



# **Pioneer Bank & Trust**

## **Trust & Investments**

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## Who pays the estate tax?

Author Tom Clancy, who died October 1, 2013, had attended to his estate planning just a few months earlier, in July. Clancy had four adult children from his first marriage. He also had a daughter with his second wife, who was his primary beneficiary.

According to published reports, Clancy's estate is worth at least \$83 million. It includes a 12% interest in the Baltimore Orioles as well as a functioning 1943 Sherman tank appraised at \$250,000.

When Clancy met with his lawyer in July 2013, he amended trusts for his second wife to make certain that they qualified for the marital deduction from the federal estate tax. As such, they would not generate any estate tax due.

Imagine Mrs. Clancy's surprise when the executor of the estate—the same lawyer who drafted the trust amendments—proposed that she share in paying the taxes due on the legacy passing to the adult children. Of the \$16 million in expected estate taxes, her trust was to be assessed \$6 million.

Mrs. Clancy has filed a lawsuit to have the executor removed. Her lawyers point out that putting the tax burden on her share makes no sense if minimizing taxes is the objective, which would seem to be the case. To the extent that money is withdrawn from the marital trust to pay taxes, the marital deduction is reduced, which, in turn, means that still more estate tax is due. It's a vicious circle of taxation.

### **Make it clear**

Very often a will and a trust will have a "tax apportionment" clause to settle the question of which legacies will bear the burdens of taxation. Typically, both marital and charitable bequests are exempted, because they do not themselves trigger death taxes. However, one is free to overrule that approach if so desired, if tax minimization is not a concern.

Did Clancy anticipate that the marital trust for his surviving spouse might have to help pay the tax bills? Did he fully appreciate the tax consequences of that? Those questions will be answered in the course of litigation. But we probably can say with confidence that Clancy did not expect a clash between his surviving spouse and his chosen executor, one that would take a lawsuit to resolve.

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