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ROWLAND FAMILY A planning mistake cost the estate of Billy Rowland, center, \$1.5 million in extra taxes.

An Estate-Tax Mistake That Can Cost Millions

BY ASHLEA EBELING

The U.S. tax code is generous when it comes to passing down money to heirs tax-free, and it has only become more so under the new tax law. But for married couples to obtain the full benefit, there is a strict set of rules. Messing up can be disastrous.

In the case of Billy Rowland, it cost his heirs \$1.5 million in extra estate taxes.

Rowland expanded his many small businesses in Lorain, Ohio, over decades, with his hand in trucking, used cars, commercial real estate and banking. He served on local charity boards and wore a "World's Greatest Grandpa" cap.

After he died, his executor filed an estate-tax return, and the Internal Revenue Service came calling in 2021, asking about the estate return of his late wife, Fay, filed years earlier. The tax agency said it believed her return was incomplete, and that disqualified his estate from getting a share of her exclusion.

The Rowland case has lawyers and accountants who prepare estate-tax returns on edge. The Tax Court sided with the IRS last month, disallowing the estate from using the common planning technique known as portability. *Note*

That lets a surviving spouse use any leftover exclusion amount from the first spouse to die—as long as the estate filed a return and filled it out properly. The trouble is, often no one checks the work until the second spouse dies. At that point, it can be too late to fix any mistakes.

The Tax Court said Rowland's estate couldn't take Fay's unused exclusion amount of \$3.7 million because of the error. Hence the extra taxes. The message to wealthy families is that obtaining the doubled estate-tax shelter for married couples isn't automatic. *Note*

"It's really a trap for the unwary," said Mark Feuer, who represented Billy Rowland's estate before the Tax Court.

The stakes for families are elevated by the permanent increase in the estate-tax exclusion amount under the new tax law. The estate-tax threshold is \$13.99 million per person this year. It is \$15 million per person for 2026 deaths, and indexed for inflation after that. Since estates are taxed at 40%, the heirs of a couple that loses the \$15 million exclusion for the first spouse would owe an extra \$6 million in taxes. *Note*

In general, there is no requirement to file an estate-tax return when the first spouse dies if the estate isn't above the threshold. When one spouse dies, the partner often inherits all or part of the deceased person's estate. The surviving spouse receives those funds tax-free. The survivor can also carry over the deceased's unused estatetax exclusion, so the survivor's estate gets a bigger tax shelter.

For most surviving spouses, a \$15 million exclusion is enough to shelter their estates from taxes. They don't need the combined \$30 million available to a married couple. Yet nearly 500,000 Americans have a net worth of \$15 million or more, according to the global wealth tracker Altrata. *

For those with estates worth \$15 million to \$30 million, it generally makes sense to file an estate-tax return when the first spouse dies to elect portability. "It would be a disaster if they fouled up," said Ed Zollars, a Phoenix-based CPA.

Even those with less than \$15 million today might need the first spouse's extra exclusion amount later on. Their investments could grow, or they could get an unexpected inheritance or win a lot in the lottery. Note

"All of a sudden, you have a much bigger estate than you thought," said Kenneth P. Brier, an estate lawyer in Needham, Mass. "People should be filing these portability returns, and they have to do it right."

The concern for other families and their advisers is how much of a mistake can be on an estate-tax return filed for portability before the IRS considers it defective.

Fay Rowland died in 2016, when the estate-tax exclusion amount was \$5.45 million. Her estate-tax return, filed to elect portability, estimated the gross value of her estate at \$3 million. It listed various assets, including real estate and shares of the Rowland family businesses, but didn't spell out the values of each asset. That was a decisive flaw, the Tax Court said.

IRS rules allow nontaxable estates to leave off specific values on the estate-tax return if the assets are left to a spouse or charity. Fay named children, grandchildren and friends among her heirs, so her estate wasn't allowed to use those rules, the Tax Court said.

Portability was introduced in 2010. So many people weren't filing the required estate-tax returns that in 2017 the IRS extended the time frame for filing to two years after death. Then, in 2022, the IRS extended it to five years.

After Rowland died in 2018, his estate filed a return that listed its value as \$26 million. At the time, the estate-tax threshold was \$11 million, so his estate would benefit from taking Fay's unused exclusion. The IRS first contacted Rowland's estate about her return in 2021, when the agency pulled his return for audit.

The Rowland estate argued that any errors should be excused on the grounds that the regulations were murky and they substantially complied. Plus, it was unfair, they said.

The estate argued that if the IRS had raised the issue earlier, they could have applied for a special private- letter ruling, which would have let them ask the IRS to allow a corrected return with the details the IRS wanted.

The family and Feuer wouldn't say who oversaw the preparation of the estate-tax returns. Note

Zollars, the Phoenix CPA, who isn't involved in the case, said, "There could be a lot of fingerpointing."

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