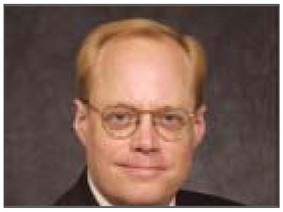
Forbes



Robert W. Wood

THE TAX LAWYER

Aug. 31 2012 — 11:33 pm

Tax Savings Aren't Everything, Not Even For Marilyn Monroe

Cropped screenshot of Marilyn Monroe from the trailer for the film Gentlemen Prefer Blondes (Photo credit: Wikipedia)

As a tax lawyer, I sometimes see clients who are ***so*** concerned about saving taxes they end up losing out on much more. To take an extreme example, if you are trying to avoid a 15% capital gain tax on a stock sale, you might invest in a shady tax shelter. The shelter might end up costing you all of your money.

Believe it or not, some people would rather spend more trying to avoid paying taxes than the tax dollars at stake. This is especially true if they think they'll get their money back. They may get so myopic about taxes that they lose their principal.

Tax savings should be considered, of course. Once you identify a business or financial goal there is often more than one way to achieve it. One way may more tax advantaged and therefore preferable. See [Will BP Oil Spill Victims Pay Tax On $7.8B Settlement?]

Start by setting your business or financial objective. Then try to chose the most tax efficient way to get there. See [When Settling Litigation ALWAYS

Address Taxes. That's ***different*** than letting tax issues control what you do as well as how to do it. Don't let the tax tale wag the dog.

Plainly, it can make sense to spend $10 if it enables you to legitimately avoid paying $15 in tax. But it is hard to understand paying, say $50 to $100 trying to avoid paying $15 in tax! I was reminded of this homily seeing *Milton H. Greene Archives, Inc. v. Marilyn Monroe LLC*.

In that case, the Ninth Circuit Court of Appeals considered whether publicity rights that arguably passed under the Will of Marilyn Monroe were valid and could be exploited. How is that a tax issue, you might ask? It turns out the validity of the publicity rights turned on whether New York or California law controlled.

Ms. Monroe's executors had consistently taken the position that the star was domiciled in New York. Why? They wanted to avoid paying California estate taxes, of course. See Tax Maneuvers Cost Marilyn Monroe's Estate.

Monroe died domiciled in New York so New York law applied to the question of whether one of the parties in the case actually had the right to enforce the star's posthumous right of publicity. Yet New York state law does not recognize such rights. That meant the party in question (Monroe LLC) did not inherit the publicity rights under Monroe's will.

Had they paid tax in California, the case might have come out very differently. California law recognizes such rights. But it was too late. The trial court and the Ninth Circuit ruled they were estopped from claiming rights under California's posthumous right of publicity.

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.