

▲ Who's Who

How often have you read marital dissolution agreements ("MTAs") or decrees and been frustrated by the need to keep flipping back to the the front page to remember who was the petitioner and who was the respondent? If it's annoying and confusing to you, how do you think the parties and the judge feel about it? My solution is to use the plain English words "husband" and "wife" (or "father" and "mother" in paternity actions). In one of the opening paragraphs, indicate that "hereinafter the petitioner will be referred to as 'wife' and the respondent as 'husband'" (or vice versa). Thereafter, use only those two references. Consider also including the designations "petitioner/wife" and "respondent/husband" under the parties' names in the pleadings captions. This makes for much, much clearer reading and understanding by everyone.

Jennifer L.J. Gilk

Estebo, Schnobrich, Frank & Gilk, Ltd.

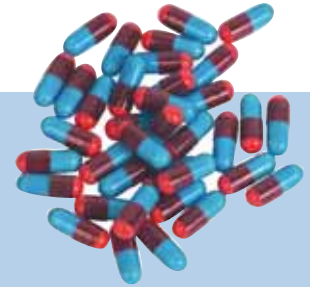
Redwood Falls

jenniferg@rwflaw.com



that is less than their income tax basis (i.e., generally the owner's original purchase price). If loss assets were held by the owner to death the estate would take a "step-down" in income tax basis to fair market value. However, if the loss assets were given away by the owner before death, and subsequently sold by the donee for a gain, the donee's income tax basis would be the owner's higher income tax basis, thus reducing taxable gain and income taxes to the donee. If done strategically, this tax planning technique could save the estate's heirs and beneficiaries substantial income taxes. For example, shortly before his death, "X" gives "Y," his sole heir, stock with an income tax basis of \$100,000. The fair market value of the stock at the time of the gift is \$90,000. Y later sells the stock for \$95,000, realizing neither a taxable gain nor a taxable loss. The tax basis to Y for determining loss is \$90,000; therefore there is no loss. Neither is there gain since Y's tax basis for determining gain is \$100,000. If X had held the stock to death (assuming values are the same) its tax basis would have been stepped down to \$90,000, its date of death value. If X's estate had then sold the stock for \$95,000, the estate would have incurred a \$5,000 taxable gain. By making a gift of the loss assets before death, X saved \$5,000 in income taxes on his estate (and on his heir). Add a couple of zeros to the example numbers and increase the number of loss assets by ten-fold and the income tax benefits become even more apparent and appealing. See IRC §1015 and the example under Treas. Reg. §1.1015-1(2).

William Forsberg
Parsinen Kaplan Rosberg & Gottlieb
Minneapolis
wfforsberg@parlaw.com



▼ Healthcare Fraud

Healthcare fraud investigations and settlements have drastically increased recently due to fraudulent practices in pricing, off-label promotion, paying kickbacks, and calculating Medicare drug benefits. Pharmaceutical and medical device companies are the primary target of these investigations, with hospitals and individual caregivers coming in second and third. Healthcare and med-tech companies should establish policies that can help minimize potential liability. Here are ten common misperceptions about a healthcare fraud investigation: thinking it's going to be fast; thinking it's going to be fair; thinking it's going to be cheap; thinking one lawyer can represent everybody; thinking a voluntary disclosure can be limited; thinking political influence can help; failing to anticipate the possibility of an investigation; failing to notify defense counsel before firing key employee-witnesses; failing to coordinate public statements with defense counsel; failing to preserve records and electronic information.

Jeff Saunders
Fulbright & Jaworski
Minneapolis
jeffrey.saunders@fulbright.com

▲ Stale Charges

Your client plans to travel to another state where there is an outstanding warrant for failure to appear on a traffic charge issued ten years ago. Is prosecution barred by a statute of limitations? First, a statute of limitations is a bar to filing a stale charge. The filing of a criminal charge and arrest warrant are probably sufficient to toll the statute, although the statute could be a bar to refiling the charge if it were dismissed on other grounds. Second, statutes of limitations generally exclude periods when the defendant was not in the state. For example, Minn. Stat.,

§628.26 (l) excludes "any period of time during which the defendant was not an inhabitant of or usually

resident within this state." What evidence currently exists to prove the criminal charge? Is the warrant still active? If the warrant is still active and client feels compelled to resolve the matter, the client should clear the warrant either by posting an appearance bond or by turning himself in on the warrant for release with a court date. Then he can defend the old charge and the stale evidence. Often, the prosecutor or court will dismiss the claims before trial, due to stale evidence.

Thomas C. Gallagher
Gallagher Criminal Defense Services
Minneapolis
tcglaw@pconline.com

▲ "Losing" Loss Assets

In the predeath, income-tax-estate-planning context, consider giving away "loss assets," generally capital assets (e.g. publicly traded stocks) that have a fair market value



Have a bit of sage advice for a newcomer to your area of practice? Send us your "tips & traps"! Your colleagues will be grateful. Email suggestions, cautions, and tales of woe to bb@mnbar.org