

THE BOSS'S ENDURING EMPIRE  
*Analyzing the Tax Consequences of the Steinbrenner Estate*  
By Joy Elizabeth Hodge, Esq.

The death of George Steinbrenner on July 13, 2010 serves as an interesting study into the effect of the temporary repeal of the federal estate tax – and the failure of Congress to correct the problem before the end of 2009.

Mr. Steinbrenner's estate was worth an estimated \$1.1 billion according to Forbes magazine. Assuming that all of his properties were subject to New York state estate tax, and further assuming that Mr. Steinbrenner did not have an estate plan minimizing his estate tax exposure, Steinbrenner's estate will pay an estimated \$175 million to the state of New York, calculated as follows:

Gross Estate Value:	\$ 1,100,000,000.00
New York State Exemption:	\$ 1,000,000.00
New York Taxable Estate:	\$ 1,099,000,000.00
Rate: \$1,082,800 + 16% of the amount over \$10,040,000:	\$ 175,316,400.00

The Federal Estate Tax question is much more interesting.

In 2001, Congress enacted the "Economic Growth and Tax Relief Reconciliation Act of 2001" ("EGTRRA") which both gradually increased the amounts which can be exempted from federal estate tax **and** lowered the rates at which estates would be taxed. Under EGTRRA, the federal estate tax was "repealed" on January 1, 2010. However, there's a problem: EGTRRA "sunset" on January 1, 2011 – returning the federal estate tax with a vengeance. Specifically, the amount that could be exempt from the tax in 2009 was \$3.5 million and the top rate of tax was 45% - if Congress fails to act, the estate tax returns in 2011 with a top rate of 55% and an exemption amount of \$1million.

Further, given the widening deficit in this uncertain economy, experts agree that the federal government cannot afford to repeal the federal estate tax in its entirety. Prior to December 31, 2009, it was widely assumed that Congress would act to make the 2009 exemption amount and estate tax rate permanent – estate tax pundits watched with wide eyes as the ball dropped in Times Square before an estate tax "fix" was signed into law.

Nonetheless, the optimists projected that a new bill would be on the President's desk in early spring. Bills on the subject have been flying in both houses of Congress and estate tax professionals almost uniformly believed there would be a law that fixed the exemption amount somewhere between \$3.5 million and \$5 million, with a tax rate between 35% and 45%. We also trusted that the law would be retroactive to January 1, 2010, with Congress taking advantage of case law making enactment of retroactive taxes Constitutionally permissible. As the year progresses, however, retroactivity becomes less likely.

Spring has turned into summer, and still, no bill has been passed. It seems that extreme forces on both sides of the aisle can not come to an agreement on the compromises proposed by the mainstream politicians and even a temporary fix to the problem continues to elude Congress.

This is the estate tax climate in which George “The Boss” Steinbrenner has died.

If Mr. Steinbrenner had died *before* January 1, 2010, his estate would have been subject to the federal estate tax rate of 45% on all amounts over \$3.5 million – owing up to \$493 million in federal estate tax, calculated as follows:

Gross Estate Value	\$ 1,100,000,000.00
2009 Federal Estate Tax Exemption:	\$ 3,500,000.00
2009 Federal Taxable Estate:	\$ 1,096,500,000.00
2009 Federal Estate Tax:	\$ 493,425,000.00

In contrast, his death in 2010 means his estate avoids a federal estate tax entirely. Rather, his assets are only subject to a capital gains tax, and only to the extent that his heirs sell assets they inherit from Mr. Steinbrenner for more than Mr. Steinbrenner’s adjusted basis in those assets.

By way of example, if Mr. Steinbrenner had purchased an asset for \$1million and put \$500,000.00 worth of improvements, he would have an adjusted basis of approximately \$1.5 million. If his son inherited the asset and sold it for \$4.5million, his son would pay capital gains tax of \$450,000.00 ( $\$4,500,000 - \$1,500,000 = \$3,000,000 * 15\% = \$450,000$ ). (Note that this is an oversimplified explanation included for the purposes of illustrating the point.)

Further, the 2010 law permits Mr. Steinbrenner’s estate to increase the basis of assets up to date of death fair market value, up to \$3,000,000. If Mr. Steinbrenner had died without a surviving spouse, his estate would only be able to “step-up” the basis of assets to \$1.3 million, or fair market value, whichever was lower.

Even assuming that Mr. Steinbrenner had a \$0 basis in all of his property as of the date of his death and could only step-up his basis in his assets to \$3 million, the Steinbrenner estate will save over \$328 million in federal estate tax, calculated as follows:

2010 Gross Estate Value	\$ 1,100,000,000.00
Step-Up in Basis	\$ 3,000,000.00
Capital Gains Rate 15%:	\$ 164,550,000.00
Tax Savings from 2009:	\$ 328,875,000.00

Of course, that assumes that heirs of the Steinbrenner estate will liquidate their inheritance – and there is no evidence to suggest this is the case. No capital gains tax is due and owing unless and until an asset is sold. The heirs of the Steinbrenner estate could presumably enjoy the fruits of Mr. Steinbrenner’s labors for many years to come – without ever paying anything more than income taxes from the income generated by the assets.

On the other hand, if Mr. Steinbrenner had survived until 2011, his estate tax exposure would be entirely different. With an exemption amount of only \$1,000,000 and a top rate of 55%, Steinbrenner’s estate would be assessed a Gross Federal Estate Tax of \$605 million. There is one favorable provision in the 2011 law that would reduce the federal estate tax burden – the credit against state taxes owed. To the extent that Mr. Steinbrenner’s estate is assessed New York estate taxes of \$175 million, this would offset his estate’s federal liability, bringing it to just under \$430 million – still a much larger tax burden than the \$0.00 tax expected to be paid under the 2010 tax code.

Ultimately, Mr. Steinbrenner’s death in 2010 saved his estate hundreds of millions of dollars in federal estate taxes. Proper planning done well in advance of Steinbrenner’s death probably will save his estate ten million dollars or more in additional taxes (both state and federal) – and avoid the legacy of another family-owned baseball team: With no plan in place and insufficient liquid assets when P.K. Wrigley died in 1977, the Wrigley family was forced to sell their beloved Chicago Cubs – just to pay the estate taxes due.

Steinbrenner’s plan, together with the temporary expiration of the estate tax, gives his heirs and his team reason to crow. According to Yankees President Randy Levine, “There are no succession issues, and the team will not be sold.” This is good news for Steinbrenner’s heirs – and for Yankees fans – all of whom can rest easily knowing that the empire built by The Boss will easily endure his passing.

Joy Elizabeth Hodge, Esq. is a Tax Attorney with a Masters of Laws in Taxation with Distinction from Georgetown University. Joy serves clients with a range of tax issues ranging from complex commercial transactions to wills, trusts and business succession and estate planning. Joy works with Pashman Stein, P.C. in Hackensack, New Jersey and can be reached by email at [JEH@Hodge-Law.com](mailto:JEH@Hodge-Law.com).