

DÉJÀ VU

Jack Davidson

I am experiencing déjà vu. When I experience déjà vu, my colleagues grow concerned. To be sure, I sometimes wear the mantle of prophecy or pre-recognition, but I assure them that it is simply a “feeling” of recollection and that it is not unhealthy, citing studies that confirm déjà vu is a common experience in healthy individuals, with between 31% and 96% of individuals reporting it.

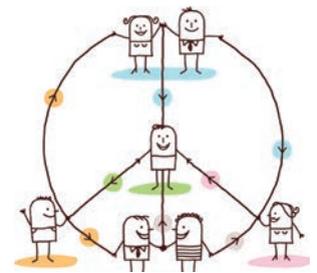
Perhaps instances of déjà vu appear more often during periods of stress. I see a correlation. I feel stress. Perhaps others in our trust company have the same feelings as well. We have the Thanksgiving Rule. Don't talk politics at Thanksgiving. Try not to talk politics at work. What we all have in common is not our politics, it is an old-fashioned family value of taking care of others, whether close family or extended family.

I try to hide my politics. That's why I don't write articles touting the estate tax endorsed by Warren Buffett, George Soros, Bill Gates Sr., and John C. Bogle, founder of the Vanguard Group. Warren can get away with it, but I can't.



One of my roles is estate planning and I enthusiastically try to save as many tax dollars as I can. It is that simple. Fortunately, my definition of “taking care” is only part of the definition, and we have others in our company, such as our administrators, who focus on taking care of the person, and managers who have been programmed to focus on “taking care” by avoiding too much risk in managing assets.

Taking care of others often involves taking tension “out of the room”, as they say, rather than bringing it into the room. Our job is to reduce tension between warring siblings, to address fears about the stock market, and to address planning around our mortality.



In times of uncertainty, we often look to the past to aid us in seeing the future. As a youth, I would run to the library. It was not fun to run to the library, so I did it less often than I should have in order to become a more enlightened person. Now it is so much easier. I simply run to my computer. It is such a blessing. Well, it may be a curse as well.



Publishing books and scholarly papers takes time. Accuracy tends to survive better in a library than it does on the internet. If those skilled in using

the internet want to promote an inaccuracy, they can instantly publish in such places as Facebook, and reinforce those who want to believe the information.

I don't use Facebook. And I am not a fuddy-duddy. And, many of those who use Facebook don't even know what "fuddy-duddy" means.¹ So I ignore Facebook postings and tweets and I try to find legitimate sites that take pride in accuracy; mindful that accuracy may have slants.

Thoughtfulness takes time. Reflexes don't.

In our company we sometimes focus on psychological preferences using both Meyers-Briggs and Enneagrams to address our reflexes. Our reflexes often need to be addressed as reflexes without meaning. Meaning often needs to control reflexes; as my colleague Jane might say to me: "Down, Boy!" (see her article and you will have a better understanding of her very capable perceptions). Once you go on the internet you might find what your reflex wants, but it may be without meaning.

So my role as an estate planner continues. I need to understand the impact and probability of tax law changes as a result of the election of Donald Trump as the 45th President of the United States, and the Republicans having retained control over the House and Senate. Will a unified GOP make big changes over the future of our tax policy and how long will the tax policy remain the same after the next election?

¹ For example, I use Alexa and everyone in our company has an offspring of Alexa, a Dot. For those who don't know about Alexa, well, they may be fuddy-duddies.

What will the future look like? So I go to my computer and look for reputable sites (mindful of their slants):

Bloomberg: *"Trump's plan would replace the estate tax with a capital gains tax on the appreciation of inherited assets of more than \$10 million, subject to some exemptions for small businesses and family farms....." AND... "He may face a difficult time ushering in a permanent end to the estate and gift taxes, even with Congress on his side. Under current rules, a permanent repeal would require 60 senators to agree...."*

So, what I see is:

- No federal estate tax,
- the resurgence of "carryover" basis,
- and the Ten Year Rule.

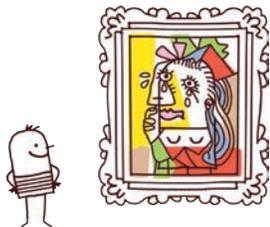
A déjà vu experience.....I see a pattern, or am I confused? Am I having flashbacks simply by reading the proposed changes in the tax code? Or am I trying to predict the future based on historical patterns?



It was 1976.....The Tax Reform Act (TRA) of 1976 included a "carryover" basis provision for transfers upon death. Before the change, if, for example, my client gives an asset purchased for \$10 to his or her child and the child sells the asset for \$100, he or she will pay gain on \$90, but if the client leaves it to the child upon death, the gain will go away. The basis of the asset was "stepped-up" upon death. This change

implemented the “carryover” basis so the recipient received the same basis in the property that the decedent had before death. In short, the basis did not change and capital gains did not go away.

It was very unsettling. I was handling estates. I now needed to know the original cost basis on all assets purchased or gifted to the decedent.



Many of our clients were organized. Some were not. Often even the organized did not record the cost basis of heirlooms. Those who handled estates went

through a terrible time in those years. Fortunately, in 1980, these carryover provisions were repealed and replaced with “stepped-up basis” provisions that had existed before TRA of 1976². Now, rather than going through file cabinets and drawers and sometimes the attic, we could now simply look up the date of death value in the Wall Street Journal and/or hire appraisers, and life became easier once again....and we could also sell over-concentrations in assets held simply to avoid the capital gains tax.

Approximately ten years later, it resurfaced once again, coupled with the repeal of the estate tax and the Ten Year Rule. The Ten Year Rule? The lack of 60 Republican votes in the Senate means that legislation would probably pass as a budget reconciliation with 10-year sunset provision (also known as the “Byrd” rule).

It was 2001..... Congress passed a law designed to get rid of the estate tax over a ten year period and have “carryover” basis resurface. It was subject to the Ten Year Rule. In 2010, the tenth year, the

federal estate tax was repealed and “carryover” basis came back to life. Then in 2011, the federal estate tax came back to life and the “carry over” basis was once again replaced by the “step-up” in basis.

Will we have another ten year cycle? Will there be a cycle? Will we have a 4 year cycle depending on who gets elected on the presidential cycle of 4 years?

Forbes: “...according to a study performed by Lily Batchelor at NYU, you have a perfect storm in which approximately 7.8 million low-income large families will experience increased tax bills under the Trump plan...”

“According to the Tax Policy Center, the totality of the Trump plan will reduce federal tax revenue by \$6.2 trillion over the next ten years. Of those tax cuts, nearly 47% will go to the richest 1%. To put it into dollar terms, those earning less than \$48,400 will experience an annual tax cut of less than \$400, while those earning in excess of \$700,000 will walk away with an average of an extra \$215,000 per year...”

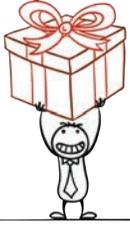
Forbes contributor Tony Nitti, “President Trump: What Does It Mean For Your Tax Bill?” November 2016

Voters can vote on promises and they can change when the prose does not match the impact on the purse (or the pocket). If President-elect Trump delivers on some, if not most, of his promises in a four year cycle, then the probability of an 8 year cycle increases. If not, a minimal reduction or tax increase on many voters increases the probability of a one term president and a 4-year cycle.



² With the exception of joint spousal property acquired after 1975

So as an estate planner, what would I recommend? There is no clarity regarding gift taxation or generation taxes, and I have little to offer regarding what cycle we might be on for estate taxes and “carryover” basis.



At this point I have only one recommendation. Make gifts for non-tax reasons and, if you do, don't choose low basis securities unless you are making charitable gifts. “Carryover” basis for lifetime gifts has been in effect since 1920 and, rather than death transfers, there is no evidence that the law will change. So if, for example, I give appreciated stock, the gain will be subject to tax when the stock is sold. If, however, I leave the property upon my death, the gain will go away, unless Mr. Trump's proposal passes and I have an estate exceeding \$10 million. So planning my estate is simple. There will be no “carryover” basis. If I were planning estates above \$10 million, I would probably recommend the same thing...whether carryover basis cycles on or off.

Will Vermont's estate tax show a cyclical pattern? It is hard to tell. But those who make gifts to avoid the Vermont Estate Tax and die within two years from the date of the gift will not avoid Vermont's tax and will lose the benefit of the step-up-in-basis.

When I cycle I wear my bike helmet. I sometimes think that my thinning hair is attributable to the helmet. I now think it is from scratching my head.

When I worry about the future, I drink good coffee, and cream.....and no additives that have been through fermentation. I then wait for inspiration.

Déjà vu once again! There is another pattern that just emerged, starting in 1972, that has made my life much easier through many years: we would find the right people to work in our company and life will have less worries. Just keep finding colleagues that do a really good job of taking care of others.

Our New Colleagues Susan Fowler and Judy Joly

In July, Probate Judge Susan Fowler and Probate Register Judy Joly retired together after a long and impressive career in the Chittenden County Probate Court (Judy Joly for 37 years and Judge Fowler for 22 years). In July, we recognized an opportunity to move quickly, before Susan and Judy had enough time to appreciate the benefits of retirement. In October the team of Susan and Judy joined us. Taking care of others is their specialty:



“Judge Fowler is being honored for her dedicated work in the field of adoption for the past 25 years,” the CCAI wrote. “In her 19 years on the bench, Judge Fowler has presided over more than 1,000 adoptions and has been instrumental in reducing the backlog of cases awaiting finalization after parental rights were terminated in the Family Division. She is recognized for her kindness and compassion in the handling of her cases, whatever the outcome.” - The Burlington Free Press 8/18/2014*

*“Angels in Adoption” is a public awareness campaign of the Congressional Coalition on Adoption Institute. As Susan point outs, it is the team of Susan and Judy that is being honored.