

**What Dead Celebrities
can Teach Us About
Estate Planning**

The Greater Boca Raton Estate Planning Council
October 2017

By: John J. Scroggin, J.D., LL.M.(tax), AEP
Copyright, 2017. John J. Scroggin. All Rights Reserved.

9/27/2017

CAVEATS

- General Discussion – Exceptions Apply
- Particular Facts can Change the Advice
- Every Possible Issue is Not Discussed
- Always Discuss Particular Facts with Competent Tax Advisors
- State Laws Vary Widely!

More Information

- www.scrogginlaw.com
- John@scrogginlaw.com
- Materials are Intended as a Resource and to Add Value to your Client Representations

9/27/2017


Memorable Quotes

***“In the future,
everyone will be
world-famous for 15
minutes.”***

Andy Warhol

9/27/2017


DYING WITHOUT A WILL



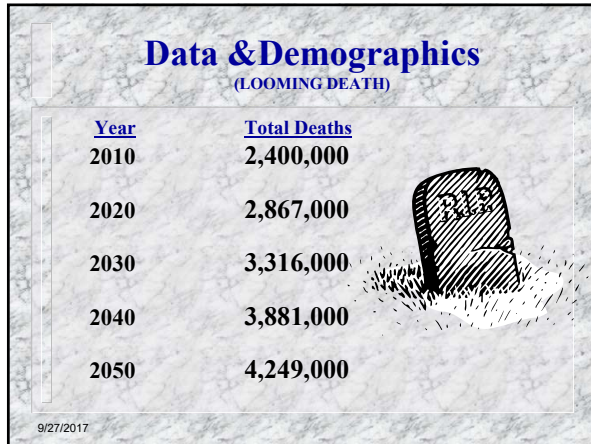
9/27/2017

Central Point

**DYING WITHOUT A WILL
DOESN'T MUCH DAMAGE
THE DECEASED, BUT IT
SURE AS HELL MAKES IT
HARD ON THE SURVIVORS**



9/27/2017



Data & Demographics (Will Signing)


A Lawyers.com study noted that in 2009 only **35%** of Americans had a Will



9/27/2017

Celebrities Dying without a Will

Abraham Lincoln,
Andrew Johnson,
Ulysses S. Grant
James A. Garfield
Prince
Sony Bono
Jimi Hendrix
Pablo Picasso
Bob Marley




9/27/2017

Celebrity Examples

Prince – Does a “Love Child” inherit 100%?
Steve McNair – moving Mom out of her House
Kurt Cobain – a multi-million inheritance at 18
Mr. Jones – Being too Busy to Focus on Planning
Chris Benoit – order of death governs inheritance
Martin Luther King – who’s in charge?

Robin Williams and **Rock Hudson**
disinherited any unknown children




9/27/2017

Celebrity Examples

Increased Conflict & Cost from a Lack of Direction

- **Jimi Hendrix** – 46 years
- **Bob Marley** – 33 years
- **Jerry Garcia** – 16 years and \$38-50M in claims
- **Pablo Picasso** – 6 Years & \$30 million in costs




9/27/2017

Value Added Materials

See the Checklist for the Terminally Ill at www.scrogginlaw.com

9/27/2017

NOT HAVING A CURRENT WILL



9/27/2017

Memorable Quotes


“[Mortality] never prevented the majority of human beings from behaving as though death were no more than an unfounded rumor.”

Aldous Huxley

9/27/2017

Central Point


SIGNING YOUR FIRST ESTATE PLANNING DOCUMENTS IS NOT THE END OF THE PROCESS, IT IS THE BEGINNING OF THE PROCESS, WHICH STARTS TO CULMINATE WHEN YOU PASS



9/27/2017

Celebrity Example


Michael Crichton died from cancer with an estate estimated to be \$175 million. When he died, his fifth wife was pregnant with a son. Michael Crichton’s post-mortem child was not provided for in his Will, but would have been entitled to a 30% of the estate as an omitted child. but as one of only two heirs under the Will and Revocable Trust, the percentage could have increased to 50%.



9/27/2017


Celebrity Example

Barry White died in 2003 after being separated for several years (but not divorced) from his second wife. Because they remain married, his wife was both an inheritor of his \$20 million estate and was named to handle administration of his estate. His live in girlfriend of several years received nothing from the estate.



9/27/2017

DYING WITHOUT AN ESTATE TAX



9/27/2017

Repeal of the Federal Estate Tax?

January 16th: Glen Bell
March 28th: Dan Duncan (#39)
June 24th: Walter Shorenstein (#371)
June 28th: Senator Robert Byrd
July 13th: George Steinbrenner (#377)

9/27/2017

Long Term Planning

Anticipate the Restoration of an Estate Tax

Tax Proposal
(Elimination of Transfer Taxes)

A Change in the Post-Death Basis Rules

Memorable Quotes

“The purpose of the stepped-up basis rule was to avoid double taxation.”

Congressional Research Service, 2003

Tax Proposal
(The Basis Possibilities)

IF ESTATE TAXES ARE REPEALED:

Step-up at Death – moderate likelihood
Carryover Basis – low likelihood
Modified Carryover Basis – **Probable**
Use of the 2010 Modified Carryover Rules (§1022)?
Special Exemptions for Family Businesses?

Tax Proposal
(The Basis Possibilities)

Related Issues

Conflicts Among Heirs over the Basis of their Assets and the Allocation of Basis Exemptions – the Growth of Special Independent Trustees
How is an Asset with a Unrealized Capital Loss treated?
Adoption of the §1015 Dual Basis?

Tax Proposal
(Determining the Carryover Basis)

§1015(a) provides as follows: *"If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary as of the date or approximate date at which, according to the best information that the Secretary is able to obtain, such property was acquired by such donor or last preceding owner."*

9/27/2017

MEMORABLE QUOTE

"If Patrick Henry thought that taxation without representation was bad, he should see how bad it is with representation."

The Old Farmers Almanac

9/27/2017



PLANNING FOR TAXES



9/27/2017

The Government will ALWAYS take its "Fair Share"

*Should five percent appear too small
Be thankful I don't take it all
cause I'm the taxman
Yeah, I'm the taxman*

*If you drive a car car, I'll tax the street
If you try to sit sit, I'll tax your seat
If you get too cold cold, I'll tax the heat
If you take a walk walk, I'll tax your feet*


George Harrison, the Taxman

9/27/2017

Data & Demographics
(American Taxpayer Relief Act of 2012)

In 2013 roughly **3,000** estates were subject to a federal estate tax out of 2.5 million US residents who passed away

The Congressional Research Service reported on February 15, 2013 that less than **0.2%** of all estates will be taxable in 2013



9/27/2017


Celebrity Examples

Joe Robie's Family

- Sold the Miami Dolphins for \$109M in 1994
- In 2009 sold for \$1.0B

Wrigley Family

- Sold the Chicago Cubs for \$20.5M in 1981
- Estimated Team Value today is \$1.8B




Celebrity Examples

Estate of Michael Jackson

- Estate's Estimated Value = \$7.0M
- IRS's Estimated Value = \$1.0B

- The future value of his Income Expectations from his Inheritable Right of Publicity
- The Impact on the Prince Estate
- The Robin Williams Solution



Data & Demographics

(IRS Audits)

For the fiscal year ending September 30, 2012, the IRS reported that the effective audit rate for estates over \$10 million was

116%




The New Reality

(The Divergent Federal Tax Thresholds)

Income Taxes are the New Confiscation Tax for most Moderately Affluent Taxpayers

- ✓ Annually Renewable (compounded Cost)
- ✓ Lower Tax Thresholds
- ✓ Paid Earlier



2017 Income Tax Rates

Top Federal Tax Rates	2012	2017
Top Income Rate	35%	39.6%
Phased out Itemized Deductions	-0-	1.19%
Phased out Personal Exemptions	-0-	1.05% each
Health Care Medicare Tax (on earned income over \$200,000/250,000)	-0-	0.9%
Dividend and Capital Gain Rate	15%	20%
Health Care Surtax (investments)	-0-	3.8%
State Income Taxes	Ranging from 0% to 11%	
Local Income Taxes	Ranging from 0% to 3.876%	

In 2017, there are **19 Tax Benefits** with a Phase-Out

Trust and Estate Income Taxes

Top Fiduciary Income Tax Rates	2012	2017
Top Federal Income Rate	35%	39.6%
Health Care Surtax	0%	3.8%
Top Federal Ordinary Tax Rate	35%	43.4%
Dividend and Capital Gain Rate	15%	20%
Health Care Surtax	0%	3.8%
Top Federal Ordinary Tax Rate	15%	23.8%

State Income Tax Rates: 0% to 11%

Top Potential Rate: **54.4%+**


Beginning at \$12,500 in 2017

The New Reality
(The Focus of Tax Planning)

Planning for Death becomes more about Basis and Income Tax Planning



9/27/2017



9/27/2017




\$65M "Fair Market Value"
\$29M in Estate Taxes
\$11.7M in Penalties

9/27/2017

PLR 9152005

"In the case of property that can be sold only in an illicit market, the fact that the market is illicit does not obviate the existence of that market for estate tax valuation purposes."



9/27/2017

The Use of Medical Directives

The Incentive to Maintain Life until Tax Reform for Wealthy Clients
AND
For Clients with Non-Taxable Estates to Pass Before Tax Reform

9/27/2017

WHY DOMICILE MATTERS



9/27/2017

Celebrity Example

“...the will of the bicoastal Joan [Rivers] unmistakably stated from the outset that she was a resident of New York, but then straightaway declared her state of domicile (‘where I intend to reside indefinitely on a permanent basis’) to be in California

Charlie Douglas

9/27/2017


Why Domicile Matters

Joan Rivers died in 2014 with a Will that declared her domicile as California (where she lived in one bedroom of her daughter’s house), while she maintained a large penthouse in New York City. Her estate has been estimated to be worth up to \$150 million.

9/27/2017

Central Point

YOU CAN ONLY HAVE ONE STATE OF DOMICILE, BUT YOU MAY HAVE MULTIPLE RESIDENCES



9/27/2017

Data & Demographics

(Determining a Domicile)

In 2009, the National Association of Homebuilders estimated that there were **6.9 million homes** that qualify as **non-rental second homes**



9/27/2017

Why Domicile Matters

Dr. John T. Dorrance (founder of Campbell’s Soup Company) died in 1930 with a \$115 million estate. The estate said that it was subject to the New Jersey inheritance tax (\$12 million), but Pennsylvania imposed a \$17 million inheritance tax, arguing that the deceased was a Pennsylvania resident. The US Supreme Court refused to get involved and the estate ultimately paid both states an inheritance tax.

9/27/2017

Why Domicile Matters

- State and local income taxes
- State estate and/or inheritance taxes
- Unique issues with regard to estate administration and costs of administration
- Particular spousal benefits to a surviving spouse
- Major Liquidity Events
- The Right of Publicity rights of the deceased

9/27/2017

The Unexpected
“Just the Facts Please”

Matter of Blatt

*“In reviewing the factors of a change in domicile, historically, the move of items near and dear tend to demonstrate a person’s intention. As borne out by the evidence in this case, **Petitioner’s Dog** was his near and dear item which reflected his ultimate change in domicile to Dallas.”*

The Unexpected
“Just the Facts Please”

Ramos v Motamed

Pending a lawsuit, Michael Motamed declared himself a Florida resident with a Florida homestead.

The problem: his Gym Records from California show he worked out there **300 out of 365 days**

The Unexpected
“Just the Facts Please”

Matter of Campaniello

*“A resident individual means an individual: (A) who is domiciled in this state, unless the taxpayer maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than **thirty days of the taxable year in this state . . .**” .”*

The Unexpected
“Just the Facts Please”

□ **Matter of Campaniello**

New York State courts ruled that the taxpayer has not proven a change of residence from New York, even with:

- A Florida Residence
- More time spent in Florida than New York
- Substantial business ties to Florida
- A Florida driver’s license

Total Charges Incurred: \$709,429

9/27/2017

Value Added Material

See the Checklist for Supporting a Florida Residency at www.scrogginlaw.com

Beware: The Spousal Rights provided to the Spouse of a Florida Resident

9/27/2017

ANTICIPATING CONFLICT



9/27/2017

Central Point

If Conflict is such a Reoccurring Human Issue, why do we so Often Ignore it in Estate Planning?



9/27/2017

The New Reality
(Conflict in Estate Planning)

Estate & Trust Litigation is Increasing

Failure to **Properly Plan** for Death or Incapacity

More **Wealth**

More **Blended Families**

- Step-Parents
- Step or Half Siblings

More **Dysfunctional Families**

In-Laws


Charitable Gifts



9/27/2017

Data & Demographics
(Purpose of Estate Planning)

According to the Wealth Counsel 6th Annual Industry Trends Survey, the TOP Motivation for doing estate planning was to avoid the **Chaos** and **Conflict** among the client's heirs



9/27/2017

Celebrity Example

Sharon Disney Lund died in 1993 leaving behind three adult children and a large estate. Her Will provided subjective and ambiguous phrase that distributions (including principal distributions) could be withheld by the three Co-Trustees if the children do not show "*maturity and financial ability to manage and utilize such funds in a prudent and responsible manner.*" When the Co-Trustees exercised their discretion in ways beneficiaries did not appreciate, a flurry of criminal and civil litigation ensued.


9/27/2017

Document Drafting
Eliminate 3rd Party Claims

Eliminate Mandatory Payouts and Ascertainable Standards from Trusts in Favor of Discretionary Payouts

9/27/2017

Document Drafting
Increased Fiduciary Protection



Broader **Indemnity** Provisions for Fiduciaries, Modifications of the normal **Fiduciary Standards & Investment Policies**

Broader use of **No Contest** clauses

Limited Liability for Delegated Powers & Other Acts


Limits (or increases) on **Disclosures** to Beneficiaries

Disclosure of **Fiduciary Responsibility**

Counter-Balancing Powers designed to protect Beneficiaries

9/27/2017


PERSONAL PROPERTY



9/27/2017

Central Point


WHEN A CLIENT DIES, THE FIRST PRIORITY MAY BE TO CHANGE THE LOCKS TO THE HOUSE



Celebrity Example

“This petition complained that some property was ‘unilaterally removed’ from their home ‘days after Mr. Williams’s untimely death.’”

New York Times, February 3, 2015




The **GREATEST** Source of the Family Conflict

The **Forgotten Part** of Most Estate Plans




Non-Celebrity Example

Both spouses had children from a prior marriage. The husband died in the car accident and the wife died the next morning. His Will passed all the tangible personal property and family heirlooms to the wife if she survived him - on the assumption she would return his family’s heirlooms to his children. Her Will passed all of her tangible personal property to her husband if he survived her and, if not, to her children. Unfortunately, her children insisted that his personal property assets were their property because it belonged to their mother for the 12 hours she survived her husband.



Non-Celebrity Example

A client, who is in his second marriage, dies. His Will indicates that all of his personal property should pass to his surviving spouse. The Personal Representative finds a safety deposit box in the husband’s name that contains his deceased former wife’s jewelry. The husband’s daughter (who has joint ownership of the box) says that her father always intended that her mother’s jewelry go to her (and had gifted the items in the box to her), but she has no written evidence of that gift. The surviving spouse demands the jewelry and argues that the daughter was not a co-leasee of the safe deposit box, not an owner of its contents.



The New Reality
(Unique Personal Property Assets)

- ✓ Firearms
- ✓ Stored Reproductive Assets
- ✓ Frequent Flyer & Hotel Perks
- ✓ Pets
- ✓ Digital Assets (e.g., Facebook)
- ✓ Right of Publicity
- ✓ Contraband

The Unexpected
Travel Perks

“Miles are not the property of any member. Except as specifically authorized in the Membership Guide and Program Rules or otherwise in writing by an officer of Delta, miles may not be sold, attached, seized, levied upon, pledged, or transferred under any circumstances, including, without limitation, by operation of law, upon death, or in connection with any domestic relations dispute and/or legal proceeding.”


Source: Delta Airlines website

Value Added Materials

See the Married and Single Personal Property Disposition Forms at www.scrogginlaw.com

9/27/2017

REMARRIAGE CONSEQUENCES



9/27/2017

Memorable Quotes

Marriage is often due to lack of judgment, divorce to lack of patience and remarriage to lack of memory


Celebrity Examples

- Anna Nicole Smith (age 24) married J. Howard Marshall (age 87) – a 63 year difference.
- In 2012 Dick Van Dyke (age 86) married Arlene Silver (age 40) – a 46 year difference.
- In 1963 Supreme Court Justice William O. Douglas (then age 65) married 23 year old Joan Martin, but they divorced in 1966. In 1966 he married 22 year old Cathleen Douglas Stone and they remained married until his death in 1980.
- In 1957 Jerry Lee Lewis was 22 years of age when he married his 13 year old first cousin, Myra Gale Brown. They divorced in 1970.

9/27/2017

Central Point

HEIRS OF REMARRIED WIDOW/WIDOWERS HAVE MORE TO FEAR FROM THE REMARRIAGE THAN FROM TRANSFER TAXES



Consequences
(New Spouses)


Spousal Elective Share & Years Support (Georgia)

- Elections against the **Homestead**
- **Intestate Claims & Pre-Marriage Will**
 - **ERISA** Retirement Plans
- Elections against **Personal Property**
- Ownership of **Personal Property**
- **Decision Making Authority**
- **Filial Support Statutes**
- The Actions of **In-Laws**



Consequences
(New Spouses)

In 49 states a Spouse has a right to an “Elective Share**” and Other Rights against the Estate – EVEN if the Spouse is **Disinherited** by a Will!**




Understanding the **FIRST CASSEROLE RULE**



Data & Demographics
(Dad's New Romance)

61% of widowers are engaged in a new romantic relationship within 25 months of their wife's death, versus **19% of widows**. Widowers over age 65 are **10 times** more likely to marry than widows.



Consequences

Dad's marriage to a woman 20 years his junior has created heartburn for a lot of children who have been anticipating a larger and quicker inheritance

9/27/2017


The New Reality
(Fear of Second Wives)

Wives are Increasingly concerned about Family Assets passing to their Widower/Husband's **New Wife**

9/27/2017

Consequences
(New Spouses)

Georgia Statute 53-4-48(c): "If the will was made prior the [the marriage of the testator],and does not contain a provision in contemplation of such an event, the subsequent spouse shall receive the share of the estate he or she would have received if the testator had died intestate."





The New Reality
(Second & Third Marriages)

Even **Moderately Wealthy Clients** Need to Consider:

- ✓ Pre-Nuptial Agreements
- ✓ Post-Nuptial Waivers (ERISA Plans)
- ✓ Updated Estate Planning Documents
- ✓ Documented Ownership of Personal Property
- ✓ The Use of Conduit Trusts for Spouses

9/27/2017

THE LAW
(Void & Voidable Marriages)

Void: A Nullity from the Beginning

- ✓ Bigamy
- ✓ Incest

Voidable: A Court Order (some of the grounds)

- ✓ Lack of Capacity or Fraud
- ✓ A spouse is impotent, or has a venereal disease
- ✓ A "want of understanding" by one of the spouses
- ✓ Before the marriage, a spouse having been convicted of a felony or been with a prostitute, without the knowledge of the other spouse
- ✓ Either spouse is underage – age 14 in some states

THE LAW
(IRAs and Creditor Protection)


In a series of decisions, the federal courts have ruled that a spouse's right to an **ERISA retirement plan cannot be waived prior to the marriage of the parties. Thus, if the parties intend for such waiver, a **renunciation** of such rights should be signed after the marriage occurs.**

9/27/2017

Consequences
(STDs and the Elderly)

South Florida saw a 60% rise in **sexually transmitted infections** among people 55 and older from 2005 to 2009

As a result of this National Trend among seniors, Medicare is considering providing coverage for STD screenings for seniors




Value Added Materials

“Tax, Estate and Practical Issues in Divorce and Remarriage”
(98 pages)

at www.scrogginlaw.com

9/27/2017

INCAPACITY PLANNING



9/27/2017

Memorable Quotes


“Life is pleasant. Death is peaceful. It’s the Transition that’s Troublesome.”

Jimi Hendrix

9/27/2017

Central Point

EVERY ADULT OF EVERY AGE SHOULD EXECUTE A MEDICAL DIRECTIVE, AND A GENERAL POWER OF ATTORNEY



9/27/2017

Data & Demographics
(Prepared for Incapacity)


A Lawyers.com study reported that in 2009 only **29%** of Americans had either a Medical Directive or a General Power of Attorney



9/27/2017

Data & Demographics
(Looming Incapacity)


Year	Over age 65
2010	40,200,000
2020	54,600,000
2030	71,500,000
2040	80,000,000
2050	86,700,000



9/27/2017

Celebrity Example


Glenn Campbell announced in 2011 that he had been diagnosed with Alzheimer's. In 2015, two of his eight children filed suit in Nashville alleging that his fourth wife (married since 1982) was refusing to let them visit their father or let them participate in his health care.



9/27/2017

Celebrity Example


It has been reported that Travis Campbell has said: "We have turned over information to authorities, the FBI and district attorney in two different states to prove that she's mismanaging his finances. We need to find out some things about what she's doing with the cash."



9/27/2017

Celebrity Example

Brooke Astor's only child, Anthony D. Marshall (a former Marine, CIA officer and Ambassador), was convicted in 2009 of theft from his mother's \$185 million estate, conspiracy with regard to her new Will (to eliminate a \$60 million charitable bequest) and elder abuse. One of the key witnesses against Anthony Marshall was his own son, Phillip Marshall. Mr. Marshall was sentenced to one to three years in prison



9/27/2017


The New Reality
(Plan for Incapacity)




Encourage clients with Adult Children and Parents to have them execute Medical Directives & Durable General Powers of Attorney

DRAFTING DOCUMENTS
(General Power of Attorney)

- Detailed Authority
- Name the **Guardian**
- Authority to make **Gifts & Advance Bequests**
- Estate **Planning**
- Broad **Tax** Authority
- Safe Deposit **Boxes**
- Residence**
- Witness** and a **Notary**



The Unexpected
Planning for Guardianship




A January 26, 2015 article in the New York Times noted that it has become "routine" for Nursing Homes to attempt to gain Guardianship over Residents and to use that power to **pay bills to the nursing home**

Solution: Name Guardians in General Powers of Attorney and Medical Directives

Control of the Family Business

The Lesson from Sumner Redstone

View Medical Directives and General Powers of Attorney from a **Dispositional Perspective**



Celebrity Example

Sumner Redstone’s granddaughter said that her aunt Shari Redstone and her three adult children had *“succeeded in reversing decades of my grandfather’s careful estate planning and are poised to seize control of Viacom and CBS.”*

New York Times, June 1, 2016


The Law
(Testamentary Capacity)

“[a] man may believe himself to be the supreme ruler of the universe and nevertheless make a perfectly sensible disposition of his property, and the courts will sustain it when it appears that his mania did not dictate its provisions.”

Fraser v. Jennison, 3 N.W. 882, 900 (Mich. 1879)

“gross eccentricity, slovenliness in dress, peculiarities of speech and manner or ill health are not facts sufficient to disqualify a person from making a will” **In re’ Estate of Frazier**, 131 Neb. 61, 73, 267 N.W. 181, 187 (1936)


DYING INSOLVENT




Dying Insolvent

“Jefferson lived perpetually beyond his means, spending large amounts of money on building projects, furnishings, wine, etc.”


Monticello website



Data & Demographics
(Unprepared for Retirement)



The Center for Retirement Research at Boston College estimates **that more than half of all American households** will not have enough retirement income to **maintain the living standards** they were accustomed to before retirement, even if the members of the household work until 65, two years longer than the average retirement age today



Data & Demographics
(Reduced Inheritance)

In “*Counting on an Inheritance? Count Again,*” it was noted that rather than inheriting significant sums, Baby Boomers may actually have to go out of pocket to support their parents who are living longer than expected.

Source: Wall Street Journal, June 11, 2012

The New Reality
(Filial Support Laws)


According to the **Statute of Frauds**, you cannot generally be held liable for the debts of another without agreeing to such liability.

24 states have adopted **Filial Support statutes** in which family members can be held legally liable for the support obligations of family members

In some states, failure to provide the necessary support to a spouse can be a **criminal Felony or Misdemeanor**



LEGACY PLANNING



9/27/2017

Memorable Quotes



“The parent who leaves his son enormous wealth generally deadens the talents and energies of the son and tempts him to lead a less useful and less worthy life than he otherwise would.”

Andrew Carnegie

9/27/2017

Central Point

MOST CLIENTS ARE MORE INTERESTED IN THE LEGACY THEY LEAVE BEHIND THAN IN ADDRESSING THEIR PERSONAL MORTALITY AND THE TAXES CREATED BY DEATH

9/27/2017

Memorable Quotes

“[The perfect inheritance is] enough money so that they feel they could do anything, but not so much that they could do nothing”

Warren Buffet

9/27/2017

Celebrity Examples

Living celebrities who have indicated that their children will receive little to nothing as an inheritance:

- > Bill Gates
- > Jackie Chan
- > Sting
- > Simon Cowell
- > Warren Buffett
- > George Lucas

9/27/2017

The New Reality (The Fundamental Purpose of Estate Planning)



*To Protect
and
Preserve
Your
FAMILY*

9/27/2017


The New Reality (The Fundamental Purpose of Estate Planning)

The two highest goals parents have for their children are finding a **satisfying career** and **supporting themselves** and their families. Financial success is a low priority.



9/27/2017

CHARITABLE PLANNING



9/27/2017

Planning Fact (Charitable Giving)

A 2010 Bank of America Study of High Net Worth Philanthropy estimated that between **\$6.6 trillion** and **\$27.4 trillion** in charitable bequests would be made from 1998 to 2052

9/27/2017

Celebrity Examples

In June 2006, Warren Buffett announced that he was giving away his **\$40 billion** fortune to charity. Compare his gift to others:

<u>Philanthropist</u>	<u>Gift</u>	<u>In 2006 Dollars</u>
Andrew Carnegie	\$350 million	\$7.2 billion
John Rockefeller	\$530 million	\$7.1 billion
John Rockefeller, Jr.	\$475 million	\$5.5 billion

Source: Fortune, July 17, 2006

9/27/2017

The New Reality
Charitable Control

Clients Increasingly Want Charitable Contributions to be Held in Entities Controlled by Family



9/27/2017

The New Reality
IRS Scrutiny

Increased IRS Scrutiny of Charitable Income Tax Deductions

9/27/2017

Permanent Extender Bill
IRA Direct Charitable Transfers - §408(d)(8)

Limits on the Rule

“is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.” ((§408(d)(8)(B)(ii).

Does not apply to Contributions to Donor Advised Funds & Supporting Organizations

Does not apply to Employer-Sponsored Plans

9/27/2017

Permanent Extender Bill
IRA Direct Charitable Transfers - §408(d)(8)

The exclusion applies only if a charitable contribution deduction for the entire distribution would otherwise be allowable. *“for example, if the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the donor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution.”*

JCT Report, p. 19.

9/27/2017

642(c) and Basis Deduction

In Green v. United States, the US District Court ruled that pursuant to §642(c)(1) a Trust was entitled to take a Charitable Deduction for the **Fair Market Value** of the Contributed Property

Chief Counsel Advice 201042023: the Deduction was limited to the Property’s **Adjusted Tax Basis**

9/27/2017

Charitable Income Tax Deduction

Harvey C. Hubbell Trust

Charities were to receive the Residuary Estate of Harvey C. Hubbell once all lifetime Beneficiaries were Deceased; Charitable payments were made during the Life Term.

“...the trust is not entitled to deduct the amount contributed because none of the contributions was made “pursuant to the terms of the governing instrument”, as required by section 642(c)(1).

9/27/2017

Charitable Income Tax Deduction

An amount will not be deemed “permanently set aside” for a charitable purpose under section 642(c)(2) *“unless under the terms of the governing instrument and the circumstances of the particular case the possibility that the amount set aside, or to be used, will not be devoted to such purpose or use is so remote as to be **negligible.**”*

Treas. Regs. Sec. 1.642(c)-2(d)

9/27/2017

Charitable Income Tax Deduction

Estate of Belmont

Belmont Residuary Estate passed to Charity
IRD Assets of \$243,463 paid to the Estate
642(c) Deduction (after expenses): \$219,580
Brother contested Ownership of a Condo
“Although David was not contesting decedent’s will, his active litigation of his property rights to the Santa Monica condo created a real possibility that the funds set aside for the foundation would be depleted during the pendency of the lawsuit”

9/27/2017

Charitable Income Tax Deduction

Estate of Belmont

*“The parties cite no previous Tax Court opinions that directly address the issue. Although this Court has not had occasion to consider the **“so remote as to be negligible”** standard in the context of section 642(c)(2), we have examined identical language in connection with the regulations prescribed under section 170.”*

9/27/2017

Charitable Income Tax Deduction

Estate of John D. DiMarco

- John DiMarco died and passed his Residuary Estate to two churches he regularly attended
- 8 Cousins contested the Will
- Settlement: 1/3 to Cousins, 2/3 to Churches
- IRS: Denial of \$314,942 deduction on 1041

*“We find the negotiations here were tantamount to a legal controversy to the effect that the funds did not meet the **permanently set aside standard under Estate of Belmont**”*

9/27/2017

Charitable Income Tax Deduction

Estate of John D. DiMarco


“In general, the Commissioner’s determination in a notice of deficiency is presumed correct, and the taxpayer bears the burden of proving that the determination is incorrect”

9/27/2017

TRAP FOR THE UNWARY

Conflicts & Charitable Deductions

Effectively, these rulings put more pressure on Fiduciaries to settle conflicts before Charitable Income Tax Deductions are taken



9/27/2017

PLANNING OPPORTUNITY
Charitable Deduction for Trusts

Revenue Ruling 2004-5

“A charitable deduction under § 642(c) for a trust’s distributive share of a charitable contribution made by a partnership from the partnership’s gross income is not prohibited even though the trust’s governing instrument does not authorize the trustee to make charitable contributions.”

9/27/2017

PLANNING OPPORTUNITY
Charitable Deductions vs. Marketing Expenses

- **Charitable Deductions** by individuals and businesses are subject to numerous Limitations and Deduction requirements
- Business owners should consider having their business make Payments as **Marketing and Advertising**
- The central issue in distinguishing the two is *a reasonable expectation of a financial return commensurate with the amount of the advertising payment*

9/27/2017

PLANNING OPPORTUNITY
Advancements

Provide for the Advancement of Charitable Bequests for Terminally Ill Clients

*Example: Assuming a marginal federal income tax rate of 40%, replacing a \$100,000 charitable bequest with a 2017 gift could save up to **\$40,000** in federal income taxes*

9/27/2017


MEMORABLE QUOTES

A tax lawyer is a person who is good with numbers but does not have enough personality to be an accountant

James D. Gordon, III

9/27/2017

RULING FROM THE GRAVE



9/27/2017

Celebrity Example

Harry Houdini’s Will provided that a séance should be held on each anniversary after his death, with his surviving spouse having a secret 10 word code that Houdini hoped to use to prove that afterlife exists. Apparently the experiment failed.

9/27/2017

Celebrity Example

Leona Helmsley's Will her July 15, 2005 Will which created a 5% Charitable Unitrust for two of her grandsons, with the requirement that they must visit their Father's Mausoleum and sign a Record Book at least once per Year

9/27/2017

PLANNING OPPORTUNITY
CRT Contingencies

Normally, the existence of a Contingency on a trust bequest to a surviving spouse voids any estate or gift tax marital deduction. However, Code section 2056(b)(8) provides an exception for CRTs "If the surviving spouse of the decedent is the only beneficiary of a qualified charitable remainder trust ..." Similar language is contained in Code section 2523(g)


A CRT for the spouse (or soon-to-be-former-spouse) can contain a provision that terminates the CRT upon the remarriage of the spouse, a contest of the Will or upon other contingencies

The contingency is not taken into account in calculating the value of the charitable remainder interest and the resulting charitable deduction

9/27/2017

A THOUGHT TO REMEMBER

According to Benjamin Franklin, only **death** and **taxes** are inevitable.
So live your life **accordingly**.



9/27/2017