



Alerts

Illinois Reinstates Illinois Estate Tax and Separate QTIP Marital Trust Election in 2011

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Estate Planning Alert

Residents of Illinois and any other taxpayers who own property located in the state will be impacted by a tax-related bill recently enacted by the State of Illinois. Specifically, Illinois reinstated its estate tax effective January 1, 2011. The Illinois estate tax will apply to every resident of Illinois and to anyone else who owns property located in the state.

In 2011 and 2012, a decedent may transfer up to \$5 million free of federal estate tax. However, Illinois will only allow \$2 million to be transferred tax-free in those years. This means that it is now possible that the estate of a taxpayer who dies in 2011 or 2012 may owe Illinois estate tax, but not federal estate tax. In 2013 and future years, barring future action by Congress, the reverse will be true. In those years, the amount that may be transferred free of federal estate tax is currently scheduled to be \$1 million, whereas in Illinois \$2 million may be transferred tax-free.

In addition to reinstating its estate tax, Illinois also reinstated a special election related to qualified terminable interest property (QTIP) marital trusts effective January 1, 2011. This will be particularly important for married couples who own more than \$2 million of property (including life insurance). If the tax-free amount for federal estate tax purposes exceeds the \$2 million Illinois tax-free amount, some Illinois estate tax may become due upon the death of the first spouse to die in certain situations. A surviving spouse who uses the special QTIP election can defer up to \$352,158 in Illinois estate taxes that would otherwise be due upon the death of the first spouse, should he or she die in 2011 or 2012, and thereby avoid this potential problem.

For married residents of Illinois who have a will or revocable trust that includes a marital trust allocation formula, it is quite possible that the allocation formula will not work as anticipated given the new Illinois estate tax law. Married Illinois residents should have their trusts reviewed by qualified counsel so that these recent changes in the Illinois law can be fully considered. The attorneys in Hinshaw's Estate Planning Practice Group can provide these reviews.

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