



Even After You're Dead, you can still pay Taxes!

By Brian Madigan

Perhaps you should consider this to be an opportunity and a privilege rather than an affliction. Really, it all depends on how you look at it.

Concern about taxes existed even before Benjamin Franklin uttered those immortal words: "in this world nothing is certain but death and taxes". But, it doesn't have to be over if you don't want it to be. You can still pay taxes after you're dead!

Consider the case of Bob who has accumulated some reasonable financial assets over his lifetime and leaves a wife and two children. Let's also assume that they don't really need all of the money just to get by, but would likely invest the funds to provide additional income.

If Bob sets up an inter-vivos trust during his lifetime, this trust will be taxed at the highest marginal rates without personal deductions. However, if Bob were to utilize a testamentary trust set up in his Will, these investment funds would be taxed as if he were still alive starting at the low rates. Some, but not all of the personal deductions would apply as well.

Each year, the trust will have to prepare an income tax return. The advantage is that the income will be spread among four tax returns: the estate, the wife and the two children. Unfortunately, this is one tax –saving opportunity that is often sadly missed.

Of course, the Will should contain the appropriate trust provisions, and if it does not, all is not lost. An application can be made to Court under the *Trustee Act* and the *Variation of Trusts Act* to include the omitted provisions.

In fact, Bob might even consider transferring some of his investments in a family trust to be transferred over to the testamentary trust at the time of death. And, there is another consideration, when Bob's wife passes away, she too can kept alive on artificial tax-support. So here, we still have four taxpayers. Furthermore, it doesn't have to end there; it can go on for several generations with the estates of Bob, his wife and two children, ALL still

paying income taxes long after they have departed this world. What would Benjamin Franklin say to that?

So, this means that at some time in the future, a great-great-grandchild may have accumulated a substantial pool of money, and each time the graduated income tax rate kicks in, would be able to fill out another tax return. This is also great for the accountants too.

But, you will have to beware of the law against perpetuities. So, don't try this yourself with your own handwritten Will.

Enjoy the holiday season and stay warm!

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