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November, 2015

TO: CLIENTS AND THEIR ADVISORS

RE: ESTATE PLANNING AND INCOME TAX BASIS

Due to increased ordinary income and capital gains tax rates, increased federal and state transfer tax exemptions, and increased federal transfer tax rates, the focus of structuring most estate plans is shifting to managing the income tax basis of assets and maximizing the "step-up" in the basis of assets owned at the client's death.

Generally, property received by gift takes a carryover basis from the donor while the basis of property received from a decedent is the fair market value of the property on the decedent's date of death. The overall size of the estate, post-gift appreciation, future exemptions and tax rates and the basis of the property will be relevant factors to evaluate whether a lifetime gift of an asset is more beneficial than holding an asset until death.

The new calculus suggests that taxpayers and their advisors explore the following tax strategies:

- Include highly appreciated assets in the client's estate and gift less appreciated assets;
- Transfer less appreciated assets during the client's lifetime with zeroed-out transfer strategies;
- Use a General Power of Attorney for estate planning after the client becomes incapacitated;
- Use ordinary "Grantor Trusts" to transfer assets before the death of the Grantor, which allows the date of death value of these transferred assets to still be included in the gross estate. The Grantor continues to pay the income tax on the income and gain from the trust assets, which constitutes an additional wealth transfer to the Grantor Trust that does not count against the lifetime exemption;
- Use intentionally defective Grantor Trusts to achieve the transfer-tax-free payment of income taxes and removal of future asset appreciation from the estate tax base if estate taxes are an issue for the client.

Our office is available to assist you or your clients in exploring these and other sophisticated gift and estate tax planning opportunities including family limited partnerships, qualified personal residence trusts and charitable scenarios which will assist in the preservation of wealth for future generations. Our other areas of specialization include real estate, tax dispute resolution, business and employment law representation and retirement planning issues.