Tax and Estate Planning Lessons from a Galaxy Far, Far Away

Glen Goland, Esq.

As an estate planning attorney, the author sees individuals who look like Darth Vader every day. They may not wear the mask and cape, but many have unconventional families, own unconventional assets, and have no estate plans. This discussion analyzes the estate of Darth Vader after his death in Return of the Jedi. *And, this discussion considers other lessons that taxpayers can learn from* Star Wars to *ensure that their own tax and estate planning is in order.*

Introduction

A long time ago, in a galaxy far, far away, Darth Vader died at the end of the movie *Return of the Jedi*. Moviegoers around the world flocked to the cinema to see the story of Vader's redemption and to learn about the twisted Skywalker family tree. The author was 9 when *Jedi* was released.

When the author sees the *Star Wars* movies now, he knows he is spending too much time looking at estate planning documents. This is because the author starts asking questions like, "Did someone have to administer Vader's estate?", "How much did Vader get paid?", and "What sort of property would a guy like that have?—Does he own his spaceship? Have a condo somewhere?"

This discussion looks at three lessons taxpayers can learn from the *Star Wars* galaxy that may help in preparing their own estate plans. These three lessons relate to the following:

1. Dying without a will
2. The effective use of trusts in estate planning
3. Structuring sales to minimize taxes

This discussion considers these assumptions:

1. If Vader lived in the United States in 2013, he would probably choose to live in Vader, Washington, for obvious reasons. Let's instead assume that Vader was based out of the Empire's Portland, Oregon, office and owned a condo in Portland's trendy Pearl District as his primary residence.
2. Vader died in 2013, and he had no estate planning documents. If there was property that was going to pass via Vader's Last Will or that was stored in a safe deposit box that Luke (Vader's son) had to have, Vader would have mentioned these things to Luke as Vader was dying at the end of *Return of the Jedi* (Episode 6). He did not.
3. Luke's Aunt Beru and Uncle Owen were killed by Imperial Stormtroopers on Tatooine during the early part of the first *Star Wars* movie (Episode 4). Beru and Owen had no living parents, siblings, or children when they died. Owen and Beru never legally adopted Luke (in order to stay off the Empire's radar).
4. In 1999's *Phantom Menace* (Episode 1), viewers learned that Anakin Skywalker (the boy who would become Darth Vader) had no father. His mother explained that his birth was the result of some sort of immaculate conception. Anakin may have been conceived by Darth Sidious' master, who somehow used the Dark Side of the Force to create Anakin. In any event, there is no statute for immaculate conception via Sith Lords in Oregon. Let's assume that Vader's father (whomever it is) died before Vader.

5. We ignore Ben Kenobi's comments about Anakin Skywalker being murdered by Darth Vader (in Episode 5), and we stipulate that Anakin and Vader are the same person.
6. Finally, the news commentators are correct when they allege that the current federal government is analogous to the Empire in *Star Wars*. For this example, that means the same tax code, same estate tax exemptions, same forms, and the same procedures (and the same relaxed gun control policies) apply to employees of the Empire the same way they apply to readers of this discussion.

Understanding the order in which the six *Star Wars* movies were released will help the reader make some sense of the following paragraphs. Episodes 4 through 6 were released from 1977 to 1983, and were called *A New Hope*, *The Empire Strikes Back*, and *Return of the Jedi*. Episodes 1 through 3 were released from 1999 to 2005, and were called *The Phantom Menace*, *Attack of the Clones*, and *Revenge of the Sith*.

Lesson 1: Dying without a Will; The Administration of the Estate of Darth Vader

Since Darth Vader did not prepare any estate planning documents, this section discusses how his estate administration would probably proceed if he lived in Oregon.

At the time of Vader's death in *Return of the Jedi* (Episode 6), he had two living children (Princess Leia and Luke Skywalker). Vader's wife (Padme Amidala) predeceased Vader, as she died at the end of Episode 3 in one of the more foolish deaths in cinematic history. (She "lost the will to live" while lying amongst millions of dollars of medical equipment that none of the people standing around her bed used to try to save her—odd.)

Anyway, Vader's mother died during Episode 2, and we assume Vader's father predeceased him.

Vader's step-brother Owen (Luke's uncle) was killed by Imperial Stormtroopers early in Episode 4. No reference was made to Vader having any other siblings. Vader's parents, step-brother, and spouse predeceased him. Vader had no other siblings, and he left two surviving children (Luke Skywalker and Princess Leia) and no grandchildren.

Oregon Revised Statutes (ORS) Section 112 includes provisions for the distribution of assets of Oregon residents who die intestate (without a will). Vader's estate would be administered under Oregon's intestacy statutes in this example. Because Vader did not have a surviving spouse, the administrators of Vader's estate would look to ORS Section 112.045 to determine the distributions passing to people other than a surviving spouse.

Under ORS Section 112.045(1), property would pass, "To the issue of the decedent. If the issue are all of the same degree of kinship to the decedent, they shall take equally, but if of unequal degree, then those of more remote degrees take by representation."

Since Luke Skywalker and Princess Leia were Vader's children, they are Vader's surviving issue and they are of the same degree of kinship. Vader had no other children (alive or dead), so Luke and Leia would each inherit 50 percent of Vader's probate assets (his estate).

In the event that Luke had died before Vader, Leia would have received everything in Vader's estate. If Leia survived Vader and Luke predeceased Vader but left two surviving children (Vader's two grandkids), Leia would receive half, and each of Luke's two kids would receive one-fourth.

While most clients are not Jedi Masters or Sith Lords, many people die without a valid Last Will in place. When a person dies without a will, this is the sort of analysis tax counsel have to go through to determine the distribution of probate assets.

The process for administering an intestate estate in Oregon is not too different from administering an estate where a valid will exists and is filed with the court (called a testate estate). The major differences are as follows:

1. The court will require a bond in the administration of an intestate estate (the

Exhibit 1
Darth Vader Asset Schedule

Real Property	
Castles on Naboo, inherited from Padme	
Appraised Value	$ 3,500,000
Undeveloped Land on Naboo, inherited from Padme	
Appraised Value	400,000
Undeveloped land on Hoth, bought in private sale	
Appraised Value	100,000
Condominium in Portland, OR, bought in private sale	
Appraised Value	300,000
Total Real Property	**$ 4,300,000**
Bank Accounts	
Empire Bank Checking account No. …9999	
Date of Death Balance	$ 100,000
Empire Bank Savings Account No. …9999	
Date of Death Balance	100,000
Total Bank Accounts	**$ 200,000**
Investment Accounts	
Empire Investments Margin Account No. …9999	
Date of Death Balance	$ 300,000
Empire Investments IRA Account No. …9999	
Date of Death Balance	200,000
Total Investment Accounts	**$ 500,000**
Personal Property	
Personal Property (lightsabers, capes, voiceboxes)	
Estimated Value	$ 100,000
Total Asset Value	**$ 5,100,000**

bond may be waived in testate estates if the decedent's will waives the bonding requirement).

2. The court will issue a document called "Letters of Administration" in an intestate estate, rather than the "Letters Testamentary" that is issued in a testate probate.

Otherwise, the process is similar: the personal representative gathers the assets, notifies potential creditors, publishes notice of the probate proceeding, make payments, and then distributes remaining assets, all while keeping the court up to speed on each step in the process. The process takes from six months to a year in Oregon, sometimes longer depending on the facts.

In Darth Vader's case, Luke and Leia would have to petition the court to appoint a personal representative, as Vader never named a personal representative in a will. The appointed personal representative would then pay any remaining creditors and expenses, settle final tax liabilities, and then oversee the management and distribution of Darth Vader's property, including real estate holdings, financial accounts, and personal property (including a few light sabers and a closet full of black capes).

If Vader maintained any life insurance or retirement accounts, these accounts would pay directly to the named beneficiaries, without falling into the estate administration.

It is likely that Vader's estate would be worth a significant amount. He was Number Two at the Empire. He also probably inherited a good deal from his deceased spouse, since she was both a princess and a senator. Anything that Padme Amidala owned would likely become the property of Anakin Skywalker (i.e., Vader) at Padme's death since the two were married, unless there were trusts or other plans made to transfer the property to a nonspouse.

This analysis has been taken a step further and includes a hypothetical asset list for Darth Vader (Exhibit 1, all values listed in U.S. currency). The combined value of Vader's assets in this example is just under the federal estate tax exemption of $5.25 million, so no federal estate tax would be due.

There would, however, be an Oregon tax due, as Vader's assets exceed the Oregon $1 million estate tax exemption. The Oregon estate tax would be assessed on Vader's Oregon holdings (his condo, financial accounts, and personal property) but not on his out-of-state property.

Vader's estate tax would be approximately $95,000, arrived at by determining the Oregon estate tax due on the entire estate ($436,500 due on $5.1 million), and multiplying the tax due by the percentage of property that is located in Oregon (21.57 percent).

In this hypothetical scenario, the IRA at Empire Investments would pass to the beneficiaries listed on file with the custodian of the IRA. The remaining assets would pass through the probate administration.

One remaining issue in Vader's estate distribution follows: Luke was arguably responsible for Vader's death. If a court found that Vader died as a result of Luke striking Vader during their final light saber battle in Episode 6, then Leia would likely inherit 100 percent of Vader's estate.

ORS 112.465 provides that, "property that would have passed by reason of the death of a decedent to a person who was a slayer or an abuser of the decedent, whether by intestate succession, by will, by transfer on death deed or by trust, passes and vests as if the slayer or abuser had predeceased the decedent."

Of course, one could argue that Luke was acting in self-defense, but Luke did start the fight. There is also the possibility that it was an assisted suicide ("Luke, help me take this mask off. . . ."). These (and other) arguments about the slayer statute are beyond the scope of this discussion.

Lesson 2: Trusts Can Be Effective and Can Get Complicated; The Strange History of Luke's Light Saber

A number of holes in the George Lucas story came to light when episodes 1 through 3 were released. Many of these holes centered on the actions of Ben (Obi-Wan) Kenobi. The most prominent hole in the story is why Kenobi did not remember R2D2 and C3PO when he came across them in the desert in Episode 4, since the droids played such prominent roles in Episodes 1 through 3. A second, more subtle, question about Kenobi's memory revolves around Luke's light saber.

Moviegoers were introduced to the ways of the Jedi when Ben Kenobi explained the force to Luke Skywalker on Tatooine in the original *Star Wars* movie (Episode 4). Kenobi introduced a young Luke Skywalker to Luke's first light saber by handing him the weapon and saying, "Your father wanted you to have this, when you were old enough."

By the time fans saw the end of Episode 3 twenty-eight years later, it became apparent that Kenobi was (once again) either misremembering history or making things up. There is no indication that Vader knew of Luke's existence nor is there an indication that he asked Kenobi to hold the light saber until Luke was old enough to own the weapon.

If Vader and Kenobi did have a conversation in which Vader asked Kenobi to hold the light saber for Luke's benefit, such an arrangement would be called a "trust" in our galaxy. A trust is a legal tool which may be either oral or written, in which one person (called the grantor, settlor, or Darth Vader in our case) gives possession of property (here, a light saber) to a Trustee (Kenobi) to manage for the benefit of a beneficiary (Luke Skywalker).

There are as many uses for trusts as there are scary creatures hiding in the shadows at Jabba's palace. Trusts can hold all sorts of property—from houses to airplanes to bank accounts to businesses, and everything in between. Trusts may be used in place of wills in some estate plans and a properly funded trust may negate the need for a probate proceeding.

Some trusts are designed to remove assets from taxable estates, some are used to protect assets from creditors, and some are used to transfer family wealth among multiple generations. Some trusts are revocable and others are not. Trusts vary in their design and application. But, they all have the same basic pieces—a settlor, a beneficiary, a trustee, and some property that is placed in the trust.

In estate planning, it is common to create trusts inside of wills, called testamentary trusts. These trusts come into existence upon the death of a grantor. A common example of this type of trust may be an estate plan for an individual with a minor child. The individual's will may provide that, in the event the settlor dies while his or her kids are still minor(s), then a trust is to be created to manage the funds for the child's benefit.

This sort of arrangement allows parents to outline the manner in which they want their money spent for "parenting" purposes, even if the individual is not around to dictate these decisions. This seems to be the type of trust Kenobi is alluding to when he tells Luke about the light saber that Kenobi has been holding for him.

Trusts do not need to be as thick as a phone book to be effective, although some of them are. As a general rule, the Oregon Uniform Trust Code (Codified as ORS 130) provides "gap-filler" language that will be read in to trust agreements where no contrary guidelines are included in the trust instrument. In the case of an oral trust, the fallback language in the code can provide almost all of the terms.

In this case, had Luke wanted someone other than Kenobi to serve as trustee, he would have petitioned the court under ORS 130.625. It is likely Luke would have argued that Kenobi lacked the mental capacity to serve as trustee. This is because

Kenobi wore a bathrobe all the time, talked to ghosts, and hung out with Muppets.

Had Kenobi wanted to resign, he could have done so under ORS 130.620. If Luke had gotten married and there was a question about his spouse's rights to the light saber (or other trust property), Luke would have looked to ORS 130.530 (provided the trust was revocable and that Luke was not marrying Leia).

In practice, chapter 130 provides a variety of tools that help trustees and their lawyers negotiate trust instruments when things happen that were not contemplated when the trust was established.

Lesson 3: The Tax Man Does Not Care What Star System You Call Home; George Lucas' Sale of the *Star Wars* Franchise

A galaxy's worth of nerds rejoiced when news broke that George Lucas sold the *Star Wars* franchise to Disney in October 2012. At the time of the sale, Lucas said that he always envisioned the *Star Wars* empire (no pun intended) would live on long after he was gone and that he felt he was leaving the franchise in good hands. What he may have been really thinking was, "my CPA and my lawyer told me to do it."

The *Star Wars* sale was closed in late October 2012, when there was a great deal of uncertainty in the tax world and the "fiscal cliff" was looming on the horizon. What was certain at the time was that the Bush-era long-term capital gain tax rate of 15 percent was set to expire at midnight on December 31.

It was widely expected that the tax rate on these gains, especially for individuals in the highest income tax brackets, would be the target of democratic lawmakers in the fiscal cliff negotiations. It was also known that the new Unearned Income Medicare Contribution tax of 3.8 percent would kick in for gains recognized by high-income taxpayers like Lucas, starting in January 2013.

So what did Lucas do? He sold the *Star Wars* franchise in 2012 for just over $4 billion: $2 billion in cash and 40 million shares of Disney stock (valued at $2,000,800,000 on October 31, 2012).

It is impossible to know the exact tax figures without information on Lucas' basis in the *Star Wars* franchise at the time of the sale, but we can make some educated guesses. Lucas recognized up to $2 billion in gain in 2012, and he owes the Service up to $300 million in long-term capital gains tax on receipt of this cash.

On the other half of the purchase price, Lucas will recognize (and be taxed on) gains on the Disney stock if and when he decides to sell his shares. If Lucas holds on to the Disney shares until his death, his heirs will get a step-up in tax basis to the value on Lucas' date of death, but they will have to pay estate tax on the receipt of the shares.

Had Lucas waited to sell Star Wars until 2013, the $2 billion in cash he received would have been taxed at the new 20 percent rate agreed to under the American Taxpayer Relief Act of 2012. This would have added an additional $100 million to his capital gain tax bill. The 3.8 percent Medicare Contribution tax would have added another $75 million, bringing his total tax bill to approximately $475 million.

Whether this sale strategy was outlined by a CPA who was reading the Congressional tea leaves, or Lucas turned to a more trusted source for his tax planning ("Through the force, the future—and rising taxes—you will see. . . ."), the result is the same: Lucas probably saved close to $175 million in taxes by selling when he did.

It is worth noting that Lucas signed the Giving Pledge in 2010, in which he indicated that he intends to give the majority of his wealth to charitable foundations that focus on education. Reports have also surfaced indicating that Lucas intends to give all of the funds he receives from the sale of Star Wars to the George Lucas Educational Foundation (which Lucas used to make a $175 million donation to USC in 2006) or to some other charity or charities aimed at improving education. If these charitable gifts are properly completed, the tax implications will change dramatically and may be eliminated entirely.

It has been 36 years since the release of Episode 4. The franchise has earned hundreds of millions of dollars and spawned everything from Lego sets and video games to *Star Wars*–themed cookbooks and ice-cube trays. The next time you sees Darth Vader's face staring at you on a t-shirt or a lunch box, think about capital gains taxes and intestacy laws. Until then, may the force be with you.

Glen Goland is an associate at Samuels Yoelin Kantor LLP and practices in the firm's estate planning practice group. Glen can be reached at (503) 226-2966, or at ggoland@samuelslaw.com.