ALERT
DECEMBER 7, 2009

PRIVATE CLIENT SERVICES
News Concerning Recent
Trust and Estates Issues

END-OF-YEAR ESTATE PLANNING

As we move quickly toward year end, consider the following for this year and for 2010.

2009 ANNUAL EXCLUSION GIFTS - $13,000

In 2009, you may give up to $13,000 to any person without incurring gift tax and without using any of your $1 million lifetime gift tax exclusion. If you are married, your spouse also may give $13,000 to the same beneficiary or beneficiaries. Moreover, annual exclusion gifts need not be reported on a federal gift tax return, with some exceptions. For example, a $26,000 annual exclusion gift to a beneficiary on behalf of both spouses but made from one spouse's *individual* funds (rather than $13,000 from each spouse) must be reported on a federal gift tax return even though the gift qualifies for the annual exclusion.

Gifts to minors should be made to trusts for their benefit, to Uniform Transfers to Minors Accounts, or to education accounts such as the so-called "529 Accounts" (which grow income-tax free). You may apply five (5) years of your annual exclusion for gifts in one year to a 529 Account ($65,000 to each child's account), provided you have not used up your annual exclusions for this year on prior gifts to the child. Gifts to 529 Accounts in excess of the one-year annual exclusion must be reported on a federal gift tax return even though the gift qualifies for the annual exclusion from gift tax.

When determining how much annual exclusion you have available for gifts to a beneficiary, (i) *be sure to count* the beneficiary's share of insurance premiums contributed by you to any Insurance Trust; but (ii) don't count any gifts for education tuition or medical expenses that you paid directly to a school or medical provider. Gifts made directly for tuition and medical care are not taxable, they are not counted toward your annual exclusion, and they do not reduce your $1 million gift exclusion.

2009 CHARITABLE DONATIONS FROM IRAS

If you have reached age 70 ½, you may exclude from your income donations made to qualified charities directly from your IRA. The use of this exclusion is limited to donations of $100,000 per year from your IRA. Both spouses may use the exclusion for donations made from separate IRAs.

2009 INCREASE IN COMBINED ESTATE AND GIFT TAX EXCLUSION TO $3.5 MILLION PER PERSON

The combined estate and gift tax exclusion increased to $3.5 million in 2009. You may use up to $1 million of that amount to protect lifetime gifts from gift tax, as noted above. In light of this increase, a husband and wife can protect up to $7 million from the federal estate tax. To do so, however, the first spouse to die must have (i) assets valued at $3.5 million titled in his or her own name for which the surviving spouse is not the designated beneficiary, and (ii) a will or revocable trust that carves out the exclusion amount so that it is protected separately from any assets protected by the estate tax marital deduction.

Of course, saving taxes should not be the sole consideration in determining how assets are titled. Other factors are also important. For example, assets titled to spouses jointly generally enjoy special protection from creditor's claims against one spouse. Further the homestead laws of some states require that the residence protected by the homestead law pass outright to the surviving spouse.

ROTH IRA CONVERSIONS

For some, Roth IRAs have been a useful alternative to traditional IRAs because Roth IRAs, although funded with after-tax dollars, may accumulate income-tax free, and are not subject to the minimum distribution requirement that begins at age 70 ½. Through 2009, however, only those with a modified adjusted gross income of $100,000 or less have been eligible to convert their traditional IRAs to Roth IRAs. Beginning in 2010, the income limitations for converting to a Roth IRA disappear. Of course, you will be required to pay income taxes on the conversion of pre-tax traditional IRAs to Roth IRAs. Nonetheless, traditional IRAs that have lost value in the recent market decline may prove to be good candidates

for conversion if other variables, such as current and future income tax rates, availability of funds to pay the income tax on conversion, and anticipated retirement date (to name just a few) are favorable.

LOOKING AHEAD

The current federal estate and gift tax rates and exclusions were enacted in 2001. If Congress were to take no action, there would be an unlimited exclusion from estate tax for decedents dying in 2010, but then in 2011 the exclusion amount would revert back to a combined estate and gift tax exclusion of only $1 million. As of this writing, Congress is considering bills that would, at a minimum, make the current estate and gift tax exclusion, as well as the 45% tax rate, permanent. At least one bill calls for an increased exclusion and decreased tax rates over time. We are monitoring the progress of these bills closely, and will advise you as soon as Congress and the President take action. Stay tuned!

Please contact us for assistance and information regarding these and other tax-effective estate planning techniques.

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