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**From:** Halperin, Alan S <[REDACTED]>  
**Sent:** Wednesday, July 2, 2014 10:52 AM  
**To:** jeffrey E.  
**Subject:** Post-Death Actions of Foundation Affecting Estate Tax Value

I thought of you when I read this article. Was this =our idea? Alan

Wall Street <<http://www.bloombergview.com/topics/wall-street>>

Texas Billionaire's Heirs Save Some Money on Taxes

10Jun 27, 2014 1:26 PM EDT=o:p>

By Matt Levine <<http://www.bloombergview.com/contributors/matt-levine>>

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Every so often I hear a story that I find rather wonderful,=and that I then pass along to you, just in case you and I share a similar sense of wonder. Here is one of those stories. It's about =eath and taxes.

The story begins on Dec. 28 of last year, when a Dallas bil=ionaire named Harold Simmons died at the age of 82. He left the bulk of his \$8 billion fortune to two of his daughters. Much of that <=a href="http://www.bloomberg.com/news/2014-02-06/hidden-billionaire-daugh=ers-emerge-from-simmons-estate.html"> fortune was in

The biggest chunk of the estate was Contran's 93.8 percent stake in Va=hi <<http://www.sec.gov/Archives/edgar/data/24240/000005925514000010/ch13dvhi020514.htm>> , which was 318,156,746 shares.1 Valhi's stock closed on Dec. 27, 2013, at \$14.91 per share <<https://www.google.com/f=inance/historical?cid=37782&startdate=Jun+28%2C+2013&en=date=Jan+2%2C+2014&num=30&ei=IXStU6jAAqjZ6QHc-IDgDA>> , making that stake worth about \$4.7 billion as of Simmons's death. A=other 2,481,900 Valhi shares (0.7 percent, \$37 million) were held by the H=rold Simmons Foundation, a charity controlled by Simmons's daughters.2 Other family members owned about 2.8 million sh=res (\$41 million). Public shareholders owned about 15.7 million shares (\$234 m=llion).3=o:p>

Here are two facts about the federal estate tax:=-/span>

\* &nb=p; The estate tax rate for 2013 and 2014 is 40 percent <<http://wills.about.com/od/understandingestatetaxes/a/estatetaxch=rt.htm>> of the value of the=estate.4 \* &nb=p; The executor can choose to determine the value <<http://www.legalmatch.com/library/article/alternative-valuat=on-method-for-gross-estate.html>> =f the estate either on the date of death, or on the "alternate valuation dat=," which is the date six months after the date of death.<=span style="font-size:9.0pt;font-family:SupriaSans-Light;color:#00B9E7">5=/span>

For Harold Simmons's estate, that alternate valuation date is tomorrow -- six months from his death. Today is the last trading day before that valuation. How's Valhi done in the last six months?

Source: Bloomberg

Oh.6 The stock closed yesterday at \$6.01, reducing the value of the estate's holdings by \$2.8 billion -- and its estate-tax liability by \$1.1 billion -- since Simmons's death.

Is that good news or bad news for the estate? Well, the first law of tax is that it is always better to have more money than less money.<sup>7</sup> It's not actually a good idea to lose \$2.8 billion of money to save \$1.1 billion in taxes.

Though the estate didn't exactly lose \$2.8 billion of money. That tax liability is a cash expense: You've actually got to write a check to the IRS for \$1.9 billion (using the December valuation) or \$765 million (using yesterday's valuation), so the \$1.1 billion you save is an actual cash savings. The \$2.8 billion loss, on the other hand, is a paper loss. Perhaps it's just temporary. If there were some reason to think that it didn't reflect only a decline in the fundamental value of Valhi, you might not worry as much about that paper loss as you would about the cash taxes.

So what's happened to Valhi? Well, it's not having a great year<=span>

<<http://www.sec.gov/Archives/edgar/data/59255/000005925514000059/xh991.htm>> , with zero-ish net income last quarter. The board reduced the dividend

<<http://www.sec.gov/Archives/edgar/data/59255/000005925514000059/xh992.htm>> by 60 percent, to its lowest level since 2005. And the few people who follow the stock are unimpressed. Bloomberg shows two analysts following=Valhi, Barclays and EVA Dimensions. They both have sell ratings, and Barclays has a price target of \$5.00, saying in May that "from a SOTP analysis, we continue to view VHI as trading above its intrinsic value." A Seeking Alpha piece <<http://seekingalpha.com/article/2259473-valhi-seems-like-a-tough-way-to-seek-value>> from a few weeks ago is similarly gloomy, with a \$6 per share fair value.

All of this suggests that Simmons's estate owes less tax because it's really worth less than it was six months ago. In fact, if you taxed Simmons's heirs now based on the value of Valhi six months ago, they'd have almost nothing left of their stock.<=p>

But there's one more bit of the story. On June 11, about two weeks ago, the Harold Simmons Foundation -- the charitable foundation controlled by Simmons's heirs -- filed with the SEC

<<http://www.sec.gov/Archives/edgar/data/59255/000005925514000079/form144hsfoundation.htm>> a plan to sell all of its 2.5 million shares. That's not a lot of stock, exactly -- just 0.7 percent of the company, worth around \$16 million at the time of the filing -- but it is a lot relative to the usual volume of trading in Valhi. Remember, 93.8 percent of Valhi is owned=by Simmons's heirs and never trades. Between December 27, 2013, and June 10, 2014, Valhi traded an average of 4,311 shares a day, so the foundation's shares represented almost 59 days' volume.

It sold them <<http://www.sec.gov/Archives/edgar/data/59255/000005925514000102/form144vhc.htm>> in =1 days:

Source: Foundation filings, Bloomberg

The foundation's sales over the last two weeks or so accounted for over half of the volume, on average, each day. And the foundation's average sale on each of those days was more than five times the average volume over the previous six months. From Jan. 1 to June 10 of this year, more than five months, Valhi traded a total of 4.6 million shares. From June 11 to June 25, just over two weeks, it traded a total of 4.8 million shares -- more than half of them sold by the Harold Simmons Foundation.

You might expect that to drive down the stock a bit? Actually the stock performed surprisingly well, all things considered; it closed on <[https://www.google.com/finance/historical?q=NYSE%3AVHI&ei=3D\\_YmtU-](https://www.google.com/finance/historical?q=NYSE%3AVHI&ei=3D_YmtU-)>

CPGtCy8gbMzIDYBQ> June 10 at \$6.42 and on June 25 at \$5.81, down just 9.5 percent. But just that change, from \$6.42 per share to \$5.81, would save Simmons's heirs almost \$80 million in estate taxes.<sup>9</sup>

The foundation sold the last of its shares on June 25 (this=Wednesday). Without any more shares to sell, the foundation -- oh, wait, no, never mind, the foundation found some more shares to sell= On Wednesday, the day that it finished selling its 2.5 million shares, it received a "Gift from Affiliate"

<<http://www.sec.gov/Archives/edgar/data/59255/000005925514000102/orm144vhc.htm>> of another 900,000 shares. Those shares were =ifted to the foundation by the Valhi Holding Company, the vehicle through =hich Simmons's heirs own their 318.2 million shares.<sup>10</sup>

The Foundation immediately filed a plan

<<http://www.sec.gov/Archives/edgar/data/59255/000005925514000102/orm144vhc.htm>> to sell those shares too, with an "approximate date of sale" of June 26 (yesterday).<sup>11</sup> As of 1 p.m. today, I see Valhi trading in the \$5.80s.</=>

Isn't that neat? Honestly, I have no idea what's going on here.<sup>12</sup> But if you did want to minimize your estate taxes on a multi-billion-dollar controlled public corporation with an illiquid stock, a good way to do it would be to have a foundation that you control dump a ton of stock =n the market in the couple of weeks leading up to the day your estate is valued for tax purposes -- and, when =he foundation ran out of shares, give it a few more so it could keep selling. If the goal of this trading isn't to minimize taxes, I'll be very disappointed. Because it's working pretty well to do just that.

1 That's based on a Schedule 13D/A

<<http://www.sec.gov/Archives/edgar/data/24240/000005925514000010/ch13dvh020514.htm>>

5 This election =nly works if the estate has kept the property for the six months. Here's an Internal Revenue Service=bulletin <[http://www.irs.gov/irb/2011-51\\_IRB/ar11.html](http://www.irs.gov/irb/2011-51_IRB/ar11.html)> on the topic.

6 Here it is in =percentage terms versus the S&P 500:

<=span style="font-size:10.0pt;font-family:"inherit","serif&=uot;;color:black">Source: Bloomberg

<=span style="font-size:10.0pt;font-family:"inherit","serif&=uot;;color:black">And perhaps most interesting, here's the last year, with Simmons's death in the middle:

<=span style="font-size:10.0pt;font-family:"inherit","serif&=uot;;color:black">Source: Bloomberg

<=span style="font-size:10.0pt;font-family:"inherit","serif&=uot;;color:black">To be fair, Simmons was the chairman of the board <<http://www.sec.gov/Archives/edgar/data/59255/000005925513000066/hidef14a041013.htm>> in 2013, though the company was managed by a chief executive officer, Steven L. Watson, who remains in charge=>. <[http://www.sec.gov/Archives/edgar/data/59255/000156459014002020/hi-10q\\_20140331.htm](http://www.sec.gov/Archives/edgar/data/59255/000156459014002020/hi-10q_20140331.htm)>

7 I've cited my tax professor's two fundamental laws of tax before <<http://www.bloombergview.com/article/s/2014-04-30/levine-on-wall-street-it-used-to-be-about-the-banking>> : that it is always better to have more money than less money, and that it is always better to die later than to die sooner. The second rule is always relevant in estate-tax situations too.

8 I'm using yesterday for convenience but in fact you'd have to use today's valuation. And the stock is down again today!

9 That is, 318.2=million shares times \$0.61 per share times 40 percent is \$77.6 million.=/span>

10 Now 317.3 million, I guess.

11 You shouldn't=take that date too seriously; the foundation's June 11 filing  
<<http://www.sec.gov/Archives/edgar/data/59255/000005925514000079/form144hsfoundation.htm>>

12 Do I even nee= to tell you that Simmons was a libertarian anti-tax adv=cate  
<[http://en.wikipedia.org/wiki/Harold\\_Simmons](http://en.wikipedia.org/wiki/Harold_Simmons)> , had various run-ins with the IRS  
<<http://www.dmagazine.com/publications/d-magazine/2010/february/harold-simmons-is-dallas-most-evil-genius?single=1>> , and called President Barack =bama  
<<http://www.forbes.com/sites/christopherhelman/2013/12/30/texas-billionaire-harold-simmons-dies-called-obama-most-dangerous-man-in-america/>> "the most dangerous man in America"? Or that  
<<http://www.dmagazine.com/publications/d-magazine/2010/february/harold-simmons-is-dallas-most-evil-genius?single=1>> "In=2009, a Dallas County jury found NL Industries" -- one of the compani=s in Simmons's estate -- "liable for not honoring contractual agreeeme=ts and manipulating stock values"?

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