

A quarterly publication of Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law.



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### Topics this issue:

Is Congress ready  
to act on estate  
tax law?

Featured WBBB  
attorneys

Save money with  
your estate plan

Credit card  
regulation  
is coming

## Will 2009 be the Year for Simplicity in Estate Planning...It's Looking Good

Whoever said life was fair? Pete Smith died on December 31, 2008 leaving a \$5 million taxable estate to his children and will pay a federal estate tax of \$1.35 million. If he survived one more day, to January 1, 2009, when the exemption equivalent ("exemption") for estate taxes increased from \$2 million to \$3.5 million, the tax would have been \$675,000. If Pete lived another year to January 1, 2010, when the estate tax is eliminated, he would pay no tax. But wait, if Pete had lived two more years, to January 1, 2011, when the current tax law "sunsets," he would owe \$2.2 million in tax. How can this be?

Planning for estate taxes has become a complex and expensive procedure, which, under current law, must be monitored periodically. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRA) created this scenario, which has made estate planning more complicated than it should be.

In 2001, Congress did not have enough votes to create a permanent estate tax – or to eliminate it – so it enacted EGTRA, which prescribed a ten year phase-in for increases in the estate tax exemption, from \$675,000 in 2001 to \$3.5 million in 2009, to elimination in 2010. However, in 2011, the 2001 law returns and the exemption becomes \$1 million. In addition, the highest tax rate was reduced from 55% in 2001 to 45% in 2009. The rate will return to 55% in 2011.

In 2001, Congress intended a permanent resolution to be reached before the new law would sunset. The estate tax was controversial. Those who initiated the ten year phase-in hoped to eliminate the estate tax. Calling it a "death tax," it was characterized as an unfair tax on property that was already taxed. Those who wanted to retain the estate tax argued it helps to discourage high wealth concentrations in select families. Revenue was also a consideration. Surely, the matter would be resolved in the next few years.



In 2005, the House voted to repeal the estate tax, but the vote fell short in the Senate.

Time marched on and now it is 2009. Remarkably, the law is still on the books. The Pete Smith hypothetical above, the same size estate having four significantly different tax liabilities, simply based on the date of death, may no longer be a hypothetical. Instead, we may see a run on estate planning requests for living wills with instructions

to not pull the plug in 2009 but to pull the plug in 2010.

Congress is feeling the pressure. The current attitude is Congress must act in 2009 to prevent the bizarre outcome where the estate tax exemption will be reduced from \$3.5 million to \$1 million in two years, with an intervening year of no estate tax. In the new Congress's fourth day, H.R. 436 was introduced on January 9, 2009. H.R. 436 would freeze the 2009 estate tax law, providing a permanent \$3.5 million exemption and a 45% tax rate. President Obama has expressed his desire to stabilize the estate tax exemption at \$3.5 million and to add "portability" to the exemption to allow a predeceased spouse's exemption, if not used, to pass to and be added to the surviving spouse's exemption. This would ensure a married couple could pass \$7 million to their children without the need for complicated estate planning techniques. The "portability" element may become a revenue issue; we hope not.

I began practicing law in 1976 when the estate tax exemption was \$60,000 and the maximum estate tax rate was 77%. As an attorney and a judge, I have observed attorneys and clients work diligently and creatively to accommodate the constantly changing estate tax laws. It is time to bring stability and practicality to the estate planning arena. It appears Congress may finally enact a sensible estate tax law...we will keep you posted.

By Lawrence A. Belskis

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## Featured Attorneys



**Lawrence A. Belskis**

Judge Belskis has joined the firm as an attorney practicing in trusts and estates and also mediation. Most recently, he served three consecutive terms as Judge for the Franklin County Probate Court. Prior to that, he worked in private practice for 15 years as a partner with a local law firm.

He is a graduate of Marquette University and Capital University Law School. He currently serves on the Board of Governors of the Estate Planning, Trust and Probate Section of the Ohio State Bar Association. He also is Fellow of the American College of Trust and Estate Counsel and a past president of both the National College of Probate Judges and the Ohio Association of Probate Judges.



**Nikki S. Mesnard**

Nikki has joined the firm as an associate practicing in estate planning and probate administration. She was admitted to the Ohio bar in 2008 and is a 2008 Capital University Law School graduate.

She currently is a member of the Ohio State, Columbus and National Asian Pacific American Bar Associations as well as the Women Lawyers of Franklin County.

## Four Ways to Save Money with Your Estate Plan

Every person, no matter his or her wealth, should have an estate plan. Regardless of an estate plan's complexity, the long-term savings and peace of mind of a well-devised and well-drafted estate plan should outweigh the short-term costs. In fact, every person who establishes an estate plan should expect to save money by avoiding the costs and expenses associated with the following:

**Taxes:** A well-drafted estate plan can save small businesses from becoming insolvent and life-time savings from being depleted due to tax payments. Even for individuals who do not have enough assets at death to incur estate tax liability, good planning can help prevent heirs from paying a high amount of tax, like capital gains tax, on property that is passed to them.

**Probate Estate Administration:** An estate planning myth is that the goal of estate planning should be to avoid probate. Probate administration is not bad in some circumstances, such as when court oversight is necessary due to family fighting. However, in

many circumstances, good planning can help avoid the costlier side of probate administration and prevent an estate from being subject to public records. For example, a good estate plan can provide for a smooth transfer of an individual's real estate, so that the probate process does not become expensive and prolonged by having to sell the real estate through a court action.

**Guardianship:** Many people do not realize that part of "estate" planning is also to plan for pre-death needs. As many people in our society age, estate planning attorneys are seeing increased needs for planning for times of illness or diminished capacity. There are many estate planning documents available to ensure that the appropriate people are appointed to make decisions for a client and to ensure that the finances are available for the client's care or for the continuation of the client's business during times of illness or diminished capacity. These documents help a client's family members avoid initiating a guardianship,

which can be costly and subject to public records.

**Unequal Testamentary Distributions:** Many people today do not wish to leave an "equal distribution" of their assets to their heirs. This is often the case when a client wishes to leave a family business to one child who has worked in the family business for years, when a client has a mixed family, or when a client wishes to disinherit a child or benefit one child over another. Through clear drafting and good instructions for how to communicate intentions with intended heirs, a well-drafted estate plan and a good attorney can help reduce the likelihood of litigation over an estate plan and the high costs associated with litigation.

Wiles Boyle attorneys represent decades of estate planning experience. Our attorneys are available to help you, your friends, and your family members take the important step of estate planning in a cost-efficient manner.

By Nikki S. Mesnard

## Credit Card Regulation in the Future

In these uncertain economic times, more and more consumers are experiencing the unfortunate ordeal of unexpected hikes in their credit card interest rates. Perplexed individuals, consistent and punctual in the payment of at least their minimum balances each month, are facing exponential increases in their interest rate on existing balances, often-times without prior notice. The most common question posed by these individuals is "Can my credit card company really do that?" The surprising answer is yes; a credit card company is likely entitled to increase the interest rate on an existing balance without notice pursuant to the small boiler-print font on the credit card agreement, even without any default on the individual's part....at least for now.

As many people are vaguely aware, in December 2008 the Federal Reserve Board approved final rules targeted at protecting con-

sumer credit card holders. One of these final rules, Regulation AA, specifically targets unfair and deceptive practices by credit card issuers. Regulation AA addresses a myriad of unfair practices, including, but not limited to, changes in interest rates, changes in billing and fees, and unfair application of cardholder payments. Regulation AA requires a bank to disclose the annual percentage rates that will apply to each category of transactions on a consumer credit card account at the time the account is opened. 12 CFR 227.24(a). Further, a bank is prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account except as follows (12 CFR 227.24(b)):

- (1) the interest rate's expiration date was disclosed at the account's inception (i.e. a promotional rate);
- (2) the account is a variable rate account with the rate

being tied to an indicator that is not under the bank's control, is available to the general public, and which was disclosed at the account's inception;

- (3) the credit account has been opened for at least one year and the credit card issuer gives the cardholder 45 days notice of the rate changes;
- (4) the card holder is late with a payment by more than 30 days after the due date; or
- (5) the consumer fails to comply with the terms of a work-out arrangement between the bank and the consumer.

The only bad news for consumers is that Regulation AA and the other final rules approved by the Federal Reserve Board addressing credit card accounts don't take effect until July 1, 2010. For more details on these final rules and examples of their application, visit [www.federalreserve.gov](http://www.federalreserve.gov).

By Alicia E. Zambelli

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