

---

# **Relief For Late Filing of Portability Election Returns For Decedents Who Died Before 2014—Revenue Procedure 2014-18**

January 29, 2014

Automatic Extension of Time (Through 2014) to File Estate Tax Return Making Portability Election For Estates of Decedents Who Died Before 2014 And Did Not Otherwise Have to File An Estate Tax Return

---

## **Steve R. Akers**

Senior Fiduciary Counsel — Southwest Region, Bessemer Trust  
300 Crescent Court, Suite 800  
Dallas, TX 75201  
214-981-9407  
akers@bessemer.com  
www.bessemer.com

**BESSEMER TRUST**

---

## TABLE OF CONTENTS

Background .....	1
Summary of Rev. Proc. 2014-18 .....	1
Observations.....	2

Copyright © 2014 Bessemer Trust Company, N.A. All rights reserved.

### **Important Information Regarding This Summary**

This summary is for your general information. The discussion of any estate planning alternatives and other observations herein are not intended as legal or tax advice and do not take into account the particular estate planning objectives, financial situation or needs of individual clients. This summary is based upon information obtained from various sources that Bessemer believes to be reliable, but Bessemer makes no representation or warranty with respect to the accuracy or completeness of such information. Views expressed herein are current only as of the date indicated, and are subject to change without notice. Forecasts may not be realized due to a variety of factors, including changes in law, regulation, interest rates, and inflation.

---

## BACKGROUND

Section 2010(c)(5)(A) requires that the portability election be made on an estate tax return for the decedent whose unused exclusion amount is being made available to the surviving spouse, and for the election to be effective the return must be filed within the time prescribed by law (including extensions) for filing the estate tax return. For estates having a gross estate and adjusted taxable gifts under the basic exclusion amount, no return is required to be filed, §6018(a), so there is no statutorily prescribed filing date. The portability regulations add that for those estates under the filing threshold limit, if the estate makes the portability election it will be considered to be required to file a return under §6018(a), so the due date is 9 months after the decedent's date of death (or 15 months if the return is extended). Because there is no statutory filing deadline for estates under the filing threshold, the IRS has the authority to grant extensions for filing the return under §301.9100-3 to make the portability election. The IRS has granted various such extensions for estates under the filing threshold who have made formal letter ruling requests for extensions pursuant to §301.9100-3.

## SUMMARY OF REV. PROC. 2014-18

*Overview.* Rev. Proc. 2014-18 (issued January 27, 2014) allows a simplified relief procedure (with no user fee being required), generally adopting one of the recommendations made by the Section of Real Property, Trust and Estate Law of the American Bar Association in comments filed with the IRS on September 27, 2013 (the ABA RPTE Section Comments are described in Item 8.I of the Hot Topics and Current Developments Summary (December 2013) found [here](#) and available at [www.Bessemer.com/Advisor](http://www.Bessemer.com/Advisor)). The relief measure assists those estates below the filing threshold who did not file the election return timely because they were unaware of the need to file the return in light of the newness of the regulations and also those same-sex couples who were retroactively recognized as spouses in Rev. Rul. 2013-17, 2013-38 I.R.B. 201.

*Extension to December 31, 2014.* Rev. Proc. 2014-18 grants an automatic extension for filing the estate tax return making the portability election until December 31, 2014 (without filing a letter ruling for relief under §301.9100-3) if the following conditions of the procedure are satisfied.

*Conditions to Qualify for Automatic Extension.* The requirements to qualify for the automatic extension under the Revenue Procedure are:

- The decedent of the estate
  - has a surviving spouse,
  - died after 2010 [portability first became available for decedents dying after 2010] and on or before December 31, 2013, and
  - was a citizen or resident of the United States on the date of death;
- The estate was not otherwise required to file an estate tax return because the value of the gross estate and adjusted taxable gifts was less than the basic exclusion amount [\$5 million in 2011, \$5.12 million in 2012, and \$5.25 million in 2013];

- 
- The estate did not file an estate tax return within the time specified in Reg. §20.2010-2T(a)(1) for filing the estate tax return to elect portability [i.e., the 9-month (or 15-month, if extended) period for filing the estate tax return; if a timely return was filed, that return either automatically made (or affirmatively declined to make) the portability election, Reg. §20.2010-2T(a)(3)(i)]; and
  - The estate satisfies the following procedural requirements—
    - The executor (or other person permitted to make the election) files a “complete and properly-prepared Form 706” (i.e., meeting the requirements of Reg. §20.2010-2T(a)(7) [which allows simplified reporting procedures for estates that are below the filing threshold]) on or before December 31, 2014, and
    - The return must state at the top of Form 706 “FILED PURSUANT TO REV. PROC. 2014-18 TO ELECT PORTABILITY UNDER §2010(c)(5)(a).”
  - The IRS will send an estate tax closing letter acknowledging receipt of the Form 706; but if it is subsequently determined that the estate was over the filing threshold the automatic grant of extension is “deemed null and void.”

*Limitations on Refund Claims by Surviving Spouses’ Estates.* If the surviving spouse has subsequently died after the decedent who is making the late election, Rev. Proc. 2014-18 addresses the limitations period for requesting a credit or refund. The surviving spouse must file a claim for refund before the general refund limitation period. For example, assume S1 died on January 1, 2011, S2 died January 14, 2011, and the Form 706 for S2 was filed and tax was paid on October 14, 2011 (without taking advantage of unused exclusion amount from S1, which would have eliminated the estate tax totally for S2). The estate of S2 must file a claim for refund 3 years after filing the Form 706 (i.e., by October 14, 2014), even if the estate of S1 does not file the return making the portability election or receive a closing letter regarding such election before that date. The claim will be a protective claim for refund pending the determination that the estate of S1 is ultimately determined to have elected portability pursuant to the extension measures under the new procedure.

*Effective Date; Pending Requests.* The procedure is effective January 27, 2014. Any estate that has a ruling request pending may withdraw the ruling request and receive a refund of its user fee if it does so by March 10, 2014. (The next sentence in the Rev. Proc. is confusing—it says the national office will process ruling requests pending on January 27, 2014 unless the executor withdraws the request prior to the *earlier* of March 10 or the issuance of the letter ruling. By implication, this may suggest that the IRS could issue a letter ruling before March 10 and avoid having to return the user fee as long as the executor has not notified the IRS to withdraw the ruling request before the letter ruling is issued.)

## **OBSERVATIONS**

1. *Welcome Relief.* This procedure is quite welcome. It will prevent estates who meet the requirements of the procedure from having to pay the \$10,000 filing fee (which can be reduced for certain taxpayers) for making the letter ruling request for an extension pursuant to §301.9100-3.

---

2. *Key Dates.* Two important due dates are specified.

- *December 31, 2014.* The Form 706 making the portability election must be filed by December 31, 2014, or else this automatic extension will no longer apply (and the estate would have to make a formal request under §300.9100-3 (and pay the hefty user fee)).
- *March 10, 2014.* Estates with any pending ruling requests for extending the date to file the return must do so by March 10, 2014 to receive a refund of its user fee (and perhaps even before that date—so file the notification request to withdraw the ruling request as soon as possible).
- *Refund Claim.* There is no specific date for this item, but if the surviving spouse has died and paid estate tax, the refund claim (based on having the first decedent's DSEU amount, which would reduce the surviving spouse's estate tax) must be filed within the normal 3-year date of filing the surviving spouse's return.

3. *Procrastination Pays!!!* Estates that realized they had not timely filed the return to make the portability election and that filed a ruling request (and paid the user fee) and received the ruling apparently will not get their money back. (Shame on them for being responsible and proactively filing for relief under §301.9100-3 as soon as reasonably possible.)

4. *Estates That Filed Returns After Due Date But Have Not Filed Ruling Request.* In light of the uncertainty surrounding the filing date issue, some estates may have simply filed the estate tax return late making the portability election, but have not yet filed a ruling request for an extension of time to file late. Those returns obviously would not have included the required notice at the top of the return. Those estates are not prohibited under the procedure from using the extended due date by reason of the earlier-filed return, because it was not timely filed. To be conservative, any estate in this situation should re-file the estate tax return, with the required notice added at the top of the return.