Illinois Estate Tax Practice Pointers

By John M. Janiga and Louis S. Harrison

This article offers suggestions for drafting estate planning documents based on the Illinois estate tax and provides guidance for determining when and how to pay the tax.

I. Introduction

In 1983, the Illinois inheritance tax[1] was repealed and replaced with the Illinois estate tax.[2] The objective of the change was to effect a more fair and straightforward approach to death tax. Although the Illinois estate tax has generally met this objective, it does contain nuances that practitioners should note, particularly when it comes to coordinating payment of federal and state death taxes in installments.

II. How the Illinois Estate Tax Works

The threshold question for Illinois estate tax purposes is whether property transferred at death is located (has a "tax situs") in Illinois.[3] If an individual dies while a resident of Illinois, all of his or her property is treated as having a tax situs in Illinois except real or tangible personal property physically located in another state.[4]

For those who die while not a resident of Illinois, only real estate and tangible personal property physically situated in Illinois is treated as having an Illinois tax situs. This means, for example, that if an individual is a beneficiary of a trust situated in Illinois, that trust has a tax situs in Illinois only if the decedent was a resident of Illinois at the time of death.[5]

The key feature of the Illinois estate tax is that it is determined by reference to section 2011 of the Internal Revenue Code (the "Code"). That section provides a credit in determining federal estate tax due for "the amount of any estate, inheritance, legacy, or succession taxes *actually* paid to any State or the District of Columbia, in respect of any property included in the gross estate...." (emphasis added).[6]

Importantly, the credit will be allowed only to a specified limit, and then only to the extent that Illinois estate tax has actually been paid. The starting point for computing the limit is the "taxable estate," which is the federal gross estate minus allowable deductions. From the taxable estate, $60,000 is deducted to arrive at the "adjusted taxable estate." Based on this amount, taxpayers use the table set forth in Code section 2011(b) (see sidebar on page 593) to arrive at what is known as the "maximum credit amount" allowed.

The following schedule illustrates the computation of the maximum state death tax credit amount (note: the taxable estate amount is assumed):[7]

Taxable estate	$2,100,000
- Reduction amount	$60,000
= Adjusted taxable estate	$2,040,000
Maximum credit amount (based on table in § 2011(b)):	$106,800

The Illinois estate tax is equal to the maximum credit amount allowable on the federal estate tax return if an individual died owning property located only in Illinois.[8] If, however, the decedent also had property with a tax situs outside of Illinois (such as real estate in Florida) then the Illinois estate tax is reduced. The amount of the Illinois estate tax would then be the maximum death tax credit allowable but

1. Ill Rev Stat ch 120, ¶ 375 to 404 (1983).
2. The Illinois Estate Tax was later updated to reference also the Federal Generation Skipping Transfer Tax, PA 86-737, § 1, eff. September 1, 1989. The new tax is called the "Illinois Estate and Generation Skipping Transfer Tax," 35 ILCS 405/1 et seq (1992). This article examines only the estate tax aspects of the law.
3. 35 ILCS 405/3(a) (1992).
4. 35 ILCS 405/5(a)(1) (1992).
5. 35 ILCS 405/5(a)(1)-(2) (1992).
6. IRC § 2011(a).
7. IRC § 2011(b) (see sidebar on page 593).
8. 35 ILCS 405/3(b) (1992).

reduced by the lesser of:

1. The amount of the estate tax paid to the other state, or

2. the amount of the death tax credit multiplied by a fraction, the numerator of which is the value of the property having a tax situs outside of Illinois and the denominator of which is the value of the decedent's gross estate.[9]

III. Drafting Estate Planning Documents Based on the Illinois Estate Tax

One objective of estate planning is to reduce a married couple's overall exposure to federal and state death taxes. Given this objective, estate planners have developed drafting strategies based on the state death tax credit, and more specifically on the interplay between state death taxes and credit shelter/marital deduction formulae.

A. Credit Shelter/Marital Deduction Formulae

Estate planners can use credit shelter/marital deduction formulae to minimize a married couple's death taxes. The formulae represent the critical aspect of a tax minimization plan that examines the death taxes due at two future points — the first spouse's death and the surviving spouse's death.

Usually the plan includes consideration of a federal estate tax credit known as the "unified credit" and of the marital deduction. The unified credit of $192,800[10] effectively shields transfers on up to $600,000 from federal estate tax; the marital deduction allows a decedent to transfer an unlimited amount of property to a surviving spouse free of federal estate tax.[11]

The typical plan focuses on eliminating federal estate tax at the first spouse's death[12] by: (1) carving out of such decedent's estate a "credit shelter share" to take advantage of the unified credit, and (2) leaving the remaining share of the estate to the decedent's surviving spouse to qualify for the marital deduction.[13]

Thus, the critical aspect for successfully implementing a tax minimization plan is the credit shelter share — and the formula used to determine it — established under the estate planning documents. The formula determines the amount of property that will pass to the credit shelter share.

Significantly, although the unified credit effectively shields transfers of up to $600,000 from federal estate tax, that does not mean that the credit shelter share formula should be drafted to automatically equal $600,000. Rather, formula drafters must keep in mind that this $600,000 amount may be reduced or increased based on several variables, including the state death tax credit, adjusted taxable gifts, other property included in the gross estate passing to beneficiaries which does not qualify for the unlimited marital or charitable deductions, and expenditures which are not taken or allowed as deductions for federal estate tax purposes.

The following example illustrates how one of these variables, prior adjusted taxable gifts, might affect the credit shelter share. Assume the following facts: (1) the decedent has a gross estate of $2 million, administration expenses of $100,000, and made lifetime taxable gifts of $300,000; (2) under the terms of the decedent's will, $600,000 of the decedent's estate was specifically bequeathed to the credit shelter share and the remainder was given outright to the surviving spouse; and (3) the administration expenses are taken as deductions on the federal estate tax return and not as income tax deductions.

Based on these facts, the marital deduction equals $1.3 million, which is the $2 million gross estate minus the portion of the gross estate that does not pass to the surviving spouse, $700,000 (the $600,000 credit shelter share plus the $100,000 of administration expenses). Subtracting the allowable deductions of $1.4 million (the marital deduction of $1.3 million plus the administration expenses of $100,000) from the gross estate of $2 million produces a taxable estate of $600,000. Adding the taxable estate,

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9. 35 ILCS 405/4(b) (1992).

10. IRC § 2010(a).

11. IRC § 2056(a).

12. For large estates, it may be worthwhile to incur some federal estate tax at the first spouse's passing to take advantage of the graduated federal estate tax rates.

13. A plan which left all of a decedent's estate to the surviving spouse would also eliminate federal estate tax at the first spouse's death due to the unlimited marital deduction. Such a plan, however, would fail to minimize the couple's overall death taxes because it would waste one spouse's unified credit. Under that plan, no federal estate tax is due at the first spouse's passing. At the surviving spouse's death, a maximum of $600,000 passes to noncharitable beneficiaries free of estate tax as the result of the surviving spouse's unified credit.

Under a combination credit shelter/marital deduction plan, at the first spouse's death a credit shelter share is established to pass property to either nonspousal, noncharitable beneficiaries or to a trust in which the surviving spouse is a beneficiary (and may even be a trustee if the trust is properly drafted) but which is not includable in the surviving spouse's gross estate for federal estate tax purposes. The credit shelter share produces three benefits: (1) it passes free of federal estate tax because of the unified credit (the marital deduction is not applicable to the credit shelter share because the property does not "pass" to the surviving spouse); (2) at the surviving spouse's death, the then value of the credit shelter share passes to the designated beneficiaries free of estate tax (the credit shelter share is not includable in the surviving spouse's gross estate for federal estate tax purposes); and (3) the surviving spouse is able to pass additional property free of estate tax to the extent of the surviving spouse's unified credit. Thus, at the surviving spouse's death a maximum of $1,200,000 (plus appreciation and income earned on the credit shelter share created at the first spouse's death) pass to the beneficiaries free of estate tax.

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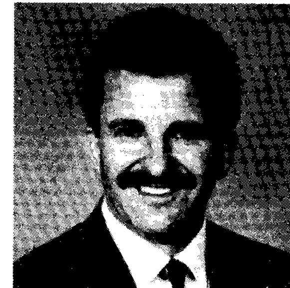

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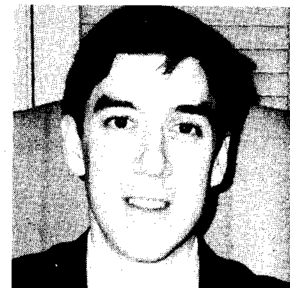

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$600,000, to the lifetime taxable gifts, $300,000, results in a federal estate tax base of $900,000. The tentative federal estate tax on this amount is $306,800.

To arrive at federal estate tax due, this amount is reduced by the amount of total gift taxes "which would have been payable" with respect to lifetime gifts made by the decedent. In this case, the total gift taxes payable are zero (i.e., the transfer tax on $300,000, $87,800, minus $192,800, the unified credit amount, results in a negative number). The unified credit, $192,800, when subtracted from the tentative tax of $306,800, results in a federal estate tax due of $114,000.

This situation results in a tax due because the credit shelter share should not have been fixed at $600,000. A portion of the unified credit, $87,800, was used to prevent gift tax from being payable on the $300,000 lifetime taxable gifts. Accordingly, the credit shelter share should have been reduced from $600,000 to $300,000. A reduction in the credit shelter share to $300,000 would have correspondingly increased the share qualifying for the marital deduction to $1.6 million. The federal estate tax base then would have been $600,000 ($300,000 taxable estate plus $300,000 in lifetime taxable gifts). No federal estate tax would have been due because the unified credit would fully offset the tentative tax on this amount, $192,800.

B. Reference to Illinois Estate Taxes in Credit Shelter/Marital Deduction Formulae

The practitioner should consider whether a given formula for calculating the credit shelter share should refer to the Illinois estate tax. Because the amount of the Illinois estate tax generally will equal the state death tax credit, any such reference will actually be to the state death tax credit.

Sample credit shelter formulae include the following:

(1) "the maximum amount of property that will result in no increase in federal estate tax payable because of credits and deductions (other than the marital deduction) allowed to my estate....,"

(2) "after considering all deductions and credits available to my estate, the amount necessary to increase my taxable estate to the largest amount that will result in no (or the minimal) payment of federal estate tax....," and

(3) "the largest amount that can pass free of the payment of any estate tax by reason of credits allowable to my estate."

Since the term "credit" as used in these formulae includes not only the unified credit but also the state death tax credit, this reference may unintentionally increase the Illinois estate taxes paid.

"[W]hen drafting under the Illinois estate tax scheme, [you] may refer in the formula that determines the credit shelter share to all available credits, but should add the following type of clause: *'provided, however, that consideration of the state death tax credit does not increase or cause the payment of state death taxes.'"*

The following example illustrates the problem. Assume these facts: (1) decedent Jane Jones died a resident of Illinois owning property with only an Illinois situs; (2) Jane's will left all of her property to her husband, Jack Jones, through a formula provision which provided that the credit shelter share was to be the largest amount of property that would result in no increase in federal estate tax payable because of the unified credit *and the state death tax credit allowable to Jane's estate*; (3) Jane made no lifetime taxable gifts; and (4) all debts and expenses of Jane's estate are taken and allowed as deductions on the federal estate tax return.

On these facts, if the credit shelter share were funded with $600,000, the tentative federal estate tax on this amount would be $192,800.[14] Because of the $192,800 unified credit, no tax would be payable. This result ignores, however, the mandate of the formula to consider not only the unified credit but also the state death tax credit.

To account for the state death tax credit, the credit shelter share initially would need to be increased to $642,425. This would increase the tentative federal estate tax by $15,697, to $208,497.[15] Despite the increase, there still would be no federal estate tax payable (and, accordingly, "no increase in federal estate tax payable"). The tentative tax would be offset by $192,800, the unified credit, and $15,697, the state death tax credit on $642,425.[16]

The state death tax credit, however, will only be available if the $15,697 of state death taxes are actually paid. Because payment of the state death taxes must be from the credit shelter share,[17] the credit shelter share would need to be adjusted from $642,425 to account for $15,697 of state death taxes paid.

Jane's formula, therefore, results ultimately in a $626,728 credit shelter share. This produces the following positive effects: (1) the marital share is decreased by $42,425, thereby preventing the future payment of federal estate tax on this amount, and (2) the credit shelter share is increased by $26,728; that amount, plus any appreciation and income, escapes federal estate tax at Jack's death.

A negative effect is that state death taxes of $15,697 must be paid, which otherwise might have been potentially eliminated, decreased, or at mini-

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14. The tentative tax on $600,000 equals $155,800, plus 37 percent of the excess of such amount over $500,000, $37,000, or $192,800.

15. The tentative tax on $642,425 equals $155,800, plus 37 percent of the excess of such amount over $500,000, $52,697, or $208,497.

16. If the credit shelter share, and therefore the taxable estate, were in excess of $642,425, the increase in the federal estate taxes owed, at a marginal 37 percent rate, would not offset the increase in the state death tax credit then available, at a 4.8 percent rate. Thus, if the credit shelter share exceeded $642,425, federal estate tax would be due. Since the formula requires that no federal estate tax be due, the formula prevents the credit shelter share from exceeding $642,425.

17. Payment of the state death taxes cannot come from the marital share because that would decrease the amount of the marital share qualifying for the marital deduction, thereby resulting in federal estate tax, which would violate the mandate of the formula that no federal estate tax be due.

mum, deferred, had the credit shelter share not required consideration of the state death tax credit. For example, in the case of a surviving spouse with no taxable estate, no state or federal death taxes would have to be paid. Accordingly, payment of state death taxes at the first spouse's death is unnecessary. Different conclusions may obtain in the case of a surviving spouse with a taxable estate.

If the surviving spouse's maximum marginal federal estate tax is 37 percent, then the payment at the first spouse's passing of state death taxes at the first spouse's death results in no overall death tax savings.[18] In contrast, if the surviving spouse has a taxable estate subject to federal estate tax at a rate in excess of 37 percent, then the payment at the first spouse's passing of state death taxes equal to $15,697 decreases the federal estate tax payable at the surviving spouse's death.[19] Nevertheless, the tax savings are not substantial.

As a result, when drafting under the Illinois estate tax scheme, estate planners may refer in the formula that determines the credit shelter share to all available credits, but should add the following type of clause: *"provided, however, that consideration of the state death tax credit does not increase or cause the payment of state death taxes."*

Occasionally, Illinois practitioners will have clients who change domicile. In these cases, reference to the state death tax credit in the credit shelter/marital deduction formula may need to be changed based on the new state's death tax laws.

In states that impose state death taxes even if there is no federal estate tax due, the estate of the first spouse to die may want to take advantage of the maximum state death tax credit that will result in the payment of no federal estate tax, even though this may increase state death taxes paid. In that event, the above proviso should not be included in the credit shelter formula. In making that determination, the increase in state death taxes must be compared with the anticipated decrease in federal estate tax at the surviving spouse's death. Based on this analysis, estate planners can determine the appropriateness of the above proviso in the credit shelter share formula.

IV. Payment of Illinois Estate Tax

A. Extensions

Generally, taxpayers must pay the Illinois estate tax and file the return concurrently. An extension, however, can be granted for one and not the other.

Payment of the Illinois estate tax and filing of the return is coordinated with payment and filing of the federal tax and return.[20] Accordingly, because the federal return is due nine months after date of death (assuming no extensions), the Illinois estate tax return is also due then. If an extension is granted to file a federal return, the Illinois return need not be filed until that extended date.

Similarly, if the IRS grants an extension to pay the tax, a similar extension for the Illinois tax is allowed. For extensions, 10 percent annual interest is charged on the unpaid Illinois estate tax amount, except that the rate of interest on the outstanding amount permitted to be deferred or paid in installments is 6 percent.[21]

The Illinois Attorney General may at his or her discretion grant an extension of time to file the return or to pay the tax, provided the application establishes "reasonable cause why it is impossible or impractical to file a reasonably complete return or to pay the full amount of tax due by the due date."[22]

Before making an extension request, consider that the timing of state death tax payments will affect the availability of the state death tax credit. Technical Advice Memorandum

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18. The $15,697 of state death taxes paid in year one allows an extra $26,728 to pass to the credit shelter share ($42,425 minus the state death taxes owed, $15,697). Even if the $26,728 experiences no appreciation between the first and second spouse's death, this means that a minimum of $26,728 will pass free of estate tax at the surviving spouse's death. If the state death taxes had not been paid, then an extra $42,425 would be included in the surviving spouse's gross estate. The federal estate tax on $42,425 at a marginal tax rate of 37 percent is $15,697, leaving a net to the beneficiaries of $26,728.
19. If, for example, state death taxes of $15,697 are paid in year one, then an extra $26,728 ($42,425 minus $15,697) passes to the credit shelter share. The credit shelter share, plus appreciation and income thereon, will pass at the surviving spouse's death free of additional federal estate tax. Thus, if the credit shelter share earns 10 percent and the surviving spouse dies at the beginning of the second year following the first spouse's death, an additional $29,401 ($26,728 plus $2,673) passes free of federal estate tax at the death of the surviving spouse. Had there been no state death taxes paid at the first spouse's death, the surviving spouse would have had an extra $42,425 plus $4,242 in his or her estate, or $46,667. At a 55 percent marginal federal estate tax rate, the additional federal estate tax is $25,667, leaving only $21,000 — rather than $29,401 - to pass to the beneficiaries. Therefore, a tax savings of $8,401 is generated by the payment of state death taxes at the first spouse's death.
20. 35 ILCS 405/6 (1992).
21. 35 ILCS 405/9 (1992).
22. 35 ILCS 405/8(c)(2) (1992).

Tax table — Internal Revenue Code § 2011(b)

If the adjusted taxable estate is:	The maximum tax credit shall be:
Not over $90,000	8/10ths of 1% of the amount by which the taxable estate exceeds $40,000.
Over $90,000 but not over $140,000	$400 plus 1.6% of the excess over $90,000.
Over $140,000 but not over $240,000	$1,200 plus 2.4% of the excess over $140,000.
Over $240,000 but not over $440,000	$3,600 plus 3.2% of the excess over $240,000.
Over $440,000 but not over $640,000	$10,000 plus 4% of the excess over $440,000.
Over $640,000 but not over $840,000	$18,000 plus 4.8% of the excess over $640,000.
Over $840,000 but not over $1,040,000	$27,600 plus 5.6% of the excess over $840,000.
Over $1,040,000 but not over $1,540,000	$38,800 plus 6.4% of the excess over $1,040,000.
Over $1,540,000 but not over $2,040,000	$70,800 plus 7.2% of the excess over $1,540,000.
Over $2,040,000 but not over $2,540,000	$106,800 plus 8% of the excess over $2,040,000.
Over $2,540,000 but not over $3,040,000	$146,800 plus 8.8% of the excess over $2,540,000.
Over $3,040,000 but not over $3,540,000	$190,800 plus 9.6% of the excess over $3,040,000.
Over $3,540,000 but not over $4,040,000	$238,800 plus 10.4% of the excess over $3,540,000.
Over $4,040,000 but not over $5,040,000	$290,800 plus 11.2% of the excess over $4,040,000.
Over $5,040,000 but not over $6,040,000	$402,800 plus 12% of the excess over $5,040,000.
Over $6,040,000 but not over $7,040,000	$522,800 plus 12.8% of the excess over $6,040,000.
Over $7,040,000 but not over $8,040,000	$650,800 plus 13.6% of the excess over $7,040,000.
Over $8,040,000 but not over $9,040,000	$786,800 plus 14.4% of the excess over $8,040,000.
Over $9,040,000 but not over $10,040,000	$930,800 plus 15.2% of the excess over $9,040,000.
Over $10,040,000	$1,082,800 plus 16% of the excess over $10,040,000.

("TAM") 8947005 highlights the importance of the timing of state death tax payments on the state death tax credit.

In TAM 8947005, the decedent's federal estate tax return was timely filed in July 1987. Pursuant to the percentage limitations of Code section 2011(b), the estate's maximum allowable credit for state death taxes was $15.32 million, based on a state death tax payable of $20.14 million. The executor deducted the entire $15.32 million as a credit in computing the federal estate tax due, even though only $4.96 million of the state death tax had been paid as of the date of the filing of the federal estate tax return. The remaining $15.18 million of the state death tax was to be paid in October 1990 under a 3-1/2 year extension obtained by the executor from the state. Consequently, the state death tax credit claimed on the federal return exceeded the state death tax actually paid as of the federal return filing date by $10.36 million.

Relying on the legislative history of section 2011(a) and judicial decisions, the IRS determined that the state death tax credit was intended to be effective only as of the date that the state death taxes are paid. Specifically, the service held that the state death tax credit may be properly claimed on the federal estate tax return only if the state taxes have been actually paid by the later of: (1) the filing due date for the federal estate tax return, or (2) the first date prescribed for payment of death taxes under state law, excluding extensions. If state death taxes are paid beyond this time, the state death tax credit will be allowed, but is first effective on the date of payment.

Based on the facts of TAM 8947005, the IRS concluded that the state death tax credit was not allowable for the $15.18 million of state death taxes unpaid as of the due date of the federal estate tax return. Such credit was allowable, however, effective as of the date of the extended payment in October 1990. (Note: When the October 1990 payment is made, the federal estate tax becomes overpaid, but pursuant to section 2011(c), the overpayment is refunded without interest).

The IRS's holding produces the following unfortunate effect — because the credit related to the $15.18 million extended payment was disallowed as of the federal return due date, the federal estate tax was underpaid. Thus, the IRS would assess interest on the unpaid estate tax from the due date until the tax was paid in October 1990.

Despite this adverse result, TAM 8947005 produced one major plus for the estate: the estate tax credit for the $15.18 million October 1990 payment was allowable, albeit as of the payment date. Underlying this positive result was the fact that the 3-1/2 year extension payment fell within the federal time frame for claiming the state death tax credit. Had it not, the state death tax credit related to the extended $15.18 million payment would have been denied.

B. Lump Sum Payment

If the federal estate tax is paid in one lump sum (not in installments), it is best to pay Illinois state death taxes on or before the federal estate tax return is filed — rather than pay the state death taxes in installments — and use the credit as an offset against federal estate tax owed.

This is because Illinois imposes interest on the state death taxes paid in installments. Accordingly, the practitioner would not ordinarily request that the Illinois Attorney General exercise its discretion to grant a payment extension.

The following example illustrates this point. Assume these facts: (1) the taxable estate equals $700,000; (2) the total federal estate tax on a taxable estate of $700,000 equals $229,800 which, after use of the unified credit, results in a tax owed of $37,000; (3) the adjusted taxable estate is $640,000 ($700,000 minus $60,000) which, under the Code section 2011(b) table yields a maximum state death tax credit of $18,000; (4) the decedent died in Illinois, so that the state death tax equals $18,000; and (5) the Illinois Attorney General allows for payment of the state death tax in 10 equal installments.

If the entire state death tax amount is paid on or before the last date for filing the federal estate tax return, the total tax burden will equal $37,000. This represents $19,000 in federal estate taxes ($37,000 minus the $18,000 state death tax credit) plus $18,000 in state death taxes.

In contrast, if the estate pays the state death taxes in installments, the same amount of total taxes — $37,000 — must be paid on or before the time prescribed for filing the federal estate tax return. In that event, there is no reduction in the $37,000 owed in federal estate tax until the state death taxes are paid.

"[I]n determining when and how to pay the Illinois estate tax due, [you] should carefully coordinate payment with the federal estate tax payments and should understand the complex interplay between payment of both federal and state death taxes in installments."

Although the estate would get a refund of its federal tax paid as state taxes are actually paid in installments, this refund carries with it no interest.[23] In effect, the estate would annually pay $1,800 in state death taxes and receive back $1,800 from the federal estate taxes previously paid. Despite the fact that the overall tax burden remains at $37,000, the estate will be unnecessarily depleted because Illinois imposes interest on the unpaid state death tax balance. Although such interest is deductible from the gross estate,[24] at most 55 percent (37 percent in this example) of the interest paid results in a federal estate tax savings.

C. Installments

The most difficult interplay between the federal estate tax payments and Illinois estate tax payments occurs if the estate elects installment treatment under Code section 6166. Installment payments would then also

23. See IRC § 2011(c).
24. Rev Rul 81-256.

be allowed (not required) for Illinois state death tax payments:

> Deferred payments and installment payments, with interest, shall be paid at the same time and in the same manner as payments of the federal transfer tax are required to be made under the applicable Sections of the Internal Revenue Code, provided that the rate of interest on unpaid amounts of Illinois transfer tax shall be determined under this Act.[25]

Although seemingly straightforward, this provision complicates the calculation of both the federal and state death tax. Consider, for example, what happens each year as installment payments are made on the federal estate tax. Under federal law, interest is paid on the federal unpaid balance. The interest generates a deduction, which reduces the taxable estate.

Because the taxable estate is reduced, so is the amount of the state death tax credit. This means that future installments owed to the state, as well as past interest paid on the unpaid balance, must be changed. This then has an impact on the future federal estate tax due.

These situations require a complex analysis to determine whether it is better to pay Illinois estate taxes in installments. This requires a comparison of (1) the rate of return available on the unused amounts held for the remaining Illinois estate tax installment payments with (2) the federal interest that effectively is charged on this unpaid portion.[26]

This comparison is complicated by one other consideration. The federal interest paid is an estate tax deduction.[27] That deduction decreases both the taxable estate and the amount of interest that has accrued to that point and, therefore, the amount of the remaining installment payment obligation.[28]

Although these variables are complex and interrelated, one rule of thumb is that deferral of the payment of state death taxes will make sense from an economic standpoint if no interest is owed on the unpaid state death tax balance and if the deferred amounts (which will be used to make state death tax payments) can be invested at a reasonable return and growth rate. Because Illinois imposes interest of 6 percent on its unpaid death tax balance paid in installments, it is difficult without a computer program to compare the economic benefits of deferral versus lump-sum payment of Illinois estate taxes, although lump sum payment will certainly be more administratively convenient.

A pragmatic approach is to choose the payment method which eases overall estate administration and decreases the costs associated with completing and filing multiple state death tax returns and federal estate tax returns, or filing for or preserving state death tax refunds.

V. Conclusion

Practitioners must consider the Illinois estate tax in drafting estate planning documents. Moreover, in determining when and how to pay the Illinois estate tax due, practitioners should carefully coordinate payment with the federal estate tax payments, and should understand the complex interplay between payment of both federal and state death taxes in installments.

25. 35 ILCS 405/6(b) (1992).

26. If, for example, the estate defers $100,000 in Illinois estate taxes over a ten-year period, a comparison needs to be made between the rate of return experienced by the $100,000 (or such amount each year which remains after the payment of an installment) during the deferral period versus the federal interest charged as a result of the unpaid state death taxes (i.e., had state death taxes been paid in year one, there would have been a corresponding reduction in federal estate tax liability and, hence, no interest would have been charged on this portion of the reduced federal estate tax liability).

27. See, e.g., Rev Rul 80-250.

28. Id. As a result, a 10 percent interest charge to the estate on the deferred portion of the federal estate tax liability does not cost the estate 10 percent times the amount of the deferred federal estate tax; rather, it costs the estate 10 percent times such deferred tax minus the deferred tax times the highest marginal estate tax rate to which the estate is subject (i.e., the estate tax saved by the deduction generated).

Reprinted from the *Illinois Bar Journal*, Vol. 81, No. 11, November, 1993