

December, 2009

To Our Clients and Friends:

A lot has happened -- and in the case of the federal estate tax has not happened -- during the past year which affects estate planning. Here is our brief discussion of some issues that you should be aware of.

The Federal Estate Tax is Likely to be Extended. The 2001 tax act raised the federal estate tax exemption amount from \$600,000 to \$3.5 million and lowered the maximum estate tax rate from 55% to 45%. The law also provided that the estate tax, but not the gift tax, would disappear in 2010, only to be resurrected in 2011 with a smaller \$1 million exemption and a 55% (or more) maximum estate tax rate. The 2010 disappearance and 2011 reappearance was a legislative gimmick to comply with the budget law, and it was widely expected that during the nine years from 2001 to 2010 Congress would address the issue to avoid repeal. This was the conventional wisdom among estate planners and none of us can believe that, with less than 30 days until 2010, the law has not been changed.

The Obama Administration's stated policy is to extend the \$3.5 million exemption and 45% maximum federal estate tax rate, and there is little Congressional support for repeal of the estate tax. Virtually everyone in our profession, including senior IRS officials, anticipates that the 2009 limits will be extended into 2010. If this legislation does not pass in 2009, a law may be enacted in 2010 to extend these limits, retroactive to 2009.

Thus, we believe that our clients should anticipate that the federal estate tax in 2010 will retain the \$3.5 million threshold and, with careful planning, a married couple will be able to pass \$7 million in assets to their heirs without paying any federal estate tax.

State Estate Taxes Remain an Issue. Each state has its own estate tax policy and rates, which applies both to residents and to non-residents who die owning certain assets in that state, such as real estate. A New York resident is only permitted an exemption of \$1 million from the New York estate tax. Thus a New York resident who dies in 2009 with a taxable estate of \$3.5 million would pay no federal estate tax, but would owe \$229,200 in New York estate tax. New Jersey recognizes a \$675,000 exemption. This year, Connecticut took significant steps to ease this tax burden for its residents by raising its exemption to \$3.5 million and reducing its estate tax rates by 25%. On the other hand, if you reside in Florida or one of the other states that lost its estate tax with the repeal of the "State Death Tax Credit", then your heirs will pay no state estate tax regardless of the size of your estate. With careful planning, we can help you to minimize your state estate tax exposure, whether by making lifetime gifts which are not subject to New York transfer tax, or building flexibility into your will and other planning documents

Gifts of Assets Remains a Tax Efficient Method to Reduce Estate Taxes. It is well known that you may make an annual gift to an unlimited number of individuals (and to qualifying trusts) of up to \$13,000 per year without incurring any gift tax or utilizing your \$1 million gift tax exemption. If you have the financial ability and have not made these gifts in 2009, you should make them in December. The \$13,000 amount remains in effect for 2010.

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We have also discussed with many of you that you may make unlimited gifts for any person's educational or medical needs without affecting your \$13,000 annual exclusion or gift tax exemption. The only caveat – and it must be carefully adhered to – is that payments must be made directly to the educational or health care provider. Thus, you cannot reimburse your daughter for your grandchild's orthodontist bills, but you may pay the orthodontist directly. Also, while there are categories of bona fide expenses that may be covered, there are others that would trigger a gift tax. For example, you may pay a grandchild's college tuition, but you cannot pay dormitory fees, which are not considered to be educational expenses.

In addition to the annual exemption and the medical/educational gifts, each of us has a \$1 million lifetime gift tax exemption. To the extent that it is used during lifetime, it reduces the estate tax exemption. This is a valuable planning tool and, if the right circumstances exist, could present excellent opportunities to move assets efficiently to the next generations.

Using Retirement Plans for Charitable Giving. Although there are no required minimum distributions from retirement plans in 2009, the law permits certain IRA holders to direct up to \$100,000 to charity in 2009. This IRA distribution will not be subject to income tax and is a very tax efficient method of making charitable contributions.

Another effective technique is to name a charity or charities as beneficiaries of your IRA or retirement plan when you die. The funds will pass directly to the charity and will avoid both the estate tax and the income tax that non-charitable beneficiaries other than your spouse would pay upon distribution. Your heirs can then inherit other funds from your estate, which are not subject to income tax.

Estate Tax Planning in Turbulent Times. While some of us may be wary about undertaking substantial planning during this time of economic uncertainty, for others this may be a window of opportunity to transfer assets at very low values. We are also in an historically low interest rate environment, and this makes certain planning devices, such as the Grantor Retained Annuity Trust (GRAT) very attractive and efficient if you anticipate that the value of your assets will rise at a greater rate than the IRS tables assume.

The current interest rates also provide an additional incentive to make loans to family members at very low interest rates. This can provide children or grandchildren with the means to afford to purchase a home, make investments or improve their lifestyle. Please remember that intra-family loans need to be properly documented and their provisions followed scrupulously.

The rules regarding Roth IRAs are changing in 2010 to permit any person, regardless of income, to convert an IRA to a Roth IRA. While this would involve the upfront payment of income tax on the existing IRA, the change may be appropriate for some clients who anticipate an income tax rate increase and prefer to pay income tax on their IRA assets at current rates and then invest the balance (and any subsequent growth) free of income taxes for the future.

New York State has a new form of Durable Power of Attorney. On September 1, 2009, the New York form of durable power of attorney changed substantially and is now a more complicated document. Among the significant changes: you must execute a separate form if you want your agent to be able to make gifts on your behalf to children or others, and this form can be tailored to your needs and wishes regarding gifts; in order to be effective, your agent must sign a form acknowledging his or her responsibilities to act as your fiduciary; and finally, banks

and financial institutions are required to accept the New York form and may not insist that you use the bank's power of attorney forms.

There is no requirement to execute the new form if you have a New York power of attorney that was executed before September 1, 2009. This form will remain effective indefinitely. However, clients might want to consult with us to determine whether the new form might better serve your needs.

Our firm. Earlier this year, Gerald & Lawrence Blumberg, LLP suffered the death of our partner, Gerald Blumberg, who in 1937 founded the law practice upon which the firm was built. Jerry was an extraordinary person and a great lawyer and advocate for his clients. He remained engaged in client matters until only a few years before his death at age 97½. We are grateful for his wise counsel and were moved by the many clients and colleagues who contacted us with their memories. You may read more about Jerry at <http://www.glblumberg.com/bio-GeraldBlumberg.php>.

On a happier note, we are pleased that both of the firm's partners, Larry Blumberg and Lois Tilton, were named to the 2009 New York Super Lawyers® list. We are far more gratified by the wonderful relationships that we have with our clients and colleagues.

We look forward to speaking with many of you in the coming weeks – and hopefully to being able to advise you that Congress has taken action on the estate tax – and wish you a wonderful holiday season and a happy new year.

Sincerely,

Gerald & Lawrence Blumberg, LLP

P.S. A copy of this letter is also posted on our website: www.glblumberg.com

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