

April 13, 2010

Dear Clients & Friends:

We hope this letter finds you and your family well.

This is our 18th annual letter and, by far, this will be the most frustrating. In the past we had the pleasure to inform you of changes to the estate tax law which decreased your estate tax obligation and the misfortune to inform you of changes which increased your estate tax obligation. As of this date, we have to report that the estate tax laws are muddled.

Due to the uncertain legislative climate, we must relate that the estate tax laws may be modified in any of the following ways:

- (i) full repeal of estate tax in 2010;
- (ii) retroactive application of 2009 laws to 2010 and beyond;
- (iii) 2001 laws applying in 2011 and beyond; or
- (iv) something else.

Now, more than ever before, we urge you to carefully read the enclosed Newsletter and to review your estate plan.

We value your relationship with our firm and we wish you a very happy and healthy year.

Very truly yours,

Karol Hausman & Sosnik, P.C.

ESTATE PLANNING FOR 2010

I. INTRODUCTION

In 2001, President Bush signed into law the Economic Growth & Tax Relief Reconciliation Act of 2001 (EGTRRA) which was an attempt to, among other things, eliminate or repeal the federal estate and generation skipping transfer (“GST”) taxes. Due to budget constraints, the changes made by EGTRRA were only enacted for a 10 year period. Accordingly, many of the provisions were designed to “sunset” (i.e., revert back to the provisions that were in effect when the legislation was first passed). In effect, this sunset provision revokes the laws introduced by EGTRRA.

As a result of EGTRRA, the estate tax applicable exclusion and the GST tax exemption (both \$3.5 million in 2009) were eliminated on January 1, 2010 but only for one year. In 2011, the federal estate and GST taxes are scheduled to be reinstated (as if EGTRRA never was enacted) with a \$1 million applicable exclusion (indexed for inflation) and a top tax rate of 55%.

In 2007, 2008 and 2009 Congress attempted to enact new legislation to bring clarity and certainty to this area of the law. However, due to the toxic legislative climate, concerns regarding two wars, and the highly debated issue of health care reform, we are left with a strange set of laws.

To add to the confusion, the Democratic leadership in Congress has indicated a desire to enact legislation that will reinstate the federal estate and GST taxes retroactively, this year, to eliminate their temporary repeal. Certain prominent legal scholars and commentators, however, have argued that such a retroactive reinstatement of these taxes by Congress could be challenged on constitutional grounds.

II. THE LAW IN 2010 (AS OF NOW)

- (i) no federal estate or GST taxes for individuals dying in 2010;
- (ii) the federal gift tax exemption is \$1 million (\$60,000 for non-resident alien donors);
- (iii) the top gift tax rate is 35%; and
- (iv) new carry-over basis rules will apply to inherited property that will limit (to \$1.3 million) the amount that basis in assets can increase (which is allocated among the assets of the decedent by the executor of the decedent’s estate) and an additional basis increase of \$3 million that only applies to transfers to spouses. It should be noted that if the fair market value of a decedent’s assets on his/her date of death is less than the decedent’s basis then the heir’s basis can be DECREASED without limitation.

NOTE: The modified carry-over basis rules will cause great confusion, potential arguments among beneficiaries, conflicts for the Executor, and the need to collect prior years’ records to calculate the tax basis of a decedent’s assets.

III. THE LAWS IN 2011 AND BEYOND (AS OF NOW)

1. The estate tax is reinstated with a top rate of 55% and a 5% surtax for estates over \$10 million;
2. A \$1 million federal applicable exclusion amount for estate and gift taxes;
3. A \$1 million federal GST tax which will be indexed for inflation;
4. The State death tax credit will be applicable; and
5. The date of death basis rule and alternate valuation date rules apply.

IV. OTHER FEDERAL TAX LIMITS ISSUED FOR 2010

1. Annual Exclusion from Gift Tax. The annual exclusion amount will remain at \$13,000 in 2010.
2. Gifts to Non-Citizen Spouses. The annual exclusion for present interest gifts to non-U.S. citizen spouses will be \$134,000 in 2010 (up slightly from \$133,000).
3. Notice of Large Gifts from Foreign Persons. Recipients will now have to report gifts from non-resident aliens that exceed \$14,165.
4. Income Tax Standard Deduction. Married Filing Jointly or Surviving Spouse (\$11,400), Married Filing Separately (\$5,700), Head of Household (\$8,400), and Single (\$5,700).
5. Annual Limit for Defined Benefit Plans. The limitation on the annual benefit under a defined benefit plan under Section 415(b)(1)(A) will remain at \$195,000. This amount will be subject to inflation indexing in \$5,000 increments in future years.
6. Annual Limit for Defined Contribution Plans. The contribution limit for defined contribution plans will remain at \$49,000. This amount will be subject to inflation indexing in \$1,000 increments.
7. Qualified Plan Income Limits. The maximum income level to be considered in calculating qualified plan contributions will remain at \$245,000 in 2010. This amount will be subject to inflation indexing in \$5,000 increments.
8. Qualified Plan Contribution Limits. Employees can defer up to \$16,500 of income for contributions to a 401(k) plan (regular or Roth 401(k)) or a 457 (b) plan in 2010. In addition, employees age 50 or over may make additional 401(k) contributions under Section 414(v)(2)(B)(i); the additional 401(k) contribution “catch-up” amount will be \$5,500 in 2010.

9. Definition of Highly Compensated Employee. The limitation used in the definition of a highly compensated employee will remain at \$110,000.
10. Annual Contributions to Individual Retirement Accounts (IRAs). The annual contribution limit for IRAs will remain at \$5,000 in 2010, and the “catch-up” contribution amount will remain at \$1,000 for persons age 50 and over.

V. IRA CONVERSION TO ROTH IRA

The major benefits of a Roth IRA are (1) all of the growth of the investments are exempt from income tax; (2) there are no required minimum distributions beginning at age 70½; and (3) your heirs withdraw the money over their lifetime income tax free.

In the past, many individuals were denied the ability to convert an IRA to a Roth IRA if they had earned income in excess of \$100,000.

As of January 1, 2010, the \$100,000 earned income limitation no longer exists. Now, everyone should consider a “Roth Conversion”. Among the issues to analyze when considering whether to take advantage of a Roth Conversion in 2010 is that the law allows the income tax payment for the conversion to be spread out over two years. A Roth Conversion offers the greatest benefit to individuals who do not need to draw upon their retirement assets during their lifetime thereby allowing the Roth IRA to continue to grow income tax free. The ability to use other funds, especially to pay the income tax generated from the Roth Conversion (e.g. from a bank account, brokerage account or leverage of real estate) is the ideal method to maximize the benefits of a Roth Conversion.

Finally, it should be noted that the law allows individuals to reverse a Roth Conversion by utilizing the re-characterization rules. These rules permit an individual to extend their personal income tax filing to October 15, 2011 to determine if the conversion was a good idea. For example, if you convert the IRA in early 2010 and the market drops thereafter, then you can re-transfer the investment back into the IRA and avoid paying income taxes on the higher value at the date of the conversion.

Please talk to us or your financial advisor regarding the advantages and disadvantages of a Roth Conversion.

VI. STATE ESTATE AND GIFT TAX LAWS

A. New York

New York's applicable exclusion amount for estate taxes remains at \$1,000,000. New York State does not have a separate gift tax. The top estate tax rate in New York is 16%. Taxes are due nine months after death.

B. New Jersey

New Jersey has a limited inheritance tax and applicable exclusion amount for estate taxes. No inheritance tax will be imposed on transfers to a spouse, parent, grandparent, child or other direct lineal descendent of the decedent. For estate tax purposes, the applicable exclusion amount remains at \$675,000. New Jersey does not have a separate gift tax. The top estate tax rate in New Jersey is 16%. Taxes are due nine months after death.

C. Connecticut

Connecticut has a unified gift and estate tax that applies to gifts made, and estates of decedents dying, on or after January 1, 2005. The Connecticut unified estate and gift tax exemption amount was increased on January 1, 2010 to \$3,500,000. The top estate tax rate is 12%. Taxes are due six months after death.

D. Florida

Florida has no independent estate or gift tax. In 2007, Florida repealed its Intangibles Tax (which was a tax imposed on certain intangible assets such as bonds, stocks, mutual funds and money market accounts).

E. North Carolina and South Carolina

North Carolina in 2009 imposed an estate tax on a decedent's estate in excess of \$2,000,000. This law has not changed. The North Carolina estate tax is premised on federal estate taxes. If there is no federal estate tax then North Carolina will have no State estate taxes. South Carolina is similar to Florida and has no separate estate or gift tax.

SPECIAL PLANNING NOTE

It is important to note that the repeal of the federal estate tax will have no impact on the estate tax owed to New York or New Jersey.

Clients who have created "formula clauses" in their Last Will & Testament or Revocable Trust (i.e., a provision used to obtain the maximum allowable marital deductions for estate tax purposes) need to have their documents reviewed. Further, clients who are in second marriages or implemented dynasty planning for grandchildren should have their documents reviewed.

Clients suffering significant health issues should consider reviewing both their estate planning documents and the title of their assets in light of these uncertain times.

Lastly, beneficiaries of estates in 2010 should be careful in analyzing the income tax consequences of a sale of inherited property. It may be prudent to postpone sales of inherited property to see if Congress retroactively retains the stepped-up basis rules of 2009.

VII. GIFTING, LIFE INSURANCE & CRUMMEY LETTERS

For those clients who made gifts in 2009, or are considering making gifts this year, please discuss with us the potential requirement of filing a gift tax return. For gifts made in 2009, gift tax returns are due no later than April 15, 2010. For those of you who have made gifts to irrevocable trusts (including those trusts owning a life insurance policy), you must be certain to comply with the requirements for treating such gifts as present interest gifts, thereby qualifying them for the gift tax annual exclusion. Remember to prepare and mail all necessary "Crummey" letters. Finally, gifts to irrevocable trusts that are designed as generation skipping trusts during 2010 require special consideration. Please contact us to discuss this issue.

VIII. NEW POWER OF ATTORNEY IN NEW YORK STATE.

As we informed you last year, in 2009 Governor David A. Paterson signed into law new legislation regarding the New York State Durable Power of Attorney ("DPA"). The focus of the new law is to reduce the rise in the financial abuse of the elderly and infirmed.

The new law took effect on September 1, 2009. The new law does not invalidate an existing DPA. However, any new DPA signed after September 1, 2009 will need to comply with the new laws.

Some of the many new provisions that are included in the DPA are set forth below:

(i) A "Statutory Major Gift Rider" is a supplemental document to the DPA which spells out the gifting capability of the agent. This rider is signed separately by the principal and then both acknowledged and witnessed by two witnesses.

(ii) The DPA provides the principal with the opportunity to appoint a "Monitor". The Monitor is a third party who may compel the agent to produce records and receipts on a continuous basis to ensure to all interested parties that the agent is acting in a responsible and appropriate manner as fiduciary.

(iii) The appointed agent must sign the DPA and have his or her signature notarized.

Again, Durable Powers of Attorneys executed prior to September 1, 2009 are still valid unless you revoke them.

IX. BENEFICIARY DESIGNATIONS AND ASSET TITLING

As you know, when we implemented your estate plan we addressed the importance of properly preparing your beneficiary designations to coordinate them with your estate plan (e.g., your Last Will and Testament or Revocable Living Trust). For example, if a trust has been established for a family member, then possibly the beneficiary of the account would be the “Trustee” of the trust and not your family member. The issue of designating beneficiaries typically arises when dealing with your IRAs, annuities, life insurance policies and retirement accounts (e.g., 401(k)s, profit sharing plans, TDAs). It is suggested you contact the appropriate institution to confirm that the beneficiaries designated by you are actually on file. **Further, it would be beneficial if you had copies of your beneficiary designation forms in your file.**

In general, we do not recommend naming beneficiaries on brokerage accounts. Many times “transfer on death (TOD)” designations conflict with the structure of a client’s estate plan. Before naming a beneficiary on a brokerage account, please call us so we can advise you if the designation will adversely affect the distribution of your estate.

X. HEALTH CARE PROXY AND HIPAA RELEASE FORM FOR LOVED ONES

Our clients are very appreciative when we point out that a parent no longer has the legal right to know a child’s medical information once the child attains the age of 18. We urge all parents of children attending college or living alone to have a discussion with their child to ensure that a Health Care Proxy and HIPAA Release Form has been executed to allow someone to handle a medical emergency for that child.

XI. ELDER LAW PLANNING

We are happy to announce that our Elder Law practice group expanded in 2009.

As you may know, New York State is one of the few states that encourage the elderly to “stay at home” in the event of a chronic, long-term illness rather than go to a skilled nursing facility. The various programs that we can discuss with you include, but are not limited to, the following:

- (i) Home Attendant or Personal Care Program;
- (ii) The Lombardi Program;
- (iii) Certified Home Health Care Agencies;
- (iv) Medicaid Managed Long-term Care Programs;
- (v) Hospice Programs; and
- (vi) Nursing Home Programs.

In addition we are capable of representing you or a loved one concerning:

- (i) a Guardianship proceeding; and
- (ii) establishing a Supplemental Needs Trust.

Lastly, it is important that a family be proactive to protect their assets in order to qualify for governmental assistance. However, you should know that it is possible to protect a substantial portion of your assets even if a catastrophic medical event occurs and no prior planning was implemented. If you, a family member or a friend have any questions regarding the eligibility for custodial care or skilled care in the home for an ill person, please give us a call.

XII. CONCLUSION

If you or a loved one has any questions or would like additional information regarding any topic discussed above or any other matter, please do not hesitate to contact us.

Have a healthy and prosperous year.

Very truly yours,

Karol Hausman & Sosnik, P.C.

To the extent this document constitutes tax advice subject to Circular 230, this tax advice was not intended or written to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice).

Please note that our ethical rules require us to remind you that once you have executed your estate planning documents, our legal representation has been completed. However, we always attempt to keep clients and former clients informed of pertinent information. Please know we are always available to discuss your estate planning documents or your future legal needs.

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Please provide us the following information:

(1) Change of address (if applicable)

(2) E-mail address

(3) Message for us (if any) :

