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ESTATE PLANNING UPDATE

Important Tax Law Changes Effective January 1, 2010

Many married couples' estate planning documents divide the estate of the first spouse to die into two portions. One portion is equal to the deceased spouse's unused Federal estate tax exemption amount. The other portion is equal to what is called the marital deduction amount. Neither portion will be subject to Federal estate tax when the first spouse dies even if there is a Federal estate tax in effect; the estate tax exemption portion (sometimes called the "credit shelter," "bypass" portion or "family trust") escapes tax because it takes advantage of the Federal estate tax exemption of the first spouse to die. The estate tax exemption portion also escapes estate taxation when the surviving spouse dies. The marital deduction portion is not subject to estate tax when the first spouse passes on, but is potentially subject to estate tax when the surviving spouse dies. This is the common way most married couples have disposed of their wealth for many years. We continue to believe that this approach is appropriate for most married couples. Due to Congressional inaction in 2009, however, a change in the tax law became effective January 1 and will last only for this year. It may be appropriate for you to come in and discuss this change with us to determine if your documents should be modified.

In the absence of legislation this year, there will be no Federal estate tax in 2010 (although some states, such as New Jersey and New York, will retain independent estate tax systems). There will also be no Federal generation-skipping transfer tax. The Federal gift tax remains in effect. It may be uncertain how the provisions of your estate planning documents will be interpreted if there is no Federal estate or generation-skipping tax. This is because several provisions of your documents may be phrased in terms of tax concepts, such as the federal estate tax exemption amount, the "GST exemption" and the marital deduction. Because those tax concepts are not in the law in 2010, there may be some questions as to what your documents mean and how your property is disposed of. That, in turn, may raise tax questions as well.

Another change in effect for the estates of individuals dying in 2010 relates to the income tax basis of inherited assets. Income tax basis is the value from which capital gain or loss on assets sold is measured. Under the law up until this year, the income tax basis of most assets is changed to its current value when its owner dies, thus eliminating or minimizing capital gains consequences to heirs when they sell inherited assets. However, in 2010 this automatic change in basis will not occur. Rather, subject to certain limited adjustments, the deceased owner's

income tax basis in assets will “carry over” to the persons who inherit the assets. It may be appropriate for your documents to be revised in order to take into account the possibility of carry over basis.

Congress may amend these laws in 2010 by reinstating the Federal estate and generation-skipping tax system as it existed in 2009 when taxpayers enjoyed a \$3.5 million exemption against each of these taxes. Any new legislation also may apply retroactively to January 1, 2010, although the constitutionality of such a provision is unclear. In the absence of legislation, the Federal estate tax will be reinstated in 2011 with only a \$1 million exemption, indexed for inflation. The attorneys at Borteck & Sanders, LLP are closely monitoring all legislative developments. In light of the current uncertainty of the law, we think that it is important for you to consider scheduling an appointment with us to discuss these matters in detail. If you would like to meet with us, please call to schedule a meeting.

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