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December 30, 2010

Dear Client/Friend of the Firm:

Late in the evening of Thursday, December 16, 2010, Congress delivered what many consider an extremely important holiday gift with the passage of a new transfer tax law. Like many holiday gifts, however, the law comes with a limited (2 year) warranty. Nevertheless, it is important that you consider the impact of the new law on your estate planning and contact us should you wish us to review your current plan in light of your individual circumstances and the provisions of the new law.

Under the provisions of the "Bush Tax Cut" laws enacted in 2001, an individual's exemption from the federal estate tax increased gradually through 2009 when it reached $3.5 million. Over the same period, the maximum estate and gift tax rate was reduced from 55% to 45%. Under the law, the estate tax was suspended entirely for individuals who die in 2010, and the estate tax was reinstated for individuals dying after 2010. However, when reinstated in 2011, the exemption was decreased to $1.0 million per person and the rate was increased from its 2009 level of 45% to 55%.

New Law:

The new law reinstates estate and generation-skipping taxes but adopts more generous exemptions and rates. It also contains other favorable provisions that present significant estate planning possibilities to many people. These include:

1. Estate, gift and generation-skipping exclusions of $5.0 million in 2011, and then indexed for inflation after 2011.

2. A top estate, gift and generation-skipping tax rate of 35%.

3. A "reunification" of the estate and gift tax exclusions. You may know that in 2009, while you had an estate tax exclusion of $3.5 million, the gift tax exclusion was only $1.0 million (after the $13,000 per person annual exclusion). As a result, taxpayers making large gifts encountered a gift tax after $1.0 million. With reunification, a taxpayer can make up to $5.0 million of taxable gifts without paying a gift tax (an individual's estate tax exclusion is reduced to the extent he or she uses the gift tax exclusion during lifetime).

4. Very importantly, a surviving spouse can elect to take advantage of any unused portion of the $5.0 million exclusion of the first spouse to die. For example, if the first spouse to die leaves his or her entire estate to the surviving spouse, there would be no tax on the first death due to the 100% marital deduction. Because of the marital deduction, the first spouse would not need to use any of his or her $5.0 million exclusion. As a result, if a proper election is made at the time of the first spouse's death, the surviving spouse will have $10 million of exclusion available to him or her.

5. The generation-skipping transfer tax exemption will be the same as the estate tax exemption - $5.0 million indexed for inflation after 2011.

6. The new law also provides important flexibility with respect to estates of individuals dying in 2010. Their estates can elect either to be exempt from federal estate tax totally with limited step-up in basis provisions, or to be treated as "taxable" with a $5.0 million exclusion and a complete step-up in basis in inherited assets.

How Might All of This Affect You: There are numerous ways in which the new law may affect you. Among these are the following:

1. It may now be realistic to assume that neither you nor your spouse (if you are married) will be subject to estate taxes.

2. If you have used all or a portion of your $1.0 million lifetime gift tax exclusion, you now have an additional $4.0 million that you can use during your lifetime without incurring a gift tax.

3. If a member of your family died in 2010, you will have to elect whether to exempt the estate from tax under the 2010 law and receive a limited step-up in basis, or to be subject to the estate tax but with a $5.0 million exclusion and a complete step-up in basis. This requires an affirmative election.

4. Due to the temporary nature of the new regime, you will want to consider flexible approaches to the disposition of your estate that are capable of adjusting or self-adjusting should Congress change the law again. The new law, by its terms, is effective only for 2011 and 2012. In fact, the act refers to the changes as "Temporary Estate Tax Relief." This is extremely unfortunate, but the law provides a host of planning opportunities in the meantime.

We will continue to study the new law and be prepared to discuss your individual circumstances should you desire to do so.

Best wishes for the New Year.