

The Estate Analyst®

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The Year In Review—2012 *A Retrospective of the Whole Shebang*

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Regrettably, you did not win the \$587.5 million Powerball lottery. And, although you survived the Mayan apocalypse, this is no time to relax. We have segued right over the “fiscal cliff” and into the new economic reality zone. In fact, with so many dangerous-sounding analogies, we may soon find ourselves between the devil and the deep blue sea.

Let’s regroup with a look back at the highlights of 2012,



including Supreme Court rulings, Tax Court cases, celebrity estates, and a variety of items gleaned from another eclectic year.

A Supersonic Recap

Fortunately, 2012 was a leap year, and we had an extra day to pack in the events: Apple released the iPhone 5, the Supreme Court upheld Obamacare, Republicans held

**The good news: There was no Mayan apocalypse.
The bad news: You didn't win the Powerball.**

Presented With Our Compliments

presidential debates, Facebook went public, George Zimmerman shot Trayvon Martin, physicists found the elusive Higgs Boson particle that may be the key to the universe, a plutonium-powered rover named Curiosity explored Mars, Felix Baumgartner did a space jump at supersonic speed (and lived), Superstorm Sandy tore up the east coast, and President Obama was reelected.

LeBron James got his first NBA title; the Olympics were held in London (where McKayla Maroney was not impressed); *The Avengers* grossed \$1.36 billion worldwide; Psy's "Gangnam Style" went viral with 1 billion YouTube views; Kim Kardashian dumped Kris Humphries for Kanye West; Kristen Stewart cheated, broke up, and then made up with Rob Pattinson (hurray!); and Kate Middleton is expecting an heir to the British throne.

The Rolling Stones performed for their 50th anniversary. It was the 50th anniversary of the death of Marilyn Monroe. Also turning 50 were the New York Mets, *General Hospital*, the Shelby mustang, and motion pictures *Lawrence of Arabia*, *To Kill a Mockingbird*, *The Music Man*, and *Dr. No*.

It was the 100th anniversary of Chevrolet, the Girl Scouts, and Canada's Grey Cup. New Mexico and Arizona became our 47th and 48th states, respectively, in 1912. One hundred years have also passed since the sinking of the *Titanic*. The last *Titanic* survivor, Millvina Dean, was a two-month-old baby who was put on a lifeboat in 1912. She died in 2009 at the age of 97.

Posthumous Conception

Question: Where do babies come from? Answer: Storks. Specifically, very large storks fly in with babies and drop them off. It is a time-honored tradition.

Today, however, modern science has provided an alternate time table for conception, and babies can arrive even after parents have died. That was what happened for Robert and Karen Caputo. After Robert Caputo died in 2001, his surviving spouse, Karen, became pregnant via in vitro fertilization and bore twins in 2003, 18 months after her husband's death.

The Social Security Administration (SSA) did not dispute that Robert Caputo was the biological father of the twins but denied survivor benefits to the children. The District Court affirmed, based on the applicable state intestacy laws (Florida). According to SSA regulations, if posthumously conceived children could not inherit from a deceased parent based on state law, then they also could not receive Social Security survivor benefits. The Third Circuit Court of Appeals reversed, but the United States Supreme Court sided with the SSA unanimously.

The respondents raised a constitutional argument that, "Under the government's interpretation . . . posthumously

conceived children are treated as an inferior subset of natural children who are ineligible for government benefits simply because of their date of birth and method of conception." Justice Ginsburg's opinion rejects this argument, saying, "No showing has been made that posthumously conceived children share the characteristics that prompted our skepticism of classifications disadvantaging children of unwed parents. We therefore need not decide whether heightened scrutiny would be appropriate were that the case."

Congress delegated authority to the Social Security Administration to regulate the distribution of survivor benefits. The regulations have provided for state law to determine the eligibility of posthumously conceived children for many decades, and the agency's interpretation of these regulations is entitled to deference from the Court under *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

"Tragic circumstances—Robert Caputo's death before he and his wife could raise a family—gave rise to this case," wrote Justice Ginsburg. "But the law Congress enacted calls for resolution of Karen Caputo's application for child's insurance benefits by reference to state intestacy law. We cannot replace that reference by creating a uniform federal rule the statute's text scarcely supports." *Astrue v. Caputo*, No. 11-159 (May 21, 2012).

Posthumously Yours

How far can things go beyond posthumous conception within a family? In 2009, a 21-year-old man suffered brain death as the result of a fight, and his mother obtained a court order to maintain life support long enough to harvest genetic material. She intends to use surrogates to create her own grandchildren.

Burials: The past year provided a range of possibilities, each posing various ethical questions. Sherman Hemsley, the actor who played George Jefferson on television, died July 24, 2012, with no wife or children and an estate "in excess of \$50,000" that he left to his friend Flora Bernal. Bernal claimed that Hemsley wanted to be buried in El Paso. A man named Richard Thornton, claiming to be Hemsley's

half-brother, wanted the burial to be in Pennsylvania and filed a civil action contesting Hemsley's will. A hearing was delayed while Thornton's DNA was tested. The will was finally found to be valid, and Hemsley was buried in Texas, nearly four months after his death.

Burials were delayed even longer in other cases. The remains of Australian outlaw and folk hero Ned Kelly were located in 2012 after 132 years and were returned to his family. The skeleton of Charles Byrne, better known as the "Irish Giant," was purchased by a surgeon and displayed for more than 200 years at the College of Surgeons' Hunterian Museum in London. Byrne grew to be 7 feet 7 inches tall due to a



pituitary disorder. He is rumored to have requested a burial at sea, but in 2011 the Museum rejected calls by ethicists to give up the skeleton.

Paternity: In 2010, chess champion Bobby Fischer's remains were exhumed in Iceland to obtain DNA to resolve a paternity case. Fischer died in 2008, leaving no will or heirs, but had an estate of at least \$2 million. It was found that he did not father Jinky Young. An alleged wife, two nephews, and the IRS were in contention for the estate, but in 2011 a Court ruled that Miyoko Watai was Fischer's widow and rightful heir.

Marriage: In 2012, a French soldier was gunned down in a small town in France by a man claiming to be part of al-Qaeda. The soldier's pregnant girlfriend, Caroline Monet, was able to marry him. A French law dating from World War I permits posthumous marriage with permission of the French President. The surviving spouse can qualify for pensions and insurance but not intestate inheritance.

Medical Research: Can your medical records be opened after your death to further medical research? Minnesota legislators investigating whether Lou Gehrig died of amyotrophic lateral sclerosis (ALS), better known as Lou Gehrig's Disease, are proposing a law that would require the opening of medical records after a person has been dead for 50 years, unless there are objections from surviving descendants or the patient signed a health care directive to the contrary.



Disastrous Donations

Joseph Mohamed, Sr., donated land valued at \$19 million to a Charitable Remainder Unitrust (CRUT). Upon conducting an audit, the IRS disallowed any charitable deduction.

A CRUT is a type of split interest trust that allows the lifetime beneficiary to enjoy the property for the term of the trust, and the remainder goes to charitable beneficiaries at the end of the term. If all the rules are followed, the donor gets an immediate tax deduction against current income, and the CRUT can be rolled over and used in the future based on gross income. Here, Mr. Mohamed claimed a \$4.2 million deduction initially and planned to utilize a \$15 million deduction in the future.

As an experienced real estate broker and a licensed real estate appraiser, Mr. Mohamed was confident that his donated land was valued properly. However, tax regulations require an independent appraisal. When the IRS disallowed the charitable deduction, an independent appraisal was obtained after the fact and confirmed that the land was worth even more than had been claimed. Did this demonstrate enough good faith and substantial compliance to get the charitable deduction reinstated?

No. The Tax Court noted the clear regulations for Section 170. A qualified appraisal must be independent and timely. The taxpayer cannot substantially comply if he fails to meet essential requirements; see *Mohamed v. Commissioner, T.C. Memo 2012-152 (2012)*.

Conservation Easement: Another charitable contribution went awry in *RP Golf, LLC v. Commissioner, United States Tax Court (October 3, 2012)*. Two golf courses on 277 acres were worth \$17.4 million when donated and \$1 million after the donation, resulting in a claim for a \$16.4 million deduction.

The land was made subject to a conservation easement.

However, the conservation easement was not made pursuant to a clearly delineated governmental conservation easement policy. Nor was it clear if a natural habitat was being preserved by the donation. Held: The charitable deduction based on the conservation easement was denied.

Burning Down the House: The Tax Court sided with the IRS on homes that have been donated to fire departments to be burned down in training exercises. Homeowners have embraced this practice of obtaining a charitable deduction for the value of their homes and then essentially getting free demolitions of the homes they planned on tearing down anyway. The precedent for such a deduction was established 40 years ago in *Scharf v. Commissioner, T.C.M. 1973-265*.

In *Rolfs v. Commissioner, 11-2078 (February 8, 2012)*, the Seventh Circuit Court of Appeals agreed with the Tax Court's decision, *135 T.C. 471 (2010)*, because the taxpayers failed to demonstrate that the fair market value of the home exceeded the value of the demolition that was obtained in return for the donation. The fair market value of the property had to allow for its imminent destruction.

Patel v. Commissioner, 138 T.C. 23 (2012), came to similar conclusions as in *Rolfs* but was based on the donation of a partial interest violating IRC Section 170(f)(3). *Rolf* and *Patel* were covered in *Forbes* in an excellent article by Tony Nitti entitled, "The IRS Would Like You To Stop Burning Your Houses Down Already."

The Waffle House Waitress

In 1999, a regular customer at an Alabama Waffle House arrived one evening and gave a Florida lottery ticket to his favorite waitress, even though she wasn't waiting on him that night. The lottery ticket turned out to be worth \$10 million. A family attorney then set up a corporation for the waitress, her parents, and her siblings. Various parties then staked out their claims.

The new family corporation claimed the winning ticket and elected to receive annual payments of \$354,000 for 30 years. Other staff at the restaurant claimed that there was a binding arrangement to share all tips, including lottery tickets. The IRS eventually claimed that the waitress had made a taxable gift by sharing the lottery ticket with her family.

As the case was sorted out, 1) the customer who gave the waitress the lottery ticket was not treated by the IRS as making a taxable gift; 2) the waitress's former Waffle House coworkers were not entitled to any share of the lottery ticket—which was a gift to the waitress and not a tip; and 3) the waitress's long-standing family agreement to share tickets was not binding, so a taxable gift of 51% of the lottery ticket was made with a value of \$1.1 million.

A gift tax delinquency of \$771,000 was owed with interest and penalties. *Dickerson v. Commissioner, T. C. Memo 2012-60 (March 6, 2012).*

Celebrity Estates

The Andy Warhol Foundation for the Visual Arts, which oversees the estate of the artist, announced plans to auction 20,000 Warhols. The Foundation previously gave 4,000 pieces to the Andy Warhol Museum in Pittsburgh. Selling off the remaining art assets will reduce the cost of storing and insuring the collection and allow more funds for making philanthropic grants.

Collectors have reacted with concern about such an infusion of Warhol's work into the art market within a short span of time. Jose Mugrabi, who owns 800 Warhols, was part of a group that attempted to buy the remaining Warhol collection to prevent dilution of the market. Mugrabi has a 3,000-piece art collection valued at \$770 million.

Marilyn Monroe's estate recently attempted to take advantage of a California law that was passed in 2007 that would have prevented the sale of hundreds of photos that were taken shortly before Monroe's death in 1962.

The photos were in the archives of celebrity photographer Milton Greene, and prints are being sold without paying royalties to Monroe's estate. However, the Ninth Circuit Court of Appeals has ruled that the California law does not apply to Monroe because her estate had claimed New York residency for inheritance tax purposes. Monroe's estate has earned \$27 million by licensing Monroe's image.

Worst Grantor of 2012

In 2010, polo billionaire John Goodman ran a stop sign, crashed his Bentley, and caused the death of a 23-year-old man. In 2012, Goodman, 48, made news when he adopted his

42-year-old girlfriend to make her a beneficiary of a \$200 million trust fund for his other children.

The adoption was approved by a judge, but lawyers for Goodman's children are asking the judge to reconsider. Goodman settled a civil suit—for \$46 million—with the parents of the young man who was killed. He was found guilty of DUI manslaughter and was sentenced to 16 years in prison.

Coca-Cola Stock Claim

Tony Marohn purchased an antique stock certificate for Palmer Union Oil Co. from an estate sale in 2008 for a nominal amount. After researching the stock, however, he concluded that the stock certificate was actually worth 1.8 million shares of Coca-Cola, Inc., with a value of \$130 million.

Marohn filed suit in Delaware's Chancery Court in 2009.

After his death in 2010, his estate continued the suit. Although Marohn wrote in his own name as the transferee, his estate filed papers arguing that certificates that do not identify transferees are bearer instruments.

In January 2012, Judge Leo Strine said, "This is a new version of *The Beverly Hillbillies*," and he discussed the number of mergers in the company history, warranties of outstanding shares, the notices that would have taken place, the rights of the state to an escheat of unclaimed stock, and the cost of proving a nonfrivolous claim while utilizing top-quality law firms:

"[L]ife can be amusing. But I take seriously the notion that, when corporations get sued, it costs their investors money. And if it's doing it needlessly, it raises the cost of capital in our nation in a way that can reduce economic growth.... To go back and make them do a history lesson? It seems to me that you ought to have some game first.... If a history lesson is done in a situation like this, it might be done at the researcher's expense, which is, if your client wishes to be the Jacques Cousteau of this, then he may have to pay the rate for sending the *Calypso* out to sea."

Later in 2012, apparently after doing more research, the Marohn estate lowered its estimate of the stock's value to \$15,000 based on reverse stock splits. Coke's attorneys indicated that the antique certificate's value was "in the range of zero." Actually, the value may be higher than zero; Palmer Union Oil certificates have been spotted on eBay for \$18.

In Memoriam

There were many notable departures this year; here are a few: Neil Armstrong, Ray Bradbury, Dave Brubeck, Andy Griffith, Larry Hagman, Whitney Houston, George McGovern, and Mike Wallace.

