Celebrating Life (Chai) and Taxes: Lessons Learned

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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.

A glance at my resume presents a life journey including at least three different careers: tax accountant, tax lawyer and tax professor. While I have had different titles, in substance I have been doing the same thing for decades (albeit in a different form). And as we know substance rules over form, except when form rules over substance. Same daily excitement only different locations, I digress, which is what law professors do best.

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. You see 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. What? I am beginning to sound like a rabbi, perhaps my next career? As the summer boils into fall, I return again to the classroom having learned the hard way that there is nothing certain about taxes or death. I beg your pardon Ben Franklin, but hear me out . . .

Since the ripe young age of 20, after 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, my mother’s 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, has 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 financial affairs. The estate planning readily emerged from the facts and circumstances.

My paternal grandmother, who was born on 12/7/06, that is 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 or the Jewish substitute for lard) would likely predecease my parents. My father, who has lived his life surrounded by and surrendered to five (now seven with two granddaughters) strong Jewish women, not surprisingly had smoked, drank, and over eaten for decades.
He would likely pass next. My mother, who NEVER smoked, 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 of 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 of shock and disbelief on my mother’s face when the oncologist told her the cancer had metastasized to her liver 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. The only thing he promised was that the chemotherapy was certain to make her feel terrible. He asked her to go home and think about what she wanted to do and then to call him as soon as she had made her decision. Somehow we stood upright and walked out of this horrible nightmare into the waiting room surrounded by cancer patients, worn magazines and blasting TVs, 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 with vim and vigor and passion beyond description. After thirty months of countless rounds of chemotherapy she became a favorite patient and loved friend of the heroic oncology nurses. Somehow 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.

Despite the diagnosis I never really believed that my mother would not somehow prevail . . . she always had. And she had taught her daughters how to face life’s most difficult challenges. She said “It was like eating an elephant: take it one bite at a time.” Intellectually and in hindsight, I know that I was thinking irrationally about my mother’s battle with terminal cancer. Yet, I know I am not alone. Very few people can openly discuss death with their loved ones or have come to terms with their own mortality. Even though everyone knows they will die one day, no one really comprehends it. At a fundraiser for colon cancer this summer, Katie Couric said she never wanted to discuss death with her husband, because she didn’t want him to think she had given up hope. It was the same with my mother and me.

Irrespective of the facts and circumstances, my mother did not survive my father and grandmother. As we prepared for her funeral and life without her, I realized that
despite the 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 long outlive my father we elected to have my father waive his right to a spouse’s 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, has long-held whole life insurance policies. Rational decisions when made, but in hindsight were 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 in the certainty of death and taxes, I realized that a myriad of new issues had been presented.

My grandmother who lived with my parents until this April will be 100 in December. However, 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 (presently $2,000,000)) 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. Learn from Ms. Couric and me. 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 Including Details of All Assets and Liabilities (including Accounts Receivables and Accounts Payables)

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 safety deposit box and the access key. We also had a current list of everything that was in the safety deposit box and I generally knew where all the important papers were located. However, during the process I discovered that while my parents had copies of their birth certificates, they did not have a copy of their marriage certificate (which Social Security wanted for payment of my father’s survivors’ benefits) or the pink slip to their car. Tracking these documents down was time-consuming and frustrating during a time when I was not emotionally equipped to handle the additional stress.
Copies of historic income and other (e.g., gift, property or business) tax returns (including any related IRS correspondence), receipts for major appliances, details of life insurance policies, property and health insurance coverage (renewal dates and periodic costs), car, boat, motorcycle and/or boat registration and smog information, promissory notes and mortgages as well as any lines of credit or credit card liabilities and all the other necessary details of life are critical to keeping some continuity for the survivors. 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 expenses that should be cancelled quickly to avoid unnecessary expenses can be timely handled. If a loved one dies after an extended illness, like my mother, the steady stream of medical bills arriving long after their death can be daunting to manage. 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.

While my mother had numerous address books only she could understand her system as to which numbers were current (e.g., which plumber of the several ones listed was the one that she currently used). Tracking down where she stored her check blanks and deposit slips for her various accounts proved to be difficult and we still do not have a good record of all of my parents’ credit cards. Copies of credit reports can help with these types of inquiries. I am not surprised that so many financial accounts of decedents undiscovered by loved ones escheat to the state.

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

Detailed records of personal property are important, but are rarely maintained. My grandmother has a number of beautiful furs that she received as gifts from my grandfather. 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 The Antique Roadshow as “provenance”) can also help ascertain values if necessary. This also applies to personal property that only has sentimental value. I found a number of beautiful colorful silk and lace negligees in my grandmother’s and mother’s dresser drawers. I would love to hear the rest of the story about these elaborate pieces, but am left to wonder if my grandmother or mother wore one of these gorgeous gowns on her respective wedding night. My mother, grandmother (and great grandmother) saved countless embroidered hankies and elbow length gloves that certainly have romantic histories as well. Gems, as well as costume jewelry, are often gifts from loved ones for special occasions that can be enjoyed for generations. 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, of course, she was not in any shape to do that when she was being hospitalized. 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. Unfortunately, when 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 very difficult. 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 thirty years. Making these decisions and arrangements after losing a loved one is so very challenging. Funeral arrangement 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 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 every intimate details of a person’s life.

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