

S.F. No. 333 – Portability of deceased spouse’s unused exclusion amount (as proposed to be amended by the A-1 amendment)

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Minnesota allows a \$3 million subtraction for purposes of calculating the Minnesota taxable estate, so that up to \$3 million is exempt from tax. In the case of married couples, the exemption amount applies for purposes of calculating the taxable estate of the first-deceased spouse. If the estate is less than \$3 million, the “unused” amount does not transfer to the surviving spouse for purposes of the calculating the surviving spouse’s estate tax liability. This bill allows spouses to elect to transfer, or “port”, the amount of the deceased spouse’s unused exclusion (DSUE) to the surviving spouse for purposes of calculating the surviving spouse’s estate tax liability. Portability would only be allowed if the election is timely made. This bill also makes technical changes to remove obsolete provisions in the estate tax chapter relating to the exclusion amount, calculating the taxable estate, and calculating estate tax.

Section 1. Return required. Strikes obsolete language regarding the phased-in estate tax exclusion for purposes of the filing requirement for estate tax returns. Allows a return to include an election to allow a decedent’s surviving spouse to take the DSUE into account. Effective for estates of decedents dying after June 30, 2023.

Section 2. Subtraction. Strikes obsolete language regarding the phased-in estate tax exclusion amount and the qualified small business property and farm property subtraction amount. Allows a surviving spouse an additional subtraction for purposes of calculating the surviving spouse’s taxable estate equal to the lesser of \$3 million or the amount of the deceased spouse’s unused exclusion. Effective for estates of decedents dying after June 30, 2023.

Section 3. Tax amount. Strikes obsolete language for calculating the estate tax during years the years the exclusion amount was phased in. Effective the day following final enactment.

Section 4. Election of portability of deceased spousal unused exclusion amounts; election irrevocable; deemed elections. Allows the personal representative of a decedent’s estate to elect to allow the decedent’s surviving spouse to use the DSUE as calculated in a later section. The election is irrevocable. The election is deemed to have been made when the return required under an earlier section is filed unless the representative affirmatively states that the decedent’s estate is not electing portability. Effective for estates of decedents dying after June 30, 2023.