

THE ILLINOIS ESTATE TAX: A FEW SURPRISES, PERHAPS?

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In light of the increase in the Federal estate tax exempt amount, and the adoption by our state legislature of the right to utilize an Illinois QTIP election, most of the focus of the local estate planning community has been on the restructuring of documents to provide for a deferral of both Federal and Illinois estate tax until the death of the second spouse. What might have been lost in the shuffle, however, is the real impact of the Illinois estate tax (35 ILCS 405/1, et seq) on planning for the estates of decedents of this state.

When Illinois decoupled from the Federal taxing scheme, it was generally understood to mean that the amount exempt from Illinois estate tax was set at \$2 million, although the Federal exempt amount was increased to \$5 million. It was also generally known that the calculation of tax was to be determined through use of the Illinois Attorney General Estate Tax Calculator, which for 2011 decedents can be found at www.illinoisattorneygeneral.gov/publications/calculator/calculator2011.html. When one avails itself of the Calculator, however, the results which you find are somewhat surprising.

The origin of the calculation of the estate tax imposed by Illinois is the Federal "State Death Tax Credit Table." This Table reflects rates which progressively rise to a top rate of 16% when the Federal Adjusted Taxable Estate reaches \$10,040,000. Further, the State Death Tax Credit is determined prior to the add back of Adjusted Taxable Gifts under the Federal law.

However, when one utilizes the Calculator, one finds that the rate of tax on Illinois estates in excess of \$2 million is both regressive and significantly higher than the 16% rate in the Table. Further, although Illinois does not have a gift tax, the impact of Federal Adjusted Taxable Gifts on the Illinois tax can be significant as well.

Using examples for 2011 decedents found in the "2011-2012 Important Notice Regarding Illinois Estate Tax and Fact Sheet" (also available on the Illinois Attorney General website), as well as other examples run on the Calculator by the author, the regressive nature of the Illinois estate tax is dramatically shown:

<u>Estate</u>	<u>Illinois Estate Tax</u>	<u>Rate of Illinois Tax (on value over \$2M)</u>
\$2,000,000	0	0
\$2,000,100	\$ 26	26.00%
\$2,500,000	\$128,518	25.70%
\$3,000,000	\$167,279	16.73%
\$4,000,000	\$253,986	12.70%
\$5,000,000	\$352,158	11.74%

A second unexpected result comes in estates of decedents which made lifetime taxable gifts. Using an example set forth in the Attorney General "Notice," it seems to matter not whether you die with your property or have made deathbed gifts:

<u>Estate</u>	<u>Adjusted Taxable Gifts</u>	<u>Illinois Estate Tax</u>	<u>Rate of Illinois Tax (on value over \$2M)</u>
\$2,100,000	0	\$ 25,926	25.93%
\$1,900,000	\$ 200,000	\$ 25,926	25.93%

It is unclear whether these results were intended or even contemplated by the legislature. At this time, however, these results should prompt further examination and consideration of our statute. This is also a wakeup call for practitioners, who have viewed the Illinois estate tax as the tail on the Federal estate tax dog. In fact, these examples clearly show that, especially for clients with estates between \$2 million and \$5 million, this is a big nasty dog indeed.