Bridging Generations

December 2009

A Newsletter from **Foley & Foley**, A Professional Corp.

Generations

For our clients and our professional estate planning partners

Annual Successor Trustee Workshop

Don't Miss It!

When:

December 29, 2009

Where:

Dimond Center Hotel
Chesloknu Conference Room
700 E. Dimond Blvd.

Time:

1 p.m.

Who:

For *Generations* clients, their families, successor trustees and beneficiaries.

Why:

- Celebrate the holidays.
- Teach your family, friends and loved ones about your estate plan.
- Allow us to get to know your family better.

RSVP to 522-2272

Death to the Death Tax?

Time is Running Out

By William Michael Pearson and Susan Behlke Foley

Ben Franklin said, "In the world nothing can be said to be certain except death and taxes."

The Greek philosopher Heraclites advised that "the only constant is change."

The 2009-2010 planning environment confirms that Messrs. Franklin and Heraclites were both correct: We are going to experience a change regarding the "death tax," otherwise referred to as the "estate tax," but we don't know what that change will be and we may not know for some time. Consequently, we (and you) need to be alert to Congress's actions.

Although we may see a change in estate tax law before the end of 2009, many commentators are now guessing that changes will not be made until sometime in 2010. Those changes will be retroactive to January 1, 2010.

Here's the background on this issue. The past decade has seen a dramatic increase in the amount of money and property that can be passed estate tax free. In 2001, amounts in excess of $675,000 were subject to estate taxation at a 55% rate. (Remember that gifts to a surviving spouse who is a U.S. citizen are not counted in this figure.) Therefore, the tax on the estate of an unmarried individual who died that year with $1 million would have been $178,750. Since 2001, the amount that is free of estate tax has increased incrementally. If that same individual died in 2009, he or she could pass $3.5 million free of tax, and the excess would be taxed at a 45% rate. What a difference!

Because the Tax Bill enacted in 2001 did not receive 60 votes in the U.S. Senate when it was passed, it will "sunset" after 10 years. The result is that the tax law will revert in January 2011 to what it was before the 2001 changes were enacted: 55% tax on amounts in excess of $1 million. And if Congress doesn't act, 2010 will be a year without estate tax—instead, the 2001 law would recapture a portion of lost estate tax revenues with capital gains taxes when inherited property is eventually sold. It's unlikely this law will ever become effective. Remember Heraclites' advice to us.

With Congress, you can't have your budget-cutting cake and eat it, too.

Where is the action on a new

Estate Taxes,

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estate tax bill likely to take place? Article I, Section 7, of the United States Constitution provides that all bills for raising revenue must originate in the House of Representatives. In turn, the House delegates responsibility to the Ways and Means Committee, currently chaired by Charles B. Rangel of New York.

Shelley Berkley (D-NV) recently introduced legislation in the Ways and Means Committee to extend applicability of the 2009 law through 2010 and increase the amount that could pass estate tax free from \$3.5 million to \$5 million over the next 10 years. The same day Berkley's bill was proposed, Chairman Rangel announced that he is drafting legislation addressing the estate tax. However, Rangel's comments don't give us much guidance about where the estate tax is heading.

An extension of the \$3.5 million exemption through 2010, which would provide Congress time to draft a more permanent estate tax bill, has the support of President Obama. This position was affirmed by the Obama Administration's "Green Book," an explanation of its fiscal year 2010 budget proposals. The 2010 Fiscal Year Budget Resolution, passed in April by both the House and the Senate, assumed a freeze of the estate tax at 45% with a \$3.5 million exemption. One key component of this resolution was that it would limit valuation discounts for family limited partnerships and LLCs.

Intertwined in the issue of estate tax reform is the "pay go" system, requiring Congress not to cut taxes or increase Federal expenditures without offsetting, revenue-raising legislation. In other words, with Congress, you can't have your budget-cutting cake and eat it, too. Therefore, under the "pay go" system, it would be difficult to eliminate estate taxes altogether. When projecting revenues for 2011, the Congressional Budget Office is currently assuming a 55% tax rate and a \$1 million exemption.

Congress is faced with a great partisan and ideological divide regarding death taxes. The result could be something unprecedented, or it could be the status quo. None of us know. The best advice we can give you is to take advantage of the ***Generations*** program at Foley & Foley. We'll let you know as soon as *we* know what impact Congressional action (or inaction) will have on your estate planning.

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Planned Giving:

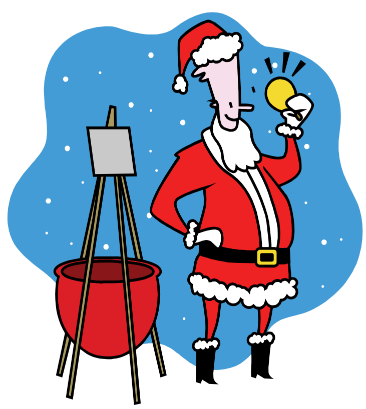
Treating Your Charity Like Family

By Richard H. Foley, Jr.

Many of our clients tell us that they provide financial support to one or more charities with regular gifts and annual contributions. But when they are asked about making a gift to charity in their will or trust, the same clients sometimes say, "I have given plenty of money to charity during my lifetime, so I don't feel like I need to leave anything to charity when I die. I'd rather leave what's left of my estate to my family."

I'm not sure what it is that motivates people to give money to charities during their lifetime, then disappears when they are working on their estate plan. Perhaps it relates to whether the client really identifies with the core mission of the charity to the point that the charity and its causes feel like family.

The word *philanthropy* comes from the Greek and means "love for mankind." The Greek word *philia* denotes the virtuous kind of love that is often reserved for the closest friends and family. It is a love motivated by the practical needs of the beloved. True philanthropy is caring for our closest friends and family because they have needs that we feel compelled to fulfill.



If you make regular gifts to charity and have developed a deep bond with the charity and its mission, you should consider treating the charity like another family member and include it in your estate plan. Contributions to charity from your will or trust are called *planned gifts*, and they can make a substantial difference to the charity. Moreover, with the help of a qualified estate planning attorney, planned gifts can often be structured in a way that saves income or lowers inheritance taxes, lessening the practical impact of the gift on other heirs. If you would like to make a planned gift, give us a call or talk with your charity about ways you can leave an inheritance to your family *and* to your charity.

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Business Planning in a Recession:

Obstacle or Opportunity?

By Richard H. Foley, Jr.

When the economy heads south, the first instinct of many business owners is to duck and cover. Slow growth or no growth suggests cutting overhead, slashing inventory, curtailing marketing expenses and reducing staff. But smart business owners watch for opportunities, including the acquisition of smaller, less adaptable or well-managed businesses—especially competitors.

When the economy turns downward, opportunities include buying another business.

When things look difficult we like to say, "Obstacle or opportunity." It helps us remember to keep our eyes open for strategic moves that can help our business in the long term. When the economy turns downward, such opportunities include buying another business. In a buyer's market, you can expect to find not only lower purchase prices, but also much more attractive seller-based financing and earn-outs.

Consider for a moment that some of your smaller or less efficiently managed competitors are experiencing a fall in revenue that may portend the end of their company's ability to survive. While their overhead is not large by your standards, it might represent such a substantial percentage of their revenue that, as revenues sink, they simply cannot reduce overhead enough.

You might consider a structured acquisition of a competitor that is financially favorable to you while providing your competitor with a face-saving way out of business. For example:

◊ **Acquire equipment and assets you can use immediately.** Used equipment values are probably depressed and in some cases you might simply need to take over existing equipment leases with no money down.

◊ **Purchase customer lists.** Estimate the stream of future revenue from the customers and pay ten percent down and a portion of the future revenue for a fixed period of time, such as two or three years. Such an arrangement reduces your risk, ties the buyout to future performance of the seller's customers, and allows the seller to receive more than would be likely if otherwise forced to liquidate.

◊ **Retain qualified employees of the selling business.** A competitor you acquire may have qualified and trained staff that can become a valuable part of your operations. You are in a position to cherry-pick the best and most productive employees.

These are just a few acquisition techniques you can use to build the value of your company during a recession. So keep your eyes open for ways to turn your next business obstacle into an opportunity.

And remember, Foley & Foley is available to assist you with business planning while you are growing your business and when you are planning your exit strategy.

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Don't Know Where to Start?

Foley & Foley Can Help You With Your Business Exit Planning

Many men and women who have built successful businesses are at a loss when it comes to making a plan to exit their business. They might be thinking about selling to a third party, selling to employees or transferring the business to children. But in each case, the owner isn't quite sure how or when to proceed. Each of these exit options has its own benefits and drawbacks relating to taxes, value, financial security and business continuation.

Foley & Foley can help business owners develop a sound exit planning roadmap. We can assist in the preparation of strategies and business organizational requirements to help assure a smooth business transition. Call us if you want to know more about our business law and exit planning services.

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Foley & Foley

BRIDGING GENERATIONS

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Holiday Giving

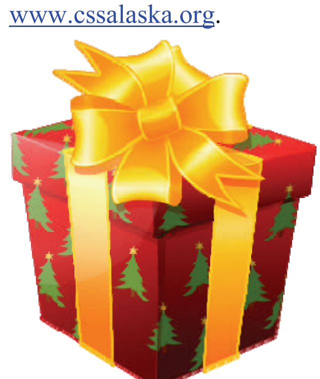
Foley & Foley and its staff support many local charities with donations of time and money. We believe in philanthropy and encourage our clients to build charitable legacies. If you want to include a planned gift in your estate plan—or just want to know how you can be more involved in local philanthropy—give us a call.

During this Holiday season, please consider making a donation of time, clothes, food or money to one or more of these Alaska charities, which provide for basic needs of the less fortunate and disadvantaged:

Alaska Community Foundation. Offering more than 200 different giving options. One we think is timely is the **Alaska Safety Net Fund**, which makes grants to nonprofits assisting Alaskans in crisis. www.alaskacf.org.

Beans Café. Serving meals to the hungry and homeless of Anchorage. www.beanscafe.org.

Brother Francis Shelter. A service of Catholic Social Services, providing emergency temporary shelter and an evening meal for the homeless in Anchorage. www.cssalaska.org.



Covenant House Alaska. Providing shelter and other services to homeless, runaway and at-risk youth. www.covenanthouseak.org.

Food Bank of Alaska. Securing donated food for nonprofit agencies to distribute to hungry Alaskans. www.foodbankofalaska.org.

If you bring gently used business clothing (for use by teens interviewing for jobs) or nonperishable food items to Foley & Foley by December 21, we will deliver them to Covenant House and the Food Bank.

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