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Linda Suzzanne Griffin, P.A.

LINDA SUZZANNE GRIFFIN, P.A.
LeGacy Planning... For Every Family... For Everyone

Dear Friends of the Firm:

This is my firm's annual memorandum updating your knowledge on various legal issues. I want to thank you for your referrals and continuing business.

This has been a busy year. I am currently co-Chair of the Florida Bar Real Property Probate and Trust Law ("RPPTL") IRA, Insurance & Employee Benefits Committee. I continue to be Chair of the Ruth Eckerd Foundation Charitable Planned Giving Committee, a member of the Executive Council for the Florida Bar RPPTL Section, and a member of the Florida Bar Tax Certification Committee. I also continue to volunteer at the Clearwater Marine Aquarium ("CMA"), the home of Winter, the star of *Dolphin Tale,* released in theaters September 23, 2011.

I had the wonderful opportunity to be on Channel 13, Channel 8 and in the Tampa Bay Business Journal Blog to discuss my involvement in Dolphin Tale, my volunteer activities at CMA, the new tax laws, and lottery winnings. You can see these clips on my website.

As you know, I concentrate my practice in the areas of estate planning, wills, revocable and irrevocable trusts, estate tax planning, charitable trusts, probate, and trust administration. Even though I generally do not practice in other areas of law, such as probate and trust litigation, personal injury (such as slip and fall, nursing home negligence, wrongful death and medical malpractice), corporations, family law, bankruptcy, elder law, collections, criminal law or real estate, PLEASE CONTACT ME IF YOU NEED A REFERRAL.

Good news! Nicholas Grimaudo has joined the firm as an associate, and Christine, Nancy and Simi continue to serve our clients in their excellent manner. Honeybear, my yellow lab, is still at the office (she will be 13 in January!) and she **loves** your visits. Come by and greet her and, of course, if you are allergic or just do not have preferences for dogs, she stays with Christine during your visit.

I hope you find this newsletter helpful. If you have any questions, then please contact Christine or Nancy for an appointment. Currently, I see clients on Monday, Tuesday and Thursday and Nicholas sees clients Monday through Thursday. The office is open Monday through Thursday 8:30am to 5:00pm and is closed on Fridays. However, if, for any reason, you require a Friday, evening, or weekend appointment, then please let us know. For your convenience my firm accepts VISA and MasterCard. Please also take a look at my website – www.lawyergriffin.com.

I hope you have a wonderful Holiday Season!

Sincerely,

Linda Suzzanne Griffin

Take a look at my website ……
www.lawyergriffin.com

…And look for our upcoming Blog!!

INSIDE THIS ISSUE:

Estate and Gift Tax Highlights

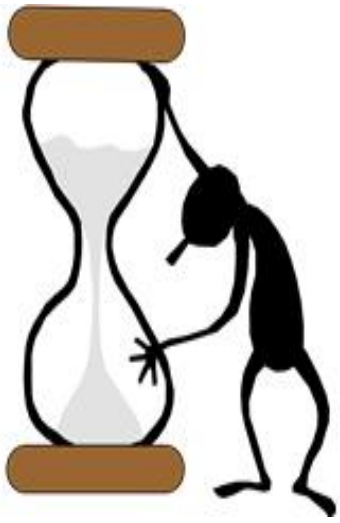
The recently enacted "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010," signed into law by President Barack Obama on December 17th, 2010, (the "Act") was a sweeping tax package that included, among other tax benefits, retroactive estate tax relief for 2010 and estate tax rules for the years 2011 and 2012

The Act increases the applicable exclusion amount to $5,000,000, lowers the estate tax rate to 35%, and makes the estate tax retroactive to January 1, 2010. Representatives of 2010 decedents have an option to either apply (1) the estate tax law (with the $5,000,000 applicable exclusion amount and step up in basis); or (2) no estate tax law with the modified carry over basis rules of §1022 of the Internal Revenue Code (the "Code"). The application of the estate tax law is the *default* and the modified carry over basis rules must be *affirmatively elected.*

For years 2011 and 2012, a significant change from prior law makes the unused portion of a decedent's estate applicable exclusion amount portable to the surviving spouse. The decedent's personal representative can transfer the decedent's unused applicable exclusion amount to the surviving spouse. When there are multiple spouses, only the applicable exclusion amount from the most recently deceased spouse can be used and the amount is not indexed for inflation. A portability election must be made on the decedent's timely-filed estate tax return. See a further discussion below.

The estate and gift taxes are unified under the current law. A gift tax exemption of $5,000,000 and a gift tax rate of 35% apply to all gifts until December 31, 2012. In 2011 and 2012, the Generation Skipping Transfer Tax ("GSTT") (basically, gifts to grandchildren), exemption amount is also $5,000,000, but the GSTT rate is 35%. A surviving spouse cannot use the unused portion of the decedent's GSTT exemption amount.

For decedents dying in 2010 and before December 17, 2010, the due date originally was September 17, 2011 for filing the following: (1) estate tax returns (Form 706); (2) payment of estate tax; and (3) disclaimers. However, IRS recently announced that 2010 estates that timely request an extension to file (Form 4768) their estate tax returns and pay their estate tax will have until March 2012 to do so. The time limit for disclaimers was **not** extended. Thus, most 2010 estates will have until Monday, March 19, 2012 to file Form 706.



ADVICE: The Act provides many new options and potential complications. You should contact our office to carefully examine the various options regarding carry over basis election, applicable exclusion portability, gifting strategies, and the drafting of funding formulas.

Portability of Unused Exclusion between Spouses

Under the Act, any applicable exclusion amount that remains unused as of the death of a spouse who dies after December 31, 2010 (the deceased spouse's unused exclusion amount of "DSUEA"), generally is available for use by the surviving spouse, in addition to such surviving spouse's applicable exclusion amount. Therefore, a surviving spouse can have an estate tax exclusion amount of up to $10 million, consisting of their $5 million estate tax exclusion and their deceased spouse's unused $5 million estate tax exclusion. However, if a surviving spouse is predeceased by more than one spouse, the amount of unused exclusion that is available for use by such surviving spouse is limited to the lesser of $5 million or the unused exclusion of the last such deceased spouse.

Under the Act, a surviving spouse may use their predeceased spousal carryover amount **in addition** to such surviving spouse's own $5 million exclusion for taxable transfers made during life or at death. Thus, the surviving spouse can use the remaining deceased spouse's unused exclusion amount to avoid gift tax on any transfers made during the surviving spouse's life. This provides a significant planning tool for estates that might not have planned well enough before the first spouse's death.

A DSUEA is available to a surviving spouse **only** if an estate tax return (including extensions) of the first deceased spouse is filed, regardless of whether the estate of the first deceased spouse otherwise is required to file an estate tax return. The decision to use any of the DSUEA in the future must be made on this estate tax return even if the estate is under the applicable exclusion amount of $5 million. If a personal representative or their advisor does not file the estate tax return making such election prior to the due date, then the surviving spouse could lose up to $5 million in estate tax and gift tax savings.

The decision to use any of the DSUEA in the future must be made on an estate tax return even if the estate is under the applicable exclusion amount of $5 million.

ADVICE: If a spouse dies during 2011 or 2012, then it is important to keep this DSUEA and the filing date deadline in mind. You must seek the proper advice and planning as to the use of this unused exclusion to be sure no problems arise on the death of the surviving spouse. You will need to file a Form 706 Federal Estate Tax Return to take advantage of the DSUEA. You also want to be sure your documents provide your spouse with the authority and funds to make such an election.

Beneficiary Designations

Beneficiary designations are becoming one of the "hot" topics in estate planning and litigation because of the amount of wealth being transferred. It is very important for you to know and understand whom you have named as your primary and contingent beneficiaries. The beneficiary designations of your retirement plans, IRAs, annuities, and life insurance will determine who receives those assets, **regardless** of what your Will or Trust might say. Clients also need to understand what happens when a **beneficiary** of your retirement plan dies after inheriting the benefits from you.

ADVICE: Please review your current beneficiary designation forms to ensure that these forms reflect your wishes. You should also review your respective contracts with these providers to determine what will happen to the benefits if both your primary and contingent beneficiaries predecease you.

Important 2011 Florida Legislative Probate Changes:

An inherited IRA is exempt from creditors under Florida Law.

Confidential Information:

Effective July 1, 2011, in an effort to keep an individual's confidential information from public record, the Florida Legislature passed changes to Florida Probate Rules 5.200, 5.210 and 5.520. In a Petition for Formal Administration, a Petition for Probate of Will Without Administration and a Petition for Summary Administration, the petitioner is only required to list the last 4 digits of the decedent's social security number.

Intestacy Laws:

When one dies without a will (intestate), the Florida law provides how the decedent's assets are distributed. Under the previous Florida law, if a husband died and was survived by a wife and lineal descendants of both husband and wife, then the wife received $60,000 plus 50% of the remainder and the lineal descendants received the other 50% of the remainder. An amendment to Florida law changes this result by distributing 100% of the husband's assets to the wife if husband was survived by wife and lineal descendants of both husband and wife. However, if husband was survived by a wife and lineal descendants of husband and not wife (blended families) the percentages will differ.

Notice of Attorney-Client Relationship:

Florida Senate Bill No. SB 648 amended Section of 90.5021, Florida Statutes to clarify that the attorney-client relationship exists between an attorney and the fiduciary, i.e. a Personal Representative or Trustee. Confusion existed as to whether the attorney represented the fiduciary or the beneficiaries of the estate or trust. Florida Senate Bill No. SB 648 also amended Sections 733.212 and 736.0813, Florida Statues to require that the fiduciary notify the beneficiaries that the fiduciary attorney-client privilege applies with respect to the personal representative or trustee and any attorney employed by the personal representative or trustee. Effective July 1, 2011, this notice to the beneficiaries must be included in the Notice of Administration for an estate and the Notice of Trust for a trust.

Inherited IRAs:

In *Robertson v. Deeb*, 16 So.3d 936 (Fla. 2d DCA. 2009), and *In re Ard*, 2010 WL 3400368,(Bankr. MD FL August 19, 2010), Florida courts concluded that the interest of a beneficiary or owner of an inherited IRA was **not** an exempt asset protected from creditors under the terms of Florida Statute §222.21. I am happy to say our committee "spearheaded" the Amendment to Florida Statute §222.21(2)(c) to override the incorrect results reached by the courts in *Robertson* and *In re Ard*. The statute is now clear that an inherited IRA is exempt from creditors under Florida law, which was signed by the Governor on May 31, 2011 and was effective upon becoming law.

ADVICE: If you have any questions about these changes, then please contact our office. Current documents reflect the required changes.

New Durable Power of Attorney Statute

The Florida Legislature passed Senate Bill 670 which significantly revises Chapter 709, Florida Statutes for Durable Powers of Attorney (DPOA). The changes took effect on October 1, 2011. A DPOA is a legal document in which the principal appoints an agent to legally act on their behalf.

DPOA's signed after October 1, 2011 can no longer be "springing," meaning the DPOA takes effect immediately once signed and not when the principal becomes incapacitated. The statute requires the principal to initial or sign beside certain powers that are given to their agent, such as the power to make gifts or to create a revocable trust. A third party has the power to request an opinion of counsel that explains the DPOA is legally effective. A **DPOA that was validly executed under Florida law before the effective date will remain valid.**

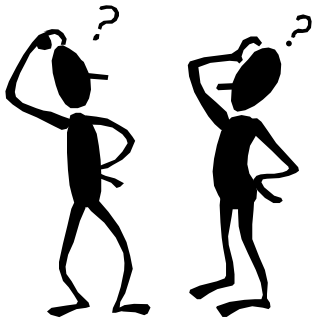
The Florida Legislature passed Senate Bill 670 which significantly revises Chapter 709, Florida Statutes for Durable Powers of Attorney (DPOA).

ADVICE: There are many changes to the DPOA statue and this newsletter is to notify you that you may wish to do new DPOAs as the banks and financial institutions may require the new DPOAs even though the statue specifically validates DPOAs executed before October 1, 2011.

Plain Writing Act

Congress passed the Plain Writing Act (the "Act") (What an oxymoron! Congress and "plain writing" in the same sentence!) to improve the effectiveness and accountability of the IRS and other federal agencies to the public by promoting clear government communication that the public can understand and use. The Act applies to letters, publications, forms, notices and instructions put out by the various federal agencies. The Office of Management and Budget states that when disclosing information to the public, "agencies should communicate in a way that is clear, simple, meaningful and jargon-free." The Act allows these federal agencies one year to comply with the new laws. We have a bright future of easy to read tax laws and regulations. Not so fast my friends!

The Act provides a specific exemption for regulations issued by the Treasury and other government agencies. Furthermore, the Act does not apply to the actual laws written by Congress. Therefore, the Act does **not** require that the Code, or the regulations thereunder, be written in understandable language. Thus, clients will continually need your CPA or legal advisor to help you interpret these laws.



ADVICE: Although this law does not apply to the Code or the Treasury Regulations, its application will still be positive. All revenue procedures, revenue rulings and other forms issued by the IRS will be governed by the new Plain Writing Act. Therefore these documents should be easier for the lay person or non-tax practitioner to decipher.

Federal Court Opens The Door For Joint Filing By Same Sex Married Couples

A federal court in Massachusetts recently held that Section 3 of the Defense of Marriage Act ("DOMA"), which defines marriage as the "legal union between one man and one woman as husband and wife," violates the Equal Protection Clause of the Fifth Amendment of the United States Constitution. *Gill v. Office of Personnel Management*, (DC MA 07/08/2010) 106 AFTR 2d ¶ 2010-5058. The decision opens the door for same-sex spouses to file joint federal income tax returns. The suit was brought, in part, by same-sex married couples in Massachusetts who sought the right to file joint federal income tax returns.

In reaching its decision, the court examined four interests outlined by Congress in DOMA's House Report: (1) encouraging responsible procreation and child-bearing; (2) defending and nurturing the institution of traditional marriage; (3) defending traditional notions of morality; and (4) preserving scarce resources. The court also considered the government's argument that DOMA is a permissible act to preserve the status quo pending the resolution of a contentious social issue. The court held that the interests outlined above were insufficient to establish a rational relationship between the marriage classification and a legitimate government interest. Further, the court held that the federal government has no legitimate interest in having a uniform definition of marriage for determining federal benefits.

The IRS has raised the annual gross receipts threshold at which tax-exempt organizations, other than private foundations, must file a Form 990.

ADVICE: The government is likely to appeal the verdict, and it is unclear how the IRS will treat the jointly filed returns of same-sex married couples relying on the decision.

Form 990-N Electronic Notification e-Postcard

Many of you may want to form a charitable organization. Good news is provided in Revenue Procedure 2011-15, whereby the IRS has raised the annual gross receipts threshold at which tax-exempt organizations, other than private foundations, must file a Form 990, Return of Organization Exempt from Income Tax, from $25,000 to $50,000, for tax years beginning on or after January 1, 2010. Under this new rule, most tax-exempt organizations whose gross annual receipts are normally $50,000 or less can file a simplified Form 990-N Electronic Notification e-Postcard.

A tax-exempt organization that normally has annual gross receipts of not more than $50,000 is not required to file an annual return under Section 6033(a) of the Code. Instead, the tax-exempt organization must electronically file a Form 990-N to acknowledge that the tax-exempt organization's annual gross receipts are not more than $50,000. However, if, at any time, the tax-exempt organization has annual gross receipts of more than $50,000, then that tax-exempt organization is no longer exempt from filing an annual return. Therefore, if a tax-exempt organization fails to meet the requirements of Revenue Procedure 3011-15, then a Form 990 is required to be filed.

ADVICE: If you are connected with a tax-exempt organization that has annual receipts of $50,000 or less, then this procedure should ease the burden of filing a Form 990. Read Revenue Procedure 2011-15 carefully before deciding to file an e-Postcard because certain organizations, such as political organizations, are specifically excluded from this increased threshold.

Tax Court Holds Estate Is Not Entitled To Multiple Fractional Discounts In Same Property

Many of you have transferred assets to use discounts in the valuation of property for estate or gift tax purposes. In the case of *Estate of Alder v. Commissioner*, T.C. Memo 2011-28 (Jan. 31, 2011), the Tax Court held in favor of the IRS that the estate had incorrectly valued the decedent's fractional interest in a ranch in Carmel, California (the "Ranch"). In 1965 he gave an undivided one-fifth interest in the property to each of his five children. In the deed, the decedent reserved the right for full use, control, income and possession of the Ranch during his lifetime. During his lifetime, the decedent continued to live on the property and paid all of the expenses associated with the Ranch.

In 1991, one of the decedent's children deeded their interest back to the decedent and thus the decedent owned a one-fifth interest in the Ranch and four of his children owned the remaining four-fifths at the time of his death. The estate included a one-fifth interest in the Ranch for tax purposes, subject to a 32 percent marketability discount and a 16 percent minority interest discount in the decedent's gross estate. On Schedule G to Form 706, the estate also reported the value of the four-fifths interest; each separate one-fifth interest was subject to a 22 percent marketability discount and a 16 percent minority interest discount.

The Tax Court held that under Section 2036 of the Code (which includes the value of property transferred by a decedent who retains the possession or enjoyment of or the right to income from such property in the decedent's gross estate) the transfer of property subject to a decedent's right to possession or enjoyment actually occurs at death, not during life. Thus the Tax Court held that (1) the decedent retained the entire interest in the Ranch for his life and transferred the four interests to his four children at his death and (2) 100 percent of the value of the Ranch was includable in the decedent's gross estate, with no discounts.

ADVICE: This case illustrates why you should operate an entity properly and not retain complete control. If you retain control over the property until the time of death, then the property will be includable in your estate for tax purposes.

The IRS has finally posted the 2010 Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent (the "Form 8939", for allocating basis.

IRS Has Finally Released Basis Form For 2010

As previously indicated, estates of decedent's dying in 2010 can elect "out of" the estate tax regime, and elect "carryover" basis plus certain basis increases. IRS has finally posted the 2010 Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent (the "Form 8939"), for allocating basis.

The Internal Revenue Service also recently released Notice 2011-66 and Revenue Procedure 2011-41, which sets forth the procedure for electing to not apply the estate tax regime and to apply the carryover basis regime. A Form 8939 must be filed by the personal representative or trustee to take advantage of this basis step-up allocation and is due on January 17, 2012 and is irrevocable once made.

ADVICE: If you are the personal representative of an estate that is electing out of the estate tax for 2010, then you should contact our office or your CPA to file a Form 8939. You should also have records and appraisals showing the values of all assets at the time of the decedent's death.

Linda Suzzanne Griffin, P.A.
1455 Court Street
Clearwater, FL 33756

Phone: (727) 449-9800
Fax: (727) 446-2748
E-mail:
linda@lawyergriffin.com
nick@lawyergriffin.com
christine@lawyergriffin.com
nancy@lawyergriffin.com

Holiday Office Schedule

Closed For Thanksgiving:
Nov. 23rd at 12:00 noon until Nov. 28th
Closed For Christmas:
Dec. 23rd to Jan. 2nd.

MISSION STATEMENT

To honor God by being of maximum service to our fellow man by providing legal services with wisdom, integrity, professionalism and excellence.

THIS NEWSLETTER IS PUBLISHED FOR INFORMATIONAL PURPOSES ONLY AND NO LEGAL ADVICE IS INTENDED. EACH CASE IS DIFFERENT.

We're on the Web!
www.lawyergriffin.com

Items to Consider Prior to 2011 Year End

- In 2011 and 2012 you can make up to $ 5 million in gifts tax free and gift tax rates are now only 35%. **Take advantage and make those gifts!.**
- Review your durable power of attorney. **Consider making a new durable power of attorney in light of the new Florida Statute.**
- Real estate values are low. **Consider combining taxable gifts with a transfer to a GRAT or QPRT.**
- **Consider revising estate planning documents** as the estate tax applicable exclusion amount may be reduced from $5 million in 2011 and 2012 to only $1 million in 2013. Thus, what was once nontaxable may become taxable.
- **Consider Roth conversion.** Income tax rates will probably never be lower.
- **Consider charitable gifts to offset income after making a Roth conversion.**
- **Make your annual gifts ($13,000) prior to year end.** Consider intra-family loans because interest rates are at an all time low!

ADVICE: Promptly contact me should you have any questions regarding these items.

Disclaimer From QPRT Allowed After Bad Legal Advice

A Qualified Personal Residence Trust (QPRT) is a trust whereby an individual (parent) transfers their residence or vacation home to a trust and retains an interest for a certain time period. At the end of the time period, the property is distributed to the remainder beneficiaries (children) and the parent may rent the property. This transfer will reduce the estate tax of the transferor if the parent outlives the time period.

In *Breakiron v. Gudonis*, USDC Ma., No. 1:09-cv-10427, two parents created a QPRT for their home for a term of ten years. Upon the expiration of the term in 2005, the property passed to their son and daughter.

After consulting with a tax attorney in 2005, the son disclaimed his interest in the property so that his sister would inherit everything. The attorney advised the son that if he disclaimed within nine months of the **expiration** of the QPRT term, then no gift tax liability would be incurred. However, the attorney's advice was incorrect. The nine month window for disclaiming began when the QPRT was **created** in 1995, and the IRS assessed a $2.3 million gift tax against the son.

The son brought a case in Massachusetts state court to rescind the disclaimer and eliminate the corresponding gift tax, and the IRS had the case removed to federal district court. His main argument was that he would not have disclaimed the property but for the erroneous legal advice. The IRS argued that the gift tax was due regardless of whether the disclaimer was rescinded.

The court held for the son for three main reasons: (1) the proceeding took place in federal court; (2) the IRS was a party to the proceeding; and (3) the son had documentation to prove the legal mistake was made before the disclaimer was executed.

ADVICE: Hopefully you will never have to rely on this case. If, however, you have failed on a disclaimer, then this is a "must read." This case also points out that attorneys and clients should be sure about the time period for disclaimers on unusual trusts such as QPRTs, GRATs, CRATs, etc.