

The Estate Analyst®

December 2013

Au Revoir *The Year In Review—2013*

By Robert L. Moshman, Esq.

Friends, counsel, and certified public accountants, lend me your eyes for the last interruption of billable hours in 2013, so that we may collectively tiptoe across the finish line of another spectacularly dysfunctional year.

Editor's Note: Please, no tweaking, tweeting, or texting, and definitely no twerking...seriously, don't do it! Or as the Oxford Dictionary would now say, "srsly." In the wake of news coverage of Miley Cyrus's performance at MTV's VMAs, the Oxford Dictionary also added "twerk" to its

official list of words, along with "selfie." President Obama famously posed for a selfie with Danish Prime Minister Helle Thorning-Schmidt at the memorial for Nelson Mandela. And Paris Hilton dressed as Miley Cyrus for Halloween. Does that qualify as life imitating art or the reverse? Srsly!

Let's review the year's highs and lows from Congress, the Supreme Court, celebrity estates, and the grand conglomeration of things you just can't make up.

Presented With Our Compliments

Legislative Free Fall

We entered 2013 in free fall, having plunged over the fiscal cliff. Thus, we began the January issue of this newsletter with a resolution for 2013: “Never invite Congress to a New Year’s Eve party again. They fight all night, they won’t go home, and what a mess they leave behind!”

After a 20-hour marathon of debate, Congress adopted the American Taxpayer Relief Act of 2012 (ATRA). The good news was that the transfer tax system was stabilized with a unified estate and gift tax, a stepped-up tax basis for assets owned at death, and a significant lifetime exemption. The bad news was that a higher top tax rate and capital gains tax rate under ATRA, combined with the 3.8% Medicare surtax from the Patient Protection and Affordable Health Care Act, resulted in excessively high tax rates on some relatively small personal trusts.

The Congressional dysfunction of 2013 then manifested itself with a complete shutdown of government when terms of raising the national debt ceiling were disputed. Then came the rollout of *healthcare.gov* to implement the Affordable Health Care Act, and the chaos and fallout from that will accompany us into the new year. One brighter note is that Congress achieved a bipartisan agreement to avoid the next budget crisis. The negative ramifications from this, however, are that deficit spending and the servicing of the national debt are not sustainable. Barring substantive reforms, an economic day of reckoning must follow.

Top Story of 2013

The recognition of same-sex marriage by the IRS is arguably the biggest financial planning development of 2013 (if not the entire decade). Allow us to make that case right here.

Notwithstanding the sea change of public opinion in the United States in favor of same-sex marriage, only 15 state jurisdictions currently permit it. Yes, there are a number of states that recognize legal same-sex marriages from other jurisdictions or permit civil unions. Yes, there are pending proposals in many states. Yes, there are eight Native American tribes that allow it. Yes, there are at least 15 countries that allow same-sex marriage and many others that are on the way there. And, yes, no less than eight Federal Court decisions found the Defense of Marriage Act (DOMA) unconstitutional in a variety of contexts.

In, *Windsor v. United States*, the plaintiff sought a refund of \$363,000 of estate tax that resulted when a widow was not permitted to utilize an estate tax deduction for her same-sex spouse. Edie Windsor and Thea Spyer were New Yorkers who entered into a committed relationship in 1963. The couple married in Canada in 2007; Spyer died in 2009. In her Will, Spyer left her estate to Windsor, who filed suit in her capacity as executor of the estate. In a 5-4 decision, the

United States Supreme Court found that DOMA violated principles of equal protection and due process by depriving same-sex couples of the benefits and responsibilities that come with the federal recognition of their marriages.

The net result of the Supreme Court ruling is that the Federal government no longer defines marriage as between a man and a woman, but it does not require states to allow same-sex marriages or even recognize same-sex marriages from other jurisdictions. The majority of American states do not currently allow or recognize same-sex marriages. How will residents of those states be treated with regard to the 1,138 laws that determine benefits, rights, or privileges based on marital status (as determined by the Congressional Budget Office in a 2004 study)?

On August 29, 2013, the IRS issued a press release, IR-2013-72 to announce a new policy:

“The U.S. Department of the Treasury and the Internal Revenue Service (IRS) today ruled that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. The ruling applies regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage. The ruling implements federal tax aspects of the June 26 Supreme Court decision invalidating a key provision of the 1996 Defense of Marriage Act. Under the ruling, same-sex couples will be treated as married for all federal tax purposes, including income and gift and estate taxes. The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, employee benefits, contributing to an IRA and claiming the earned income tax credit or child tax credit.”

Who knew the ultimate conservative bureaucracy, the grim, gray, faceless, monolithic personification of Big Brother itself would embrace the rainbow? This permanently changes the entire landscape for same-sex couples for estate and financial planning.

Celebrity Estates

Did Ryan O’Neal steal an Andy Warhol painting of Farrah Fawcett from Fawcett’s condominium after her death? The University of Texas at Austin is suing O’Neal for possession of the painting that they claim the late actress donated to the University. O’Neal claims the painting, one of two that Fawcett possessed, was given to him by Andy Warhol for arranging the portrait session for Warhol in 1980. O’Neal is suing reality television producer Craig Nevius for defamation for alleging that he stole the painting.

Harry Belafonte sued the estate of Martin Luther King Jr. to establish ownership of three documents that the estate had

prevented him from auctioning in 2008. The documents consist of an outline of a Vietnam War speech that King had worked on and left in Belafonte's apartment in 1967, notes to a speech found in King's suit on the day he was assassinated for a speech he would have delivered in Memphis (and which Coretta Scott King gave to Belafonte in 1979), and a condolence letter from President Lyndon B. Johnson to Coretta Scott King, which she gave to Belafonte about a decade ago.

"Blurred Lines," by **Robin Thicke**, Pharrell Williams, and Clifford Harris, Jr., was one of the big hits of 2013 and was admittedly based on the 1977 hit "Got To Give It Up," by Marvin Gaye, who died in 1984. Thicke, Williams, and Harris, Jr., preemptively filed a lawsuit this past summer to show that "Blurred Lines" is derivative only and did not illegally infringe on Gaye's song (or Funkadelic's "Sexy Ways") and that the intent was simply to evoke an era. The threesome also offered Gaye's estate a six-figure payment. Gaye's family not only turned down the offer but has now sued Thicke for copyright infringement. And, as long as they were going to court, they claimed that Thicke's "Love After War" is a rip-off of Gaye's "After the Dance."

Nina Simone's 1965 hit "Sinnerman" was allegedly used by The Harrisonville Telephone Company without permission, prompting a lawsuit for \$1 million by Nina Simone's daughter on behalf of her mother's estate. Nina Simone died in 2003. A separate lawsuit for professional malpractice was filed against Simone's former attorneys for failing to establish whether Simone was domiciled in France at the time of her death or whether the estate was probated in California (and extended for the past decade) to generate higher fees to the estate planning firm.

Celebrity Follow-ups

Michael Jackson died with debts exceeding assets on hand by about \$385 million. However, he owned a lot of intellectual property, such as rights to music and his own name and image. The estate and the IRS clearly do not agree on what those intellectual properties are worth. For example, the estate thinks the artist's likeness and image are worth \$2.1 million. The IRS thinks those assets are worth \$434 million. In 2013, the IRS issued an overall tax deficiency notice of \$505.1 million in taxes and \$196.9 million in penalties for a total of \$702 million. The estate notes that it has already paid \$100 million in taxes earlier this year.

The Jackson estate is also being sued for child molestation allegedly committed during the singer's lifetime by an individual who once testified on Jackson's behalf at one of his previous molestation trials.

Anthony Marshall, 89, a former Broadway producer, diplomat, and the son of the New York philanthropist

Brooke Astor, was convicted in 2009 of stealing artwork and millions of dollars from his mother using his power of attorney. In 2013, with his appeals exhausted, Marshall was ordered to start serving a one- to three-year sentence. His lawyers then submitted 900 pages of health records indicating that Marshall could not walk, stand, clean himself, dress himself, and had serious trouble swallowing. The New York State Parole Board then ruled that Marshall could not receive adequate healthcare in prison and ordered his medical parole. He had served two months of his sentence.

Ronald Perelman has been accused of burning through his daughter's inheritance to seek revenge upon his former in-laws. Perelman, with an estimated wealth of \$12 billion, was named as executor to the \$68 million estate of his former wife, Claudia Cohen. The estate allegedly paid \$30 million in taxes and may have spent another \$20 million or more on four lawsuits directed at Cohen's father and brother over the past five years. Perelman's suits allege that Cohen's father promised to leave half of his estate to his daughter but that he instead sold an \$800 million company to his son for \$15 million.

In 2009, Perelman lost part of one case alleging that Cohen's father was incompetent when he revised his Will. In that case, Judge Ellen Koblitz assessed damages of \$2 million on Perelman for frivolous litigation. In 2013, the Appellate Division ruled that, although the claims were frivolous, the damage award was excessive and remanded the case.

Meanwhile, a separate trial continues in Hackensack Superior Court with claims that Claudia Cohen's brother pressured his father to modify the Will and managed the Hudson News in a manner to reduce the cash in the father's estate, which Claudia Cohen's daughter, Samantha, could then have inherited.

Uncool Trusts & Estates

Australia's richest person Gina Rinehart offered to resolve conflicts with her children over a \$19 billion family trust by appointing a co-trustee. "If only it were that simple," said one of the children. The trust was established by the late Lang Hancock for his four grandchildren in 1988 and was to hold 23.4% of Hancock Prospecting until the youngest grandchild turned 25 in 2011. But days before the payout, Gina Rinehart delayed the payout until 2068 to avoid a large tax consequence.

Washington State adopted retroactive estate tax changes in response to a loophole that was opened by a state court ruling that certain families had avoided the estate tax by using a certain type of trust. Observers predict that the retroactive impact on 70 or more estates, which includes a tax rate increase on the largest estates, will be found unconstitutional. Facing a \$1.2 billion

budget shortfall, the \$160 million of refunds avoided by the new legislation is significant.

It turns out that you can't adopt your girlfriend for trust purposes. Florida's Third District Court of Appeals reversed a 2011 trial court ruling that allowed Florida polo tycoon John Goodman to adopt his adult girlfriend. The maneuver made her a beneficiary of the 1991 trust for his children and preserved part of his fortune for her while he negotiated a civil wrongful death settlement. A contract provided her with \$16.75 million from the trust over time. Judge Alan R. Schwartz concluded that adoption of a lover was so contrary to the beneficent purposes of adoption that it could not be confirmed.

Saudi billionaire Prince Alwaleed bin Talal sued *Forbes* magazine for libel because of the magazine's annual listing of the wealthy had him at \$20 billion and allegedly undervalued his wealth by \$9.6 billion. Not cool, billionaire Prince.

Notable Briefs

HRH Prince George Alexander Louis of Cambridge, born to Kate Middleton and Prince William this year, stands to inherit wealth on the order of \$1 billion from Queen Elizabeth (who is worth an estimated \$660 million), Prince Charles (who is worth an estimated \$370 million), and Prince William (worth about \$20 million, not to mention the crown jewels).

Richie Havens, who was the opening act at the 1969 Woodstock concert, died this year at the age of 72, and his ashes were scattered from a plane as it flew over the Woodstock site.

Longest Divorces

Asset protection is needed for estates threatened by potential creditors and liability, but divorce remains a potent threat to wealth as well. Harold Hamm, the CEO of oil giant Continental Resources, may be sharing his \$11.3 billion fortune with his ex-wife if the prenuptial agreement that was drafted was never signed.

A \$5+ billion divorce settlement would surpass the \$1.7 billion settlement Rupert Murdoch paid in 1999 or the reported \$2.5 billion upfront payment and \$100 million annual payment for 13 years to be paid by Alec Wildenstein to Jocelyn Wildenstein, the infamous "Bride of Wildenstein," aka, "Catwoman," who is known for having \$4 million of plastic surgery to enhance her cat-like facial features.

However, big settlements are only one aspect of divorce. Legal battles can also take their toll. In 2013, the Ashton Kutcher/Demi Moore breakup was referred to as "the longest divorce," after taking more than two years from their separation and one year from the filing of divorce papers.

That's a mere trifle compared to the 10-year, 600-motion war of attrition waged between David Zilkha and Karen Kaiser in Stamford, Connecticut. "There are some cases that for whatever reason ... sort of spin out of control," said Judge Michal Shay at one hearing. "It's been soul-destroying. It's been life-destroying," said one of the litigants. This case was filed in 2003, and the divorce was granted in 2005, but disputes and motions have continued ever since.

Which brings us to the endless battle of Lassiter in Cincinnati, Ohio, which involved the divorce of two law professors. Their divorce and related disputes are now in their 17th year—10 years longer than their marriage. The original divorce action took five years. That action, plus ongoing disputes, have a combined 1,400 entries. "Both (parties) should be thoroughly embarrassed and ashamed," said Hamilton County Common Pleas Judge Leslie Ghiz during a 2013 hearing.

So, that just happened...

- On the 50th anniversary of the assassination of John F. Kennedy, the wedding ring of the assassin, Lee Harvey Oswald, was auctioned for \$118,000. The ring had been in a Fort Worth attorney's files for nearly 50 years before being returned to Oswald's widow, Marina, who wrote: "At this time of my life I don't wish to have Lee's ring in my possession because symbolically I want to let go of my past that is connecting with November 22, 1963."
- In, *Matter of Stafford*, A New York Appeals Court upheld a Surrogate court decision that a woman's \$100,000 bequest for the care of "Kissie Meouw" was valid and so was her disinheritance of three nephews.
- J&D Foods announced the first bacon-themed casket for \$2,999.95. It is painted to look like bacon and has gold handles. "Yes, this is really real," states the company's press release.
- Michigan woman Evie Branon awoke in a nursing home after five years in a coma, asked to see a Bob Seger concert, and the staff arranged it for her. Seger, 68, has been performing for the Silver Bullet Band since 1973.

**"Just take those old records off the shelf
I'll sit and listen to 'em by m'self
Today's music ain't got the same soul
I like that old time rock and roll."**