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Dear Clients & Friends:

We hope this letter finds you and your family well.

We are proud to inform you that this is our 20<sup>th</sup> Anniversary. We are very fortunate to consider you our friends and clients and we would like to thank you for allowing us to provide you with our services.

As you may recall, each year we advise you to review your estate plan in the event of death, disability (of you or a loved one), a change in circumstances (e.g., divorce or fear of a lawsuit), or an economic event (e.g., intent to sell a business or retirement). We also state that if the laws change we would need to address your estate plan.

Well, as you may have heard, the laws have changed. The recently enacted "Tax Relief Act of 2010", signed into law by President Obama on December 17, 2010, creates an unprecedented opportunity to protect wealth from future transfer tax burdens and to engage in asset protection planning for family members.

We strongly suggest that all clients review their estate plan and contact us within the year in order to understand how to take advantage of the planning opportunities this new law has provided. As the new law will expire on December 31, 2012, you must act quickly to insure you will benefit from same.

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.

# UPDATE

2011

## **I Introduction**

Congress passed, and the President signed into law, The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which became effective on December 17, 2010 (the "2010 Act").

The 2010 Act greatly alters the way estate planning should be implemented. The 2010 Act applies prospectively to the tax years 2011 and 2012 and if family members have passed away in 2010, retroactively to January 1, 2010. In essence, a 2 year window of opportunity has been created to provide families with the ability to: (a) transfer significant sums of wealth to future generations and (b) engage in meaningful asset protection planning.

## **II The Estate Tax**

The 2010 Act reintroduces the estate tax for calendar years 2010, 2011 and 2012. The estate tax credit for such years is a full \$5,000,000, indexed for inflation after 2011. The top estate tax rate is thirty-five (35%) percent which is reduced from a forty-five (45%) percent top estate tax rate in 2009.

## **III The Gift Tax**

The 2010 Act greatly modifies the lifetime credit for gifting. In 2010, tax free, lifetime gifting was limited to \$1,000,000. Under the 2010 Act, an individual can gift \$5,000,000 (\$10,000,000 per married couple), increased for inflation after 2011, without gift tax consequence. Individuals that had utilized their \$1,000,000 lifetime credit prior to the 2010 Act now have the ability to gift an additional \$4,000,000.

The increase in lifetime gifting does not affect an individual's ability to gift \$13,000 per individual per year (the annual exclusion amount) or the ability to make tax free gifts for medical expenses or tuition.

## **IV The Generation Skipping Transfer Tax ("GST")**

Significantly, the 2010 Act allows individuals the ability to engage in "dynasty" or "generational" planning by increasing the GST credit to \$5,000,000 per individual, increased for inflation after 2011.

## **V Portability and the Deceased Spousal Unused Exclusion Amount**

The most interesting change under the 2010 Act is the introduction of “portability” and the “deceased spousal unused exclusion amount” for both estate tax and gift tax purposes (not available for GST tax purposes). In general, if an election is made on a deceased spouse’s timely filed estate tax return, the surviving spouse can utilize, upon his/her death or during his/her lifetime, both his/her own credit as well as the unused portion of the deceased spouse’s credit.

Please note, the deceased spousal unused exclusion amount received by the surviving spouse is not indexed for inflation.

Though the intent is to make planning easier, we believe this change creates a significant trap for the unwary. Specifically, New York and New Jersey have no such portability feature. Further, use of portability will cause the loss of one’s GST credit. Finally, consideration must be given to the future growth of asset values before portability can be considered a good idea.

Also, the surviving spouse cannot take advantage of the deceased spousal unused exclusion amount for more than one predeceased spouse. There is no minimum period for marriage in order to qualify for the deceased spousal unused exclusion amount.

## **VI Examples of the New Rules**

1. Husband 1 dies in 2011 with an estate of \$5,000,000. Under his Will, he leaves \$2,000,000 to his children and the remainder to his wife. Wife 1 now can gift during her lifetime or pass upon her death the total of \$8,000,000 free of any federal gift tax or estate tax. Note though, only \$5,000,000 can be used for “Dynasty” planning.
2. Husband 2 and Wife 2 jointly gift \$4,000,000 to their children in 2011. The result is no gift taxes are payable. Husband 2 then dies and all assets pass to Wife 2. Wife 2 has a unified estate and gift tax credit of \$6,000,000.
3. Husband 3 dies in 2011 and leaves all of his assets to Wife 3 (neither Husband 3 nor Wife 3 ever made gifts to their children in excess of \$13,000 per year). Wife 3 now has the ability to utilize a \$10,000,000 unified estate and gift tax credit. Wife 3 now marries a wealthy man (Husband 3a). Husband 3a dies before Wife 3 leaving \$5,000,000 to his children. Wife 3 is now limited to a \$5,000,000 unified estate and gift tax credit. Only the deceased spousal unused exclusion amount of the last such deceased spouse of such surviving spouse can be utilized.
4. Wife 4 dies leaving everything to Husband 4. Husband 4 now can utilize a \$10,000,000 unified estate and gift tax credit. Husband 4 marries a new wife (Wife 4a) and then dies, leaving his children \$5,000,000. Wife 4a now has a \$10,000,000 unified estate and gift tax credit (her \$5,000,000 and her husband’s \$5,000,000). It **appears** that the new law provides that when a surviving spouse dies, he or she first utilizes the inherited spousal unused exclusion amount before utilizing his or her own exclusion amount.

## **VII Effect of the New Rules**

The large increase in the unified estate and gift tax credit coupled with the portability rules may lead many individuals to believe that estate planning is no longer needed.

However, as discussed below, New York and New Jersey still impose an estate tax that can be mitigated with proper planning. Further, estate planning and the use of trusts between spouses can accomplish or address the following issues:

- (i) protect assets in the event of a remarriage or co-habitation;
- (ii) protect children to insure they are not disinherited;
- (iii) protect a surviving spouse in the event of a disability;
- (iv) minimize state estate taxes; and
- (v) maximize the ability to undertake dynasty planning.

Further, a proper estate plan must always accounts for personal, family and other non-tax issues which must be considered with the same care that is given to planning for tax issues.

The 2010 Tax Act sunsets on December 31, 2012. Therefore, if Congress does not implement a new law, the estate tax and gift tax credit will return to \$1,000,000 and the GST tax exemption will return to \$1,000,000 increased for inflation. The top tax rate will revert to 55% (with a 5% surtax on estates in excess of \$10,000,000)

## **VIII 2010 Tax Act Summary**

<b>Topic</b>	<b>2010 - 2012</b>	<b>2013 and thereafter</b>
Annual gifts	\$13,000	\$13,000
Educational and medical payments directly to provider	unlimited	unlimited
Lifetime exemption	\$5,000,000 (increased by CPI in 2012)	\$1,000,000
Estate tax exemption	\$5,000,000	\$1,000,000
Estate tax and gift tax rate	35%	55% (plus 5% surtax in large estate)
Portability	available	not available

**IX     New York and New Jersey Tax Calculations**

<b>Size of Estate</b>	<b>New York Tax</b>	<b>New Jersey Tax</b>
\$675,000	-0-	-0-
\$1,000,000	-0-	\$33,200
\$2,000,000	\$99,600	\$99,600
\$3,000,000	\$182,000	\$182,000
\$4,000,000	\$280,400	\$280,400
\$5,000,000	\$391,600	\$391,600
\$6,000,000	\$510,800	\$510,800
\$7,000,000	\$638,000	\$638,000
\$8,000,000	\$773,200	\$773,200
\$9,000,000	\$916,400	\$916,400
\$10,000,000	\$1,067,600	\$1,067,600

**Observation:**            Due to inconsistencies between Federal and State estate tax law, it is prudent for couples to utilize trusts to minimize the New York and New Jersey estate tax impact.

**X     Elder Law**

We are pleased to say that after a short period of time we have developed a well-recognized reputation in Elder Law including the specific issues of protecting individuals with special needs.

Our Elder Law department has been successful in representing individuals in Guardianships and Medicaid applications for both “facility” and “in home” care and “spousal refusals” to protect assets when obtaining Medicaid benefit for a disabled spouse.

We have also advised many families regarding the benefits of establishing a Supplemental Needs Trust (“SNT”). A SNT is a discretionary trust that protects and shelters assets for a disabled person whose disabilities would entitle him/her to obtain governmental benefits. A SNT is designed to enhance the quality of life of a disabled person and segregate funds that cannot be attached by governmental agencies or utilized by other family members.

Upon the passing of a disabled person the SNT funds are eligible to be distributed to other members of the family of the individual (s) who established the SNT (provided such funds were not the funds of the disabled person).

Simply put, by establishing a SNT, it is possible to provide economic resources to an individual with special needs without jeopardizing such individual's governmental benefits.

## **XI Other Federal Tax Limits for 2011**

1. Annual Exclusion from Gift Tax. The annual exclusion amount will remain at \$13,000 in 2011.
2. Gifts to Non-Citizen Spouses. The annual exclusion for present interest gifts to non-U.S. citizen spouses will be \$136,000 in 2011 (up slightly from \$134,000).
3. Notice of Large Gifts from Foreign Persons. Recipients will now have to report gifts from non-resident aliens that exceed \$14,165 on Form 3520.
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 2011. 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 2011. 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 \$5,500.00 in 2011.
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.

## **XII 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.

If your beneficiary is suffering a “disability” or has “creditor problems” then naming them as beneficiary may be financially devastating to them upon your death.

## **XIII 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 access 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.

## **XIV Gifting, Life Insurance & Crummey Letters**

For those clients who made gifts in 2010, or are considering making gifts this year, please discuss with us the potential requirement of filing a gift tax return. For gifts made in 2010, gift tax returns are due no later than April 18, 2011 (extended from April 15<sup>th</sup> due to a little known holiday, Emancipation Day, observed in the District of Columbia). 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 2011 require special consideration. Please contact us to discuss this issue.

## **XVI New Planning Ideas for 2011 and 2012**

Because of the new gift tax exemption, wealthy clients can shift significant amounts of wealth to future generations. Many clients believe that, other than an education, a house is the best gift a child or grandchild can receive to gain a strong financial foundation

Gifting (or assisting a child or grandchild to purchase) a home should be done with the advice of your attorney. The equity provided to purchase the home should be protected, if possible, from divorce claims, creditors claims and dissipation of equity through home equity loans. Further, the ability for a child to build up “credit scores” is a good goal through home ownership. Lastly, the ability for the child to ultimately benefit from the \$250,000 capital gain tax exclusion for the sale of a primary residence is important to the overall planning strategy.

We will be happy to discuss the following ideas that best suits your needs:

- (i) Low interest rate loans to assist your loved one;
- (ii) Irrevocable Trust to own the home; and
- (iii) Joint ownership of the home.

Each method has its advantages and disadvantages from a creditor and tax perspective. We will be happy to discuss the best plan for you.

## **XVII Business Succession Planning**

Please call us if you think you would like to pass your business to one or more of your children or if you are contemplating a sale of your business. Our experience in dealing with these matters as well as our significant network of appraisers, bankers, brokers and other clients looking for opportunities may assist you in this endeavor.

## **XVIII Transfer of Real Estate and Property Insurance**

It is our recommendation that clients always carry “umbrella insurance” on their homes and cars to add extra protection in the case of an accident. Please review your insurance to ensure that you are adequately protected.

If you have transferred your real estate to a limited liability company, a Revocable Trust, an Irrevocable Trust or outright to your children, please contact your property and casualty insurance agent to make sure that the “insured” or “payee” on the policy is correctly identified. For example, if Mr. A transfers his home to a Medicaid Qualifying Trust to protect the home for Medicaid purposes, then the policy insuring the house should identify the Trustee of the Medicaid Qualifying Trust as the insured (not Mr. A).

## **XIX Additional Points to Consider**

It is always better to be prepared and organized. Please consider making copies of the following items and placing the copies with the documents we have provided to you as part of your estate plan:

- copy of Medicare card and insurance cards
- copy of title to automobile and related insurance policies
- copy or list of life insurance and/or long-term care insurance policies
- copy of latest tax return
- copy or list of investment and/or bank accounts
- list of doctors
- list of prescriptions
- list of any allergies

Please let your children or other loved ones know where this important information is kept.

## **XX 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.

**DATA SHEET FOR THE FILES  
OF KAROL HAUSMAN & SOSNIK, P.C.**

**Return to us in a manner most convenient for you:**

By Mail: Karol Hausman & Sosnik, P.C.  
600 Old Country Road  
Garden City, New York 11530

By Fax: (516) 222-1499

By E-Mail: [khs@khspc.com](mailto:khs@khspc.com)

**Client Name:** \_\_\_\_\_

Please provide us the following information:

- (1) Change of address (if applicable)

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\_\_\_\_\_  
\_\_\_\_\_

- (2) E-mail address

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- (3) Message for us (if any) :

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