Bridging Generations

April 2010

A Newsletter from **Foley & Foley**, A Professional Corp.

Generations

For our clients and our professional estate planning partners

Estate Planning Workshops

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Don't forget that Foley & Foley offers two workshops every month for people who want to know more about wills, trusts, insurance, probate, estate taxes, children's trusts, and more.

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There is no charge and no obligation.

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You can check our schedule, times, and location online at www.foleyfoley.com.

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Call us to RSVP at 522-2272.

Estate Tax Update: Is it a Good Year to Die?

by Richard H. Foley

In the classic 1970 movie *Little Big Man*, starring Dustin Hoffman, co-star Chief Dan George makes famous the classic Lakota Sioux saying attributed to Crazy Horse before the Battle of the Little Big Horn: "It is a good day to die."

In the movie, Chief George's character proceeds to lie down solemnly under the vast western sky with the intent of quietly breathing his last. Unexpectedly, it starts to rain, and as the drops pelt the old man's face he asks his grandson, played by Dustin Hoffman, "Am I still in this world?"

"Yes, grandfather," is the reply.

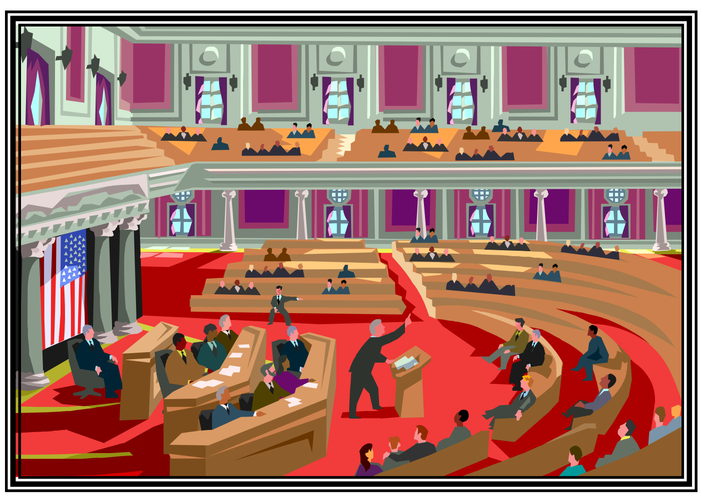
"Well," the old chief concludes, "sometimes the magic works and sometimes it doesn't. Let's go back to the teepee and eat."

Because of a strange quirk in the federal estate tax law and the failure of Congress to take action last year, some estate planners are asking the same question as Chief Dan George, albeit without nearly as much poignancy: Is 2010 a good year to die?

For years, estate planning experts assumed that Congress would not allow the estate tax to fade away.

In order to understand the current law, we need to review some recent history—history that now seems to have occurred a lifetime ago.

In 2001, George Bush and the Republican Party swept into power. For the first time in over 50 years, one party controlled both houses of Congress and the White House. The Republicans moved quickly to fulfill a campaign promise to reduce income taxes and repeal the Federal estate tax law, sometimes referred to as the death tax. Congress passed a bill that was signed into law in June of 2001 that was known as the Economic Growth Tax Relief Reconciliation Act, or EGTRRA.



Estate Taxes

continued from Page 1

Under this law, the estate tax repeal was to be phased in over ten years. The law raised the estate tax exemption amount from $675,000 in 2001 by various increments until it reached $3.5 million in 2009. At the same time that the estate tax exemption amount was going up, the highest tax rate of 55% in 2001 was gradually reduced to 45% in 2009. Finally, the entire federal estate tax was repealed effective January 1, 2010. However, EGTRRA was subject to a special Senate rule that required an automatic sunset of the law in 2011 if it was not otherwise changed or extended by Congress.

For years, the national estate planning experts assumed that Congress would not allow the estate tax to completely fade away and that the law would be modified or changed with some compromise between Republicans and Democrats. When the Democrats took strong control of both houses of Congress and the White House in 2009, it was a foregone conclusion that they would not allow the estate tax to be repealed in 2010. But politics is a strange spectator sport, and Congress became focused on national health care and the economy rather than on the estate tax. The House of Representatives passed a bill in December of 2010 that would have continued the estate tax at a 45% rate on all estates over $3.5 million, but the Senate never got around to voting on the bill before it adjourned for its winter break.

The result? Today there is no estate tax.

But if Congress takes no action on the estate tax this year, the old law will be reinstated effective January 1, 2011, with a tax exemption amount of $1 million and a highest tax rate of 55%. Practically speaking, this means that anyone with an estate exceeding $1 million when they pass away would be taxed at a rate of up to 50% or more for every dollar of wealth passing to the next generation over the $1 million exemption amount. A person with an estate valued at $2 million would pay $435,000 in taxes. A person with an estate valued at $4 million would pay a tax of $1.495 million.

Anything might happen in Congress, including nothing.

The repeal of the estate tax for 2010 and the possible return of the law as it existed prior to 2001 has left many estate planning experts scratching their heads. At first some of the experts speculated that Congress might pass a bill when it returns from the winter recess, retroactively re-instating the estate tax to Jan. 1, 2010. But the Republican upset in the Massachusetts Senate race and the looming midterm elections next fall have caused more and more members of the estate planning community to conclude that anything might happen in Congress, including nothing.

Indeed, if Congress fails to take any action at all this year, the "Bush" estate tax repeal would expire on December 31, 2010. This expiration of the current law would effectively result in a substantial increase in the estate tax rates in 2011, without the current Congress having ever voted for the tax increase.

At this point, nobody—including the leaders in Congress—really knows what the estate tax laws will look like next year. But there is a lot of money riding on this issue for people who have estates worth more than $1 million. We recommend that our clients stay abreast of developments and keep following our newsletter for the latest information about the estate tax. If you are concerned about how your estate plan might be affected by the changing tax law, feel free to give us a call.

And rest assured, despite the 2010 estate tax repeal, you still have a lot to live for. We don't think it is a good year to die.

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Check Your Real Property Tax Bill!

The Senior Citizen's Exemption recently went missing from a Generations member's real property tax bill. It disappeared even though the proper steps had been taken in funding this couple's trust. The Municipality's oversight was easily corrected.

His vigilance paid off; so can yours. Feel free to contact us if you need help.

Red Zone Offense: Administering the Family Trust

By William M. Pearson

Sports clichés are often applied in the course of everyday affairs, especially in the business world. They are also applicable in the law. One sports metaphor that I use in the probate and estate planning practice is the term “the Red Zone.” The phrase “the Red Zone” is a football term that addresses the ability of a team to score when they are within the opponent’s 20 yard line. The idea is that the offense has moved the ball most of the way down the field, but the key is converting the drive into points. Teams that are successful in the Red Zone score more and are more likely to win the game. Creating your living trust is much like the Red Zone. By creating your living trust you have reached the 20 yard line—the question then becomes, will the plan be implemented? Will your successor trustees get the job done?

Over the last five years I have been involved with the administration of Living Trust based estate plans at Foley & Foley. I have found that the effectiveness of any estate plan is only as good as its administration and the designated successor trustees.

If you are married, your living trust likely directs that, upon the death of the first spouse, the trust assets shall be divided between a Marital Trust and an irrevocable Family Trust. Using a formula, the trust directs that the maximum amount that can be passed estate tax free shall be transferred to the Family Trust.

There are many advantages to utilizing the Family Trust:

♦ It is a required fiduciary duty by the terms of the trust. This may sound odd, but by requiring the creation of the Family Trust, the tax and non-tax advantages of the trust are obligatory on the successor trustee;

♦ By transferring assets to the Family Trust, you are maximizing the amount that can be passed estate tax free (currently there is no estate tax, but it is set to return to

$1 million in 2011);

♦ The Family Trust is an irrevocable trust and has certain creditor protections;

♦ The Family Trust provides bloodline protection, which assures that, upon the death of the surviving spouse, the Family Trust assets shall be distributed to those individuals that you originally directed; and

♦ Once an asset is transferred to the Family Trust—so long as it continues to be held in the Family Trust—the asset will not be subject to estate taxation (if it is sold, but held in the trust, it will be subject to capital gains or income taxes). Thus, the ability to compound tax savings over multiple generations can be a powerful means to maintain family assets. For unmarried clients, similar advantages can be realized by leaving assets in an irrevocable testamentary trust for friends and family.

Your living trust estate plan directs for the administration and management of your estate. Usually this involves working with an attorney at Foley & Foley, your accountant, and your financial advisor to ensure that the right mix of assets are titled in the Family Trust. Remember, these advantages can only be realized if your successor trustee effectively implements the trust. Its value is largely dependent on the successor trustees who will administer the plan.

By creating your trust, you have brought your estate plan into the Red Zone. You have done your part by articulating your legacy. The actual implementation of your legacy is in the hands of your successor trustees. These agents are the ones who are responsible for the Red Zone offense.

Now you must ask yourself: Are your successor trustees prepared to administer your trust? Do they understand and appreciate their responsibility? Do they have the proper attributes as trustees to execute your estate plan?

By creating your living trust you have reached the 20 yard line—the question then becomes, will the plan be implemented?

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The Red Zone

continued from Page 3

In other words, can they score the touchdown by implementing the plan as drafted?

I have found that it is vital that your successor trustees understand this responsibility and know the importance of administering the estate, both upon the creation of the Family Trust and when coordinating the ultimate disposal of the trust assets.

The administration and transfer of assets to the Family Trust is key to realizing your original intent and achieving your estate planning goals.

Foley & Foley offers an annual Successor Trustees Workshop as well as two estate planning workshops each month. In addition, you can meet with Richard, Sue, or myself to discuss your trust. Give us a call or come to one of our workshops if you are interested in learning more.

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Introducing the *Generations* Partners Program!

Foley & Foley ***Generations*** clients receive special discounts and pricing from the following Alaska businesses. Look for details on our website, www.foleyfoley.com.

Alaska Club: Free enrollment; 1st month free.
Bagoy's Florist and Home: 15% discounts on fresh flowers.
Bells Nursery: 15% discount on gift cards.
Café del Mundo: Various discounts on coffee cards and wholesale coffee purchases.
Hotel Captain Cook: "Tier 1" rates.
Intuitions Day Spa: 10% rebate given quarterly toward new services.
Katmai Wilderness Lodge: 20% discount on published rates.
Steve Gordon, Artist: 10% discounts on original artwork purchased directly from the artist.
WineStyles: One month free after 12 months.