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IMPORTANT MESSAGE REGARDING REPEAL OF THE ESTATE TAX

Dear Clients and Professional Advisors:

We want to alert you to some important changes in the estate tax laws that may significantly impact your estate plan.

Changes in the Estate Tax Laws

To the surprise of most estate planning practitioners, the federal estate tax was repealed as of January 1, 2010. Congress was unable to compromise on legislation that would have either maintained the previous \$3.5 million exclusion amount and 45% estate tax rate, or implement a new exclusion amount and/or tax rate. As a result, the following rules are now in effect for 2010:

- There is no federal estate tax or generation-skipping transfer tax in 2010.
- The gift tax exclusion amount remains at \$1 million, but the gift tax rate is reduced from 45% to 35%.
- The step-up in basis for inherited assets is eliminated, and beneficiaries inheriting assets will receive the decedent's basis in such assets (assuming the assets have appreciated), with the following adjustments: (a) there will be a \$1.3 million increase in basis for assets passing to beneficiaries other than the decedent's spouse, and (b) there will be an additional \$3 million increase in the basis of assets passing to the decedent's spouse.

It is still possible that Congress will act to reinstate the estate tax and make it retroactive to January 1, 2010, with either the previous \$3.5 million exclusion amount and 45% estate tax rate or a new exclusion amount and/or estate tax rate. However, even if Congress reinstates the estate tax retroactively, the constitutionality of the retroactive effective date will almost certainly be challenged, and a U.S. Supreme Court decision will likely be years away.

If Congress fails to act in 2010, under current law the federal estate tax will be reinstated on January 1, 2011, with \$1 million exclusion amounts for the estate tax and the gift tax, a \$1.35 million exclusion amount for the generation-skipping transfer tax, and with a maximum rate for all of these taxes of 55%.

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What You Should Do Now

Because each individual's estate plan is unique, and because of the uncertainty surrounding the estate tax, there is no general answer for all clients as to if and how these changes will affect you. Rather, this analysis must be done on a case-by-case basis.

First, you should review your estate planning documents to make sure that they still reflect your wishes and that the people that you have appointed as executors, trustees, and agents to make financial and medical decisions for you are still the most appropriate selections.

Second, you should review your will or trust for terms like "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "GST exemption," "marital deduction," "maximum marital deduction," "unlimited marital deduction," "inclusion ratio," or "applicable fraction." If you find any of these words, then you should call us immediately. If you were to die in 2010, the use of these words *may* cause unintended consequences that inadvertently disinherit one or more of your loved ones.

Finally, a review for the tax changes discussed above is probably indicated by any of the following:

- You are presently in a second or third marriage, especially if you have children from a prior marriage or marriages.
- Your will or trust agreement has provisions for substantial charitable gifts.
- Your assets, including life insurance, retirement plans, and IRAs are more than \$2 million.
- If you have made substantial gifts and used all or most of your gift tax exemption amount of \$1 million.

Should you wish us to review your documents, please call Mary Braun at 330-5528, extension 229, to schedule an appointment. **PLEASE NOTE THAT IT IS INCUMBENT UPON YOU TO CONTACT US IF YOU WOULD LIKE US TO REVIEW YOUR CURRENT ESTATE PLANNING DOCUMENTS, AND WE WILL TAKE NO ACTION UNLESS REQUESTED TO DO SO BY YOU.**

Please do not hesitate to contact us with any questions or concerns that you may have. As always, we appreciate the continued opportunity to assist you in your estate planning.

Very truly yours,
/s/ Freed & Shepherd, P.C.