

Revised August 27, 2012 Notice Regarding Estate Tax Treatment of Civil Unions and Fact Sheet

For decedents dying prior to 2012, see the Instruction Fact Sheets previously posted on this website covering the specific year of death at issue subject to taxation.

For persons dying in 2012, the Federal exemption for Federal estate tax purposes is \$5,120,000. However, the exemption equivalent for Illinois estate tax purposes is \$3,500,000. Therefore, tentative taxable estates with adjusted taxable gifts between \$3,500,000 and \$5,120,000 will owe an Illinois estate tax without any corresponding Federal estate tax liability. In such situations, the estate representative is to prepare and file the Illinois Estate Tax Return, Form 700, together with a Federal Form 706, Federal Estate Tax Return, or any other form containing the same information, even though the Federal return is not required to be filed with the Internal Revenue Service. The Federal Form 706 must include all schedules, appraisals, wills, trusts, attachments, etc. as the Federal Form 706 would have for a 2011 decedent with a tentative taxable estate plus adjusted taxable gifts over \$2,000,000. The Illinois estate tax will be determined using the inter-related calculation for 2012 decedents. The calculator at the Illinois Attorney General's website may be used for this computation. (www.illinoisattorneygeneral.gov) To make the computation, the amounts of the Illinois Tentative Taxable Estate (Line 3, Schedule A or B, Form 700) and the Illinois Tentative Taxable Estate with Adjusted Taxable Gifts (Line 5, Schedule A or B, Form 700) without the State Death Tax Deduction are required for input into the 2012 Estate Tax Calculator to determine the amount of Illinois estate tax due. Please note that the Calculator will not perform the computation of Illinois estate tax due unless amounts are inserted in both of the boxes described above.

When the tentative taxable estate plus adjusted taxable gifts exceeds \$5,120,000 the Illinois Estate Tax return, Form 700, is to be prepared in the same manner for 2012 as for 2011, and must therefore include a copy of the Federal Form 706 with all attachments.

For both resident and non-resident decedents, the tax base will be calculated assuming all assets are located within Illinois. (Line 6, Schedule A or B, Form 700). The percentage of Illinois assets to total assets is then computed with the percentage applied to the tax base for apportionment purposes to determine the amount of Illinois estate tax due.

Illinois Q-TIP election (Qualified Terminable Interest Property)

For persons dying January 1, 2009 and after, the estate may make a Q-TIP election for Illinois purposes which is larger than the Federal Q-TIP election. The Illinois Q-TIP must be elected on a timely filed Illinois return by checking the election box, inserting the dollar amount of the Q-TIP election, and providing the social security number of the surviving spouse. The Illinois Q-TIP election will follow Federal statutes and rules for treatment of such elected property passing to the surviving spouse and inclusion for Illinois purposes on any Illinois Estate Tax Return of the

surviving spouse, except as to the application of the Illinois Religious Freedom Protection and Civil Union Act to parties of a civil union for Illinois estate tax purposes. The maximum Illinois Q-TIP election allowable for decedents dying in 2012 is \$1,620,000.

Estate Tax Treatment of Civil Unions

Wherever the Illinois Estate and Generation-Skipping Transfer Tax Act incorporates provisions of the Internal Revenue Code, those provisions shall be construed in accordance with the Illinois Religious Freedom Protection and Civil Union Act [750 ILCS 75]. Individuals who are parties to a civil union recognized under 750 ILCS 75 occurring on or after June 1, 2011 shall be subject to the same obligations and responsibilities and afforded the same protections and benefits under this Part as apply to spouses in a marriage recognized for Federal estate tax purposes. An Illinois marital deduction, including qualified terminal interest property (Q-TIP) elections allowable under 35 ILCS 405/2(b-1), is therefore allowable for property passing from a decedent to his or her partner in a civil union recognized under 750 ILCS 75 to the same extent that property transferred to a husband or wife is allowable as a marital deduction, including Q-TIP elections, under the Internal Revenue Code (26 USC 2044 and 2056). Because civil unions are not recognized for Federal estate tax purposes, civil union partners recognized under 750 ILCS 75 who elect a marital deduction and Q-TIP elections for Illinois estate tax purposes are required to file the following returns with the Illinois Attorney General:

- a) A Form 700 Illinois Estate and Generation-Skipping Transfer Tax Return, available on the Attorney General's website at (<http://www.illinoisattorneygeneral.gov/publications/estatetax.html>);
- b) A pro forma Federal Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return completed as if the Federal estate tax statutes allowed a marital deduction to civil union partners recognized under 750 ILCS 75 that reflects the marital deductions claimed; and,
- c) For those estates that were required to file a return in accordance with Federal law (26 USC 2001, et seq.), a copy of the Federal Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return actually filed with the Internal Revenue Service.

As used in this Section, the term "qualified terminal interest property" or "Q-TIP" has the same meaning as prescribed in 26 USC 2056(b)(7)(B).

Computation Examples of Illinois Estate Tax

01-01-12 decedent with an estate of of \$2,000,000	\$0 Illinois Estate Tax \$0 Federal Estate Tax
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01-01-12 decedent with an estate of \$2,500,100 and adjusted taxable gifts of \$1,000,000	\$26 Illinois Estate Tax \$0 Federal Estate Tax
01-01-12 decedent with an estate of \$3,000,000	\$0 Illinois Estate Tax \$0 Federal Estate Tax
01-01-12 decedent with an estate of \$3,500,000 (all Illinois property)	\$0 Illinois Estate Tax \$0 Federal Estate Tax
01-01-12 decedent with an estate of \$4,000,000 (all Illinois property)	\$129,629 Illinois Estate Tax \$0 Federal Estate Tax
01-01-12 decedent with an estate of \$5,000,000 (all Illinois property)	\$352,158 Illinois Estate Tax \$0 Federal Estate Tax
01-01-12 decedent with an estate of \$5,120,000, a surviving spouse, and an IL QTIP election	Illinois QTIP \$1,620,000 \$0 Illinois Estate Tax \$0 Federal Estate Tax
01-01-12 decedent with an estate of \$5,000,000 with 50% in Illinois and 50% in Florida	\$176,079 Illinois Estate Tax (even though Florida imposes no State Estate Tax) \$0 Federal Estate Tax

Note: The portability and carry-over of the unused Federal exemption to the surviving spouse is inapplicable to the computation and assessment of the Illinois Estate Tax.

The Illinois Attorney General administers the Illinois Estate Tax. The Illinois Estate Tax Return is designated and titled Form 700 and is present at this website. The original Return is filed with the Illinois Attorney General’s Office. Effective July 1, 2012, as a result of the enactment of SB 3802 as P.A. 97-0732 a copy of the Form 700 must be filed with the State Treasurer. For Cook, DuPage, Lake and McHenry Counties, the original Return along with a copy of the Federal Return is filed at the Office of the Illinois Attorney General, Revenue Litigation Bureau - Estate Tax Section, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601. For all other counties, the original return along with a copy of the Federal Return is filed at the Office of the Illinois Attorney General, Revenue Litigation Bureau - Estate Tax Section, 500 South Second Street, Springfield, Illinois 62706. **Payment of all taxes, interest and penalties must now be made payable to the Illinois State Treasurer with the “Illinois State Treasurer Estate Tax Payment Form”** available on the State Treasurer’s website at <http://www.treasurer.il.gov/finances/estate-tax/estate-tax.aspx> at the addresses designated therein. The tax is due nine (9) months after the date of the decedent’s death. Extensions are based on allowed Federal extensions. Further filing and payment instructions are on the Return.

If the Federal tax is paid in installments, the Illinois tax may be paid in installments. Form 4350a is the computation worksheet for installment payments and is available at this website. Please note that “gross” values are used to determine the percentage subject to deferral; not adjusted values as on the Federal return.

Estates between \$3,500,000 and \$5,120,000 may elect 2032A and alternate valuations, as well as 6166 deferrals, if the estate qualifies for such elections as if the Federal exemption still matched the Illinois exemption. All forms and supporting documentation required with the Federal Form 706 for those elections must be filed with the Illinois Form 700.

Please contact the Estate Tax Section, Illinois Attorney General’s Office with any questions or problems at:

Estate Tax Section
100 West Randolph Street
13th Floor
Chicago, Illinois 60601
Telephone: (312) 814-2491

Estate Tax Section
500 South Second Street
Springfield, Illinois 62701
Telephone: (217) 524-5095