

# Law Office of Allen M. Leung

## A Professional Law Corporation

Newsletter – March 2011

### Recent Tax Law Changes – Gift & Estate Tax

As part of the Middle Class Tax Relief Act of 2010, which became law in December 2010, the “estate tax” came back to life for 2011 and 2012. However, the exemption amount is quite high for these 2 years (**\$5 million**). Only estates above this threshold are taxed at a rate of 35%.

So does this mean there is no need for Living Trust? In our view, the need for Living Trust is more pressing than ever. Due to the fact Living Trust **bypasses probate**, a time consuming (and expensive) court procedure that takes at least 9 months to more than one year, Living Trust can **saves time and money** in the long run for loved ones.

### Tax Savings Strategies

For people who like to use the \$5 gift tax exemption this and next year, but wish to retain some control over the gifted assets, we have a **strategy** to do so. That strategy would allow an owner to transfer (**tax –free**) \$5 million out of his/her estate, and the beneficiaries would also receive (**tax-free**).

### How Much Do You Know Regarding Gift Tax Law?

Do you know that a recipient of a gift does **NOT** have a tax issue at all? Rather, it is the donor that may have a tax issue. Many people believe that gifts received (from another person or through inheritance) must be reported as income. That is **NOT** true at all. The easiest way to think about is whether you as recipient had to “work” for the money received. If yes, then it is income and you would receive a form W-2 or form 1099. Obviously, you do not “work” for the gift received and therefore it is **NOT income** and you are **NOT liable** for any income taxes. This area of law is often confusing and you would be well-advised to consult an attorney, such as our firm, to clarify.

### Tax Savings Strategies – Tax Deferral Or Non-Payment of Taxes

With the current economic downturn, there is a greater need for tax savings ideas to maximize tax efficiency of assets and protecting your hard-earned net-worth “estate” at the same time.

The Tax Code in general taxes gains (even on profits that are “reinvested” such as mutual funds) but limits losses (e.g. capital gains), an undesirable scenario for most people. My clients often ask me if there is a way to defer or eliminate taxes on gains while increasing the limits on losses, that would be optimal.

The answer is: **Yes, there is a way** under the Tax Code which allows for gains to be untaxed (deferred or completely eliminated) and losses are not subject to \$3,000 (Sched. D for cap gains).

*(Over please)*

Specifically, it is called a 1031 “tax-free” exchange (named after the same section of the Tax Code) of property, and it applies to real estate. Basically, you sell an investment real estate (i.e. house, apt bldg, office, warehouse etc) and purchase another investment property “at or above” the price that you just sold, within 180 days. The sales proceeds of the first must stay “in escrow” where the owner have no access. Therefore, you are able to “roll-over” your capital gains in the first property into the second property. And you can keep on doing this as the law does NOT have a limit of the number of 1031 exchanges during one’s lifetime.

How does it become Tax-Free, one might asks? When the owner passes away (eventually), his/her heirs will inherit the property at “market-value” tax basis. Therefore, the heirs can sell the property immediately and there would be NO capital gains. Voila. **Tax-Free**. If the owner had implemented advanced estate planning techniques, the owner’s estate would not have to pay any estate tax. So as you can see, it can be “**Tax Free**” forever.

**KNOWLEDGE IS POWER. USE THE LAW TO YOUR ADVANTAGE!!**



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### **Specializing in the Following Areas**

- 1) Living Trust, Wills & Probate;
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- 3) Real Estate (including “Short-Sales”);
- 4) Education Law + Immigration Law;
- 5) Asset Protection (including debt relief & Settlements)

*We focus on the above areas to protect Client’s personal finances, an area that is underserved in the legal community*

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*The examples cited herein are for illustrative purposes. To determine whether a particular transaction is indeed tax-free, you are well-advised to consult an experienced attorney.*