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## Celebrating Life and Taxes

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## CELEBRATING LIFE (CHAI) AND TAXES

by Francine Lipman\*

If you ask my law students, “What does Professor Lipman do?” they would respond without missing a word of their concurrent cell phone conversation “She teaches tax.” While this might be one consequence of what I do, that is not my answer. You see, I have been doing the same thing for more years than I care to admit. I study tax law. The only difference between my side of the podium and my students’ is that I have spent and will spend more time at the task.

Ironically, the deeper I dig into tax law, the darker and more disconcerting becomes the abyss of unanswered questions. More recently, even my simplest utterances sound like they end with a question mark. The ineluctability of aging and its concomitant badge of wisdom are riddled with uncertainty and pause for what cannot be undone and what will never be done, you see? This fall, I returned again to the classroom having learned the hard way that there is nothing certain about taxes or death.

Since completing my first tax class, I have been the family tax goddess. I started this role secure and confident despite my mother’s persistent *oy veys!* and nonstop questions. As my credentials and billing rate increased, her concerns and the sophistication of the family tax issues decreased. If I was good enough for the Fortune 500, I was good enough for the Lipman Form 1040EZ. The compensation, however, remained the same: more food than I could ever consume and the use of the washer and dryer.

Over the years, I have necessarily gotten more and more involved with my parents’ and grandmother’s financial and estate planning and now handle their routine transactions. As the only non-doctor daughter, there was no competition to take over the family books and records and finan-

cial affairs. The estate planning readily emerged from the facts and circumstances.

My paternal grandmother, who was born in 1906, smoked until her eyesight started to fail, hated exercise enough to get notes from home excusing her from gym class, and loved to cook with generous spoonfuls of schmaltz (chicken fat, the Jewish substitute for lard), would likely predecease my parents. My father, who has lived his life surrounded by (and surrendered to) seven strong women, not surprisingly had smoked, drank, and over-eaten for decades. He would likely pass next. My mother, who NEVER smoked or drank and married the only man she had ever loved... who was always early to any appointment and never jaywalked or colored outside of the lines... who crossed every “t” and dotted every “i” and exercised and only used low salt margarine and raised three daughters to be strong career women—two doctors and a token (but necessary) accountant/lawyer—would likely outlive us all.

But death and taxes are not that certain. In May 2003 my mother was diagnosed with colon cancer. Having fought and survived thyroid and breast cancer, we prepared my mother with the physical and emotional support to fight the terrifying battle against cancer again. The surgery was a success and her fifteen lymph nodes were clear. My mother healed quickly and went back to her exercise class as an official member of the semi-colon club.

Months passed and then a follow-up CAT scan (upon the insistence of my sisters the doctors) depicted a small tumor in her liver. I will never forget the look on my mother’s face when the oncologist told her the cancer had metastasized and that she would not win this battle. He told her with the compassion of an ice cube that the only thing that he could do was extend her limited life span with chemotherapy. He promised only that the chemotherapy was certain to make her feel terrible. He asked her to go home and think about what she want-

ed to do and to call him when she had made her decision. Somehow we walked out of this nightmare into the waiting room surrounded by cancer patients, and we sat and hugged and cried rivers of tears. For my mother there was no decision to make, for more than seventy years she had embraced life and she would not, could not, stop now.

She fought her cancer like she lived her life—with courage, determination and passion. After thirty months of chemotherapy, she became a favorite patient and loved friend of the heroic oncology nurses. She even caused her oncologist to thaw and smile on occasion. Like the sign I posted on her refrigerator... she never, never, never gave up.

Irrespective of the facts and circumstances, my mother did not survive my father and grandmother. As we prepared for her funeral, I realized that despite a very hands on and logical, up-to-date approach to my family’s financial and estate planning, I had made some misjudgments. Because neither death nor taxes are certain, I simply could not predict the future. For example, because I had assumed my mother would outlive my father, we elected to have him waive his right to a survivors’ benefit, which increased my mother’s monthly pension amount (while she was alive). We also named my mother rather than my father as the custodian of their granddaughters’ educational IRAs. As typical of their generation, my father, rather than my mother, had whole life insurance policies. Rational decisions when made, but in hindsight not the best choices financially.

As I spent the summer settling my mother’s rather simple and straightforward estate and rethinking and adjusting my father’s and grandmother’s estate plans, I learned several real world lessons. Even under the best of circumstances, settling the affairs of a decedent is an incredibly time-consuming, detail-oriented, complicated and emotionally exhausting process. Moreover, with my loss of confidence

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in the certainty of death and taxes, I realized that a myriad of new issues had been presented.

My grandmother will be 100 in December. Her doctor reports that she has the body of a 70 year old and could very well live another five to ten years. Accordingly, providing for her nursing home care for the next decade versus living at home has become a center stage issue. I am now studying long-term care insurance, irrevocable funeral trusts and MediCal.

As a CPA/attorney/tax professor, I clearly have an advantage regarding researching and understanding the many legal and tax issues presented for financial and estate planning. However, for the typical family (even with assets less than the estate tax threshold), there are many critical details to accumulate, sort and understand. These matters should not be put off until someone is diagnosed with a terminal disease. During the battle for life, focus should not be on death or taxes. The time to organize and arrange one's affairs is when one is celebrating life and not battling death.

### KEEP COMPLETE AND UP TO DATE RECORDS

Because I had taken over my parents' and grandmother's financial planning years ago, I had a very good understanding about the details of their various financial accounts including the location of their safe deposit box and the access key. We also had a current list of everything that was in the safe deposit box, and I generally knew where all the important papers were located. I discovered that while my parents had copies of their birth certificates, they did not have a copy of their marriage certificate (for Social Security survivor's benefits) or the pink slip to their car.

Copies of historic income and other (e.g., gift, property or business) tax returns (including any related correspondence), receipts for major appliances, details of life, property and health insurance coverage (renewal dates and periodic costs), vehicle reg-

istration and smog information, promissory notes, mortgages, lines of credit, and credit card liabilities are critical information. A list of monthly expenses (e.g., utilities, newspaper, cable, insurance, Internet, cell phones) or copies of bills with addresses and telephone numbers might ensure that services that should be cancelled quickly to avoid unnecessary expenses can be timely handled. The same detailed records should be kept for income items (e.g., Social Security benefits, IRA required minimum distributions, annuities, pensions) so that these benefits can be continued or cancelled, as the case may be, so that a survivor does not end up owing money that has already been spent or suffering onerous penalties for mishandling. Copies of credit reports can help with these types of inquiries.

Current, detailed records can be used for planning how to provide adequately for a surviving spouse and any dependents. Notably, these records must be kept out of sight so that they do not get into the wrong hands.

Detailed records of tangible personal property (other than vehicles) are rarely maintained. Writing down the story behind a loved one's treasures should be done so that the intimate memories and stories can continue to be recounted for generations. These details (described on *Antique Roadshow* as "provenance") can also help ascertain values if necessary. This applies even to personal property that has only sentimental value. My mother, grandmother (and great grandmother) saved countless embroidered hankies and elbow length gloves that certainly have romantic histories. Take the time to celebrate life by going through these treasures with your loved ones while they are healthy. Write down the stories, as well as who should receive the treasure in the far-off future, to preserve the family memories for eternity.

### DURABLE POWERS OF ATTORNEY AND ADVANCE HEALTH CARE DIRECTIVES

Once my mom was diagnosed with terminal cancer, she resisted answering some of the very tough questions on her Advance Health Care Directive. This made it difficult to admit her to the hospital because only she could sign herself in and she was not in any shape to do that. It is easier to deal with these tough questions when one is not facing the painful reality of their pending application.

Given the strict privacy requirements for most personal information, it is difficult to handle any health or financial matter over the telephone or otherwise without the person being available to authorize the conversation or having an appropriate power of attorney on record. By the time you realize you need these documents, it is usually very challenging and costly to get them prepared, notarized and delivered in a timely manner.

### THE STUFF OF EVERYDAY LIFE

While funerals are for the living, families want to respect the wishes of their loved one. My mother never discussed her funeral, but she and my father have had burial plots since my grandfather passed in 1961 and in the Jewish religion funerals happen very quickly and are very simple (no flowers, music, embalming or elaborate caskets). It was important to my father to pick out Mom's casket, but he did not want to go alone. Contacting my mother's many friends and finding an available rabbi and site as quickly as possible was overwhelming. It was so important to us to make my mother proud. I rushed over to the neighborhood delicatessen and ordered too many trays of food, but could not remember my parents' home address even though I had lived there or visited for more than 30 years. Making these decisions and arrangements after

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# NEWS BRIEFS

## 2006 LAW STUDENT TAX CHALLENGE

Now in its sixth year as an ongoing project of the Tax Section's Young Lawyers Forum, the 2006-2007 Law Student Tax Challenge is underway. Designed to stimulate and reward law student interest in and knowledge of the tax law as it applies to "real life" tax planning situations, this nationwide competition is open to law students attending any ABA-accredited law school.

Teams are initially evaluated on two criteria: a memorandum to a senior partner and a letter to the client explaining the result. Based on this written work product, 6 teams from the J.D. Division and 4 teams from the LL.M. Division receive a free trip to the Section's 2007 Midyear Meeting, January 18-20 in Hollywood, Florida, where they will defend their submissions before a panel of some of the country's top tax lawyers.

This year's problem asks competitors to address choice-of-entity and employee compensation issues in the context of an acquisition of a privately-held corporation. To review the contest rules and this year's problem, visit [www.abanet.org/tax/lstc](http://www.abanet.org/tax/lstc).

## POINTS TO REMEMBER

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losing a loved one is so very challenging. Funeral arrangements can be made and paid for in advance. Relieving survivors of this emotional and financial burden (funerals can be an unexpected expense of many thousands of dollars) is a gift.

Even though I write regularly, writing my mother's obituary was an incredible honor, but an arduous task. As a close friend recounted when she wrote her own mother's obituary, every word is so very important. We

## SECTION SURVEY ON IRS APPEALS PROCESS

The Section of Taxation has distributed a questionnaire to conduct a survey on practitioners' experiences with the IRS Office of Appeals. We encourage you to complete the survey via the link to it on the Section's homepage at <http://www.abanet.org/tax>.

Your participation is critical to the survey results, which will be used to inform the Section on the Appeals process. If you haven't answered it yet, please do so, even if you don't work directly in this area. We plan to use the results to assist us in working with the IRS to improve the appeals process and appreciate your interest and contribution to this important project.

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wanted to include pictures and scrambled to find just the right ones that captured my mother's smile and effusive personality. Surprisingly, the charge for a nonstandard obituary with two pictures was almost \$1,000, which I gladly paid because my mother was never standard and loved knowing intimate details of a person's life.

I miss my mother every day and wish that I had made the time during her life to go through every picture, scarf, dress, hankie, pin and newspa-

per clipping to discover why it was so precious to her. She would have loved sharing the details, and I could have learned a great deal more about the woman I love so deeply.

As a law professor, I teach, but this summer I learned some very valuable lessons that I hope you will ponder. Simply put...Celebrate life (chai) and taxes! ■