Death and Taxes 4

New Life on Death Taxes. And Salamanders. And guys who wear white pants to school.

Mud wasn't an intimidating factor for a self-respecting boy growing up among the rain forests of North Vancouver. Mud was the stinky underfloor of frog ponds, the pungent home of skunk cabbage, and the gooey stuff of well-flung mud-balls.

During our school lunch and recess breaks, we were exploring the fleshy curiosity of a small family of salamanders in the darkish forest floor. The magical salamander, with its tiny Lisa Simpson hands leapt and swam graciously, like little misshapen, pinkish frogs. We knew each of them by name, and tenderly handled them in their mucky confines.

So when Derek Davies and his minions started sneaking around the perimeter of our outdoor laboratory in his weirdo white pants, he stuck out like a cat on fire in the dusky forest. He, of course, had to be dealt with, but how does a small army of fourth grade biologists confidently dispatch a lanky seventh grade voyeur and his crowd of nameless bumpkins? Primitive justice. He was four years older and 8 inches taller than the biggest of us, but a few well-placed mud balls on his sister's white pants should do the trick.

Moments later in the schoolyard, the much larger boy had me on my back, both of his knees on my biceps, ready to start pounding me in the face. A delighted crowd gathered around us, chanting "Fight! Fight! Fight!" as an ambitious Vice Principal, marched purposefully toward us to quell the disturbance. With adult authority perching, Derek hesitated, and I took that last opportunity to clear my throat and huck a magnificent loogy right between his eyes. It dribbled there, like raptor venom, while Derek's eyes showed deadly intent. But I had timed it perfectly, and his cocked right arm was just at that moment seized by the authoritative VP.

I stood up, brushed off, and told the larger boy that he got off lucky this time. And honestly, Captain Whitey-pants never bothered me again.

Over the past month we have looked at a number of issues that tax us on death, and some new legislation that tinkers with it, some good and some… mucky. Today's is a pretty good one.

Death & Taxes - Part 4

Charitable Donations at Death

Prior to 2016, charitable donations made in a Will were generally deemed to be made by the individual just before death and were claimed on the final tax return. Any excess amount could be claimed on the immediately preceding year's tax return, but could not be carried forward, period, end of sad tax story.

New Life on Some Death Tax Write-offs

As of January 1, 2016 (for deaths occurring after 2015), donations made by Will or by designation under a RRSP, RRIF, TFSA or life insurance policy will no longer be deemed made just before death. Instead, the estate can claim a donation in the year a gift is made or in the five subsequent years. If the donation is made by a "graduated rate estate" (GRE), the trustee of the estate will have the flexibility to allocate the available donation among:

- The taxation year of the GRE in which the donation is made;
- An earlier taxation year of the GRE;
- The GRE's tax return for the five years following the year the GRE made the donation; or
- The last two taxation years of the deceased individual.

Note that this flexibility does not extend to a testamentary spousal trust but is only applicable to a GRE. Generally, a GRE of an individual is the estate that arose as a consequence of the individual's death for the first 36 months after death. To be considered a GRE, the estate also needs to remain a testamentary trust and be designated for its first taxation year as the individual's GRE.

Under the current rules, a donation must be made by the GRE within 36 months of an individual's death to be eligible for the flexible donation rules just discussed. However, on January 15, 2016, the Department of Finance released draft legislative proposals, to further relax these rules.

The draft proposals include:

- A stipulation that a donation made between 36 months and 60 months after death cannot be claimed in the tax years before hand.
- For donations of qualifying securities, ecological or cultural property, a 0% capital gain inclusion rate will apply if the donation is made within 60 months of the individual's death and the estate continues to meet the other requirements of a GRE, other than the 36 month time period.

These proposals apply to 2016 and subsequent taxation years.

If a donation is claimed on the estate's return, the maximum charitable donation that can be claimed is 75% of net income of the estate. If the donation is claimed on the deceased's final return or the tax return for the year before the year of death then the maximum charitable donation that can be claimed is 100% of net income.

The information in this article is not intended to provide individualized legal or tax advice. Readers should obtain professional advice from a qualified tax and/or legal advisor before acting on it.

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