TISSER LAW GROUP

Plan Early, Plan Well™

The Estate Planning Edge

info@tisserlaw.com

818-226-9125

October 2011

Team Tisser Foundation

Team Tisser Foundation ((TTF) is a non-profit corporation founded by Doron M. Tisser and his wife Laurie. TTF raises money for various charitable purposes and does not focus on any one charity or charitable purpose. The goal is to raise as much money as possible to "Help Make A Difference" by "Improving Life for Others." TTF has made donations to Memorial Sloan-Kettering Cancer Center, Leukemia & Lymphoma Society, Challenged Athletes Foundation, as well as charities helping people affected by natural disasters such as Hurricane Katrina and the Tsunamis. Since 2000, TTF has donated almost $175,000 to over 25 different charities. Friends and clients generally donate money to TTF to support Doron's participation in triathlons and marathons. If you would like more information about TTF, please contact Doron at doron@tisserlaw.com, or visit www.teamtisser.org

Quick Links

www.tisserlaw.com
www.teamtisser.org

About Doron M. Tisser

Doron M. Tisser has specialized in estate and gift planning, tax planning, trust and probate administration, charitable giving, buy-sell agreements and related areas for over 30 years. Mr. Tisser is one of less than 100 attorneys in California who has been designated as both a Certified Specialist in Probate, Estate Planning and Trust Law, and as a Certified Specialist in Taxation Law by the State Bar of California Board of Legal Specialization. He was chosen by his peers as a Super Lawyer for 2009, 2010, and 2011 for Southern California, and enjoys an "a.v." rating by Martindale-Hubbell Law Directory, which is the highest possible rating and is based on ethical considerations and legal skills. Mr. Tisser has published over 65 articles and chapters in books on various estate and tax planning subjects and is a frequent speaker and lecturer at estate and tax planning seminars. Mr. Tisser competes in triathlons, including Ironman races, and raises money for charities through Team Tisser Foundation, a non-profit corporation he co-founded with his wife Laurie.

What's Happening

Because of the confusion related to estate tax planning for persons who died in 2010, the IRS has issued Notice 2011-76, which eases the deadline for estate tax returns (Form 706) and extends the filing date for new Form 8939 (for estates using carry-over basis). The new due date for Form 8939 is January 17, 2012 (instead of November 15, 2011). Estates of persons who died in 2010 which request an extension to file the Form 706 will not have to file the return until March 19, 2012 and will receive an automatic extension of time to pay the estate tax (which is typically granted only for good cause). The reason for the Notice is to give estates more time to comply with the tax law changes which were enacted in 2010.

Doron M. Tisser will be competing in the Malibu Half Marathon on November 13, 2011 to raise money for the Leukemia & Lymphoma Society in memory of his close friend Steve Craig, who recently passed away. If you would like to donate money, please do so by sending your check to Team Tisser Foundation, a non-profit corporation founded by Doron and his wife Laurie, at Doron's office address. Acknowledgement of your donation will be sent to Susan Laine, Steve's wife.

Doron M. Tisser has been nominated for The Most Trusted Advisor Award (for providing excellent service to clients) and for the Community Service Award (for his fund-raising efforts through Team Tisser Foundation). Both awards will be presented by the San Fernando Valley Business Journal.

The next meeting of the San Fernando Valley networking group for graduates of Southwestern Law School will be October 13, 2011. If you or someone you know is a graduate of Southwestern Law School, either work or live in the San Fernando Valley and want to attend the next networking meeting, contact Laura Stein at laura@tisserlaw.com or call Laura at (818)226-9125. We have established a list-serv for members to stay in touch with each other.

If you would like Doron M. Tisser to speak to your group or organization about the new estate tax laws, trust administration or other estate planning subjects, please contact Laura Stein at laura@tisserlaw.com or call Laura at (818)226-9125.

GIFT TAX INSURANCE THROUGH DEFINED VALUATION CLAUSES

If you make a gift to a person in excess of $13,000 in any one year, you are required to file a gift tax return (Form 709). The IRS will review that return and may decide to challenge the stated gift value. Depending on the amount of the gift and other factors, you may have to pay a gift tax.

In addition to the $13,000 annual gifts per person discussed above, you can gift up to a certain amount (called the Applicable Exemption Amount, "AEA") during your lifetime without paying a gift tax. If you gift more than the AEA, you will have to pay a gift tax. The AEA for 2011 and 2012 is $5 Million and will be reduced to $1 Million in 2013, unless Congress enacts new legislation. When you file a Form 709 and use part of your AEA, this also reduces the amount you can leave estate tax free when you die, resulting in higher estate taxes.

If you are making gifts of money or of publicly-traded stocks (which are valued by the public exchange on which they are traded), you should have no issues with the valuation of the gifts when you file a gift tax return. When you gift assets that are more difficult to value, however, there is a risk that the IRS will challenge your stated valuation and cause an increase in the tax to be paid.

For gift tax purposes, when you make a gift, the value is what someone would pay you for the item being gifted. If you gift a building worth $1 Million, the gift tax value is $1 Million. But if you only transfer 50% of the building, then the value would be less than $500,000 because a person buying half of a building would not pay full price for that half because they do not control the property and there will be limitations on transfers. This difference is the discounted value. If a person would only pay you $400,000 for half of a $1 Million building, that would amount to a 20% discount (i.e., $500,000 - $400,000 = $100,000, and $100,000 is 20% of $500,000).

The value of the gifted asset should be determined by an appraisal. The appraiser will prepare two reports: a full valuation and a discounted valuation, both of which will be attached to the Form 709.

If you make a gift of a 50% interest in the building in the example above, the IRS may challenge either or both of the valuation reports. If the IRS is successful in its challenge, then the value of the gift is increased and you use up more of your AEA.

If you plan on using most of your AEA in making gifts (which can be a tremendous tax planning tool), the potential consequences of an IRS audit to a Form 709 become greater. For example, assume you want to gift your children $4.5 Million of real estate in 2012 (when you can gift up to $5 Million without gift taxes). If the IRS challenges the valuation you used or the discounted value, the revaluation of the gift could result in your having made a gift in excess of $5 Million and you would owe a gift tax.

A way to provide insurance against an inadvertent gift tax resulting from an IRS revaluation is to include a defined valuation clause in the transfer document. This clause would provide, in general, that if the IRS determines that any part of the gift exceeds a specified dollar amount, the excess gift is to be transferred to another party. If the transfer to the other party would not result in a gift tax, the IRS has less incentive to audit the value of the gift.

For example, let's say you make a gift to your child in 2012, the gift is valued at $4.5 Million, and you file a gift tax return showing the discounts you have taken. If the IRS challenges the value and succeeds in showing the value of the gift is really $5.3 Million, you will owe an estate tax of $105,000 on the $300,000 in excess of the $5 Million.

But if your gift document has a defined valuation clause in it which states that the extra $300,000 goes to a charity, then you would owe no gift tax and the charity would receive the excess. If the charity determines it does not want to own that portion of the real estate, you may be able to buy back the charity's interest in the real estate.

The excess does not have to be given to a charity in a defined valuation clause. For example, it could go into a trust for your spouse, which would also not be subject to a gift tax.

The use of a defined valuation clause is not limited to gifts. It can also be applied in a situation where you sell an asset to a family member, such as selling your business to your children. In this case, the IRS may try to show that you sold the business at a price which is lower than the true value, with the excess value resulting in a gift.

If you intend to make a large gift or some other transfer (such as a sale) to a family member, you should consider the use of a defined valuation clause in the transfer document as insurance against a potential gift tax.

Tisser Law Group | 5425 Farralone Ave, Suite 100 | Woodland Hills | CA | 91367

doron@tisserlaw.com – Doron M. Tisser, Esq.
brian@tisserlaw.com – Brian H. Standing, Esq.
armine@tisserlaw.com – Armine Bazikyan, Esq.
judy@tisserlaw.com – Judy Schwarz, Legal Assistant
erica@tisserlaw.com – Erica May, Legal Assistant
laura@tisserlaw.com – Laura Stein, Admin. Assistant
heather@tisserlaw.com – Heather Lanet, Admin. Assistant
amber@tisserlaw.comm – Amber McBride, Admin. Assistant

This Newsletter is intended to provide legal information only; legal information is not legal advice and you should consult with qualified legal counsel prior to implementing any estate planning. The transmission or receipt of information to or from this Newsletter is not intended to create, and does not create or constitute, an attorney-client relationship. No portion of this Newsletter may be reproduced or used in any manner other than for the private information of the reader without the express written consent of Tisser Law Group. The testimonials throughout this Newsletter were provided by actual clients. To maintain their privacy their names may have been abbreviated. Please note that testimonials do not warrant, guarantee or predict your particular results. Copyright © Tisser Law Group 2010. All Rights Reserved.