BARBARA ANN DALVANO, ESQ.
2990 E. 17th Avenue, #1105
Denver, CO 80206
(719) 963-2933
barbaradalvano@yahoo.com

IMPORTANT FEDERAL TAX LAW CHANGES ENACTED DECEMBER 2010

On Friday, December 17, 2010, President Obama signed the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" ("Act"). This Act changes significant aspects of the federal estate, gift and generation-skipping transfer tax law. Below is a summary of some of the more publicized changes. Perhaps most ***importantly***, if you are contemplating gifts to grandchildren directly (or in trust for grandchildren), you may want to make those gifts during calendar year 2010 because gifts to grandchildren directly or in trust made during 2010 will not be subject to the generation-skipping transfer tax.

1. Estate Tax Exclusion and Rates. For deaths occurring during 2010, 2011 and 2012, $5 million per person can be passed to family members (in addition to the unlimited amounts that can be passed to a spouse or to charity) without estate tax. The $5 million exclusion amount available at death will be reduced by certain gifts made during lifetime. For calendar year 2012, the $5 million exclusion amount will be indexed for post-2010 inflation. The maximum estate tax rate during these years is 35%. The income tax basis of assets passing through an estate will be equal to the date of death value of the assets except that for deaths occurring during 2010, a special election can be made to elect a "carryover basis" for the assets in lieu of being subject to the estate tax.

2. "Portability" of Exclusion Between Spouses. If a married individual dies during calendar years 2011 or 2012, the unused portion of his or her $5 million estate tax exclusion amount can be utilized by his or her surviving spouse (in addition to the surviving spouse's own exclusion amount) to shelter transfers made by the surviving spouse to family members from estate tax at the surviving spouse's later death. This concept of preserving unused exclusion amounts between spouses, referred to as "portability," will enable a married couple to pass up to $10 million of wealth to family members without estate tax.

3. Gift Tax Exclusion and Rates. For calendar years 2011 and 2012, the lifetime gift tax exclusion amount (which currently is $1 million per person, in addition to the "annual exclusion gifts" per recipient of $13,000 per year) has been increased to $5 million per person. The maximum gift tax rate during calendar years 2010, 2011 and 2012 for lifetime gifts in excess of the applicable exclusion amount (not counting "annual exclusion gifts" per recipient of $13,000 per year) is 35%. Notably, a deceased spouse's unused exclusion amount is "portable" and can be used by his or her surviving spouse to increase the amount of lifetime gifts the surviving spouse can make to family members without federal gift tax.

4. Generation-Skipping Transfer Tax Exclusion and Rates. Through the final days and hours of calendar year 2010, grandparents can make gifts to grandchildren (or more remote descendants) directly or in trust, without any generation-skipping transfer tax and without using any of the grandparent's generation-skipping transfer tax exclusion amount. Note, however, that gifts made during calendar year 2010 to a grandchild directly or in trust in excess of the $1 million *gift* tax exclusion applicable in 2010 will incur a *gift* tax of 35%. The generation-skipping transfer tax is imposed in addition to federal gift and estate tax. For calendar years 2010, 2011 and 2012, the generation-skipping transfer tax exclusion is increased to $5 million per person and the tax rate will be 35%.

5. Family Limited Partnership/Limited Liability Company and "GRAT" Planning. The Act does not contain any provisions limiting or restricting current law regarding estate planning using family limited partnerships and family limited liability companies. Moreover, the much touted provisions placing restrictions on "grantor retained annuity trusts" ("GRATS") that were contained in President Obama's budget proposal are not part of the Act. Hence, opportunities to incorporate limited partnerships, limited liability companies and GRATs into your estate plan currently remain intact.

6. Bottom Line. These changes are effective for a limited period of two years and in some cases, only effective for a very limited period through the balance of calendar year 2010. If you are contemplating gifts to grandchildren or more remote descendants, you may want to make such gifts during calendar year 2010. Based on these developments, it may be appropriate for your estate planning documents to be reviewed and revised in order to address these changes. The Act also makes significant changes to the income tax rules which will also affect your estate. Should you have any questions about the Act or how the Act may affect your estate planning documents, please call me.

I wish you and your family a very happy holiday season and a healthy and prosperous New Year.

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