

# **A Wish List for Whitney Houston's Daughter and the Families of Other Artists**

By James F. McDonough, Jr. on March 23, 2012

The recent attention paid to the probate of the will of the late Whitney Houston is only a very small slice of a very complex estate. The complexity is primarily due to certain assets that are part of the estate and must be valued for estate tax purposes. How does one provide for the payment of death taxes paid if one has not attempted to establish values that will be respected by taxing authorities. Planning, or the lack thereof, may not be an item to grab newspaper headlines but it is more important than an excerpt from a will.

Although parts of Ms. Houston's will were made public, we do not know whether Ms. Houston engaged in any significant business and estate planning prior to her passing. We do not know, because trusts and business entities formed during a person's lifetime are not usually identified in a will.

We suspect that this artist's most valuable assets are the copyrights for her music, her appearances (concerts and film), and her name (likeness) (the "Artist's Rights"). Consider the catalogues of the collected works for the Beatles and the Beach Boys. The market values of these catalogues substantially escalated over time, according to published reports. Moreover, if the experience of the Elvis Presley estate is any indication, the body of work of the late Michael Jackson is of immeasurable value. These examples serve to drive up the value of Artist's Rights. Therefore, it is not unreasonable to believe that Ms. Houston's Artist's Rights will be valued far in excess of the estate tax exclusion, currently \$5,120,000.

How does the estate pay the taxes? There are certain techniques for paying estate tax over a number of years that require planning in order for the estate to qualify under estate tax law. We do not know if Ms. Houston made any transfers into a trust during her lifetime. Such transfers prior to death would avoid the escalation in value that occurs upon the passing of a celebrity.

There are other nuances with copyright law and licensing that require a particular set of business skills to address. It is not uncommon to have a specialist deal with the licensing and a different person act as trustee, in order to provide oversight. More importantly, the skills of the specialist may not necessarily be the same ones needed by the trustee who is charged with caring for Ms. Houston's daughter. The specialist is charged with maximizing revenue, while the trustee is charged with preserving wealth and looking out for the overall well-being of a young adult. These are different roles and that is why proper planning may assign them to different persons.

It would be worthwhile for an artist to engage in proper planning prior to death given the many variables faced by his or her estate, especially with respect to valuation that appears to escalate substantially at the artist's death. Such planning would establish a value for Artist's Rights, provide liquidity or other lawful means for payment of taxes and plan for sound management of these assets. Advance planning is the only means to protect the surviving family members. May all artists' have the wisdom to do so.