November, 2013

LINDA SUZZANNE GRIFFIN, P.A.

LeGacy Planning... For Every Family... For Everyone

Volume 4, Issue 4

Dear Friends of the Firm,

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

As always, 2013 has been a busy year. I am currently a member of the executive council of the Florida Bar Real Property and Trust Law section ("RPPTL") and serve as a Vice-Chair of the RPPTL, Florida Bar Journal Editorial Committee and the Certification Seminar Committee. I also serve as Chair of the Florida Bar Tax Certification Committee and continue to volunteer at the Clearwater Marine Aquarium ("CMA"), the home of Winter and Hope the stars of the upcoming Dolphin Tale 2 (the sequel to Dolphin Tale!). I recently became a board member at CMA and am Chairman of the CMA Planned Giving Committee. My book, "The Survivor's Navigator: A practical guide for dealing with the death of a loved one in Florida," is also available for purchase either in my office or Amazon.com.

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 pactice 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.

Please welcome my new associate, Kit Van Pelt. Christine, Nancy, Barbara and Simi continue to serve our clients in their excellent manner.

I will be welcoming a new puppy, Teddi Bear, to the office on December 14. For those of you who remember Honeybear, you can see a tribute to her on my website. My long-haired dachshund, Yogie Bear, currently comes to the office, and she ***loves*** your visits. Come by and greet her, and, of course, if you are allergic or not fond of dogs, she will be happy to stay with Christine during your visit.

I hope you find this newsletter helpful. If you have any questions, then please contact Nancy or Barbara for an appointment. Currently, I see clients on Monday, Tuesday and Thursday and Kit Van Pelt sees clients Monday through Thursday. The office is open Monday through Thursday 8:30 a.m. to 5:00 p.m. 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, MasterCard and Discover. Please also take a look at our web site at **www.lawyergriffin.com**.

I hope you have a wonderful Holiday Season!

Sincerely,

Linda Suzzanne Griffin

Congress Passes Fiscal Cliff Act

As you all know, in 2013, President Barack Obama signed the American Taxpayer Relief Act, H.R. 8 (the "Act") which permanently extends some provisions of the Bush Era Tax cuts and temporarily extends many other tax provisions that had lapsed at midnight on Dec. 31, 2012.

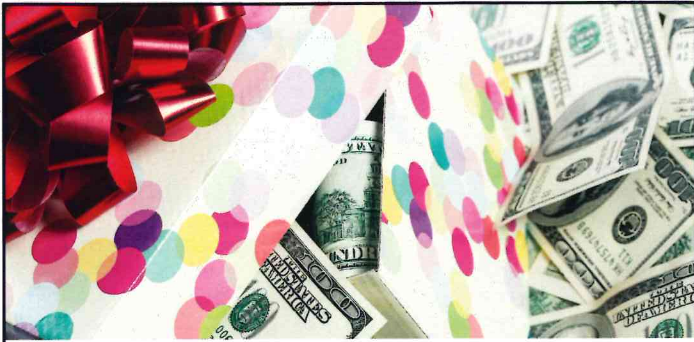
The Act retained the individual marginal tax rates of 2012 (10%, 15%, 25%, 28%, 33%, and 35%) and added a new top rate of 39.6% on taxable income over $400,000 for those individuals filing single, $425,000 for head of-household filers, and $450,000 for married taxpayers filing jointly ($225,000 for each married spouse filing separately). The Act retained the 15% rate on capital gains and dividends for taxpayers in the middle brackets and a zero rate for taxpayers in the 10% and 15% brackets and imposed a 20% tax rate on capital gains and dividends for individuals above the top income tax bracket threshold described above. The Act also extended the unified estate and gift tax exclusion amount of $5 million indexed for inflation ($5.120 million in 2012 and $5.250 million in 2013), with a top tax rate of 40% effective Jan. 1, 2013.

Many of you already know that under the 2010 Tax Act surviving spouses could take advantage of their deceased spouse's unused federal estate tax exemption amount or "DSUEA" and increase their estate tax exemption by such DSUEA. This concept is called portability and the portability election must be made on a complete and properly prepared estate tax return (Form 706), which must be made within nine months of the deceased spouse's death plus any available extension. The Act made this portability election permanent.

The Act is not all good news for taxpayers. Among the tax items not addressed by the Act was the reduction for the employees' portion of the Social Security payroll tax, which was 4.2% and has now reverted to 6.2%. In addition to the various provisions discussed above, some new taxes also took effect Jan. 1, 2013 such as the 3.8% surtax as a result of 2010's health care reform legislation.

> The Act is not all good news for taxpayers.

ADVICE: *NOW is the time to discuss with your tax planning professional ideas and strategies to reduce your 2013 income taxes.*



2014 Gift and Estate Tax Exclusions

The 2013 annual gift tax exclusion amount for a gift to a non-spouse increased for the first time since 2009 ($13,000) to $14,000 per gift, and continues to be $14,000 in 2014. Thus, a taxpayer can give up to $14,000 to an individual in 2013 and 2014 without filing Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

The annual gift tax exclusion amount for gifts made to a spouse who is not a U.S. citizen will increase from $139,000 in 2012 to $143,000 in 2013 and $145,000 in 2014. Thus, a taxpayer can give up to $143,000 to their non-citizen spouse in 2013 without filing a Form 709.

As always, gifts to a spouse who is a U.S. citizen will remain exempt from gift taxes due to the unlimited marital deduction.

The applicable exclusion amount (the estate and gift tax exemption) increases from $5.250 million dollars in 2013 to $5.340 million dollars in 2014.

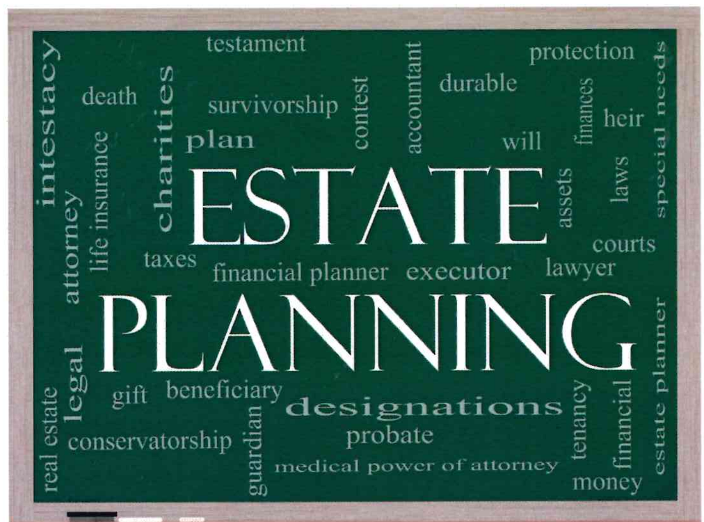
REMEMBER: *If you make a gift in 2013 or 2014 with a value in excess of the annual exclusion, then you must file a Form 709 even though no gift tax will be due if you still possess a sufficient amount of your gift tax exemption ($5.250 million dollars, in 2013 and $5.340 million dollars in 2014).*

ADVICE: *Take advantage of this gifting opportunity BEFORE year end. Gifting is a great way to reduce the size of your estate. However, be careful about gifting low basis assets as those assets generally receive a "step up" in basis upon your death and your loved ones may be able to avoid capital gain treatment if you hold those assets until your death.*

In Light of New Tax Law Review Estate Planning Documents

As the "Act" extended the unified estate, gift and generation-skipping transfer tax exclusion amount of $5 million indexed for inflation ($5.250 million in 2013 and $5.340 million in 2014) you should carefully review your documents. The Act made the portability election permanent, which allows the surviving spouses to take advantage of their deceased spouse's unused federal estate tax exemption or "DSUE" and increase their estate tax exemption by such DSUE. These are two very powerful tools for estate planning and clients' documents should be reviewed in light of these changes.

For example, the increased estate, gift and generation-skipping transfer tax exclusion might make a typical estate tax planning marital and family trust plan unnecessary for most married couples. With a combined estate, gift and generation-skipping transfer tax exclusion of $10.5 million in 2013 and $10.680 million in 2014 per married couple, the married couple's trusts should be reviewed to simplify the administration at the first spouse's death.



ADVICE: *You should discuss your current estate planning documents with our office to determine whether changes should be made.*

U.S. Supreme Court Strikes Down DOMA; Now What?

On June 26, 2013, in United States v. Windsor, 111 AFTR2d 2013-2385 (S. Ct., 2013), the Supreme Court of the US upheld the Court of Appeals for the Second Circuit (the "Appeals Court") decision in Windsor v. US, which upheld a challenge to Section 3 of the Defense of Marriage Act ("DOMA"). DOMA denies recognition of same-sex marriages for purposes of administering federal law.

The Supreme Court found Section 3 of DOMA to be unconstitutional "as a deprivation of the liberty of the person protected by the Fifth Amendment." Justice Kennedy's decision to strike down Section 3 of DOMA cited the principles of state autonomy, equal protection, and liberty. Agreeing with the Appeals Court, the decision states that homosexuals are a quasi-suspect class entitled to heightened scrutiny and DOMA's classification of same-sex spouses was not substantially related to an important government interest.

The scope of the Windsor decision is not yet known and may bring about a lot of litigation. The Tenth Amendment to the United States Constitution solidifies the principle of federalism by providing that powers not granted to the federal government by the Constitution, nor prohibited to the States, are reserved to the States or the people. Thus, each state has the power to outlaw same-sex marriages. For example, how will same-sex couples married in a state that allows a same-sex marriage be treated in a state, such as Florida, which does not recognize such marriage? This will almost certainly result in litigation and it will be interesting to see if state laws regarding same-sex marriages will be respected or not.

The question of federal tax treatment of same-sex married couples is no longer in question. The Treasury Department announced in IR-2013-72 and Revenue Ruling 2013-17, both released on August 29, 2013, that regulations will be issued shortly recognizing same-sex marriages for federal tax purposes. Although this is a big step for same-sex couples, these federal laws will not apply to registered domestic partnerships or civil unions.

Under this new policy, all federal tax provisions dealing with marriage will apply to same-sex married couples regardless of what state they live in. These federal tax provisions include, but are not limited to, filing status, IRA contributions, earned income rules, and income, gift and estate taxes.

Thus, there are plenty of federal tax implications that will keep attorneys and CPAs busy. For example, same-sex married couples should consider filing protective claims for income tax refunds for 2010, 2011 and 2012 if the couple's income taxes would be reduced by filing jointly. Further, the surviving spouse of a same-sex married couple should consider filing an estate tax return for portability if their spouse died in 2011 or 2012.

ADVICE: *In the aftermath of the Supreme Court upholding the Appeals Court decision, same-sex married couples will have all of the federal tax benefits available to heterosexual married couples. Thus, if you are in a same-sex marriage you will be entitled to the portability election, the unlimited estate and gift tax marital deductions, and the many income tax benefits available to married couples and should consult with our office to adjust your plans for these tax benefits.*

Obama Administration Releases Fiscal Year 2014 Revenue Proposals

President Obama's administration released its fiscal year 2014 revenue proposals (the "Proposal"). The Proposal has many provisions that affect both the individual taxpayer and trusts and estates. The following is a brief synopsis of the important provisions.

(1) Individual Retirement Accounts ("IRAs").

(a) Postpone minimum required distributions (MRDs) until retirement, as opposed to the current requirement that all owners take MRDs at age 70 and ½.

(b) Exempt owners of retirement plans from having to take MRDs if the aggregate value of their retirement plans does not exceed $75,000 with a phase in.

(2) Inherited Retirement Plans.

(a) Roll over within 60 days allowed.

(b) Non-spouse beneficiary of retirement plans must take the distributions over no more than five years with certain exceptions.

(3) Limitations of contributions to retirement plans to an aggregate of $205,000 per year for each taxpayer.

(4) Estate, Gift, and GST tax provisions.

(a) An Estate tax exclusion amount of $3.5 million dollars, a gift tax exclusion of $1 million dollars, a GST tax exemption of $3.5 million dollars and the top tax rate would remain at 40%.

(b) Retain portability and ensure no clawback provisions.

(c) The maximum term a GST exempt trust can last will be 90 years.

(d) The exclusion from GST tax will not apply to health and education exclusion trusts.

(e) Terminate the current benefits of a sale of an appreciated asset to an intentionally defective grantor trust.

ADVICE: *While these provisions are merely proposals it is interesting to see the way the President is looking at tax planning techniques. It may be advisable for you to discuss alternatives in your documents including the potential changes in tax laws.*

Potential Liability for a Fiduciary to File Amended Tax Returns

No authority exists in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations thereunder or case law that imposes a duty on a taxpayer to file an amended estate tax return to correct an error or omission on a previously filed estate tax return if the error or omission was made in good faith without fraud. So practically what should you do if you discover that you have accidentally filed an erroneous federal estate tax return?

You should discuss filing an amended return with the beneficiaries of the estate or trust to get their consent to file an amended return to correct the error. If all parties consent to the amended return, then you should file same. However, if any beneficiary refuses to consent, then you should petition the court for a court order providing direction.

ADVICE: *Under Circular 230, attorneys are required to advise the client of the non-compliance and to advise what the consequences are if the non-compliance is not corrected. There is no requirement to file such an amended estate tax return.*

Noteworthy Florida Legislation 2013

You should be aware of the following noteworthy Florida Legislation:

GIFTS TO LAWYERS:
While most reputable attorneys would never accept gifts from clients, unfortunately a few have done just that and created ethical and legal issues. Section 732.806, Florida Statutes, provides that any gift to a lawyer is VOID if the lawyer prepared or supervised the execution of the document or solicited the gift unless the lawyer is related to the person making the gift.

PRODUCTION OF WILLS:
The depositor of the last will and testament must provide the last 4 digits of the social security to the Clerk. The Clerk must keep the original last will and testament in its original form for 20 years.

FILING FALSE CLAIMS:
New legislation makes it a third degree felony to file a false claim to ownership or claim lien against real or personal property.

HOMESTEAD TAX EXEMPTION:
Generally, rental of property constitutes abandonment for homestead tax exemptions. New legislation provides that rental does not constitute abandonment unless the property is rented for more than 30 days per calendar year.

Be Aware of Tax Liens on Real Property

Many people do not realize that if the Internal Revenue Service (the "Service") has filed a lien on any real estate, and the lien has not expired, a seller or buyer must deal with that lien before a transfer can take place.

In Gregory v. United States, 2012 U.S. Dist. LEXIS 159307 (W. D. Va. 2012), the District Court enforced a Service tax lien on the sale of real property by an innocent third party. The Court enforced the tax lien on the property at the current fair market value, stating that government's entitlement to recover under a tax lien was not fixed at the time the property was transferred by the original owner. Thus, the Service recovered more than it would have if the tax lien was enforced upon the first transfer.

In 2002, the Service filed a tax lien against Mr. Watson. Mr. Watson owned a piece of real estate with his wife as tenants by the entireties and the tax lien attached to Mr. Watson's one-half interest in the property under United States v. Craft, 535 U.S. 274 (2002). In 2003, the Watsons transferred the property to their daughter Tammy, who assumed the mortgage and tax lien on the property. In 2006, Tammy sold the property to Mr. and Mrs. Gregory for $225,000 and the existing mortgage was paid off. The Service did not enforce the tax lien in connection with either of these two transfers. It is interesting that the title company did not deal with these liens at the time of sale.

The Gregorys subsequently made $100,000 worth of improvements on property and entered into a contract to sell the property for $380,000. The Service refused to release the tax lien on one-half of the property and in order to sell the property the Gregorys posted a bond for $190,000. The Gregorys filed suit to have the tax lien released.

The Court held, that, according to Internal Revenue Code Section 6323, the Gregorys purchased the property subject to the tax lien. The Gregorys argued that they should receive credit for the $100,000 in improvements to the property, but the Court denied this argument and held the government was entitled to receive one-half of the sales price.

ADVICE: *Make sure you use a reputable title company to do a title search before you sell any real property. In this case, the Gregorys would not have been in this predicament had the title company found the tax lien before they purchased the property.*

Tax Court Denies Bad Debt Deduction

In Herrers, TC Memo 2012-308, the Tax Court sustained a deficiency asserted against a married couple who reported pass-through bad debt deductions from a limited liability company named HSA. The Herrers' claimed such bad debt deduction on the grounds that a related corporation did not repay a debt owed to HSA. The Herrers owned interests in both companies. HSA had transferred cash in excess of $500,000.00 to the related company.

Bona fide business bad debts are deductible against ordinary income whether wholly or partially worthless during the year the debt becomes worthless. A bona fide debt is one which arises from a debtor-creditor relationship based on a valid and enforceable obligation to pay a fixed or determinable sum of money. The Service is very critical of advances and loans between related entities.

The Tax Court disallowed the deduction because the debt was not bona fide and was instead an advance between related entities. The Tax Court relied on the lack of a promissory note, bond, or indenture evidencing the indebtedness; the lack of a maturity date; the lack of a repayment schedule; the lack of security or collateral for the loan; and the subordination of HSA's debt. The Tax Court also emphasized that HSA did not require interest payments, which clearly demonstrated that the debt was not bona fide and instead was an advance.

ADVICE: *If you are operating two related entities and plan on making a loan from one entity to the other, then you should consult an attorney to ensure that the loan is bona fide. At the very least, make sure to execute a promissory note, include a maturity date and repayment schedule, require security or collateral for the loan, do not subordinate the debt to other debts, ensure that the indebted company has sufficient capital to pay the loan and make sure interest payments are made on the loan.*

Dependency for Child of Divorced or Separated Parents

In Commissioner v. Armstrong, 139 TC No. 18 (2012), the Tax Court denied a non-custodial husband's claim of a dependency deduction for his son because a Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, was not attached to his return. The Tax Court determined that the state court order attached to husband's return, which showed husband was entitled to claim the dependency deduction for his son if he satisfied his child support obligations, did not conform with the substance of Form 8332.

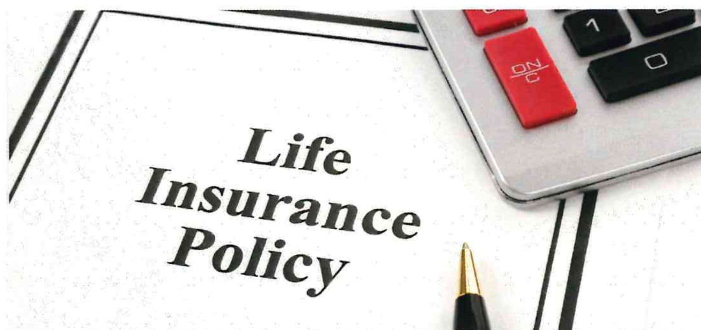
The Tax Court determined that the state court order did not affirmatively require that the child's mother would not claim a dependency deduction for their son or that she had to sign a Form 8332. The state court order instead only established circumstances under which she would not release her claim to such deduction. Thus the language was insufficient. Section 152(e)(2)(A) of the Internal Revenue Code (the "Code") requires an unequivocal declaration that the custodial parent will not claim the child as a dependent. Although husband satisfied all of his support obligations under the state court order, the order was insufficient to satisfy the requirements of Section 152(e)(2)(A) of the Code.

ADVICE: *If you are divorced, are the non custodial-parent and were "awarded" the exemption, then make sure a Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, is signed by both parents and attached to your income tax return.*

Federal Beneficiary Designation Does Apply If Divorce

Florida enacted a new statute which provides generally that, upon divorce, a beneficiary designation naming the former spouse of an IRA and other investments is void. The Florida statute, however, does not apply to the extent federal law applies. In a recent U.S. Supreme Court case, Hillman v. Maretta, 133 S.Ct. 1943 (2013), the court determined that a beneficiary designation under the Federal Employee Group Life Insurance Act of 1956 which named a former spouse was valid and therefore the new spouse received no proceeds.

ADVICE:
If you are divorced, make sure you review all beneficiary designations!



Proposed Revisions to Sections 733.808(4) and 736.05053(1) Florida Statutes

The Real Property, Probate and Trust Law (RPPTL) section of the Florida Bar has proposed legislation intended to clarify that life insurance proceeds are generally exempt from administration expenses and creditor claims under Sections 222.13 and 733.808, Florida Statutes.

In Morey v. Everbank and Air Craun, Inc., 93 So.3d 482 (Fla. 1 Dist. Ct. App. 2012), life insurance proceeds were paid to the insured's revocable trust that contained a clause directing that all of the insured's debts were to be satisfied with trust assets. In its decision, the Florida Appellate Court held that such a clause acted to negate the creditor protection of life insurance proceeds and, as a result, the insurance proceeds were available for the payment of the insured's claims.

The proposed legislation clarifies that life insurance proceeds paid to a trustee of a revocable trust is exempt from claims of creditors, unless the trust instrument expressly provides that Section 733.808(4), Florida Statutes, does not apply. Thus, a general "pay all my debts" provision in a will or trust instrument does not waive the statutory exemption from creditor claims for insurance proceeds paid to a trustee.

ADVICE: *It is generally preferable not to name your revocable trust as the beneficiary of a life insurance policy, but in those instances when you do, then make sure that your trust explicitly states that the Trustee shall not use life insurance proceeds, qualified employee benefit plans, individual retirement accounts, or any other property exempt by law from the claims of the decedent's creditors to pay any debts and expenses. Our documents provide such language.*

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MISSION STATEMENT

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

Have a Blessed and Healthy Holiday Season!

HOLIDAY OFFICE SCHEDULE:

November 27th: Closed at 12:00 noon

November 28th: Closed for Thanksgiving

December 23rd – 27th: Closed for Christmas

January 1st: Closed for New Year's Day

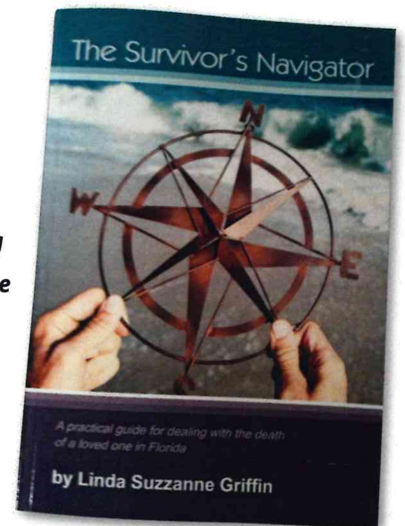
A Few Last Thoughts . . .

Do you know where your Estate Planning Documents are?

Every Spring and Fall when you are turning your clocks forward or backward, it is a good idea to pull out your estate planning documents. Ask yourself the following: Where are my originals and copies (at home, in a safe deposit box, in safekeeping at my attorney's office, etc.)? Does someone in my family know where my originals and copies are if something happens to me? Have a I had any life changes (births, deaths, divorces, etc.) that could now affect my current documents? Do my documents need to be updated? Depending how you answer those questions, please feel free to call our office to assist you.

Linda has published her book!!

The Survivor's Navigator: A practical guide for dealing with the death of a loved one in Florida is a now available for purchase in our office or on **Amazon.com.**



You don't have to wait for our once-a-year newsletter!

Now you can get helpful information by subscribing to our blog. Go to **helpwithestateplanning.com** and sign up using your email address. Periodically our blog is updated on a wide variety of topics. You can also read our past posts on the home page.

ADVICE: *If Linda Suzzanne Griffin, P.A. is holding your original documents in our safekeeping, please be sure to keep our office updated with your current address. If you plan to permanently move out of the state of Florida, please contact our office for information on how you can take your original documents with you.*

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