

# The **Estate Analyst**<sup>®</sup>

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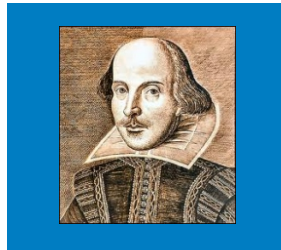
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## Midsummer's Madness — 2013

*Budget Surrealism, DOMA No Más, Second-Guessing Gandolfini's Estate, Perelman's Revenge, & God's Plan for Tim Tebow*

By Robert L. Moshman, Esq.

Don't look now, but we are more than halfway through 2013, and there are inexplicable tax and budget proposals, a new direction for DOMA, bizarre celebrity litigations, and even a Sharknado sighting. Without further adieu, here is this year's midyear madness collection.



### *Estate Tax Reform*

There was a moment earlier this year when the estate and gift tax system reached a stable, permanent, sustainable foundation upon which good planning could finally be based. But that moment has passed.

**“Why, this is very midsummer madness!”**

—William Shakespeare, from *Twelfth Night*

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**Presented With Our Compliments**

After myriad tax reforms running from the Tax Reform Act of 1976 to ERTA '81, TEFRA '82, TRA '84, TRA '86, etc., through the "Bush tax cuts" of EGTRRA of 2001, and then a decade-long phaseout of the estate tax until 2010, followed by the alternative universe of 2010 (estate tax and carryover basis or no tax and stepped-up basis) and two dramatic 13th hour restorations, the finality of a permanent estate tax that arrived in January 2013 took on a surreal quality. For the first time in many years, we weren't in transition. The unified estate and gift tax plus portability were established for the long haul.

It got very quiet on Capitol Hill. Tax legislators sat and watched the clock. So much certainty in the tax code, so little to rant about. Minutes passed without any change. The second hand moved around the dial—tick, tick, tick—without any pending tax reform.

Then the tax writing committee woke up. Someone must have announced, "Surf's up! Let's have a tax reform!" For the 113th Congress, it was game on, and the Washington tax idea factory started turning out proposals. As of early July 2013, there were 204 tax proposals in the House of Representatives and at least a dozen related to financial planning matters.

The Death Tax Repeal Act of 2013 (HB 2429/ S. 1183) has 60 cosponsors in the House and 32 cosponsors in the Senate and was introduced on June 19, 2013. The repeal of the estate tax law sounded so familiar that we checked the date on it multiple times. It's like déjà vu all over again: Yes, there are some folks who still want to get the estate tax repealed. Actually, this bill followed up on the Permanently Repeal the Estate Tax Act of 2013 (9H.R. 795), which was introduced with 6 cosponsors last February. And this followed the Farmers Against Crippling Taxes Act (H.R. 483) from February 4, 2013, which also repealed estate, gift, and generation skipping transfer taxes. This followed two other proposals from January 3rd and 4th, each going by the identical name of Death Tax Repeal Act of 2013. These were H.R. 147 and 177, respectively.

A more targeted revision of one aspect of estate taxation was proposed in the Farmers and Ranchers Minimizing Estate Regulations Act of 2013 or the FARMER Act of 2013 (H.R. 1448). This bill would amend the Internal Revenue Code, with respect to the special use valuation of farms and other property used in a trade or business for estate tax purposes to: (1) increase to \$2 million the allowable reduction in the fair market value of such property for valuation purposes, (2) reduce the required holding period for such property for eligibility and recapture purposes, (3) allow rentals of such property by controlled entities to qualify as a special use, (4) repeal the requirement to use the gross cash rental method for valuing such property, and (5) exempt woodlands subject to a management plan from the additional tax for early dispositions of such property and for failure to comply with special use requirements.

Conservation easements would be affected by H.R. 47, the Farmland Preservation and Land Conservation Act of 2013. This proposal would allow an estate and gift tax exclusion for real property located in the United States, which at the time of

a decedent's death was being used as a farm for farming purposes or exclusively for conservation purposes. It imposes: (1) an additional estate or gift tax with respect to such property if an heir or donee disposes of or uses such property for purposes other than farming or conservation, and (2) a federal tax lien on such property until liability for estate or gift tax with respect to such property has been satisfied or has become unenforceable.

SMART, the Simplified, Manageable, And Responsible Tax Act (S. 173) would replace all income taxes with a flat 17% tax on individuals and businesses. This law would repeal the alternative minimum tax and eliminate nondiscrimination rules, contribution limits, and distribution rules for pensions. All transfer taxes would be repealed. This law might have been named SAILOR for Send All Irritating Laws Over the Rainbow.

Honorable mentions from the initial efforts of the 113th Congress:

H.R. 2125 is designed to prevent the implementation and enforcement of Obamacare by withholding funding. Similarly, S. 983, the Keep the IRS Off Your Health Care Act of 2013, would prohibit the Treasury from enforcing the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010.

The Halt the IRS Act (H.R. 20145) would prevent the IRS from conducting any audits for 180 days.

The Fair Tax Act of 2013 (H.R. 25/S. 122) that was introduced on January 3, 2013, would replace all federal taxes with a 23% national retail sales tax. The estate, gift, and generation skipping transfer taxes would be repealed as part of this.

The Flat Tax Act (ironically designated H.R. 1040) and the Simplified, Manageable and Responsible Tax (SMART) Act (S. 173) would tax individuals on wages and businesses on cash flow.

H.R. 2393, the American Growth & Tax Reform Act of 2013, points out that "the national debt has grown from \$75.5 million in 1790 to \$16,781,967,702,405.37 as of April 19, 2013," and requires the Treasury to draft legislation for a national consumption tax.

The Tax Code Termination Act (H.R. 352) would repeal the Internal Revenue Code and have Congress start over. Period.

H.R. 2680 would tax residents of the District of Columbia the same as residents of United States possessions such as Guam or the Mariana Islands, i.e., without being subject to income taxation.

The "Protecting Honest, Everyday Americans from Senseless And Needless Taxes (PHEASANT) Act of 2013," (H.R. 2361) would prohibit special taxes on firearms and ammunition. This proposal lends itself to several useful marketing strategies, such as T-shirts with pheasants and the slogan, "Things are more pleasant with PHEASANT."

## *The President's Budget*

The arrival of the Administration's proposed budget, also referred to as the Treasury's "Green Book," has some significance, but in the modern gridlock era where spinning, counter spinning, and world-class posturing rarely correlate with legislative results, the budget proposed for 2014 may be more of an opening negotiating position than a position to be pursued precisely. Nevertheless, the administration's budget represents a benchmark against which progress is measured.

**Budget Deficits:** The Administration claims the budget will reduce the nation's fiscal deficit by \$4.3 trillion over 10 years. The Congressional Budget Office concluded that the proposal increases the deficit by \$5.2 trillion over 10 years. One or the other may be off by about \$9.5 trillion.

**The Buffet Rule:** Households with income of more than \$1 million would be required to pay tax of at least 30% of income (after charitable giving).

**Dividends:** Taxpayers in the top two tax brackets would pay regular income tax on dividends.

**IRA Limits for the Wealthy:** The wealthy would have their IRA and retirement plans with tax preferred status limited to \$3 million.

**Stretch IRAs:** Inherited IRAs would have to be cashed out within five years of the deceased owner's date of death.

**Minimum Wage:** The current Federal minimum wage of \$7.25 would be increased to \$9 and indexed for inflation.

**Estate Tax:** The unified estate and gift tax exemption would be scaled back from \$5.25 million to \$3.5 million. This was the amount of the last estate tax exemption in 2009 before the estate tax repeal and subsequent reinstatement and reunification with gift tax took place. The \$3.5 million is also the amount that both Barack Obama and John McCain supported when they were running for President in 2008.

The budget also proposes a return to the 2009 estate tax top rate of 45% and the gift tax exemption of \$1 million. Inexplicably, all of these changes would take effect in 2018, reducing the estate tax exemption from what would then be about \$6 million to \$3.5 million. This would create another sunset with critical ramifications. Analysis: The likelihood of this being adopted is about halfway between slim and none. This is a counterbalance against the renewed calls for total repeal of the estate tax.

**Estate Tax Liens:** The absolute life of an estate tax lien under IRC §6324(a) is currently 10 years. The proposal would extend the lien to 15 years and 3 months from the decedent's date of death for estate tax deferred under §6166.

**HEETs:** Health Education Exclusion Trusts allow grantors to set up irrevocable trusts to provide for the future educational and health needs of grandchildren and great-grandchildren. The budget proposal would subject distributions from HEETs to generation skipping transfer taxation. The proposal would apply to HEETs established after

the new rule is adopted and transfers to preexisting HEETs after the date of adoption.

**Dynasty Trusts:** A 90-year limit would be placed on trusts remaining free of estate and GST tax. Analysis: This would essentially replace the rule against perpetuities to which so many states have now provided exceptions.

**GRATs:** The IRS has provided a series of rulings that establish how grantor retained annuity trusts can be utilized. This year's budget proposes that estate and gift tax apply to the portion of the trust attributable to the property received in "a sale, exchange, or comparable transaction that is disregarded for income tax purposes by reason of the person's treatment as a deemed owner of the trust." The proposal would also require a minimum term of 10 years for GRATs.

**Analysis:** There are always attempts to test the existing parameters and periodic crackdowns to prevent abuses. Last year, the Treasury's announcement that it would seek to have all GRAT funds included in a grantor's estate or be subject to gift tax at termination of grantor status was a deliberate shot across the bow. This year's budget proposal has a more specific limitation on GRAT usage. It would limit or prevent the use of installment sales to intentionally defective grantor trusts from saving estate tax and prevent the use of zeroed-out GRATs.

**“Quite literally, the opposition to gay marriage is dying. It's old people.”**

*—George Will, on ABC's This Week, December 9, 2012*

## ***DOMA, No Más***

Last year at this time, we asked if the Defense of Marriage Act was on the ropes. This year, the Supreme Court answered the question on June 26, and DOMA proponents have had to walk away like Roberto Durán saying “No más” against Sugar Ray Leonard in 1980.

DOMA was enacted by Congress in 1996 to define marriage as the legal union between one man and one woman and to enable states to disregard or refuse to recognize the validity of same-sex marriages from other jurisdictions. Section 3 of DOMA was found to be unconstitutional by a California Bankruptcy court, several District Courts, and the Court of Appeals for the 1st Circuit.

In, *Windsor v. United States*, 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. On June 6, 2012, the Federal District Court for the Southern District of New York held the Defense of Marriage Act unconstitutional.

In a 5-4 decision authored by Justice Kennedy, the United States Supreme Court agreed and 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.

Equal treatment of couples for estate tax purposes was the focus of Windsor, but the Court also noted impacts in the context of bankruptcy law and health care and the separate treatment and stigma attached to same-sex marriage that resulted from DOMA.

“Among the over 1,000 statutes and numerous federal regulations that DOMA controls are laws pertaining to Social Security, housing, taxes, criminal sanctions, copyright, and veterans’ benefits,” said the Court.

Justices Scalia, Roberts, Thomas, and Alito dissented for various reasons. *Edith Schlain Windsor v. United States*, 833 F.Supp.2d 394 (S.D.N.Y. 2012), *aff’d* 699 F.3d 169 (2nd Cir. Oct. 18, 2012), *aff’d.*, \_\_\_ U.S. \_\_\_ (June 26, 2013).

## Celebrity Estates

James Gandolfini, who played Tony Soprano in *The Sopranos* on HBO, recently passed away, leaving an estate estimated to be worth \$70 million. His Will was filed in Manhattan Surrogate’s Court and reveals generous bequests to his wife and sisters, as well as bequests to friends and relatives, including \$500,000 to each of his nieces, \$200,000 to his assistant, and \$100,000 to his godson.

The remainder of his estate was left in trust to his two minor children. Tax planners will undoubtedly second-guess what might have been achieved with better planning. On its face, a large portion of the estate will be heavily taxed with Federal and New York estate taxes.

Anthony Marshall, 89, a former Broadway producer and diplomat, was ordered to start serving a one- to three-year sentence for stealing funds and artwork from his mother, socialite and philanthropist Brooke Astor, who was suffering from Alzheimer’s disease. This marks a sad conclusion to one of America’s greatest fortunes.

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.

**“It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.”**

—Warren Buffett

## Sport Estates

Warren Buffett’s advice holds true whether you are Paula Deen or Aaron Hernandez. For Ms. Deen, commercial endorsements have fled in the wake of her admission of using a racial slur in the past.

For Aaron Hernandez, all of the caveats noted in the May issue of *The Estate Analyst* have been illustrated. A young man signs a \$37.5 million contract extension and then surrounds himself with terrible influences. Having late-night conflicts with people in clubs is a recipe for being sued for shooting a man in the face and then arrested for murder. Sports stars should heed this warning: Don’t fight with people at clubs, don’t shoot people in the face, and don’t get arrested for murder. Aaron Hernandez is now done in the NFL.

The New England Patriots have allowed fans to trade in Hernandez jerseys and pick any other player. They have also signed Tim Tebow. The Lord surely works in mysterious ways.

Following through on the adage that there is no such thing as bad press, Gilbert Arenas, who previously destroyed his career by keeping firearms in his locker while playing for the Washington Wizards, an NBA franchise that was no doubt thrilled by the flagrant reminder of the Washington Bullets name that they were trying to move on from, demonstrated how an experienced pro can seize bad headlines.

Arenas was caught speeding in Los Angeles, without a license, and... (wait for it)... driving a truckload of illegal fireworks. That’s how to get the job done. Agent Zero played professionally last season for the Shanghai Sharks of the Chinese Basketball Association. He faces a potential jail term of three years for this latest move.

**“Everyone is talking about Sharknado, so I Googled it. Is there a way to unknow this?”**

—Arianna Huffington (July 12, 2013)