

**BARBER EMERSON, L.C.**

Summary of Portability of Estate Tax  
Exemption Between Spouses

March, 2012

---

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Act") allows for the availability of "portability of estate tax exemption between spouses." Portability permits any or all of the estate tax exemption amount (\$5,000,000.00 in the year 2012) not used by the estate of a deceased spouse, to be used by the surviving spouse, either during life for gifts, or at death to decrease the surviving spouse's estate tax liability. With portability of estate tax exemption between spouses, a married couple may transfer up to \$10,000,000.00 free of estate and gift taxes to their intended donees and beneficiaries.

According to the 2010 Act, however, portability of unused exemption between spouses will expire on December 31, 2012. If Congress does not act to extend portability beyond 2012, surviving spouses dying after 2012 will not be able to apply any portion of their previously deceased spouse's unused estate tax exemption to reduce their own estate tax liability. There are indications, however, both from Congress and from President Obama, that portability likely will be continued beyond the current expiration date of December 31, 2012. One should not, however, base planning decisions on the continuation of the availability of portability, but rather should plan for the possibility that portability will be eliminated and the estate tax exemption

amount could be \$1,000,000.00, \$3,500,000.00, \$5,000,000.00, or the estate tax repealed.

The following examples illustrate the tax advantages associated with the availability of portability of estate tax exemption between spouses:

Husband and Wife have combined assets of \$10,000,000.00. \$9,000,000.00 of the assets belong to Wife, and \$1,000,000.00 of the assets belong to Husband. If Husband predeceases Wife in the year 2012 and leaves all of his assets to his children, his estate will only be able to use \$1,000,000.00 of his \$5,000,000.00 estate tax exemption.

Without portability, the \$4,000,000.00 unused portion of Husband's estate tax exemption is wasted. As a result, at Wife's death, Wife would have \$9,000,000.00 of assets, and only her own \$5,000,000.00 estate tax exemption, resulting in a taxable estate of \$4,000,000.00.

With portability, the unused portion of Husband's estate tax exemption, equal to \$4,000,000.00, will be added to Wife's own estate tax exemption. Consequently, at Wife's death, Wife will have \$9,000,000.00 of assets, and both her own \$5,000,000.00 exemption and Husband's unused \$4,000,000.00 exemption, for a total \$9,000,000.00 estate tax exemption. Wife, therefore, will have a taxable estate of \$0.00.