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Giving It All Away

Vows of Poverty, Leaps of Faith, and the Right Time for Giving

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"If you become a nun, dear,
A friar I will be;
In any cell you run, dear,
Pray look behind for me.
The roses all turn pale, too;
The doves all take the veil, too;
The blind will see the show;
What! you become a nun, my dear,
I'll not believe it, no! "

— Leigh Hunt, The Nun

Shortly before her death, a Benedictine nun honored her vow of poverty by anonymously redirecting an inheritance she was about to receive.

An affluent socialite with numerous children, friends, and a full life renounced her wealth and became a nun. Wealthy people have been known to give away the vast majority of their possessions. Some people even give away their lottery winnings.

But giving away wealth has ramifications. There are transfer tax liabilities and estate planning concerns. Here is a collection of examples, their resulting financial planning issues, and some Charitable Giving Briefs.

Sister X

As a member of a Benedictine Order, Sister X's vow of poverty precluded her from accepting a $10,000 inheritance from a distant cousin's estate. She had even given away the $25 Christmas check sent by the same distant cousin the previous year. Sister X would not break her vow.

A letter from Sister X to the Executor of her cousin's estate clarified her wishes. She was not to accept the funds but wanted to direct them instead to a local charity. She specified that the funds were to be transferred "in memory of" the name of the deceased cousin from "an anonymous donor."

By the time the estate had assembled funds and was ready to make distributions, Sister X had passed away, leaving no Will and leaving no further instructions. The letter from Sister X was too late to meet state or Federal requirements for disclaimers. How should Sister X's inheritance be treated?

On the one hand, Sister X had not made a qualified disclaimer that would cause her share to be distributed to the other beneficiaries of her cousin's estate. Moreover, Sister X did not actually disclaim the assets; she redirected them to a charity of her own choice. Technically, to redirect assets, one must accept them first. It is doubtful that Sister X appreciated this nuance, but the estate paid the applicable state inheritance tax that resulted from the anticipated transfer to Sister X.

Sister X's letter was not a self-proving Will that could be probated after her death. And to require Sister X's estate to be opened for the purpose of an administrator to locate distant next of kin would appear contrary to her stated objectives. She had no assets, accepted no assets, and adhered to her vow of poverty throughout her adult life.

The letter that Sister X sent to the Executor of her cousin's estate evidenced her true intent, i.e., to make a lifetime gift of her interest in the estate to the charity she had selected.

A Socialite's Revelation

Today, she is known as Sister Mary Joseph and is cloistered at the Carmelite Monastery. She sleeps on a wooden plank bed. She may speak with other nuns during a two-hour period per day and may have one visitor per month.

It was always her ambition to lead a devout and contemplative life, but at age 19 she fell in love. Ann Russell Miller, as she was once known, was the only child of the Chairman of the Southern Pacific Railroad. She married a vice president of Pacific Electric & Gas (a utility company that was privately held by her husband's family at one time), and had 10 children. They had a nine-bedroom home overlooking the San Francisco Bay. She was a member of 22 boards, traveled the world, had her hair done at Elizabeth Arden's, purchased date books at Tiffany's, carried a silk parasol, and called everyone "darling."

Yet, after her husband died, Mrs. Miller began distributing her wealth and putting her affairs in order. Within a few years, she threw a black tie event for her 61st birthday in the Grand Ballroom of the Hilton Hotel for 800 of her friends. Here, she announced that the remainder of her life would be devoted to prayer. "The first two-thirds of my life were devoted to the world. The last third will be devoted to my soul," she said.

How well did Mrs. Miller/Sister Mary plan her estate? Considering the wealth she inherited from her parents, the old money that may have been inherited from her husband's family, and the wealth accumulated over 40 years with high net worth and income, it is likely that substantial assets were transferred.

Not that it was relevant to Sister Mary, but with only a $600,000 exemption to work with and a unified transfer tax rate of 55% for assets exceeding $3 million at the time she transferred assets, it is likely that very high transfer tax liabilities resulted. Assets transferred during life also did not benefit from a stepped-up cost basis.

Given the circumstances, it is possible that the Millers, as a couple, established some useful trust arrangements during their lifetimes. Perhaps knowing their own wealth was sufficient; perhaps their parents utilized generation-skipping transfers to bypass their estates.

Giving Away Lottery Winnings

A Boston man won $4,000 in a scratch-off lottery game and promptly gave the winnings to a homeless family.

An elderly Canadian couple won $11.2 million and gave away 98% of it. Allen and Violet Large bought nothing for themselves. They gave the majority of the money to the Red Cross, fire departments, cemeteries, and hospitals. Mr. Large, a retired welder, said that he and his wife were content with their 147-year-old home. "You can't buy happiness," he said.

Using those very words, Frano Selak gave away his winnings from the Croatian lottery to friends and family and retained only enough for hip surgery. Initially, he had bought a luxury home on a private island, but he sold it and returned to his modest home in Petrinja. Selak, a music teacher, is also known as the world's luckiest man because he has cheated death multiple times.

It is worth digressing to note exactly how death was cheated by the world's luckiest man:

1) The train he was riding derailed into a river in 1962, killing 17 (but not Selak); 2) In his only plane ride in 1963, 19 were killed when a door flew open, but Selak landed safely in a haystack; 3) In 1966, a bus he was riding skidded into a river. Four were killed, but Selak swam to safety; 4) His car caught fire on a highway in 1970, but Selak escaped seconds before it exploded; 5) A fuel pump leak caused petrol to hit Selak's hot car engine and ignite, sending flames through his car's air vents in 1973. The flames got much of his hair, but Selak survived; 6) After a rare 22-year period without peril, Selak was hit by a bus in 1995. Selak survived. No word on the bus; and 7) Driving on a mountain pass in 1996 (and why, pray tell, if you are Selak, with that history of transportation-related incidents, would you drive on a mountain pass?), a head-on collision with a UN truck resulted in Selak's vehicle going through a barrier and over a 300-foot precipice. Selak jumped out and sat in a tree, watching his car as it hit the bottom and exploded.

The world's luckiest man then bought his first and only lottery ticket. He won, of course. But, in the end, he gave away the wealth and returned to a simple life of trains, planes, cars, buses, and trucks.

In 2011, Shaw McBride said he would give away all of his $159 million winnings from the Georgia lottery due to finding God. No word on whether he reconsidered.

Enough lottery winners have given away their jackpots for

it to be a syndrome or a phenomenon. The typical scenario is the winner surfacing for the press to snap a picture of the giant check, at which time the winner announces that he is giving all the money to a list of several charities. (Then there is a bit of incongruous discretion about not revealing how much each charity receives, even though each charity is going to report the amount on public tax documents.)

For the rest of us unlucky people who, time after time, are left holding their lottery ticket stubs wondering why, why, why can't I ever win the big jackpot and how come the Hands of Fate hand over the money to someone who doesn't even need it or want it? Is it the act of winning money that prompts an epiphany in certain recipients that their cups already runneth over and they should give away their winnings?

For most lotteries, the proceeds are taxable as income, and state and Federal taxes apply. This is true even if you receive the funds and then give them away to charity. If, however, a lottery winner gives funds away to lots of strangers, being a secret millionaire Santa, both annual and lifetime gift tax exclusions will soon be exhausted.

This could, ironically, have a negative impact on estate plans that the generous winners may already have in place because their existing plans may have been designed to utilize existing unified estate and gift tax credits.

Demi-Titans of Business

Success doesn't sit well with everyone. Financial matters can complicate one's life. Being treated differently due to wealth can make people feel self-conscious. This can be true even when the fortune involved is far less than that of the Bill Gateses and Warren Buffetts of the world.

With a production cost of $200 million, *Evan Almighty* (2007) was the most expensive comedy ever made. Its worldwide gross was $173 million, indicating a net loss of $17 million. "The final act of the movie is one big money splurge," wrote one blogger. "We get the flood scene, and you can almost literally see the money flowing by."

The director of the movie, Tom Shadyac, later had a spiritual awakening following a 2007 cycling accident (and concussion). He sold his mansion, gave away most of his money, and moved into a trailer home. He then proceeded to make a film about a man who bangs his head and then gives away his wealth. Online sites estimate his net worth at $5 million, but it is not clear if this guesstimate is before or after the divestment of "excess" assets.

Austrian businessman Karl Rabeder, 47, found that his net worth of $4.7 million was making him miserable. He proceeded to sell his 3,455-square-foot villa with private lake in the Alps, as well as his stone farmhouse in Provence, his business, and even his Audi A8. His game plan is to donate all the proceeds to charities in South America (specifically funds that will be used to make micro loans to start-up businesses). He'll then move into a small wooden hut.

"My idea is to have nothing left. Absolutely nothing," he reportedly told the *The Daily Telegraph*. Since selling his belongings, Mr. Rabeder said he felt "free, the opposite of heavy."

What Shadyac and Rabeder have in common—aside from attaining success and then attempting to simplify their lives by giving away their money when they reached their late forties—is a potential short-sightedness for possible future needs. Not retaining funds to launch one's next business venture may mean not being able to realize your future dreams. Even being able to borrow money in the future may be problematic. If you move into a trailer home or a wooden hut, don't ask me to loan you money.

Basic needs cost money too. Even someone with $5 million who stops earning money, fails to invest properly, and experiences the vicissitudes of life may find that those funds are not infinite after all.

Albert Gubay made $1.1 billion by founding the Kwik Save supermarket chain in 1965. Although he donated about 90% of his wealth to a charitable foundation, he left himself in charge of his business empire to continue to generate income and wealth and also left himself with $20 million to maintain his financial independence.

Astounding Accomplishments

While giving away all of one's wealth wouldn't appear to be a prudent way to embark on a future project, Millard Fuller did exactly that. Fuller was an attorney and a businessman who made millions with a direct marketing company that sold cookbooks and candy to high school chapters of Future Homemakers of America.

Fuller and his wife then gave away their wealth and moved to a farming community. They spent years living in Zaire. Eventually, Fuller returned to the United States

and established Habitat for Humanity. By 2003, Habitat affiliates working in 92 nations had built 150,000 housing units. Fuller was recognized as a leader in the movement to provide affordable housing and was awarded 50 honorary degrees and the Presidential Medal of Freedom.

The Heavyweight Division

Charles Feeney made a fortune with duty free shops in airports. When he sold his Duty Free Shoppers business in 1997 for $1.6 billion, however, he did not keep the money. Instead, all the proceeds went into a charitable foundation that is designed to completely spend the money by 2016. Atlantic Philanthropies has provided more than $5.5 billion in grants over the past 25 years. Mr. Feeney has been described as not owning a house or a car; he wears a $15 watch. (Hopefully, he put aside enough of a nest egg to buy a new watch when that one breaks.)

Bill Gates and Warren Buffett have orchestrated a "giving while living" movement in philanthropy, in which billionaires pledge the majority of their wealth to charity. So far, 81 notable people and families have signed the pledge. These include Paul Allen, George Lucas, Ronald Perelman, Michael Bloomberg, and Mark Zuckerberg. Charles Feeney, who already gave away his fortune, expressed his support for the project.

Bill and Melinda Gates have specified that their charitable funds be spent down within 50 years of the last of them to pass away. Warren Buffett's charitable donations are to be fully given away within 10 years of the settlement of his estate.

Charitable Giving Briefs

CHARITABLE SINGLE MEMBER LLCs: The IRS has now clarified that contributions to a disregarded single member LLC, which is owned and operated by a charity, will be deductible. This removes uncertainty from the issue and opens the door to charities to establish LLCs as a means of containing liability that might otherwise pertain to the charity. Notice 2012-52.

DONOR TRAP: The IRS prevailed in denying a charitable contribution where the charity failed to provide contemporaneous written proof of the amount contributed, identification of the taxpayer making the gift, and stating that no goods or services were provided in consideration for the contribution. Strict compliance with these requirements of Section 170(f)(8) is needed for gifts exceeding $250. In the case at bar, the Durdens supplied canceled checks and a letter from the charity to substantiate a $25,171 charitable gift. The IRS denied the deduction because there was no contemporaneous statement that no goods or services were provided as a quid pro quo for the donation. *Durden v. Commissioner (T.C. Memo 2012-140 (May 17, 2012)*

CHARITABLE GIVING RISES: The Blackbaud Index indicates a 1.6% rise in charitable giving for the three months ending June 2012, while online giving is up by 8.2% over the same time period. Total giving to charitable organizations was $298.42 billion in 2011 (about 2% of GDP). This is an increase of 4% from 2010.

IRA CHARITABLE ROLLOVERS: The Senate Finance Committee voted in favor of extending IRA charitable rollovers for two more years and made it retroactive to the beginning of 2012. The IRA charitable rollover provision is designed to allow IRA owners to donate funds directly to charity from their IRAs, without tax applying to the distributions. Congress will have to vote on the provision for the extension to take effect. The larger context is how Congress will treat all of the Bush-era tax cuts, including the potential imposition of a limit on itemized charitable deductions for those earning in excess of $250,000.

FIRE DEPARTMENT TRAINING: The Tax Court has rejected a charitable deduction for a taxpayer who donated his home to the fire department for training exercises. The home was then burnt down during the training exercises. The taxpayer wanted the home destroyed for the purpose of replacing it. The Tax Court reasoned that under the applicable state law, the home was part of the land and the gift to the fire department was only the home, not the land. This was therefore a partial gift that did not qualify for a deduction under Section 170(f)(3). *Patel v. Commissioner, 138 T.C. 23.*

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