Tax Alert

****Action May Be Required****

Dear Clients and Friends:

We are writing to advise you of significant tax law changes that may adversely impact your current estate plan. We encourage you to meet with us to review your estate plan as soon as possible.

Congress ended its 2009 session without extending the Federal estate and generation-skipping transfer ("GST") taxes, resulting in the repeal of both taxes as of December 31, 2009. This may create unintended consequences for your estate plan.

SIGNIFICANT TAX LAW CHANGES

In 2010, the Federal estate and GST taxes are repealed. With the repeal of these Federal taxes, the $3.5 million estate and GST exemptions, as well as the 45% estate and GST tax rates, are eliminated. Also eliminated in 2010 is the adjustment of basis to fair market value at death (often referred to as the "step-up in basis" rule). This rule has been replaced with the "modified carryover basis" rule, which will require cumbersome cost basis tracing. In a bizarre twist, for some estates these changes will actually increase the overall taxes paid by virtue of an individual's death.

Unless Congress acts, beginning in 2011 the Federal estate and GST taxes will be reinstated. However, the Federal exemptions for these taxes will be greatly reduced. Specifically, the estate tax exemption will be reduced to $1 million and the GST tax exemption will be reduced to $1 million indexed for inflation. These lower exemptions will substantially increase estate taxes for many estates.

In addition, Maryland and the District of Columbia continue to impose local estate tax on estates valued at more than $1 million. Virginia abolished its estate tax for Decedents dying on or after July 1, 2007.

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IMPACT OF TAX LAW CHANGES

These law changes may impact you in several ways. For decades, Wills and Trusts have commonly included formulas that reference the estate and/or GST tax exemptions for the purpose of maximizing tax savings. Likewise, formulas have been used to determine the amounts that will pass to family members or charities. Now that the Federal estate and GST taxes have been repealed, these formulas reference taxes that no longer exist. The consequences can be disastrous. For example, a beneficiary may be inadvertently disinherited or there may be an unintentional reduction in the amount of assets passing to certain beneficiaries.

RECOMMENDED ACTION

Whether you are impacted by these tax law changes depends on the provisions in your estate planning documents and also on your family and financial circumstances. To confirm that your property will be distributed according to your desires, we must review and possibly revise your Wills, Trusts, and other estate planning documents.

Additionally, married couples residing in Maryland who have not updated their estate plans since 2006 should be aware that additional changes to their documents are necessary to take advantage of a 2006 change to the Maryland estate tax law that can defer and, in some cases, save substantial Maryland estate tax.

Even in the most certain of times, you should review your estate plan every few years. However, in this unpredictable estate-planning climate, we strongly suggest that you review and adjust your estate plan to ensure that it reflects both your objectives and the current law.

To schedule an appointment to review your estate planning documents, please contact Jay M. Eisenberg (jeisenberg@shulmanrogers.com or 301-230-5223) or Patrick J. Howley (phowley@shulmanrogers.com or 301-231-0944) in our Trusts & Estates Department.

Sincerely,

Jay M. Eisenberg
Chair, Trusts & Estates Department