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Notice of Federal Estate Tax Changes

On January 2, 2013, the President signed into law the American Taxpayer Relief Act of 2012. The law preserves Bush-era income tax rates for all Americans, except those who earn in excess of \$400,000 (\$450,000 for families) who will now pay a top income tax rate of 39.6% and a top capital gains rate of 20%.

The new law raises exemptions from federal death taxes. In 2013, individuals may exempt assets worth up to \$5,250,000 from federal death taxes. Married couples may exempt \$10,500,000. These exemptions increase to \$5,340,000/\$10,680,000 respectively on January 1, 2014 and will be adjusted annually for inflation. Assets in excess of the exemption will be taxed at the rate of 40%.

By raising personal exemptions, the new law eliminates federal death taxes for 99.5% of taxpayers.

How does the new law affect existing Wills and trusts? Prior to 2013, married clients commonly implemented Wills which included sophisticated "credit-shelter" or "non-marital" trusts to hold assets after the death of the first spouse, thereby shielding those assets from federal death taxes. For most clients, those trusts may no longer be necessary for federal death tax purposes because the assets of most married couples will be lower than the \$10,500,000 exemption.

As a result of these federal tax changes, we offer the following general guidance to our estate planning clients:

→ We advise our married clients who have Wills that include credit-shelter trusts to consider alternative arrangements that may be more tax efficient. These options include (i) outright gifts to surviving spouses or (ii) so-called disclaimer Wills which give the surviving spouse the power to decide whether or not to fund a credit-shelter trust after the death of the first spouse.

For married couples with estates in excess of \$10,000,000, credit-shelter trusts will continue to protect appreciated assets from federal death taxes. In these situations, consideration must be given to the impact of federal capital gains taxes.

→ *If you are married (and your spouse is living) and your Will gives your credit-shelter trust to someone other than your spouse, we advise you to seek immediate advice about the impact of the increased federal exemption on the size of the credit-shelter trust. In these very rare situations, the enhanced federal exemption may increase the size of the credit-shelter trust and reduce or eliminate the marital gift.*

→ If you are currently single, widowed or divorced, or if your Will leaves everything *outright* to your surviving spouse (with or without disclaimer trust provisions), the issues discussed above will not affect you. You will benefit from the \$5,250,000 federal exemption (or, if married, \$10,500,000).

If you have any questions about the impact of the increased federal death tax exemption on your estate plan, or if you have any other questions about your estate plan, please call or email our office to arrange an estate planning review.

Please contact us with any changes to your contact information. Please note that the material in this Notice provides general information and should not be construed to offer legal advice or legal opinions on specific facts. For specific legal advice, please contact our office. Nothing in this Notice is intended to be used, or may be used, to avoid any penalty under federal tax laws.