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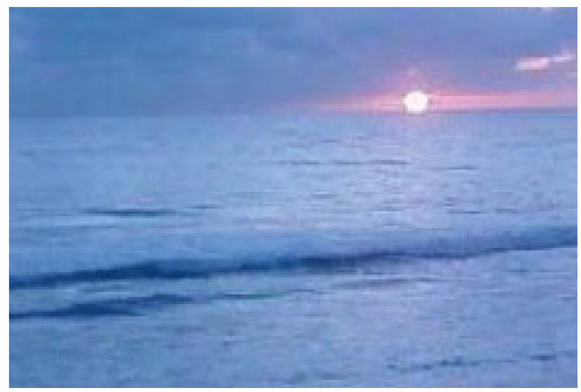

Tax Reminders for Funeral Homes

By T. Scott Gilligan
NFDA General Counsel

BROOKFIELD, WISCONSIN – With the end of another year, it's time for tax preparation and filings. Funeral homes, like most small businesses, face general tax issues such as depreciation, bad debt, health insurance and other employee benefit deductions. However, there are other tax issues funeral homes often encounter that other businesses may not. NFDA highlights three such issues that funeral home owners should keep in mind when compiling tax records for tax preparation purposes.

ADA CREDITS If your funeral home constructed a ramp, made a bathroom more assessable or simply paid interpreters for hearing-impaired family members who attended a funeral, you may be entitled to a tax credit and/or tax deduction. Section 44 of the IRS Code provides a tax credit of 50 percent of eligible ADA expenditures up to $10,250 (there is no tax credit for the first $250 of expenditures). This means that a business that spent up to $10,250 last year to build a ramp or widen bathroom stalls to make them ADA assessable could receive a tax credit of $5,000. Or if a funeral home simply paid $750 for interpreters, it would receive a tax credit of $250. IRS Form 8826 is used to claim the ADA tax credit.

It is important to remember that a tax credit is much more beneficial than a tax deduction. A tax credit is subtracted from your total tax obligation after your taxes are calculated, while a tax deduction is simply subtracted from gross income before taxes. Therefore, if a funeral home is able to take full advantage of the ADA credit, it will recoup a little less than one-half of the cost of the expenditure it made.

The ADA credit is only available to businesses that earn less than $1 million in annual gross income or that have 30 or fewer full-time employees in the year. For the most part, this will only exclude large funeral home operations with 31 or more employees. Please note that even if a funeral home grosses more than $1 million, it's still eligible for the credit as long as it employs fewer than 31 full-time employees.

With regard to renovations and construction, the ADA credit is not available for new construction, even if it is ADA compliant. Rather, it applies only to renovations and additions to existing structures that are being made in order to comply with the ADA.

For funeral homes that are too large to receive the ADA tax credit and for eligible funeral homes that spend more than $10,250 in ADA expenditures, ADA business deductions of up to $15,000 may be taken under Section 190 of the Tax Code. In the case where a funeral home has taken on a sizable ADA renovation, it can take advantage of both the credit and the deduction. For example, if a funeral home has spent $15,000 to place a ramp and widen an entry door, it can take the $5,000 tax credit and a $10,000 tax deduction. The deduction would be equal to the difference between the total ADA expenditures and the amount of the credit claimed. If the ADA expenditures were $25,000, the funeral home could take the $5,000 maximum credit but only $15,000 in deductions because of the ceiling of $15,000 that Section 190 places on ADA expenditures.

CONSTRUCTIVE RECEIPT When a funeral home performs a funded preneed funeral, it can often control the timing of payment. In most cases, the funeral home files the necessary paperwork to obtain preneed trust funds or insurance proceeds as soon as possible to help with cash flow. But at the end of the year, a funeral home may be tempted to hold off filing for a preneed funeral performed in December until after the new year in the hope of pushing the income (and tax liability) into the next year. However, under the doctrine of constructive receipt, the income would be taxable in the year the funeral was performed because the funeral home had full access to the funds even though it elected not to collect them.

A similar circumstance can arise in states with less than 100 percent preneed trusting. Some funeral homes in those states may elect to trust 100 percent of preneed funds even though state law may require only 90 percent or 80 percent trusting. While these funeral homes may be acting prudently to protect themselves against preneed shortfalls in the future, they may also be incurring income tax liability for that percentage of prepaid funds that does not have to be trusted.

For example, if a funeral home in a 90 percent trusting state decides to place all prepaid funds in trust, the IRS will take the position that the funeral home has to pay tax on the 10 percent of preneed funds it was entitled to receive but decided to trust. To avoid taxation in these cases, funeral homes that elect to trust more than what is statutorily required should ensure that the wording of their preneed contracts legally obligates the funeral home to trust 100 percent of the preneed funds paid by the consumer. With that legal obligation imposed by the preneed contract, the funeral home would no longer have constructive receipt of preneed funds.

ISSUING FORM 1099S FOR CASH-ADVANCE PROVIDERS During January of each year, NFDA fields questions from its members regarding cash advances and Form 1099. Typically, the questions arise because the funeral home's accountant instructs the funeral home to issue a Form 1099 to each minister, hairdresser, musician or florist who has received cash-advance payments in an aggregate amount of $600 or more from the funeral home during the tax year. The purpose of Form 1099 is to report to the IRS that payments have been made, who received the payments and how much the payments were. Obviously, the issuance of Form 1099 places an onerous paperwork burden on the funeral home and often triggers the question as to whether funeral homes are legally required to issue Form 1099s to each recipient of cash-advance payments.

The answer in most cases is no. Section 1.6041-1 of the IRS regulations governs the issuance of Form 1099. Subsection (e) addresses the situation in which a business serves as a middleman in the payment process. The regulation requires the business that makes a payment as a middleman to issue a Form 1099 to the payee but only if the business: (1) performs management or oversight functions in connection with the payment and (2) has a significant economic interest in the payment.

Several years ago, the IRS was asked whether a funeral home was responsible for issuing a Form 1099 with regard to cash-advance payees. Relying on Regulation 1.6041-1(e), the IRS issued a private letter ruling (PLR 200106032) that found that generally, funeral homes do not perform management or oversight functions with regard to services performed by cash-advance payees. In that regard, the IRS noted that the funeral home "neither directs nor inspects the quality of the work provided." It also does not select the providers, negotiate the price for services or have the discretion to withhold payment for unsatisfactory performance. As such, the IRS found that the funeral home was not obligated to issue a Form 1099 to third-party providers who receive cash-advance payments from the funeral home.

When issuing private letter rulings, the IRS always notes that the ruling does not serve as precedent in other cases. However, they do provide an indication to taxpayers on how the IRS interprets its own regulations. Since Regulation 1.6041-1(e) has not changed since the private letter ruling on cash advances was issued, it appears that the private letter ruling is still applicable to the question of whether funeral homes have to issue Form 1099 to cash-advance payees. As long as the funeral home is not exercising supervisory control over the third-party service provider, the IRS private letter ruling would indicate that a funeral home does not have to issue a Form 1099 to a cash-advance payee.

MBJ

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Impact of the Election on Financial Markets

By Jason Benowitz
Roosevelt Investment Group

NEW YORK CITY – The election of Republican candidate Donald Trump to the U.S. presidency on November 8 marked a significant shift in the financial markets, with implications across asset classes.

Investors generally expected Democratic candidate Hillary Clinton to win, based on polling, international betting markets and expert consensus. Their baseline assumption on November 7 was a Clinton victory, with Republican control of the House of Representatives and a closely divided Senate leading to additional years of gridlock in Washington. Instead, Republicans will unilaterally control the institutions of federal government, which changes key investor assumptions about the future path of U.S. fiscal and regulatory policy.

We believe investors have zeroed in on three important potential changes in U.S. policy, which we call the "Trump Triad": tax cuts, deregulation and infrastructure stimulus. Within tax policy, Congress and the incoming administration have prioritized a reduction in the corporate tax rate. Deregulation is contemplated across many sectors of the economy, with the most prominent to include banking and fossil fuels, where regulatory burdens have been among the highest in recent years. Infrastructure stimulus is currently proposed via tax incentives to spur private-sector investment, though a compromise in Congress could augment this with direct federal subsidization of projects.

INVESTMENT IMPACT

STOCKS Since the election, stocks have advanced, with the Dow Jones Industrial Average approaching 20,000. Stocks are securities that represent an ownership interest in the issuing company. Accordingly, they are priced based on expectations for the future earnings of those companies.

If enacted, the Trump Triad should support a faster pace of economic growth, which could prompt accelerated earnings growth at the U.S.-listed companies that make up the domestic stock market. Moreover, a corporate tax reduction would feed directly into their after-tax corporate earnings and should boost the overall level of profits. In our view, even some of the milder scenarios put forth by Congressional Republicans could still deliver gains beyond what has been priced in already by the market's post-election advance.

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To be sure, the Trump victory creates risks as well. Investors are closely monitoring U.S. trade relations, including in the NAFTA region and China, which carry some risk of weighing on economic growth. And in some respects, financial conditions have tightened after the election. Most notably, interest rates have increased, which raises the cost of debt financing for businesses and consumers. In addition, the U.S. dollar has strengthened relative to other currencies, which makes U.S. exports more expensive abroad and reduces the value of profits in foreign currencies for U.S. multinational corporations. Finally, Trump has used his podium to introduce the potential for blowback from moving work offshore, where in some cases it may be performed more efficiently. Overall, though, these risk factors do not appear enough to outweigh the potential benefits to corporate earnings from the Trump Triad, and the stock market has responded accordingly.

Investors often hold stocks to enhance their prospects for long-term growth of capital. Measured over long time periods, stocks have consistently outpaced other asset classes, including fixed income, real estate and commodities.

However, stocks are generally more volatile and carry a higher risk of loss in shorter holding periods than these other asset classes. In addition, the market has advanced for nearly eight years, and valuations are higher than historical averages. Nevertheless, we expect stocks to again perform well in 2017. In our view, the potential benefits of the Trump Triad are not yet fully priced in, the risk of a recession seems low and the market typically performs well in the early stages of a Federal Reserve rate hike cycle.

BONDS While stocks have advanced since the election, the investment-grade U.S. fixed-income market has declined. This is true for bonds issued by federal, state and local governments, as well as large corporations. Fixed-income securities (also called bonds) are effectively loans to the issuer and are priced based on the issuer's credit and ability to repay the loan principal at maturity, the taxable treatment of the interest payments, the available interest rates on alternative loans and the expected purchasing power of the funds collected.

Fixed-income markets have declined since the election primarily because of changes in the latter two factors. If enacting the Trump Triad drives a faster pace of economic growth, then the overall demand for borrowing tends to increase, driving interest rates higher.

Future purchasing power is mainly determined by inflation, where expectations have increased as accelerating U.S. economic growth combined with the present low level of unemployment could create upward pressure on wages. However, the Reserve has indicated plans to raise its benchmark Federal Funds rate next year, which should keep inflation from spiking. Instead, investors seem to expect inflation to continue its slow, upward climb. This is a key difference from mid-year, when market participants expected low levels of inflation to persist.

Within fixed-income markets, investors may hold Treasuries (bonds issued by the federal government) to earn a low but “safe” yield with presumed certainty of repayment. When interest rates are rising, Treasuries may still make sense as part of a portfolio if the investor holds them to maturity. If the investor sells prior to maturity and interest rates have risen in the interim, this could result in capital losses that offset or even exceed interest earned during the holding period.

Municipals bonds and investment-grade corporate bonds are best considered relative to the Treasury market. Both groups have declined post-election, likely for the same reasons as Treasuries, but not by as much. This may be understood in terms of improving issuer creditworthiness, which is most pronounced in the investment-grade corporate credit market. All else equal, a stronger economy reduces the likelihood of default on these securities and this in turn supports their prices.

Since Treasuries are thought to effectively carry no default risk, as they are backed by the U.S. government, they tend not to garner support from improving credit conditions. Municipal issuers, which include state and local governments as well as public works projects such as waterworks, have default risk that may be thought of as in-between that of the federal government and that of corporations. Therefore, they declined less than Treasuries but more than investment-grade corporates. However, the main influences in the municipals market are generally the same as in the Treasury market, so the post-election returns were largely similar. Like Treasuries, we expect the prices of the investment-grade bonds to decline as interest rates rise. However, prices will decline less if interest rate increases are driven by a strengthening economy, as we expect. Payments at maturity will be unaffected by market fluctuations during the holding period, with the issuer still delivering the full principal amount, assuming the issuer is creditworthy.

Yet as bond prices decline, it also becomes possible to reinvest maturing proceeds at higher interest rates, increasing a bond portfolio’s yield over time.

GOALS-BASED PORTFOLIO

While stock and bond prices may move up or down for a variety of reasons, the primary consideration for most investors is the portfolio’s overall goal. Whether you are looking to achieve income, preservation of capital, growth or a mix of these, your portfolio should be positioned accordingly. For instance, when investing for growth, a greater exposure to stocks may make sense versus a portfolio geared toward generating income, which might primarily comprise fixed-income securities. Other aspects to consider include your level of risk tolerance, investment time horizon and type of account (taxable or not). For example, interest payments on municipal investments are typically exempt from income tax, both on the federal level and in the state in which they are issued, which makes them appropriate for taxable accounts.

There are many factors to balance when constructing an investment portfolio. An advisor can help you navigate the investment landscape and position your portfolio in an allocation structured to meet your goals and needs.

MBJ

Jason Benowitz is a senior portfolio manager for Roosevelt Investment Group, New York City.

NFDA Slates Cremation Retreat

BROOKFIELD, WISCONSIN – The National Funeral Directors Association will host its second annual Cremation Retreat March 15-16 at Emory Conference Center Hotel in Atlanta.

The program offers funeral professionals from small- to mid-size firms an opportunity to explore and reflect on cremation from a variety of perspectives, discern what cremation means to the future of their business and explore proven strategies to increase the value – and profit – of their business.

Business retreats like NFDA's event have become increasingly popular because they enable professionals to get away from the office and into a stress-free environment where they can immerse themselves in holistic discussions on critical business issues.

NFDA's lineup of presenters includes Robert Biggins, owner of Magoun-Biggins Funeral Home in Rockland, Massachusetts; T. Scott Gilligan, NFDA legal counsel; Mark Musgrove, co-owner of Musgrove Mortuaries & Cemeteries in Eugene, Oregon; Mike Nicodemus, NFDA vice president of cremation services; Lacy Robinson, NFDA director of member development; and Kurt Soffe, co-owner of Jenkins-Soffe Funeral Homes and Cremation Center in South Jordan, Utah.

The speakers will share insights on a variety of topics, including "Seizing the Cremation Opportunity"; "Competing With Low-cost Providers and Cremation Societies"; "Business Strategies and Financial Tools for Making Cremation Profitable"; "Cremation Ethics and Liability Issues"; "Your Guide to Cremation Arranging"; "Training Staff to Serve Families That Choose Cremation"; and "Marketing the Value of the Funeral in a High-cremation Market."

The Cremation Retreat will also feature collaborative roundtable discussions with peers and a panel discussion during which attendees can ask presenters their most pressing questions.

In addition, NFDA will host its Cremation Certification Program at Emory Conference Center on March 17. Created by funeral directors for funeral directors, this certification is recommended for anyone who offers cremation to the families they serve – even if they do not own a crematory.

For more information about this program, visit *nfda.org/cremationcertification*.

MBJ

Indiana Bill Would Tighten Crematory Oversight

INDIANAPOLIS – A bill calling for stricter oversight of crematories has been introduced in the Indiana State House. House Bill 1041, authored by Rep. Jeffrey Thompson, would require that a crematory that is registered after July 1, 2017, be supervised by a funeral director.

The funeral director would be responsible for the operation of the crematory concerning the laws and rules governing funeral service, cremation and the disposition of human remains. Of note, the bill would also require that, as of July 2018, a person who operates a cremation chamber receive training and be certified as a crematory operator.

The bill, which was referred to the Public Health Committee for review, would also allow alkaline hydrolysis as a means for dissolution of human remains.

Last year, a bill allowing alkaline hydrolysis in Indiana passed a House committee but failed to advance.

MBJ

From the Editor's Desk...

Holding Sway

Did you see the container used for Carrie Fisher's cremated remains at the double funeral with her mother, Debbie Reynolds? The actress' remains were held in a container that looked like a giant Prozak pill. Fisher's battles with mental illness were well known, but the choice of this particular container could not have been a more personal choice, reflective of who she was.

Speaking of celebrity deaths, this week I read a news article that noted the one-year anniversary of David Bowie's death. If you recall, Bowie did not want a funeral, so instead his remains were cremated in a style that has become known as direct cremation. I wondered at the time if such a decision might hold sway over the public and make the direct-cremation model even more popular with consumers.

If you were to listen to a company called Pure Cremation, a direct-cremation firm that covers England and Wales, the answer would be an unequivocal yes.

According to Catherine Powell, Pure Cremation's customer experience director, in the past year alone, the number of direct cremations managed by the company has increased by more than 200 percent, and the company expects this to rise by another 300 percent in 2017.

States the article: "Pure Cremation believes that the growth in demand for direct cremation is based on the belief that there must be a better alternative to the rigid funeral formula, even if families don't always know what that alternative is." Interestingly, the company says cost, too, can be an influencing factor but in most cases is not the main consideration.

Added Powell: "What a direct cremation provides is a new degree of freedom on a number of levels. It provides time to enable loved ones to plan a celebration of life when it suits them, as well as the option to invest the money they would spend on a funeral in a different way to honor the memory of the deceased."

Research in the United States still reflects consumers' overwhelming desire for memorialization and recognition of their loved one's life. If all things are equal, then yes, price can be the deciding factor. The emphasis must be on the differences. If a direct-cremation company has a "customer experience director" on staff, who is telling *your* story to the public?

Ed.

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