



# Estate Planning in Uncertain Times

Gary J Hoff  
ghoff@illinois.edu  
University of Illinois



- **Asset protection**
- **Succession/transition planning**
- **Entity planning**
- **Income tax planning**



## Deaths in 2009

- Exemption: \$3.5 million
- Rate: 45% on excess
- Basis step-up

## Deaths in 2010

- Estate tax repealed
- Modified carry-over basis
- GSTT repealed



- **Exemption: \$1 million**
- **Rate: 35% on excess amounts**
- **Annual exclusion: \$13,000**
  
- **2011 exemption would have been \$1 million.**
- **Rates of 41% – 45%**

- **Federal estate tax reinstated.**
  - Effective **1/1/2010**
  - Top rate: **35%** (\$500,000 and up)
  - Exemption: **\$5 million**
    - **Portable for deaths in 2011 and 2012**
  
- **Reinstatement of GSTT**
  - Effective **1/1/2010**
  - GSTT rate **0%** for 2010
  - Exemption: **\$1 million** for 2011 - 2012

## ■ 2011 - 2012

- First death - \$5 million
- Equal to \$1,730,800 of estate tax
- Spouses death - \$5 million + portable amount
  - Surviving spouse must die in 2011 or 2012 to use portable amount.

## First death 2011 or 2012

Basic exclusion	\$5,000,000
FMV of estate	<u>4,000,000</u>
Excess exclusion	<u>\$1,000,000</u>

## Spouses' death 2011 or 12

Basic exclusion	\$5,000,000
Portable amount	<u>1,000,000</u>
Total exclusion	<u>\$6,000,000</u>

## First death 2011 or 2012

Basic exclusion	<b>\$5,000,000</b>
Prior gifts	<u>(1,500,000)</u>
Remaining exclusion	<u>\$3,500,000</u>
FMV Estate	<u>3,000,000</u>
Excess exclusion	<u>\$500,000</u>

## Spouses' death 2011 or 12

Basic exclusion	<b>\$5,000,000</b>
Prior gifts	(1,500,000)
Remaining exclusion	<u>\$3,500,000</u>
Portable amount	<u>500,000</u>
Total exclusion	\$4,000,000
FMV estate	<u>4,750,000</u>
Taxable estate	<u>\$750,000</u>



- **Portability a.k.a. “deceased spousal unused exclusion amount”**
- **Applies to decedents dying after 1/1/11**
- **Election to use requires filing Form 706 first spouse to die.**
- **Remarriage after first spouse – exclusion of last deceased spouse**

# Remarriage


	Husband #1	Husband #2	Husband #3
Basic exclusion	\$5,000,000	\$5,000,000	\$5,000,000
FMV estate	<u>2,000,000</u>	<u>4,000,000</u>	<u>100,000</u>
Unused exclusion	\$3,000,000	\$1,000,000	\$4,900,000

	1 <sup>st</sup> Marriage	2 <sup>nd</sup> Marriage	3 <sup>rd</sup> Marriage
Basic exclusion	\$5,000,000	\$5,000,000	\$5,000,000
Portable amount	<u>3,000,000</u>	<u>1,000,000</u>	<u>4,900,000</u>
Total exclusion	\$8,000,000	\$6,000,000	\$9,900,000

- For clients without planning better than not having portability.
- Avoids division of assets (closely-held stock, retirement plans).
- Step up in basis second spouse's death.

- **Must file Form 706 when first spouse dies.**
- **Surviving spouse has full control (remarriage statutory share issue).**
- **Bypass trust control to benefit the children has been lost.**
- **Will portability continue if surviving spouse does not die until after 1/1/2013?**
- **TRAP: needless Illinois death tax if over \$2 million.**

# Illinois Estate Tax

- **2010 no IL estate tax.**
  - **2011 and 2012 calculated based on old state death tax credit using \$2M exemption.**
  - **IL has no gift tax.**
  - **No portability of IL exemption.**
  - **IL has partial QTIP election (regardless of whether federal QTIP elected).**
- 

# 2011 Illinois Death

<b>Taxable Estate</b>	<b>Federal Estate Tax</b>	<b>Illinois Estate Tax</b>	<b>Total</b>
<b>\$2 million</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>\$3 million</b>	<b>0</b>	<b>167,279</b>	<b>167,279</b>
<b>\$4 million</b>	<b>0</b>	<b>253,986</b>	<b>253,986</b>
<b>\$5 million</b>	<b>0</b>	<b>352,158</b>	<b>352,158</b>
<b>\$6 million</b>	<b>190,375</b>	<b>456,071</b>	<b>646,446</b>

- **Basis is factor in decision**
  - Lifetime: Donee takes donor's basis
  - Death: step-up basis FMV date of death
- **IL no gift tax**
- **Advantages of large gifts**
  - Remove future appreciation
  - Avoid IL death tax
  - Make gift as one part of sophisticated strategy
    - like gift and then installment sale to IDGT
- **\$13,000 annual exclusion**

- **Modified carry-over basis**
  - \$1.3 million (any heir)
  - \$1.3 million + \$3 million (if spouse)
- **Stepped-up basis**
  - FMV at date of death or
  - FMV 6 months after date of death



Average annual gross cash rent/ac – property tax

Last 5 years average effective Farm Credit Bank interest rate

FMV \$8,000

Average cash rent \$400

Property tax \$25

Interest rate 6.12%

$$\frac{\$400 - \$25}{.0612} = \$6,127$$

FMV	\$8,000
-----	---------

2032A value	<u>6,127</u>
-------------	--------------

Savings	\$1,873
---------	---------

- **2032A limitation: 2011 \$1,020,000**
- **2012 \$1,040,000**
- **Events with recapture implications?**
  - **Mortgaging**
  - **Sale to reduce debt**
  - **Repaying mortgage debt**
  - **Foreclosure**
  - **Bankruptcy**

An aerial photograph of a university campus. In the background, a large, classical-style building with a prominent portico and columns is visible. The building is surrounded by lush green trees. In the foreground, a wide, green lawn is bisected by a network of white-paved walkways. Several people can be seen walking on the paths. The overall scene is bright and sunny, with a clear sky.

**Gary Hoff**  
**ghoff@illinois.edu**  
**(217) 333-2958**