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BY APPOINTMENT ONLY

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TO: CLIENTS AND THEIR ADVISORS

**RE: ADDITIONAL EXTENSION TO FILE FEDERAL ESTATE
TAX "PORTABILITY" ELECTION**

Effective January 1, 2011, the unused federal estate and gift tax applicable exclusion amount ("Exclusion Amount") of the first spouse to die is now "portable" to the surviving spouse. Portability eliminates the reliance upon the traditional "credit shelter" or "by-pass" trust arrangements and asset splitting that have been a hallmark of estate planning. The Exclusion Amount of a surviving spouse is increased by the amount, if any, by which the taxable estate of the pre-deceased spouse was less than Exclusion Amount in effect for the year in which the pre-deceased spouse died. This is referred to as the "deceased spousal unused exclusion" or DSUE. For example, if one spouse died in 2014 leaving a taxable estate of \$1 million and the surviving spouse dies in 2017, the Exclusion Amount of the surviving spouse equals the 2017 Exclusion Amount (\$5,490,000) plus the DSUE (the 2014 Exclusion Amount of \$5,340,000 less the taxable estate of \$1,000,000) for a total of \$9,830,000. To make the portability election, the estate of the pre-deceased spouse must file a "timely" Form 706, US Estate Tax Return, even if not otherwise subject to estate tax and must provide the calculation of the DSUE amount available to the surviving spouse.

The Internal Revenue Service recently released Revenue Procedure 2017-34 provides an extension of time to make a portability election for spouses dying after December 31, 2010, if a timely Form 706 was not filed. To qualify for the extension to file a portability election, a "complete and properly prepared" Form 706 (for the year of death of the deceased spouse) must be filed on or before the later of January 2, 2018 or the second anniversary of the decedent's date of death. At the top of Form 706 the following should be written: "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER § 2010 (c)(5)(A)". In most situations where the surviving spouse anticipates having a taxable estate including adjusted taxable gifts in excess of \$5,490,000 (based upon the 2017 Exclusion Amount), it is worthwhile to consider making the belated portability election.

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