THY WILL BE DONE by Atty. Donn F. Rabanes

Of death and taxes

For those of my generation who are familiar with the movie Meet Joe Black, it is a movie about love, death, mortality, wealth and family. In that movie, simple yet revealing statement should have been caught by viewers, the concept of certainty in this world. Mr. Bill Parrish, the billionaire media mogul suddenly confronted by mortality, played by the always brilliant Anthony Hopkins, has come to face two certain things in this world.

Death and Taxes.

No man or woman for that matter has found the holy grail of immortality and that is why sooner or later, we have to face our own maker. Death is something that does not knock on ones door, asking for your kind permission to enter, it comes in its own choosing, a time and place, a circumstance, lingering or swift. It is because of death's certainty that one must settle his business in this earth, before he moves to the golden plains above.

One cannot escape its clutches, despite enormous power and wealth in the temporal earth. One must recognize death's true power to take away life and because of it cause loss and suffering to those left behind. In the laws of man, death not only causes grief but has legal implications as well, which, if the heirs are otherwise unprepared, can be more of a lingering and divisive burden than the actual loss of a love one.

Taxes on the other hand, are the lifeblood of a nation. Through the efficient collection of taxes, a country will be able to pursue the basic functions of governance, funded by taxes from whence it came. Taxes come from different sources and activities, within and without its jurisdiction, primarily sourced from activities of the living, and soon of course from the estates of the dying.

Morbid as it may sound but yes, the act of dying is in some cases a taxable event, necessitating the payment of estate taxes. It is literally dying twice, one the physical act of life expiring, the other sometimes considered as a murderous spree by the government claiming its share of the wealth.

It is really a robber of some sorts that is why the certainty of death and taxes should be met with careful and deliberate planning. This is because, while we cannot outwit and outlast death, we can certainly meet taxes, in an even and legal playing field. This is where effective estate planning comes in. Wealth creation, perpetuation and division will never be effected under the singular act of the estate owner, as each step is convoluted by a host of personalities with different stakes in the estate owner's wealth.

There are the primary compulsory heirs, the secondary heirs and the voluntary heirs, and they are in one way or another competing for their share, rightful vested, or conditional and inchoate. Thus, it behoves the estate owner to settle his earthly concerns while he is still seated firmly in his pre-departure area and in sound mind to prevent the heirs from squabbling when he is gone and unable to articulate his personal wishes and desires.

Inheritance can come in so many ways, from the substantial to the trivial, from the personal to the real, from the practical to the whimsical, and lastly, from the beneficial to the burdensome. For what might be substantial, like dad's Maserati, given to a car loving child will something be trivial and useless when given to a child who has chosen to be a contemplative monk and has taken the vows of poverty. Thus, estate owners must consider relative and essential factors involving the personalities of those falling under the family tree before making an estate plan.

While the perpetuation of wealth is the primary purpose, it should be done with reference to feasibility and pragmatism. Forming a family corporation will, to family members unwilling or with no experience in running one, put the assets at risk apart from forcing upon them a form of co-ownership that is clearly discouraged by the law, given its historical tendency to foster conflicts or inequitable situations where a domineering heir may end up taking control to the detriment of other heirs.

To pursue a liquidity strategy may be the best option in certain circumstance, where an estate owner sells his real property while he is still in good health and the proceeds, divided amongs his heirs. This way, his tax hit can be managed and limited and he is able to dispose of the property for value, not being under duress or in a state of haste.

More on liquidity strategies next week.

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