

Estate-tax changes may be on the way

As Benjamin Franklin stated, there are only two things in life that are certain, death and taxes. When it comes to the estate tax, however, this saying may not hold true (at least for one year).

Under current Federal law, the amount of assets that you may pass to your heirs in 2009 without triggering estate tax is \$3.5 million (the "Exemption Amount").

Married couples may leave an unlimited amount to each other without the imposition of estate tax.

As of Jan. 1, 2010, the Exemption Amount becomes unlimited, meaning your entire estate may pass to your heirs without owing a dime of estate tax. This seemingly good news, however, must be tempered by the fact that current tax laws provide that, as of Jan. 1, 2011, the Exemption Amount drops to \$1 million with a top tax rate of 55 percent.

Suggesting that the future of Federal estate tax laws is uncertain is a significant understatement.

The rollercoaster-like changes have their roots in tax law changes enacted in 2001, which are now scheduled to expire.

Several proposals have been made in Congress to extend or modify the 2001 law changes. Currently, four major bills are being considered by Congress:

H.R. 436 provides for a permanent Exemption Amount of \$3.5 million with a top tax rate of 45 percent.

H.R. 498 provides for an Exemption Amount of \$5 million to be phased in over the course of 5 years with a top tax rate of 30 percent.

S. 722 provides for an Exemption Amount of \$3.5 million, indexed for inflation, with a top tax rate of 45 percent.

H.R. 2023 proposes a \$2 million Exemption Amount, indexed for inflation, with a top tax rate of 55 percent.

Although these bills are being considered, a fifth alternative, which can no longer be ignored, is that no legislation is passed regarding this issue, with the result that an unlimited Exemption Amount would exist for 2010, with a reversion back to a \$1 million Exemption



**MATT
ZUENGLER**
GUEST COLUMNIST

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Amount in 2011 and beyond.

Exactly what the Exemption Amount will look like in the coming years is anybody's guess. The pendulum has swung back from potential full repeal of the estate tax, which once was a distinct possibility several years ago, to the possibility of a \$2 million (or lower) Exemption Amount.

In addition to the uncertainty over the Federal estate tax laws, the future of Wisconsin estate tax is unsettled.

Budgetary shortfalls will force state lawmakers to revisit sources of revenue, including rekindling a state-based estate tax.

Prior to Jan. 1, 2008, Wisconsin imposed an estate tax on amounts left to heirs in excess of \$675,000. While Wisconsin currently imposes no separate estate tax, it seems quite likely that a reintroduction of such a tax will be strongly considered by Wisconsin lawmakers at levels that could be less, potentially significantly less, than whatever Federal levels are implemented.

As we patiently wait to see what Federal and Wisconsin estate tax laws ultimately pass, it continues to be important to prepare and update estate planning documents to address non-tax issues, including the disposition of assets, succession of business interests, charitable giving, protection for children and grandchildren, etc.

For those potentially facing estate taxes, consideration should also be given to creating an estate plan that is flexible enough to conform to the current tax laws, as well as those which may be introduced in the future months.

Matt Zuengler is an attorney with Hager, Dewick & Zuengler S.C., Green Bay.