



# Deceased Spousal Unused Exclusion (DSUE)



# Overview

- Portability of the Deceased Spousal Unused Exclusion (DSUE) amount results from an election that is available to estates of decedents who die in 2011 or 2012.
- The election is irrevocable and takes effect on date of death.
- The election must be made by the executor of the estate of the deceased spouse, and it allows the surviving spouse to take advantage of the unused portion of the deceased spouse's applicable exclusion amount on transfers made at death or during the surviving spouse's lifetime.
- The DSUE amount increases the surviving spouse's applicable exclusion amount, which can be used to reduce the tax on transfers made in 2011 or 2012.

# Computation of the DSUE Amount

The deceased spousal unused exclusion (DSUE) amount is that portion of the applicable exclusion that is not used by the estate of a deceased spouse to reduce the tentative estate tax. This unused exclusion may be used to increase the applicable exclusion that is available to the surviving spouse, so that the surviving spouse's applicable exclusion is the sum of the *DSUE amount* and the *basic exclusion amount*.

*Computation of the DSUE amount:*

The DSUE amount is the lesser of:

- (A) Basic Exclusion Amount.....\$5,120,000<sup>(1)(2)</sup> or
- (B) Basic Exclusion Amount reduced by the amount on which tentative tax is calculated:
  - ▣ Basic Exclusion Amount.....\$5,120,000<sup>(1)(2)</sup>
  - ▣ Less the sum of the:
    - ▣ Taxable Estate from Form 706, Line 3c; and
    - ▣ Adjusted Taxable Gifts from Form 706, Line 4, reduced by adjusted taxable gifts on which gift taxes were paid in the year of the gift.

(1) \$5,000,000 for 2011 dates of death.

(2) This amount must be reduced by any Specific Exemption claimed against gifts made after Sept. 8, 1976 and before Jan. 1, 1977

# Computation of the DSUE Amount

(Continued)

## *Adjustment to Adjusted Taxable Gifts:*

For purposes of calculating the DSUE amount, adjusted taxable gifts (Form 706, Line 4) may be reduced by amounts on which gift taxes were paid if:

1. Gift taxes were paid by the decedent on transfers that caused the total taxable transfers to exceed the applicable exclusion amount at the time of the transfer; and
2. the decedent's total adjusted taxable gifts are less than the applicable exclusion amount on the date of death.

# Computation of the DSUE Amount

## (Continued)

### *Special rules for Qualified Domestic Trusts (QDOT):*

- ▣ The DSUE amount of a decedent who passes property to a QDOT is calculated in the same manner as it is for any other decedent; but is subject to subsequent adjustment.
- ▣ The DSUE amount of the decedent must be redetermined upon the occurrence of the final distribution or other event\* on which estate tax is imposed under Section 2056A.
- ▣ The earliest date on which the decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse is the date of the final QDOT distribution or final other event\* on which tax under Section 2056A is imposed.
- ▣ The decedent's DSUE as redetermined may be applied to the surviving spouse's taxable gifts made in the year of the surviving spouse's death, or if a terminating event occurs prior to the surviving spouse's death, in the year of the terminating event.

\* Death of the surviving spouse or earlier termination of all QDOTs for the surviving spouse

## How to Make the Election

- ▣ The estate of a deceased spouse is deemed to elect portability of the DSUE amount by timely filing a complete and properly-prepared estate tax return.
- ▣ Such a return will be deemed to include a computation of the DSUE amount.
- ▣ A timely filed return is one that is filed by the due date, including extensions.
- ▣ The request for extension must be filed within nine months of death.
- ▣ The timing requirement for filing a return applies to all estates electing portability regardless of the size of the gross estate.

# How to Make the Election

## (Continued)

### *Special Rules for Qualifying Estates*

- ▣ Qualifying estates are granted a six-month extension to file form 706 and elect portability, but only if the estate files an extension request (Form 4768) within fifteen months of death.
- ▣ The return must also be filed within 15 months of death.
- ▣ A qualifying estate is the estate of a person who:
  - ▣ died during the first half of 2011;
  - ▣ was survived by a spouse; and
  - ▣ whose gross estate has a fair market value that does not exceed \$5,000,000.

# Complete and Properly-Prepared Estate Tax Return

A complete and properly prepared estate tax return is one that is prepared in accordance with the instructions for Form 706.

Special rules apply to executors of estates that are not otherwise required to file a return (i.e. gross estate under \$5,000,000):

- ▣ Executor does not have to report the value of certain property that qualifies for the marital or charitable deduction; but
- ▣ Executor must provide a description of the property, ownership and/or beneficiary of such property, along with information necessary to establish the estate's right to take the marital or charitable deduction.
- ▣ Above rules do not apply if:
  - ▣ The value of the property affects the value of property passing from the decedent to someone other than the surviving spouse;
  - ▣ The value of the property is needed to determine the estate's eligibility for the provisions of sections 2032, 2032A, 6166 or another provision of the Code;
  - ▣ Less than the entire value of an interest in property includible in the gross estate is marital or charitable deduction property; or
  - ▣ A partial disclaimer or partial QTIP election is made with respect to a bequest, devise or transfer of property includible in the gross estate, part of which is marital or charitable deduction property.



# Complete and Properly-Prepared Estate Tax Return

(continued)

Special rules for executors with gross estate of less than \$5,000,000  
(continued)

- ▣ Executor may estimate the value of the gross estate:
  - ▣ Instructions for Form 706 will provide ranges of dollar values and the executor must identify on the estate tax return the particular range within which falls the executor's best estimate of the total gross estate, reported on Form 706, Part 2, Line I.
  - ▣ Until the Instructions for Form 706 (that includes the above ranges of dollar values) are published, executors may round the estimate of the gross estate to the nearest \$250,000.

## Last Deceased Spouse of the Surviving Spouse

A surviving spouse's applicable exclusion amount includes the DSUE amount from the last deceased spouse providing the executor of the estate of the last deceased spouse made the portability election.

### *Identity of Last Deceased Spouse:*

- The *last deceased spouse* of a surviving spouse is the last deceased person to whom the surviving spouse was married.
- This is true even if the surviving spouse remarries; so long as the new spouse is still living.
- If a surviving spouse remarries and that marriage ends in divorce or annulment, the subsequent death of the divorced spouse does not change the status of the prior deceased spouse (as the last deceased spouse) since the divorced spouse was not married to the surviving spouse at death (of the divorced spouse.)



# Last Deceased Spouse of the Surviving Spouse

(continued)

*Multiple Deceased Spouses and previously-applied DSUE amount:*

- The applicable exclusion of a surviving spouse with multiple deceased spouses is the sum of:
  - The surviving spouse's applicable exclusion amount; and
  - the DSUE amount of each previously deceased spouse that was applied to one or more taxable gifts of the surviving spouse.
- The DSUE amount applied to each taxable gift of a surviving spouse is the DSUE amount of the last deceased spouse on the date of the gift.
- A spouse who has survived multiple spouses may apply the DSUE of multiple deceased spouses in succession. But is not permitted to use the sum of the DSUE amounts of those deceased spouses at one time; or to use the remaining DSUE amount of a prior deceased spouse following the death of a subsequent spouse.
- In applying DSUE amounts against taxable gifts, the surviving spouse (donor) will be considered to apply DSUE amounts to the taxable gifts before using the surviving spouse's basic exclusion amount.

# Application of the Portability Election Rules

## *How to report the use of a deceased spouse's unused exclusion amount:*

- Indicate on Form 706, Part 4, Line 3, whether the executor of the estate of the predeceased spouse elected to allow the decedent to use the deceased spouse's unused exclusion amount.
- Attach a copy of the predeceased spouse's Form 706 and a calculation of the deceased spousal unused exclusion amount.

## *Opt out of making the portability election by doing one of the following:*

- Attach a statement to Form 706 indicating that the estate is not making the election under section 2010(c)(5); or
- Write "No Election Under Section 2010(c)(5)" across the top of the first page of Form 706; or
- If the gross estate is less than the basic exclusion amount, not filing a timely return will be considered to be an affirmative statement signifying the decision not to make the portability election.

# Application of the Portability Election Rules

(Continued)

*Decedent died in 2012 with a gross estate of \$3,500,000 and a taxable estate of \$800,000. Decedent made no taxable gifts during his lifetime.*

*Decedent was survived by his second wife. His first wife died in 2011 and her Executor elected portability of her unused exclusion amount of \$750,000.*

Computation of DSUE amount:

Basic Exclusion Amount	\$5,120,000	
DSUE from last deceased spouse	<u>750,000</u>	(1)
Decedent's Applicable Exclusion Amount	\$5,870,000	
Amount on which tentative tax is based (706, Part 2, Line 5)	<u>(800,000)</u>	
Deceased spouse's unused exclusion amount	<u>\$5,070,000</u>	(2)

- (1) Click **Tax Information and Elections** on the **View** menu and enter this amount in the **Deceased Spousal Unused Exclusion Amount** box.
- (2) Click **Print** on the **File** menu to open the **Print Options** dialog box. Scroll to the bottom of the list and open **Supporting Schedules**, scroll down and select **Unused Spousal Exclusions Computations** to print worksheets that support the calculation of this amount.

# Authority to Examine Returns of Deceased Spouses

For purposes of determining the DSUE amount to be included in the applicable exclusion amount of the surviving spouse, the IRS may:

- Examine returns of the surviving spouse's deceased spouses whose DSUE amount is claimed to be included in the surviving spouse's applicable exclusion amount.
- IRS may do so even if the period of limitations on assessment has expired for any return involved in the determination of the surviving spouse's applicable exclusion amount.
- This authority of the IRS applies with respect to each transfer by the surviving spouse to which a DSUE amount is applied.
- IRS may adjust or eliminate the DSUE amount on the deceased spouse's return, but may not assess additional tax on the return unless the tax is assessed within the period of limitations on assessment (under sec. 6501) that is applicable to the tax shown on that return.

# Deceased Spousal Unused Exclusion (DSUE)

## Questions