

**Internal Revenue Service, Treasury**

**§ 20.2010-1**

§ 20.2010-3 *Portability provisions applicable to the surviving spouse's estate.*

(a) Surviving spouse's estate limited to DSUE amount of last deceased spouse.

(1) In general.

(2) No DSUE amount available from last deceased spouse.

(3) Identity of last deceased spouse unchanged by subsequent marriage or divorce.

(b) Special rule in case of multiple deceased spouses and previously-applied DSUE amount.

(1) In general.

(2) Example.

(c) Date DSUE amount taken into consideration by surviving spouse's estate.

(1) General rule.

(2) Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death.

(3) Special rule when property passes to surviving spouse in a qualified domestic trust.

(d) Authority to examine returns of deceased spouses.

(e) Availability of DSUE amount for estates of nonresidents who are not citizens.

(f) Effective/applicability date.

[T.D. 9725, 80 FR 34285, June 16, 2015]

**§ 20.2010-1 Unified credit against estate tax; in general.**

(a) *General rule.* Section 2010(a) allows the estate of every decedent a credit against the estate tax imposed by section 2001. The allowable credit is the applicable credit amount. See paragraph (d)(1) of this section for an explanation of the term *applicable credit amount*.

(b) *Special rule in case of certain gifts made before 1977.* The applicable credit amount allowable under paragraph (a) of this section must be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976, and before January 1, 1977.

(c) *Credit limitation.* The applicable credit amount allowed under paragraph (a) of this section cannot exceed the amount of the estate tax imposed by section 2001.

(d) *Explanation of terms.* The explanation of terms in this section applies to this section and to §§ 20.2010-2 and 20.2010-3.

(1) *Applicable credit amount.* The term *applicable credit amount* refers to the al-

lowable credit against estate tax imposed by section 2001 and gift tax imposed by section 2501. The applicable credit amount equals the amount of the tentative tax that would be determined under section 2001(c) if the amount on which such tentative tax is to be computed were equal to the applicable exclusion amount. The applicable credit amount is determined by applying the unified rate schedule in section 2001(c) to the applicable exclusion amount.

(2) *Applicable exclusion amount.* The *applicable exclusion amount* equals the sum of the basic exclusion amount and, in the case of a surviving spouse, the deceased spousal unused exclusion (DSUE) amount.

(3) *Basic exclusion amount.* The *basic exclusion amount* is the sum of—

(i) For any decedent dying in calendar year 2011, \$5,000,000; and

(ii) For any decedent dying after calendar year 2011, \$5,000,000 multiplied by the cost-of-living adjustment determined under section 1(f)(3) for that calendar year by substituting “calendar year 2010” for “calendar year 1992” in section 1(f)(3)(B) and by rounding to the nearest multiple of \$10,000.

(4) *Deceased spousal unused exclusion (DSUE) amount.* The term *DSUE amount* refers, generally, to the unused portion of a decedent's applicable exclusion amount to the extent this amount does not exceed the basic exclusion amount in effect in the year of the decedent's death. For the rules on computing the DSUE amount, see §§ 20.2010-2(c) and 20.2010-3(b).

(5) *Last deceased spouse.* The term *last deceased spouse* means the most recently deceased individual who, at that individual's death after December 31, 2010, was married to the surviving spouse. See §§ 20.2010-3(a) and 25.2505-2(a) for additional rules pertaining to the identity of the last deceased spouse for purposes of determining the applicable exclusion amount of the surviving spouse.

(e) *Effective/applicability date.* This section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2010-1T, as contained in 26 CFR part 20, revised as of April 1, 2015, for the rules applicable to estates

## § 20.2010-2

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of decedents dying on or after January 1, 2011, and before June 12, 2015.

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### **§ 20.2010-2 Portability provisions applicable to estate of a decedent survived by a spouse.**

(a) *Election required for portability.* To allow a decedent's surviving spouse to take into account that decedent's deceased spousal unused exclusion (DSUE) amount, the executor of the decedent's estate must elect portability of the DSUE amount on a timely filed Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return" (estate tax return). This election is referred to in this section and in § 20.2010-3 as the portability election.

(1) *Timely filing required.* An estate that elects portability will be considered, for purposes of subtitle B and subtitle F of the Internal Revenue Code (Code), to be required to file a return under section 6018(a). Accordingly, the due date of an estate tax return required to elect portability is nine months after the decedent's date of death or the last day of the period covered by an extension (if an extension of time for filing has been obtained). See §§ 20.6075-1 and 20.6081-1 for additional rules relating to the time for filing estate tax returns. An extension of time to elect portability under this paragraph (a) will not be granted under § 301.9100-3 of this chapter to an estate that is required to file an estate tax return under section 6018(a), as determined without regard to this paragraph (a). Such an extension, however, may be available under the procedures applicable under §§ 301.9100-1 and 301.9100-3 of this chapter to an estate that is not required to file a return under section 6018(a), as determined without regard to this paragraph (a).

(2) *Portability election upon filing of estate tax return.* Upon the timely filing of a complete and properly prepared estate tax return, an executor of an estate of a decedent survived by a spouse will have elected portability of the decedent's DSUE amount unless the executor chooses not to elect portability and satisfies the requirement in paragraph (a)(3)(i) of this section. See paragraph (a)(7) of this section for the re-

turn requirements related to the portability election.

(3) *Portability election not made; requirements for election not to apply.* The executor of the estate of a decedent survived by a spouse will not make or be considered to make the portability election if either of the following applies:

(i) The executor states affirmatively on a timely filed estate tax return, or in an attachment to that estate tax return, that the estate is not electing portability under section 2010(c)(5). The manner in which the executor may make this affirmative statement on the estate tax return is as set forth in the instructions issued with respect to such form ("Instructions for Form 706").

(ii) The executor does not timely file an estate tax return in accordance with paragraph (a)(1) of this section.

(4) *Election irrevocable.* An executor of the estate of a decedent survived by a spouse who timely files an estate tax return may make or may supersede a portability election previously made, provided that the estate tax return reporting the election or the superseding election is filed on or before the due date of the return, including extensions actually granted. However, see paragraph (a)(6) of this section when contrary elections are made by more than one person permitted to make the election. The portability election, once made, becomes irrevocable once the due date of the estate tax return, including extensions actually granted, has passed.

(5) *Estates eligible to make the election.* An executor may elect portability on behalf of the estate of a decedent survived by a spouse if the decedent dies on or after January 1, 2011. However, an executor of the estate of a nonresident decedent who was not a citizen of the United States at the time of death may not elect portability on behalf of that decedent, and the timely filing of such a decedent's estate tax return will not constitute the making of a portability election.

(6) *Persons permitted to make the election—(i) Appointed executor.* An executor or administrator of the estate of a decedent survived by a spouse that is appointed, qualified, and acting within