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MEMORANDUM

TO: Clients  
DATE: July 18, 2011  
RE: Estate and Gift Tax Changes

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On December 17, 2010, the President signed into law "The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (the "Act"). The estate and gift tax changes which are included in the Act take effect on January 1, 2011. Summarized below are the most significant changes which the Act will make to the federal estate and gift tax laws:

- the federal estate tax (which was temporarily repealed for persons dying in 2010) is reinstated for persons dying in 2011 or 2012
- for individuals dying in 2010, the 2011 estate tax rules will apply to their estate unless the estate elects out of this default rule on a timely-filed estate tax return
- the estate tax "exclusion amount" for persons dying in 2011 or 2012 is \$5,000,000
- the Act will "sunset" at the end of 2012 if no action is taken by Congress, in which case the estate tax exclusion amount for persons dying after December 31, 2012 will be \$1,000,000
- the marginal (i.e., maximum) estate tax rate for persons dying in 2011 or 2012 is 35%
- the generation-skipping transfer (GST) tax is reinstated retroactive to January 1, 2010, with a 0% rate for generation-skipping transfers which occur in 2010
- the rules which allow for heirs to receive a new income tax basis on inherited assets equal to the date of death value of the asset (i.e., "the stepped-up basis rules") are reinstated for 2011 and 2012
- the lifetime gift tax exclusion is increased from \$1,000,000 to \$5,000,000 for gifts made in 2011 and 2012

- the generation-skipping transfer tax is reinstated for lifetime transfers and transfers at death occurring in 2011 and 2012, with a GST exemption of \$5,000,000, and a marginal rate of 35%
- for persons dying in 2011 or 2012 who are survived by a spouse, the unused “estate tax exclusion amount” is “portable” (i.e., may be utilized by the surviving spouse) if the surviving spouse also dies in 2011 or 2012, and the unused lifetime gift tax exemption is “portable” with respect to gifts made by the surviving spouse in 2011 or 2012; the estate of the first spouse to die must file an estate tax return in order to preserve the “deceased spousal unused exclusion amount” (DSUEA); (portability does not apply to the GST exemption)

### PLANNING OPPORTUNITIES IN 2011 AND 2012

The “temporary” increase in the lifetime gift tax exclusion from \$1,000,000 to \$5,000,000 (for gifts made in 2011 and 2012) creates many planning opportunities for leveraged gifts, even where an individual has previously made lifetime taxable gifts utilizing all or a significant amount of the pre-2011 lifetime gift exclusion. When coupled with historically low interest rates, leveraged gifting techniques, such as grantor-retained annuity trusts (GRATs), charitable lead annuity trusts (CLATs), and charitable lead unitrusts (CLUTs), as well as qualified personal residence trusts (QPRTs), may be particularly attractive. Since there is no guarantee that the \$5,000,000 lifetime gift tax exclusion will be extended beyond 2012, it may be advantageous to utilize the gifting opportunity which is presented by the Act to remove significant wealth from an estate, in essence “freezing” the value of assets at current values (which may be depressed due to the recession). If you are interested in discussing any of these techniques, or exploring other estate and gift planning opportunities in the current environment, we would be happy to meet with you to determine what techniques may fit your objectives and circumstances to take maximum advantage of the current estate and gift tax laws.

*IRS CIRCULAR 230 NOTICE: In order to comply with certain IRS regulations regarding tax advice, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.*

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