



David P. Buckley, Jr., J.D., C.P.A.
Andrew J. Kelleher, Jr., J.D., C.P.A., LL.M.
Michael P. McElroy, J.D.
Martha E. McHugh, J.D.
Mary T. Griffin, J.D.
Vasili D. Russis, J.D., C.P.A.

Linda S. Fine, J.D.
Robert A. Holland, J.D., C.P.A.
Kathryn F. McDonough, J.D.
Helmut E. Gerlach, J.D., Of Counsel
Hon. Henry "Skip" Tonigan, Ret., Of Counsel

Email us at: attorneys@kelleherbuckley.com

Kelleher & Buckley, LLC

New Illinois and Federal

Estate & Gift Tax Update

We are writing to provide a brief overview of the new federal and Illinois estate and gift tax laws, and what actions your clients may consider taking

New Illinois Estate & Gift Tax Law

Effective as of January 1, 2011, Illinois implemented a *permanent* Illinois Estate Tax. The Illinois tax exemption is \$2.0 million per person with a highest marginal tax rate of 16%.

Illinois still does not have a gift tax.

New Federal Estate & Gift Tax Law

Congress recently reinstated the federal estate tax, with one set of rules applying for 2011 and 2012, and another set thereafter. For 2011 and 2012, the estate tax rate was reduced from 45% (in 2009) to 35%. The new law also increases the exemption for estate tax, gift tax, and generation skipping transfer tax to \$5 million per person for 2011 and 2012 (the 2012

exemption is indexed for inflation).

However, for 2013 and beyond, unless the new laws are extended, these exemptions revert to only \$1 million per person, and the highest marginal estate tax rate becomes 55%.

The new law also introduces the concept of "portability," which is intended to allow a surviving spouse to use a deceased spouse's unused estate tax exclusion. For example, generally, if husband dies in 2011 with a taxable estate of \$4.0 million, his \$1 million of unused exemption may be given to the surviving spouse. Clients with planning needs should consider not relying on portability as there are nuances and ambiguities related to the effectiveness of the same (especially considering the Illinois Estate Tax).

How are Clients Affected?

Although regular plan reviews are generally recommended, most individuals who have had their estate plan prepared or reviewed in the last two years will not likely need to immediately update their estate planing drafting. For example, a married couple with a customary two-trust plan (marital and family trust, or, A/B trust) primarily for the benefit of the surviving spouse, will likely not need any changes, provided the plan otherwise accomplishes their desires.

However, older plans and any plans that set aside a separate bucket of assets for one group based upon the amount of the tax exemption, with the rest going to another person or group, will likely need to be reviewed and updated. Two common examples of this are in second marriages where there are children from the first marriage, and first marriages where the surviving spouse is thought to have enough assets to take care of themselves. Such plans often provide that the children will receive an amount equal to the tax exemption, with the remainder going into a marital trust for the surviving spouse. Additionally, with the new laws providing a greater difference in federal and Illinois exemption amount, older estate planning documents may not take into account law changes and cause to be incurred estate tax charges otherwise avoidable. The dramatic increase in the tax exemption may cause unintended results in plans such as these.

The increase in the gift tax exclusion amount to \$5 million has many important and immediate implications. During the next two years, individuals now have an opportunity to make larger gifts without paying gift tax. Combining this exemption with other planning techniques (i.e., installment sales to grantor trusts, grantor retained annuity trusts and the like) in the next two years will allow the vast majority of families to minimize or even avoid transfer taxes.

What Should Clients Consider Doing?

Most clients should regularly review both the drafting of their estate planning documentation and the titling and funding of their assets. Furthermore, as estate planning also includes non-tax legal matters, most notably creditor protection, estate plans should be reviewed to ensure a family has the available creditor protection in place.

General email updates cannot adequately address individual circumstances. It may therefore

make sense for clients to review their planning and make sure that their property is being addressed according to their desires, that they have the correct executors, trustee and guardians, and that their estate plan is fully funded and that proper credit protection benefits are being utilized. Please call our offices if you or your clients desire estate planning.

Kelleher & Buckley, LLC

The Right Law Firm Can Make All The Difference

**102 S. Wynstone Park Drive
North Barrington, Illinois 60010
Kelleher & Buckley, LLC
Phone (847) 382-9130 / Fax (847) 382-9130**

www.kelleherbuckley.com