



Three New Illinois Laws Affect Estate-Planning Practice

The Illinois estate tax was revised in a way that might produce a refund for your client, series LLCs are now available in Illinois, and the new Disposition of Remains Act allows clients to decide who decides about their post-mortem bodies – but does it conflict with the POA for health care?

Illinois estate tax modified to account for property in other states

On August 2, 2005, Illinois amended the calculation of the Illinois estate tax effective January 1, 2003 (PA 94-0419). The amendment modifies the calculation and reduces the amount of Illinois estate tax due on Illinois estates holding property with a tax situs outside of Illinois. Thus, some of your clients might be due a refund.

Specifically, the change applies to the estates of decedents who died after January 1, 2003, if their taxable estates included property, such as real estate, with a tax situs in a “coupled” state (i.e., one whose estate tax is linked to the federal version). Because of changes to the federal estate tax law under the 2001 Tax Act EGTRRA, states that remained coupled with the federal “pick-up” tax saw their state estate tax collections reduced by 50 percent in 2003, 75 percent in 2004, and eliminated after 2005. But because of the unique way Illinois estate

tax was calculated prior to the amendment, the amount of state estate tax otherwise reduced on out-of-state property was captured under the Illinois estate tax calculation for Illinois decedents.

The law as amended corrects that perceived inequity by apportioning the Illinois estate tax. As amended, and effective for estates of decedents dying after

January 1, 2003, the Illinois estate tax calculation excludes any portion of the gross estate having a tax situs outside Illinois. Here’s a summary of how the law could, or might, work.

Estates with property in coupled states. Because of the effect of the reductions in the federal law under the 2001 Tax Act EGTRRA, property taxed in an Illinois decedent’s estate with a tax situs in a coupled state should get a refund of the EGTRRA

reduction amount for decedent’s estates beginning in 2003.

Estates with property in decoupled states. Since many of the decoupled states did not follow the increases in the applicable federal exclusion amount under EGTRRA, more tax was probably paid to these outside-tax-situs states than would have been allowed under the old federal law. In these cases, taxpayers will not be entitled to a refund.

Who is eligible for a refund? An Illinois domiciliary decedent whose estate paid Illinois estate tax on property with a tax situs in another state, but probably only if it was a coupled state.

Estate tax calculator. The Illinois Attorney General’s Web site offers a free Illinois estate tax calculator at <http://illinoisattorneygeneral.gov/publications/estatetax.html>.

Series LLC legislation

On August 16, 2005, the Limited Liability Company Act was amended by adding new section 805 ILCS 180/37-40, titled “Series of members, managers or limited liability company interests” (PA 94-0607). The new law provides that where the operating agreement creates one or more series, liabilities and obligations incurred with respect to a particular series are enforceable only against the assets of that series, *if* the series holder keeps separate records and accounts for assets separately for that series.

Estate planners have availed themselves of similar legislation in Delaware (and elsewhere), and this is expected to be a helpful alternative, especially where Illinois real estate is involved. For more about series LLCs, see Lin Hanson, “What Series LLCs Can Do for You” (December 2004 *Journal*) as well as LawPulse items in September (at page 440) and this issue (at page 562).

Disposition of Remains Act

On August 12, 2005, the Disposition of Re-

Because of the effect of the reductions in the federal estate tax, out-of-state property in a “coupled” state should generate a refund if it was taxed in an Illinois decedent’s estate.

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mains Act became law (PA 94-0561). The act, which takes effect January 1, 2006, and will be codified at 755 ILCS 65, details which persons have the right to control the disposition, including cremation, of a decedent's remains.

The new law provides that an individual may designate in a written instrument who can possess that control. It also offers a statutory form titled "Appointment of Agent to Control Disposition of Remains." The form requires that the individual's signature be notarized.

If the individual did not execute a written instrument in substantial compliance with the sample format, the new law provides under Section 5 a "priority list" of designated individuals who possess the power to dispose of his or her remains. Note, however, that this may create a conflict between this new Disposition of Remains Act and the statutory Health Care Power of Attorney.

The Power of Attorney for Health Care Law, which does not require the principal's signature to be notarized, grants an agent under a Health Care Power of Attorney some limited powers that extend beyond the principal's death, including the authority to dispose of the principal's remains under 755 ILCS 45/4-3. The Disposition of Remains Act, however, would supercede the Health Care Power of Attorney in relation to disposal of remains.

Mary Cascino, of Pasquesi Associates, PC, observes that under the new Disposition of Remains Act, an agent under a Health Care Power of Attorney is not recognized in the priority list as having priority to deal with the disposal of remains (other than as a family member in the priority list) except as the last resort: "any other person or organization that is willing to assume legal and financial responsibility." Thus, Cascino notes, a conflict may arise where a non-family member agent or specific family member to whom a principal wants to *grant* the authority over disposal of remains is acting as the agent under a Health Care Power of Attorney, but is superceded by someone in the priority list under the Disposition of Remains Act.

Cascino suggests that the two acts and the related statutory forms should be better coordinated and made complementary. In the meantime, she suggests that attorneys consider providing to their clients the "Appointment of Agent to Control Disposition of Remains" form in the new act as an additional advance directive to specifically address the disposition of their remains. ■



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