

# Trusts & Estates

The newsletter of the Illinois State Bar Association's Section on Trusts & Estates

## The Illinois Estate Tax: What Will the Future Bring?

BY ROBERT W. KAUFMAN

Like the swallows returning to Capistrano, proposed legislation with respect to the Illinois estate tax appears like clockwork every legislative session. Whether it be an increase in the \$4,000,000 "exemption" to the \$6,000,000 level for certain farm property (see HB4600), an increase in the overall exemption (see HB5230 from last year's session), an

increase to match the federal exemption equivalent of \$13,610,000 (see HB1459 from last year's session), an outright repeal (see SB2640 introduced last October), or an adoption of federal portability (to my knowledge, yet to come), various bills are annually proposed in Springfield, and reviewed by our section council.

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## Flinn Report Summary – January 12, 2024 (Issue 2) - February 2, 2024 (Issue 5)

BY AMINA SAEED

The following is a summary of regulatory decisions of Illinois agencies reported in the Flinn Report that are related to trust and estate practices.

1. Income Tax. The Department of Revenue adopted amendments that: 1) maintain the standard individual taxpayer exemption at \$2,425 for tax year 2023 (the standard exemption sunsets after 2028); 2) resume the annual cost of living increase in this amount for tax years

- 2024 through 2028; 3) increase the State earned income tax credit (EITC) to 20% if the federal credit; and 4) extend eligibility for the EITC to taxpayers without Social Security numbers, taxpayers age 18-25 without dependents, and taxpayers over 65 without dependents.<sup>1</sup>

2. State Retirement. The State Employees' Retirement System

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## The Illinois Estate Tax: What Will the Future Bring?

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Although, in years past, the reaction of the section council has been “no opinion – revenue issue,” in recent years, there appears to be a shift, as too many practitioners have seen a loss of business resulting from high net worth clients taking on residency in jurisdictions like Florida where there is no state estate tax.

Since we will likely be seeing a number of these bills in the months ahead, we thought that it would be a good time to revisit the tax itself. The place to start for this review is

the infamous Illinois Estate Tax Calculator, which can be found on the website of the Illinois Attorney General at <http://illinoisattorneygeneral.gov/estate-taxes/2013-2022-estate-calculator>.

By running various scenarios, you find that, unlike most any other tax which you might confront, the rate of tax decreases as the size of the estate increases.

Specifically, you will find the following:

Taxable Estate	Illinois Estate Tax	Tax Rate on value over \$4M	Tax Rate on last \$1M
\$5,000,000	\$285,714	28.57%	28.57%
\$6,000,000	\$456,071	22.81%	17.04%
\$7,000,000	\$565,603	18.85%	10.95%

As the readers of this article are well aware, Illinois does not have a gift tax. However, that does not mean that lifetime taxable gifts do not have an impact on the ultimate estate tax burden, as the calculator makes clear that those gifts are taken into account in the calculations.

Notwithstanding that, however, lifetime transfers can significantly reduce, or even eliminate, the estate tax which you pay to

Illinois. Admittedly there is a trade-off, since you lose the benefit of an income tax basis step-up when you gift property instead of holding it until death. Nonetheless, depending on the nature of the assets and the size of the estate, the potential savings may be too good to pass up.

Take a look at these examples, assuming the 2023 death of a single individual or a surviving spouse, with no federal estate tax:

IL Tentative Taxable Estate	IL Tentative Estate Plus Adjusted Taxable Gifts	IL Estate Tax
\$11,200,000	\$11,200,000 (no gifts)	\$1,085,172
\$5,600,000	\$11,200,000 (gift of \$5,600,000)	\$413,214
\$0	\$11,200,000 (gift of \$11,200,000)	\$0

The final impact that must be taken into account arises when your client does move to another jurisdiction, but retains his or her house or condominium in Illinois. In that case, the Illinois estate tax still applies to the proportion of the total estate which is in Illinois – which can include not only a residence, but the contents thereof as well. As a result, although the departing client may

think that he or she has escaped from the tax, it may well be that a significant payment is still due to our state, which depends on the value of what has been “left behind.”

Going forward, the state of Illinois will need to decide whether the loss of revenue from a modification or elimination of its estate tax will be offset by the economic opportunities available if high net worth

## Trusts & Estates

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To join a section, visit [www.isba.org/sections](http://www.isba.org/sections) or call 217-525-1760.

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individuals do not leave the state. Thirty-eight states no longer have a state estate tax and, while the decision rests with the Legislature, and not with our Section Council, we should be prepared to react to proposed legislation in a way which is most advantageous to our clients – and to our own practices as well.■

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*The author is a principal with Fischel | Kahn in Chicago, Illinois and specializes in trusts and estates. He is a past chair, and current member, of the ISBA Trusts & Estates Section Council.*

## **Flinn Report Summary – January 12, 2024 (Issue 2) - February 2, 2024 (Issue 5)**

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- proposed amendments clarifying certain aspects of SERS disability benefits. The rulemaking states that a SERS member receiving disability benefits is entitled to the first automatic increase after having received benefits for 48 consecutive months without any interruption/suspension. It also replaces the limit of \$3,600 per quarter in “gainful activity” earnings with the gainful economic activity limitations established annually by the federal Social Security Administration.<sup>2</sup>
3. Deferred Compensation. The State Board of Investment proposed amendments that conform the State Employees’ Deferred Compensation Plan required minimum distribution age for deferred compensation funds from age 72 with the age established in federal law (SECURE 2.0 Act of 2022). Investment options and distribution rules are also updated.<sup>3</sup>
  4. Electronic Transactions. The Department of Innovation and Technology proposed a new part establishing uniform rules for use of electronic signature and electronic records technologies by State agencies. The new Part defines an electronic record as a record created, generated, sent, communicated, received, or stored by electronic means and an electronic signature as an electronic sound, symbol, or process attached to a record and executed by a person with the intent to sign the record. Agencies are not required to accept electronic records or signatures beyond those required by law, rule, or the agency’s official policy. Agencies that accept electronic records or signatures must have written policies specifying acceptable methods for executing transactions and storing records, acceptable formats for electronic signatures, and the security measures that will be used to create, accept and maintain signatures and records. These methods must also comply with applicable laws regarding accessibility. Electronic records must also be maintained in accordance with the State Records Act, or the agency’s records retention policy, and applicable laws regarding confidentiality and data privacy.<sup>4</sup>
  5. Community Care Program. The Department on Aging adopted an amendment to the Community Care Program. Since the Department of Healthcare and Family Services has raised the asset disregard for medical assistance eligibility to \$17,500, all CCP applicants are now required to apply for Medicaid.<sup>5</sup>
  6. Mental Health. The Department of Human Services adopted a new Part providing income tax credits to qualified employers who hire individuals diagnosed with mental illness and/or substance use disorder that are in “a state of wellness and recovery.”<sup>6</sup>
  7. Autism Services. The Department of Healthcare and Family Services adopted amendments which authorizes payment for Adaptive Behavior Support services.<sup>7</sup>
  8. FOID Cards. The Illinois State Police adopted an amendment, effective December 29, 2023, clarifying, among other things, that all Firearm Owner’s Identification Card (FOID) applications must be made electronically unless a religious or disability exemption applies.<sup>8</sup>
  9. Hospitals. The Department of Healthcare and Family Services proposed an amendment to Hospital Services that aligns the annual effective dates for Medicaid High Volume Adjustment Payments with the Medicaid percentage determination year, which is January 1.<sup>9</sup>
  10. Financial Institutions. The Department of Financial and Professional Regulation proposed several new parts and an amendment, all intended to ensure that regulated financial institutions equitably provide financial services to individuals and businesses in low-income (less than 50% of an area’s median income) and moderate income (50% to 80% of area median income) neighborhoods and in areas that lack access to safe and affordable banking/lending services. The new Parts apply to credit unions, banks,

and Illinois-licensed mortgage lenders that originated or lent 50 or more mortgage loans in the previous calendar year and were responsible for underwriting or approving these loans. The new Parts require periodic performance evaluations.<sup>10</sup> ■

*Amina Saeed is a member of the Trusts & Estates Section Council and a senior trust advisor at Northern Trust.*

1. See 48 Ill Reg 1677 (proposed at 47 Ill Reg 13825).
2. See 48 Ill Reg 1662.
3. See 48 Ill Reg 1645.
4. See 48 Ill Reg 1122.
5. See 48 Ill Reg 1129 (proposed at 47 Ill Reg 7036).
6. See 48 Ill Reg 903.

7. See 48 Ill Reg 864 (proposed at 47 Ill Reg 315).
8. See 48 Ill Reg 981 (proposed at 47 Ill Reg. 4388).
9. See 48 Ill Reg 799.
10. See 48 Ill Reg 621, 695, 765, 759.

# Spotlight on Trusts & Estates Section Council Member Melissa Johnson

BY MIA O. HERNANDEZ

The Trusts & Estates Section Council has members from throughout the state of Illinois with a variety of professional achievements, skills, and practices. In this newsletter, we continue a prior series of “spotlight” articles that highlights the backgrounds, interests, and experiences of members of the Trusts & Estates Section Council, in a question-and-answer format, as a way to get to know more about them.

## Melissa Johnson

**Generation Law, Elmhurst/Oak Park, Illinois**



**Q:** What got you into the trusts and estates practice?

**A:** Honestly, my love for interactions

*with the elderly community brought me to Generation Law where I felt I could use my litigation skills for good instead of evil (creditor's rights) - lol. As I got more involved with guardianships and estate planning, my practice naturally evolved into trusts and estates.*

**Q:** What is your favorite part of the practice?

**A:** *My favorite part hands down is seeing the relief and joy on the client's or families' faces when I obtain a favorable result for them in a highly contentious case. A large majority of my practice is spent in contested estates and righting wrongs for people. It provides job satisfaction like no other.*

**Q:** What is the most challenging part of the practice?

**A:** *The pressure of knowing how much families have riding on the outcome of a contested case and the desire to get them a positive result when the cards may be stacked against them.*

**Q:** What is the most interesting part of the practice?

**A:** *The most interesting part of the practice is applying the various, and oftentimes interrelated laws—probate versus chancery—to so many different fact patterns to find the strategy toward your best result.*

**Q:** What do you like to do when you are not administering trusts/estates?

**A:** *When I'm not administering trusts and estates, I enjoy being a mom to my four*

*kids and going on daily adventures with them and my husband. We are big hockey fans (Blackhawks season ticket holders). I love reading for pleasure and going to see live music. I'm also now a huge Disney fan and go a few times each year. I even plan trips for others on the side.*

Please stay tuned for the next Spotlight article when we will feature another member of the Trusts & Estates Section Council. ■

# Future Live CLE and Previously Recorded CLE on Trusts and Estates Topics

Do not forget to mark your calendars for upcoming live CLE events sponsored by the Trusts & Estates Section Council

You can also find on-demand CLE on the

isba.org website. Eligible ISBA members can access on-demand CLE content for free up to 15 credit hours per bar year.

We list both upcoming live CLE and on-

demand CLE as follows in this section of our newsletter.

## Upcoming ISBA CLE on Trusts and Estates

February 2024				
Date	Event	Location	MCLE	PMCLE
February 15	<a href="#">LIVE WEB - Disorder in the Court: An Attorney's Guide to Judicial Misconduct</a>	Online	2.00	2.00
February 16	<a href="#">LIVE WEB – 2024 Federal Taxation Update – Part 1</a>	Online	3.00	
February 16	<a href="#">LIVE WEB – 2024 Federal Taxation Update – Part 2</a>	Online	3.00	
February 20	<a href="#">LIVE WEB - The Corporate Transparency Act: The Beneficial Ownership Reporting Rule</a>	Online	1.00	
February 28	<a href="#">LIVE WEB - Navigating Ethics In Trusts and Estates Practices: Part 3 – Cultural Competencies</a>	Online	1.25	1.00

March 2024				
Date	Event	Location	MCLE	PMCLE
March 7	<a href="#">Probate Law Basics</a>	Online	1.00	

## On-Demand ISBA CLE on Trusts and Estates

Course ▲	MCLE	PMCLE
<a href="#">2022 Trust Litigation Update - A National Perspective</a>	1.00	
<a href="#">2023 Federal Taxation Update - Part 1</a>	3.00	
<a href="#">2023 Federal Taxation Update - Part 2</a>	3.00	1.00
<a href="#">28th Annual Agricultural Law Seminar - Part 1</a>	2.50	
<a href="#">28th Annual Agricultural Law Seminar - Part 2</a>	3.00	

Course ▲	MCLE	PMCLE
4th Annual Abraham Lincoln's Legal Legacy: Overcoming Prejudice and Racial Discrimination in the Legal Profession - Part 1	3.00	3.00
4th Annual Abraham Lincoln's Legal Legacy: Overcoming Prejudice and Racial Discrimination in the Legal Profession - Part 2	3.00	3.00
5th Annual Abraham Lincoln's Legal Legacy: Lessons for Today's Lawyers - Science and Technology's Rapidly Evolving Impact on the Law - Part 1	2.75	2.75
5th Annual Abraham Lincoln's Legal Legacy: Lessons for Today's Lawyers - Science and Technology's Rapidly Evolving Impact on the Law - Part 2	3.00	3.00
6 Hour ISBA Professional Responsibility MCLE Bundle	6.00	6.00
Artificial Intelligence for Lawyers: What You Need to Know So You Aren't Left In the Dust	1.00	1.00
Charitable Giving Planning in Trusts and Estates, Part 1 - A National Perspective	0.75	
Charitable Giving Planning in Trusts and Estates, Part 2 - A National Perspective	1.00	
Defending Estate and Gift Tax Audits - A National Perspective	1.00	
Defined Value Clauses: Drafting & Avoiding Red Flags - A National Perspective	1.00	
Disinheritance in Guardianship and After Death	2.00	
Domestic Self-Settled Trusts - A National Perspective	0.75	
Drafting Client Engagement Letters in Trust and Estate Planning - A National Perspective	1.00	
Drafting Trusts With Purpose - Part 1	1.50	
Drafting Trusts With Purpose - Part 2: Finding Trust Purpose Where It Should Be	1.50	
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Drafting Wills & Trust Documents to Reduce Risks of Challenge - A National Perspective	1.00	
Elder Law Basics: Drafting Powers of Attorney 101	1.50	
Elder Law Basics: I'm a Fan of Trusts – Here's Why You Should Be Too	1.50	



<b>Course ▲</b>	<b>MCLE</b>	<b>PMCLE</b>
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Elder Law Basics: Working with Elderly Clients	1.50	1.50
Engagement Letters, Timesheets, and Billing Tips	1.00	1.00
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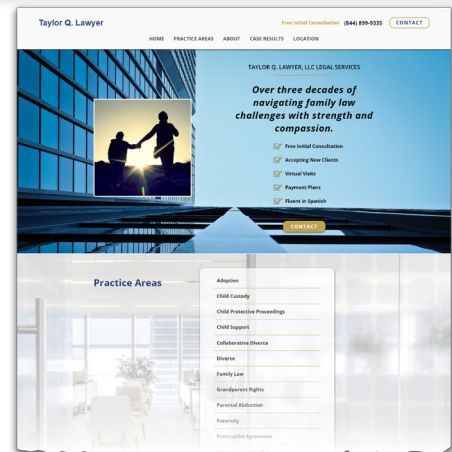
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