

By Barry A. Nelson

## Throw Me From the Train

Tell your family whether, if the occasion arises, they should take you off life support before the death tax repeal sunsets in 2011

**M**y message is not for the easily offended, but, in the closing months of 2008, I feel this must be said:

Congress still has not done anything about the estate tax law. If Congress doesn't act very soon, each one of us should ask ourselves: **If we fall terminally ill before the end of this year, do we want to be kept on life support for additional days or months into 2009 so that our estates and families can benefit from that year's higher estate tax exemption?**

**Or, if we're stricken in 2009 and Congress still fails to act, do we want doctors to keep us alive until 2010 so that we can spare our heirs the additional pain of paying estate taxes at all—since under existing law estate tax is repealed in its entirety for those dying in the year 2010?**

**And how about if we fall ill in 2010? Do we want our families to pull the plug before 2011 dawns and the estate tax goes back to its previous, onerous state?**

As we all know, when Congress enacted estate tax repeal in the Economic Growth and Tax Relief Reconciliation Act of 2001, the law made it so that the estate tax exemption gradually increased until 2010. On Jan. 1, 2009, the exemption jumps from \$2 million to \$3.5 million. In 2010, the estate taxes are eliminated entirely. But the law sunsets—so that estate taxes return and the exemption drops down in 2011 to what it was before the act: a mere \$1 million.

Whether we really want our families to delay or hasten our deaths for estate tax savings involves emotional, spiritual and ethical considerations. I know

that when my father was in a coma, my family faced the difficult decision as to how long we should let him linger once the doctors told us that there was no chance he would recover. I asked a neurologist not associated with his care to visit my dad in the hospital to see whether the recommendations of the hospital physicians were appropriate.

Back then, there were no tax-timing issues associated with when my dad died. But if there were, as a certified public accountant, I think he would have told me to keep him on support for another day or two to save \$675,000 for his family. I don't know what he would have said (or how my family would have felt) about pulling the plug earlier, no matter what the savings might have been.

**The financial rewards for delaying death from 2008 till 2009 are capped at \$675,000 plus any associated state death taxes for those subject to state taxes. (Residents of Florida or other states without estate or succession taxes who don't have assets situated in another state that imposes such taxes pay no estate taxes upon death.)**

**Of course, if estate tax legislation is not enacted before Jan. 1, 2010, then the potential savings of dying in 2010 could be enormous. Similarly, the consequences of dying in 2011 could be burdensome.**

Death and taxes are certain, but their dates and rates are not.

Don't leave these dilemmas for your family. Let them know now what you would want. Write a letter to them now. Or, better yet, **amend any health care surrogate or death-with-dignity documents you already have in place to include a provision regarding potential tax savings.**

You can always write another letter or amend those documents later, if Congress should act this year (unlikely) or the next (let's hope) or even the next. **TE**



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