

A Tax Lawyer's Interpretation of Shakespeare

By Ellen P. Aprill*

Editor's Note: Ellen Aprill, the Section's Vice Chair – Communications, authored this issue's column. We invite our readers to contribute songs, poems, puzzles, and other less-serious takes on tax law.

Shakespeare has been quoted and invoked in innumerable contexts, but, inexplicably, the insights his immortal words bring to tax law have been ignored. Below, I begin to fill that gap and invite others to offer their own favorite examples.

Antony and Cleopatra, Act I, Scene i, lines 14-15:

Cleopatra: If it be love indeed, tell me how much.

Antony: There's beggary in the love that can be measured.

Here Shakespeare anticipates the unlimited marital deduction in the gift and estate tax as well as the treatment of transfers between spouses as gifts in the income tax, rules that allow us to avoid measuring.

Hamlet, Act I, Scene iii, line 75:

Neither a borrower nor a lender be.

Accepting this advice at face value would not be good for tax lawyers. Like Hamlet's father in the play, debt haunts the Internal Revenue Code, and we have all sorts of rules for all kinds of interest—business interest, personal interest, investment interest, qualified residence interest and, in various contexts, different treatment of recourse debt, nonrecourse debt, passive investment, and at-risk investment. However, we need not assume Shakespeare was anti-tax lawyer. We must remember that this line is uttered by Polonius, and his advice is not necessarily to be respected as good and valid. Or perhaps he was just trying to avoid section 7872!

Julius Caesar, Act I, Scene ii, line 15:

Beware the Ides of March.

Somehow, Shakespeare foresees that from 1918 until 1955, individual income tax returns were due on March 15. Motivation for the choice, however, contrasts sharply to that of Caesar's assassination in the play. The income tax was paid only by the very wealthy and they spent their summers vacationing. A former IRS Commissioner is supposed to have said, "The collection of taxes would be much easier if it was made before they left town." Thus, this connection confirms the old saying that nothing is certain except death and taxes.

King Lear, Act I, Scene i, line 92:

Nothing will come of nothing.

Lear's statement at the beginning of the play proves utterly wrong. When his daughter, Cordelia, unable to match the fawning praise her sisters bestow on their father, remains silent, he disinherits her. From that *nothing*, the tragic something of the play follows. In tax, too, we have the irony of something that comes of nothing. In the case of the tax-nothing single member LLCs, we get the happy *something* of limited liability and other corporate benefits.

Romeo and Juliet, Act II, Scene ii, lines 43-44:

What's in a name? that which we call a rose/By any other name would smell as sweet.

Here we have a Shakespearean rendering of the substance over form doctrine.

Richard III, Act V, Scene iv, line 7:

A horse, a horse, my kingdom for a horse.

This may present an example of a bargain sale, although its utterance under the duress of a battle setting may suggest the absence of a free market or, at the very least, a compulsion to sell.

Othello, Act I, Scene iii, line 377:

There are many events in the womb of time which will be delivered.

In one line Shakespeare predicts time value of money, constructive receipt, and the economic benefit doctrine.

Much Ado about Nothing, Act I, Scene i, line 8:

A victory is twice itself when the achiever brings home full numbers.

This image portrays a tax shelter that succeeds (or perhaps the economic substance doctrine).

A Midsummer Night's Dream, Act III, Scene ii, line 115:

Lord, what fools these mortals be.

Puck here expresses what Shakespeare's reaction to the current state of our tax code might be. ■

* John E. Anderson Professor of Tax Law, Loyola Law School, Los Angeles, CA.