
Taxation on Death

The Good, The Bad & The Ugly...

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June 2011



Taxation on Death: Snapshot

- Deceased.... must file a stub return from Jan 1 to date of death, (past returns?)
 - Odd rules-Policy reason: Finance thinks it is not your fault you died
 - Confused Relationships...related, arm's length, affiliated persons, associated
 - Estate is treated as a trust for tax purposes
-

(Odd) Special Rules on Death

- Rules for computing income (options and elections)
 - Deemed dispositions at FMV
 - Special rules wrt reserves, losses, charitable gifts, medical expenses, AMT
-

Facts

- Mr. Deceased Dentist died on November 19, 2009.
 - Executor had 6 months from date of death to file terminal year return (May 19, 2010)
 - At the time of death, he owned the following assets.....
-

<u>Asset</u>	<u>FMV at Death</u>	<u>Adjusted Cost Base</u>	<u>Left by Will to</u>
INCOME: Sun Cap Declared but Unpaid Dividends	\$9,000	N/A	N/A
Rental Income (rent due at month end)	\$3,000/month	N/A	N/A
Earned Professional Income to Date	\$80,000	N/A	N/A
CAPITAL: AT&T Shares	\$90,000	\$120,000	Spouse
Olympia & York Shares	\$60,000	\$10,000	Spouse
Sun Cap Shares (QSBC)	\$1,000,000	\$50,000	Estate
Vacant Lots (3)	\$90,000	\$10,000	Daughter

<u>Asset</u>	<u>FMV at Death</u>	<u>Adjusted Cost Base</u>	<u>Left by Will to</u>
Apartment Building	\$180,000	\$150,000 (cost) \$40,000 (UCC)	Son
Bonds	\$50,000	\$50,000	Spouse
RRSP	\$128,000	N/A	Estate
Insurance	\$200,000	N/A	Estate
Principle Residence (jointly held)	\$250,000	\$50,000	Spouse
Works of Art (VonPig)	\$150,000	\$10,000	Museum
TOTAL	\$2,200,000		

Add zero's if required

Additional Facts

- Estate is to be divided equally among heirs identified in the will:
 - Spouse
 - Daughter
 - Son

*Life insurance policy owned by the deceased on Sun Cap shares

TERMINAL RETURNS

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN FEB MAR APR MAY



April 30 of next year



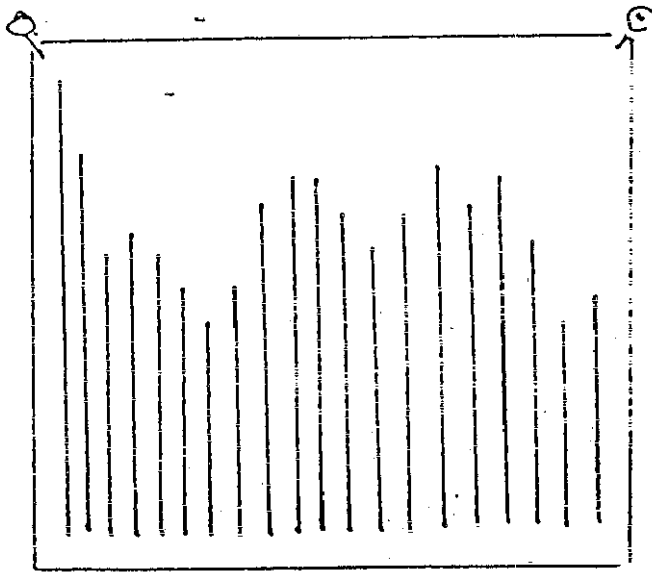
6 months after date of death.

Therefore we have until
to straighten this out.

Scenario #1 – Do Nothing but file returns

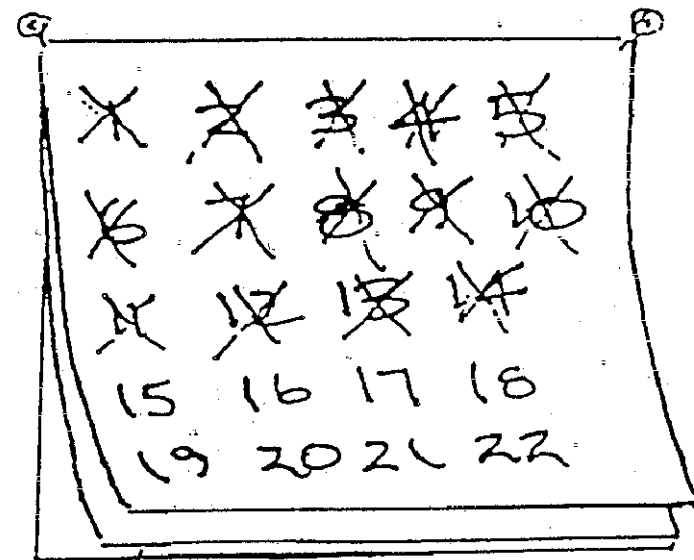
- What happens if the executor takes no tax planning steps?
 - Here is the tax result!
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Rights or Things



PIGCO Stock

Periodic Payments



Asset: Ineligible Dividends -\$9,000

- Taxable Amount: \$11,250
 - Comment:
 - Right or Thing if declared but unpaid at time of death
 - Gross up / credit provisions
-

Asset: Rental Income (Due At end of month)

- Taxable Amount: \$30,000 + \$1,900

 - Comment:
 - Periodic Payment
 - \$3K/month for 10 months + 19 days
 - Not periodic if not payable periodically or you could demand payment before death.
-

Asset: Professional Income

- Taxable Amount: \$80,000
 - Formerly special rules applied for off calendar year ends.
-

Asset: Capital property: AT & T Shares

- The rule in 70(5): Deemed disposition at FMV immediately prior to death
- Taxable Amount: \$0
- Comment:
 - s.70(6) Spousal Rollover at cost
 - automatic

Asset	FMV	ACB	TO
AT&T Shares	\$90,000	\$120,000	Spouse

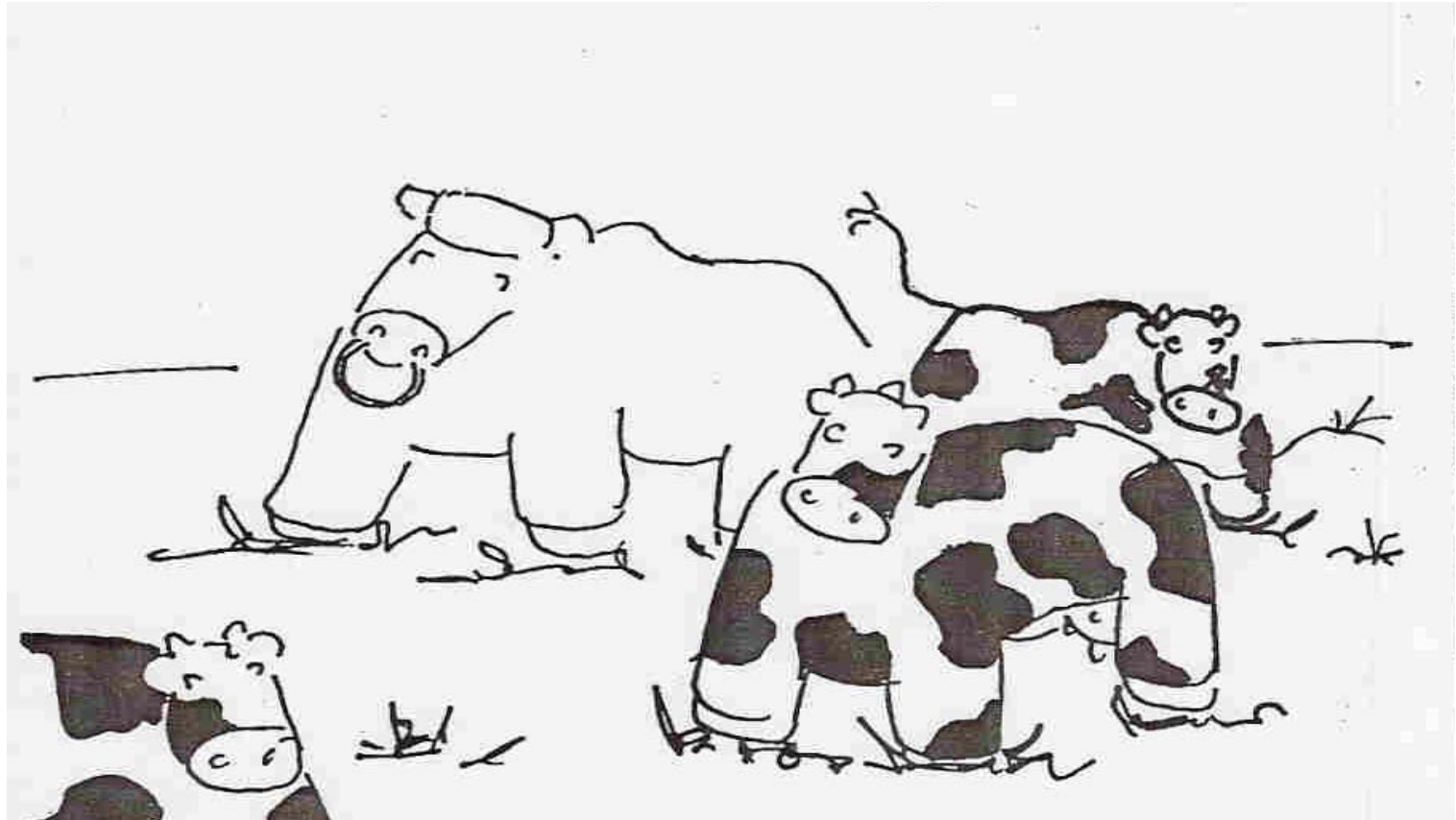
Exceptions to Deemed Disposition Rule: Who Can Capital Property be rolled to?

- Spouse, common-law partner (conjugal rollover)
 - Qualified Farm and Fishing property to children (Including farm & fishing property, shares of family farm & fishing corps, family farm or fishing partnerships)- “child” s.70(10).
-

Rollover to A Spouse or CL Partner

- By will or other testamentary instrument
- On intestacy
- By disclaimer, release or surrender of a beneficiary under a will or on an intestacy
- Dependent's relief legislation (248 (9.1))

-Deceased and recipient must be resident, property must vest indefeasibly, proof of vesting w/n 36 months of death or Minister ok



Asset: Olympia Shares

- Taxable Amount: \$0

FMV	ACB	TO
\$60,000	\$10,000	Spouse

- Comment:
 - s.70(6) Spousal Rollover

Asset: Sun Cap Shares

- Taxable Amount:
\$100,000

- Comment:
 - Assumed : \$1,030,000 gain less \$ 750,000K QSBC capital gains deduction
 - \$200K (50% is taxable)
 - *insurance

FMV	ACB	TO
\$1,000,000	\$50,000	Estate

Special Rules on Death for QSBC's

- Meeting defn't of QSBC at death (any time in prior 12 months)
 - Meeting ownership period (benef related to trust)
 - Meeting QSBC definition after death, - valuation of life insc at death (FMV=CSV), and after death if proceeds used w/n earlier of 24 months after death or 60 days of payment to buy shares
-

Asset: Vacant Lots(3) Land Inventory?

- Taxable Amount:
\$80,000

- Comment:
 - s.70(5.2) disposed of at FMV

FMV	ACB	TO
\$90,000	\$10,000	Daughter

Asset: Apartment Building

- Taxable Amount:
\$110,000

- Comment:
 - Recapture (\$150K - \$40K)
 - 15,000 TCG

FMV	Tax Cost	TO
\$180,000	\$150,000 (cost) \$40,000 (UCC)	SON

Asset: Vacant Lots(3) Land Inventory?

- Taxable Amount:
\$80,000

- Comment:
 - s.70(5.2) disposed of at FMV

FMV	ACB	TO
\$90,000	\$10,000	Daughter

Asset: Bonds

- Taxable Amount: \$0

- Comment:
 - No Gain

FMV	ACB	TO
\$50,000	\$50,000	Spouse

Asset: RRSPs

- Taxable Amount:
\$128,000
- Comment:
 - s.146(8.8) disposition

FMV	Tax Cost	TO
\$128,000	N/A	Estate

Asset: Insurance Proceeds

- Taxable Amount: \$0

- Comment:
 - Not taxable

FMV	Cost	TO
\$200,000	N/A	Estate

Asset: Principal Residence (Jointly held)

- Taxable Amount: \$0

FMV	ACB	TO
\$250,000	\$50,000	Spouse

- Comment:
- Jointly held property is subject to 70(5)
 - Principle residence exemption
 - Other?

Asset: Art Works

- Taxable Amount:
\$70,000

- Comment:

- Taxable capital gain
 - \$150K - \$10K at 50%
 - Can elect between cost and FMV
 - Charitable Tax credit based on FMV of gift
 - Up to 100% of income in year of death

FMV	ACB	TO
\$150,000	\$10,000	Museum

Total Taxable Income

■ \$626,150

Asset	Taxable Amount	Comments
Dividends	\$11,250	Right or Thing (\$9,000)
Rental Income	\$30,000 \$1,900	Periodic Payment (\$3K/mo for 10 mo + 19 days)
Professional Income	\$80,000	
AT&T Shares	\$0	s.70(6) Spousal Rollover at cost (automatic)
Olympia Shares	\$0	s.70(6) Spousal rollover
Sun Cap Shares	\$100,000	\$1,000,000K gain less \$750K QSBC capital gains deduction , (\$200K -50% taxable)
Vacant Lots	\$80,000	s70(5.2) disposed of at FMV
Apartment Bldg	\$110,000 \$15,000	Recapture (\$150K-\$40K); Capital gain \$180 - \$150 = \$30K, taxable portion 50%)
Bonds	\$0	No gain
RRSP	\$128,000	s.146(8.8) disposition
Insurance	\$0	Not taxable
Residence	\$0	Principle residence exemption
Art	\$70,000	Taxable capital gain (\$150K – 10K at 50%)
Total	\$626,150	

Total Tax Bill-\$626,150

\$250,460 (40% tax rate assumed)

-\$60,000 (charitable credit FMV of gift -
\$150,000 x 40%)

\$190,460 Total Tax Due

- **\$430,460** Tax Due if no capital gains deduction available for Sun Cap shares
-

Breakdown of Who Gets What

Spouse

\$90,000 (AT&T)

\$60,000 (O&Y)

\$50,000 (Bonds)

\$200,000 TOTAL

Daughter

\$90,000 (Lots)

90,000 TOTAL

Son

\$180,000 (Apt)

180,000 TOTAL

Estate

\$1,000,000 (Sun Cap)

\$ 128,000 (RRSP)

\$ 200,000 (Insurance)

\$1,328,000 TOTAL

Total Estate Assets

\$1,328,000

Estate Tax Liability

200,000

After Tax Amount

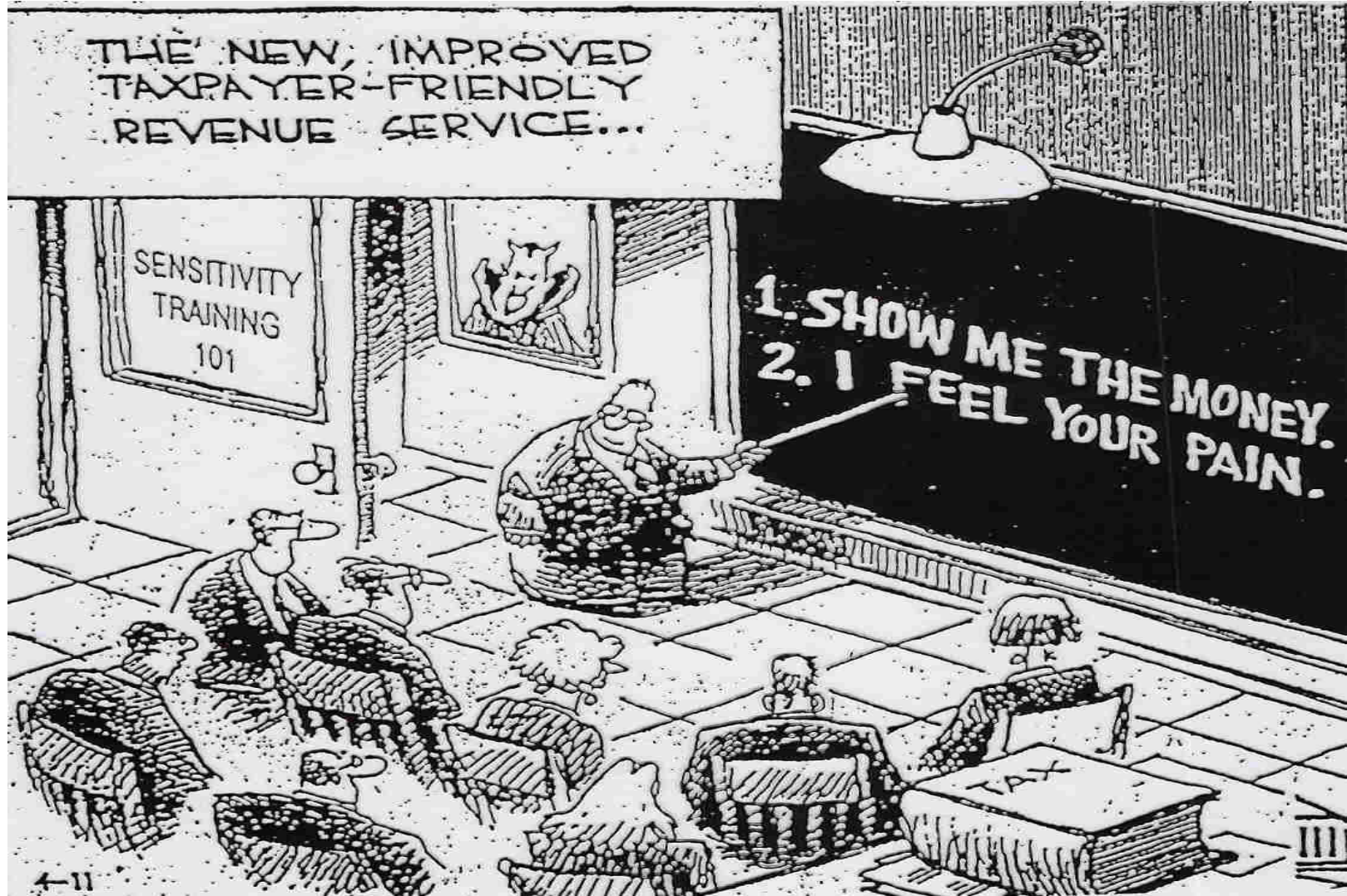
\$1,128,000

Per Person (\$1.2)

\$400,000

How do you pay the tax bill? What does that leave the spouse?

- Total estate worth 2.2 M
 - Tax bill is \$200,000
 - Insurance will largely cover tax due but wife is left with some lousy shares, \$50,000 in bonds and the matrimonial home
-



Scenario #2 – Some Planning

- How might a well advised executor improve this tax position?

 - What elections may be made or steps taken?
-

FRANK & ERNEST By BOB THAVES



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Asset: Dividends

- Taxable Amount: \$0
 - Comment:
 - Use s.70(2) to file separate rights and things return (Amount varies by prov -can receive + \$34,000 of dividends tax free in Alberta)
-

Rights or Things: Three Options

- Include in Income

 - File Separate Return
 - Not later than 1 year after date of death or 90 days after mailing of notice of assessment

 - Transfer to Beneficiaries
 - Automatic if assets transferred to beneficiaries within the period. Defers tax until Beneficiary disposes of assets
-

Asset: Rental Income (\$3,000/month Plus
19 days in November)

- Taxable Amount: \$31,900

- Comment:
 - s.70(1) periodic payment – no election available



Asset: Professional Income

- Taxable Amount: \$80,000



Asset: AT & T Shares (Scenario #1)

- Taxable Amount: \$0

- Comment:

- s.70(6) Spousal Rollover
 - automatic

Asset	FMV	ACB	TO
AT&T Shares	\$90,000	\$120,000	Spouse

Asset: AT & T Shares (Scenario #2)

- s.70(6.2) – elect out of automatic spousal rollover so transfer occurs at FMV
 - Result : ACL of \$15,000 available
 - Comment: ACL's can be used against income from any source in the year of death to the extent they exceed capital gains deduction claimed
-

Asset: Olympia Shares (Scenario #1)

- Taxable Amount: \$0

FMV	ACB	TO
\$60,000	\$10,000	Spouse

- Comment:
 - s.70(6) Spousal Rollover

Asset: Olympia Shares (Scenario #2)

- Taxable Amount: \$0

 - Comment:
 - Spousal Rollover
-

Asset: Sun Cap Shares (Scenario #1)

- Assuming \$750,000 CGD-Taxable Amount: \$100,000 TCG
- Consider that estate to be divided 3 ways and includes the spouse.
- If shares roll to spouse w/n 36 months she has her own CGD (to kids)
- Re Fawcett and Sons

FMV	ACB	To
\$1,000,000	\$50,000	Estate

Asset: Vacant Lots(3) Land Inventory?

- Taxable Amount:
\$80,000

- Comment:
 - s.70(5.2) disposed of at FMV
 - Asset is eligible for spousal rollover

FMV	ACB	TO
\$90,000	\$10,000	Daughter

Asset: Apartment Building

- Taxable Amount:
\$110,000

- Comment:
 - Recapture (\$150K - \$40K)
 - 15,000 TCG

FMV	Tax Cost	TO
\$180,000	\$150,000 (cost) \$40,000 (UCC)	SON

Asset: Bonds

- Taxable Amount: \$0



Asset: RRSPs (Scenario #1)

- Taxable Amount:
\$128,000

- Comment:
 - s.146(8.8) disposition at FMV
 - Consider election s. s. 104(27) designation or 146(8.1) election

FMV	Tax Cost	To
\$128,000	0	Estate

Asset: RRSPs

- Taxable Amount: \$0

 - Comment:
 - s.146(8.1) – Refund of Premiums: rollover to spouse or CL partner or financially dependant child (FDC). Election !
 - s . 104(27)-designate to spouse or (FDC).
-

RRSP's and RRIF's

- New rules if plans decline in value after death
 - Rules apply if RRSP wound up w/n year following year of death (tax exempt period) if RRSP does not hold non-qualifying investments post-death. (similar conditions for RRIF's)
 - allows losses incurred after annuitant's death to be carried back & deducted against year of death RRSP/RRIF income inclusion
 - applies to plans wound up after 2008
-

Asset: Insurance

- Taxable Amount: \$0
-

Asset: Principal Residence (Jointly held)

- Taxable Amount: \$0

FMV	ACB	TO
\$250,000	\$50,000	Spouse

- Comment:

Jointly held property is subject to 70(5)

- Principle residence exemption
- S.70(6.2) to elect out of rollover to increase ACB if gain is exempt?
Cottage?

Asset: Art Works

- Taxable Amount:
\$70,000
- Comment:
 - Taxable capital gain
 - \$150K - \$10K at 50%
 - Can elect between cost and FMV
 - Charitable Tax credit based on FMV of gift
 - Deductible up to 100% of income in year of death if in will

FMV	ACB	TO
\$150,000	\$10,000	Museum

Asset	Taxable Amount	Comments
Dividends	\$0	Use s.70(2) to file separate rights and things return (can receive \$34K of dividends tax free)
Rental Income	\$31,900	s.70(1) – no election available
Prof Income	\$80,000	
AT&T Shares	-\$15,000	s.70(6.2) elect out of rollover so transfer occurs at FMV
Olympia Shares	\$0	Spousal rollover
Sun Cap Shares	\$100,000	Assume \$750,000 CGD claimed
Vacant Lots	\$80,000	s70(5.2) would allow for spousal rollover
Apartment Bldg	\$110,000 \$15,000	Recapture and Capital Gain
Bonds	\$0	
RRSP	\$128,000	s. 104(27) designation and rollover to spouse
Insurance	\$0	
Residence	\$0	Use s.70(6.2) to elect out of rollover to increase ACB since gain is exempt
Art	\$70,000	Charitable gift based on FMV of \$150,000
Total	\$471,900	

Total Tax Bill on \$471,900

\$188,760 (40% tax rate assumed)

-\$60,000 (charitable tax credit (40% \times \$150,000))

\$128,760 Total Tax

- Savings from Scenario #1 = **\$61,700!**
 - **\$430,460** : Total Tax (if no capital gains deduction)
 - Consider RRSP contributions, death benefits
-

**DON'T EVER
GIVE UP!**



Scenario #3 –Creative Planning

- How might a well advised executor improve this tax position?
 - The use of disclaimers, releases and surrenders
 - *Biderman* –If a beneficiary disclaims, effect is retroactive to the date of death & valid for all purposes of ITA . Voids the gift ab initio
-

Mr. Biderman



- Federal Court of Appeal
 - Must disclaim after death of legator not before
 - Disclaimer is valid retroactive to date of death
 - Must be made before the beneficiary “begins to deal in the estate or otherwise receive benefit of gift”
 - Valid for all purposes of the Act including avoiding section 160
-

What happens if all beneficiaries disclaim specific bequests?

- Deceased has left specific bequests to named persons and instructed that residue be split.



Breakdown of Who Gets What - Before

Spouse

\$90,000 (AT&T)

\$60,000 (O&Y)

\$50,000 (Bonds)

\$200,000 TOTAL

Daughter

\$90,000 (Lots)

90,000 TOTAL

Son

\$180,000 (Apt)

180,000 TOTAL

Estate

\$1,000,000 (Sun Cap)

\$ 128,000 (RRSP)

\$ 200,000 (Insurance)

\$1,328,000 TOTAL

Total Estate Assets

\$1,328,000

Estate Tax Liability

\$200,000

After Tax Amount

1,128,000

Amount Per Person

\$400,000

Breakdown of Who Gets What - Before

Totals Per Person:

<u>Spouse</u>	<u>Daughter</u>	<u>Son</u>
\$200,000	\$90,000	\$180,000
<u>400,000</u>	<u>400,000</u>	<u>400,000</u>
\$600,000	\$490,000	\$580,000

Plan: Disclaim Specific Bequests & Re-arrange residue

	<u><i>Spouse</i></u>	<u><i>Daughter</i></u>	<u><i>Son</i></u>
Lots	\$90,000		
O&Y	\$60,000		
RRSP	\$128,000		
Apt	\$180,000		
AT&T		\$90,000	
Bonds			\$50,000
Sun Cap	\$110,000	\$380,000	\$510,000
Insurance	\$160,000	\$20,000	\$20,000
Total	\$738,000	\$490,000	\$580,000

Asset: Dividends

- Taxable Amount: \$0
 - Comment:
 - Right or Thing (s. 70(2)): Separate Return
-

Asset: Rental Income

- Taxable Amount: \$31,900



Asset: Professional Income

- Taxable Amount: \$80,000



Asset: AT & T Shares

- Taxable Amount: -\$15,000
 - Comment:
S. 70(5)-To daughter at FMV
-

Asset: Olympia Shares

- Taxable Amount: \$0

- Comment:
 - Spousal Rollover



Asset: Sun Cap Shares

- Taxable Amount: \$0
 - Comment:
 - Gain = \$950,000 - Use \$750,000 capital gains deduction.
 - Spousal Rollover of excess \$200,000 capital gain. (Spouse can use her capital gains deduction to later roll shares to kids).
-

Asset: Vacant Lots

- Taxable Amount: \$0

 - Comment:
 - Spousal Rollover
-

Asset: Apartment Building

- Taxable Amount: \$0

- Comment:
 - Spousal Rollover



Asset: Bonds

- Taxable Amount: \$0

 - Comment:
 - No Gain
-

Asset: RRSPs

- Taxable Amount: \$0
 - Comment:
 - Refund of Premiums
-

Asset: Insurance

- Taxable Amount: \$0
-

Asset: Residence

- Taxable Amount: \$0



Asset: *Art Works*

- Taxable Amount: \$70,000



Total Taxable Income

■ \$166,900

Asset	Taxable Amount	Comments
Dividends	\$0	Separate return
Rental Income	\$31,900	
Prof Income	\$80,000	
AT&T Shares	(-\$15,000)	Automatically transferred to daughter at FMV
Olympia Shares	\$0	Spousal rollover
Sun Cap Shares	\$0	CGD and Spousal rollover
Vacant Lots	\$0	Spousal rollover
Apartment Bldg	\$0	Spousal rollover
Bonds	\$0	No gain
RRSP	\$0	Refund of Premiums
Insurance	\$0	
Residence	\$0	Use s.70(6.2) to elect out of rollover to increase ACB since gain is exempt
Art	\$70,000	TCG, Gift based on FMV of \$150,000
Taxable Income	<u>\$166,900</u>	

Tax Result-\$166,900 taxable income

\$66,760 (Fed/ Prov 40% rate assumed)

-\$60,000 (charitable tax credit based on
\$150,000 gift)

\$6,760 Sub-total

-6,760 Personal credits (Non refundable)

\$0

- **Savings will increase if gift is of publicly traded securities. No capital gain. Gift claimed at FMV.**
-

Gifts of Publicly Traded Securities

- ACB \$10,000
- FMV \$110,000
- No capital gain included if donated
- Gift = $110,000 \times 40\% = \$44,000$ Charitable credit

- Better to give shares than cash

Charitable Tax Credit can ALSO be carried back to year prior to death.

Breakdown of Who Gets What - Before and After (Recap)

- Spouse
 - Daughter
 - Son
 - Estate
-

Breakdown of Who Gets What - Before (Recap)

Spouse

\$90,000 (AT&T)

\$60,000 (O&Y)

\$50,000 (Bonds)

\$200,000 TOTAL

Daughter

\$90,000 (Lots)

90,000 TOTAL

Son

\$180,000 (Apt)

180,000 TOTAL

Estate

\$1,000,000 (Sun Cap)

\$ 128,000 (RRSP)

\$ 200,000 (Insurance)

\$1,328,000 TOTAL

Total Estate Assets \$1,328,000

Deceased's Tax Liability \$200,000

After Tax Amount \$1,128,000

Amount Per Person \$400,000

Breakdown of Who Gets What - Before (Recap)

Totals Per Person:

<u>Spouse</u>	<u>Daughter</u>	<u>Son</u>
\$200,000	\$90,000	\$180,000
<u>\$400,000</u>	<u>\$400,000</u>	<u>\$400,000</u>
\$600,000	\$490,000	\$580,000

Disclaim & Re-arrange

	<u><i>Spouse</i></u>	<u><i>Daughter</i></u>	<u><i>Son</i></u>
Lots	\$90,000		
O&Y	\$60,000		
RRSP	\$128,000		
Apt	\$180,000		
AT&T		\$90,000	
Bonds			\$50,000
Sun Cap*	\$110,000	\$380,000	\$510,000
Insurance	\$160,000	\$20,000	\$20,000
Total	\$728,000	\$490,000	\$580,000

Other Planning Considerations

- Charitable Gifts
 - Pension Income Splitting
 - Testamentary Trusts (Dependant's Relief legislation, s. 104(13.1) elections)
 - Spouse trust and s. 104(13.1) election
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