The Party's Over

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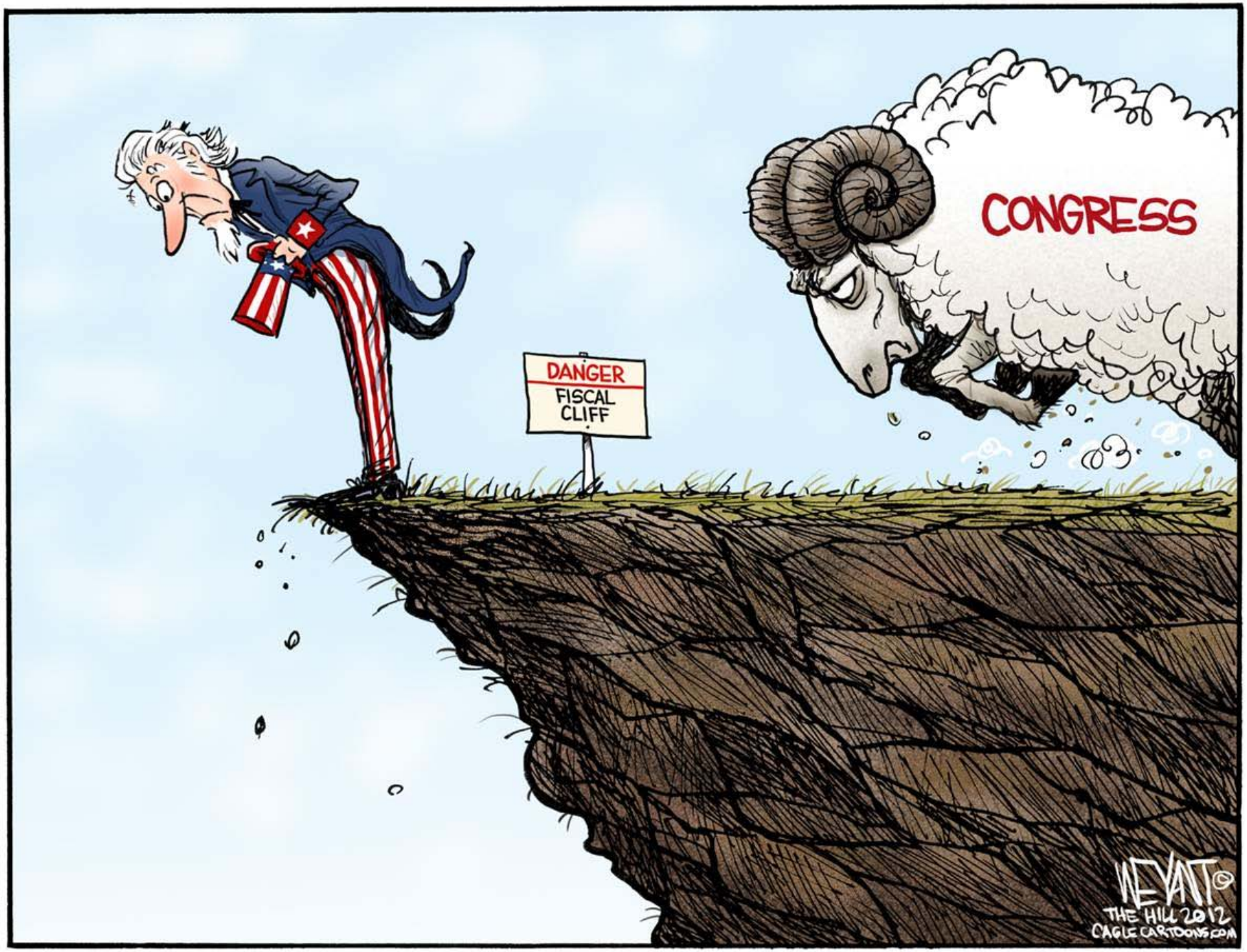
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January 1, 2013 Doomsday

- Currently, you can leave $5,120,000 tax-free at your death.
- January 1, 2013, you will only be able to leave $1,000,000 at your death tax-free. The IRS counts ALL assets, including:
  - Death benefit of life insurance
  - Retirement accounts
  - Land values, LLC interests, and royalties
- Tax rate will be 55%, and tax is due 9 months from date of death in form of a check
- 63 days left to plan ahead!

Overview of Estate Planning

- Execute basic legal documents
  - Wills
  - Revocable Living Trust (and pour-over will)
  - Coordinate Beneficiary Designations
- Plan for Incapacity
  - Statutory Durable Power of Attorney
  - Medical Power of Attorney
  - Living Will
- Tax Minimization
  - Lifetime gifting
  - Leverage estate tax exemptions

How Assets Are Transferred at Death

- <u>Probate</u>
  - "Probate Property" – assets in individual name that do not pass by operation of law or by contract
  - Court Process gives will legal effect
  - Appointment of Executor
- <u>Non-Probate</u>
  - Property that does not pass by will, but rather by operation of law or by contract
  - Life insurance, employee sponsored retirements plans, IRAs, and property owned "with rights of survivorship"

Four Basic Rules

- There will be no federal estate tax imposed on estates under the tax free amount ($1,000,000) in value.
- You can eliminate estate tax at the death of the first spouse if you leave your property to your surviving spouse (outright or in trust)
- You can save up to $550,000 in federal estate tax on estate of $2,000,000 and above by having a will with a “Bypass Trust.”
- The next step in estate planning and avoidance of estate tax involves gifts

Death of First Spouse

- There will be no estate tax at the time of the first death if the estate is left to the surviving spouse. This is the "Marital Deduction."
- You can leave the property outright or in trust. If you leave the property in trust, the surviving spouse must receive all the income for life.
- You also can transfer any amount of property to your spouse during your lifetime as a gift and pay no gift tax.
- Special planning considerations apply if property passes to a spouse who is NOT a U.S. Citizen.

Simple Will ($2M Estate)

- Husband dies and leaves all assets ($1M) to his wife. There is no tax because anything he leaves to a spouse is tax-free through the marital deduction. Wife leaves her estate ($2M) to children.

- Kids pay $550,000 in estate tax due nine months from date of death in cash (liquidity will be an issue)

Saving the $550,000 is Simple

- Husband can leave his estate ($1M) ***in trust*** for his wife during her lifetime.
- The $1M left to the trust passes as the Tax-Free Amount and is ***not taxed*** at the surviving spouse's death.
- The trust is called a Family Trust, Bypass Trust, or Credit Shelter Trust

Leaving Property in Trust for Children

- A trust protects property until the child is mature enough to handle his or her own financial affairs.
- A trust provides protection from a child's creditors, including an ex-spouse in the event of a divorce.
- The child, at an age determined by you, can be his own trustee (or co-trustee).
- A portion of the assets ("Generation-Skipping Amount) left by each parent (currently $1M per parent) in a lifetime trust (plus appreciation) will avoid estate tax at the death of the child.

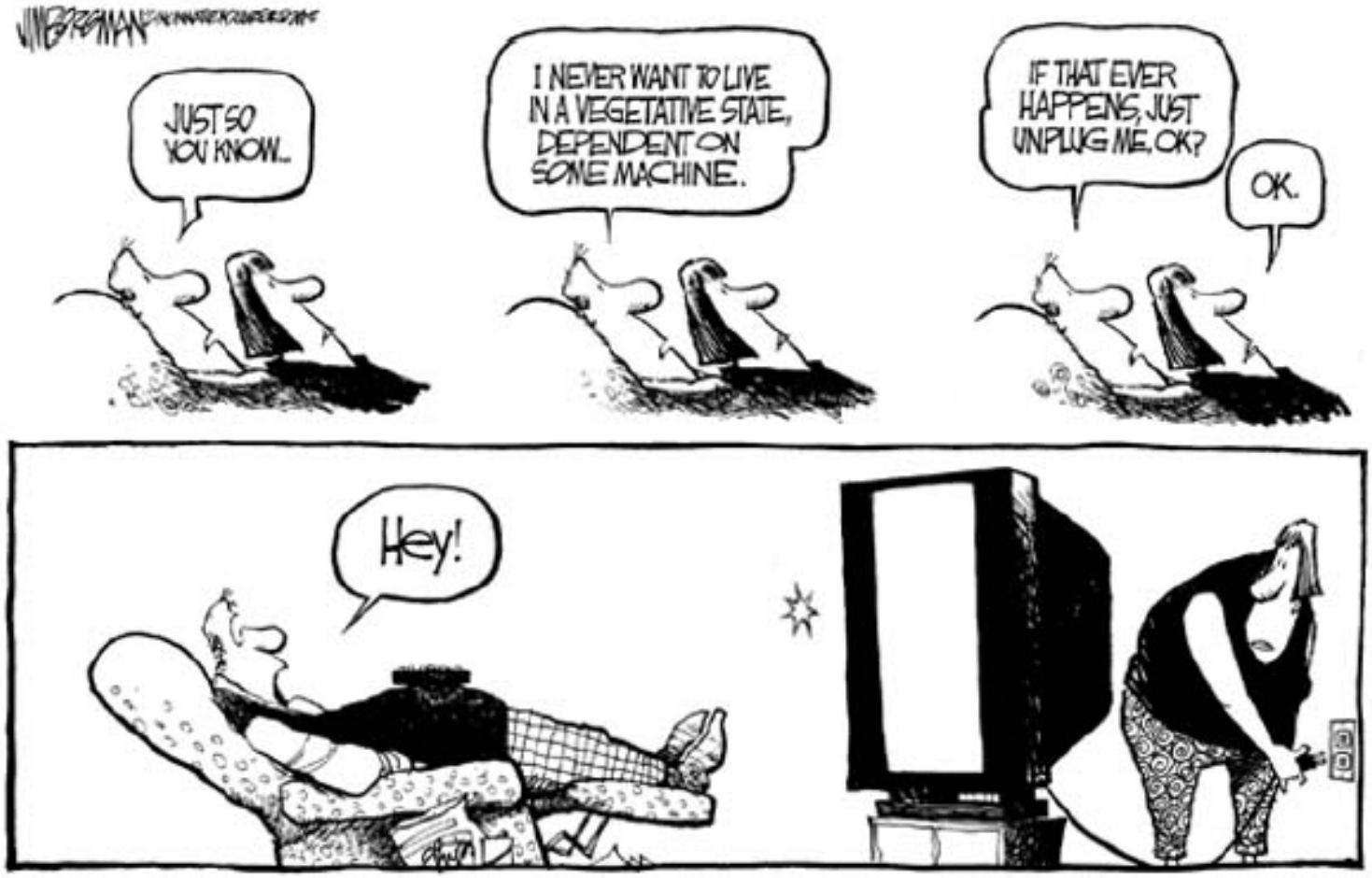
Importance of Asset Titling and Beneficiary Designations

- Guarantees that your assets (IRA, 401K, life insurance) are distributed in accordance with your wishes
- Maximizes use of estate tax exemptions by making trust the beneficiary
- Coordinates and integrates estate plan with financial affairs

You Get What You Pay For: Internet Wills vs Attorney Drafted Estate Plans

- Internet wills *may* be valid in all 50 states… however, they are not Texas-specific which could cost you and your family more money, that is if it is, in fact, a valid will!
- A website cannot advise you properly… *you* have to make your own choices without knowing the various consequences of each choice
- Special considerations not taken into account by internet wills: children owning property, children of a prior marriage or step-children, the remarriage of your spouse (will new wife and her kids get your money?), and anything out of the ordinary

Lifetime Planning Issues



Lifetime Estate Planning

- Marital Property Agreements
- Durable Power of Attorney for Financial Purposes
- Medical Power of Attorney
- Directive to Physicians (“Living Will”)
- Designation of Guardian
- Anatomical Gift Statement
- Appointment of Agent to Control Disposition of Remains

Financial Durable Power of Attorney

- You may name an agent to make non-medical decisions for you. The agent will have authority to pay your bills, sell your assets, etc., if you **ever** become incompetent to do this yourself.
- The term "durable" means that the agent's authority to act under the power of attorney will not terminate upon your incapacity.
- Naming an agent can save a great deal in court costs and legal fees, but you should only name someone you trust completely. Two people can act together at the same time. (Usually, your spouse is named as the primary agent.)
- Also, you can make the agent's authority effective immediately, or only upon your disability.

Medical Power of Attorney

- You may name someone as your agent for the purpose of making medical or other health care decisions for you, if you become incapable of making these decisions your self.

Living Will

- You make your wishes known while your capable of making them known that you do not want your life prolonged by artificial means.

Declaration of Guardian for Children

- If you have minor children, you *must* have a legal document that appoints a guardian of your children or the court will appoint one for you.
- Without a proper legal document, your children will have a court appointed attorney appear on their behalf in court every year until they are 18 (attorneys fees paid by your estate)
- A short legal document will save money and many headaches for your children
- Asking someone to be “god parents” does not count

Beyond Wills: Using Trusts if You Don't Want the IRS to be a Beneficiary of Your Estate

- Your will protects the 1st $1,000,000 from estate tax, but you need to do more planning if your estate totals over $1 million (or $2 million for a married couple)
- Good news: you can protect more of your estate from tax by giving property to a trust during your lifetime
- You don't have to give cash – you can give a % of an account, shares of an LLC or company, or an undivided interest in land or minerals
- You retain control of the trust assets, which means you can sell the trust property and buy new property within the trust
- All property in the trust (including the growth or increase in value of the assets) ***will not*** be included in your estate or in your children's estate

Maximizing Gifts to a Trust

- Discounts: Giving an undivided interest in land, shares of a family partnership, and nonvoting share of stock allow you to give these assets at a discount (give more, pay less)
- Linked Insurance Trust: Gift of income producing property to one trust and using that trust income to pay insurance premiums owned by another trust
- Sales and Loans: Gift of income-producing property to a trust and trust uses that income to buy more of your assets (you get cash; trust gets growth assets)

How to Keep the Family Farm

- Tax-planned will
- Gift of undivided interest in land to a trust during your lifetime
- Using a life insurance trust to pay estate tax. Insurance creates liquidity (cash), so ranch does not have to be sold to pay tax
- Use of complex structures, such as family limited partnerships, in conjunction with gifts of partnership interest to a trust

Type of Estate Taxes

- Estate Tax: Tax of 55% on amounts over $1,000,000 per person due at death of both spouses or at death of single person
- Generation-skipping Tax: Tax on transfer of assets to your grandchildren whether at death or during your lifetime
- Gift Tax: Tax on gifts during your lifetime above $13,000 (up to $1,000,000 tax free in 2013)

2012 vs 2013

- Estate Tax Exemption:
  - 2012: $5,120,000
  - 2013: $1,000,000
- Estate Tax Rate:
  - 2012: 35%
  - 2013: 55%
- Gift Tax Exemption:
  - 2012: $5,000,000
  - 2013: $1,000,000
- Sale of Land:
  - 2012: 15% capital gains tax
  - 2013: 20% capital gains tax + possible 3.8% surtax

Next Steps

- If you have a will, review it. The tax laws have changed since you had your will drawn up, and your family has probably changed too. Your old will from 1979 might not address your current concerns.
- If you don’t have a will, get one (no, you cannot get one off the internet!).
- If all of your assets (including life insurance, land values, etc), exceed $1,000,000 (or $2,000,000 for a married couple), you need to consider additional estate planning strategies, like a gifting trust, insurance trust, or a family partnership.
- The clock is ticking - there are only 63 days until the law changes.

"FINALLY! SOMEBODY IN WASHINGTON WHO GETS IT!"