

Forget that Prince had no Will, What About the Estate Tax Problems?

There has been a fair amount of buzz in the days after Prince's death about his estate plan, whether he has a Will, whether he did or did not do any planning. Time will see this out. Prince's heirs at law appear at this time to include his sister, Tyka Nelson, who filed a petition in the Carver County Probate Court indicating that she does not know of the existence of a Will and has no reason to believe that Prince executed any testamentary instruments. If this is in fact the case, then Prince's assets will pass pursuant to the laws of Minnesota, we would suspect at least in part to his sister. Of course, this filing alone is not enough to determine that Prince had no Will. Most states set a period of time during which a person in possession of someone's Will must submit it to the Probate Court. Prince had an army of advisors, and it would be surprising if he did not have a Will or some other testamentary plan, though it would not be the first time someone of Prince's wealth had insufficient planning. So time will tell and we will watch this play out in the Courts and on entertainment television.

However, whether Prince had a Will, or other testamentary instruments, is not the biggest problem his Estate is going to face, not by a long shot. Instead, his Estate is going to face a problem caused by his sheer success, one that would have been much more complex and harder to plan around than executing a Will.

The stories of Prince's drive and determination are legendary. He wrote and recorded music at a pace that was unparalleled by any other modern musician. We have all heard of his tireless recording sessions, and the "Vault" that contains thousands of unreleased songs. Each of these songs is an asset of his estate, to be added to the royalty rights of his released art, the money in his investments, and his real estate, including Paisley Park. If the success of his released material is any indication, the value of the songs in this Vault could be astronomical.

So the question remains, how will these songs be valued? The IRS will require the estate to report the property at the price a willing buyer would pay a willing seller for the property. There is an inexact science to valuing intellectual property – songs, art, stories, movies – which takes into consideration the popularity of the artist, the anticipated popularity of the song, and the anticipated revenues it could bring. Where would a valuation expert start, with a vault of reportedly thousands of songs written and recorded by arguably the most prolific and successful artist in modern music?

However arrived at, that valuation is expected to be massive. This valuation leads to the next problem. How will Prince's Estate pay the estate tax resulting from his ownership of these songs? The federal estate tax laws allow a credit against estate taxes which will essentially remove \$5,450,000 of value from his Estate (assuming Prince did not use this up during his life through lifetime gifts, which he may well have). After that credit, his Estate will pay federal estate tax of 40% of the value of all assets, including the value of the songs in the Vault. Will there be enough liquid assets to write this check to the IRS? If the total value of his illiquid assets – the material in the Vault, Paisley Park and other real estate holdings, his unique and vast collection of art and instruments, and his royalty rights for his released movies and songs – is valued at more than 50% of his Estate, the executors may well have a problem finding funds to pay the estate tax which these assets trigger. They will have to liquidate, or try to liquidate these assets to pay the tax. Imagine the process by which Paisley Park, Prince's memorabilia, or unreleased songs would be sold.

So while dying without a Will is generally frowned upon, and will very likely cause conflict as people try to wrestle control of Prince's Estate, it is the valuation and estate taxes that have the potential to cause serious financial damage.

Feel free to contact us if you would like to discuss tax planning, intellectual property, or generally how great Prince was as an artist.

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