IVEN R. TAUB
ATTORNEY AT LAW

Timothy P. Fisher
Of Counsel
Schwartzman Garelik
Walker & Troy, P.C.[Δ]
Of Counsel

[Δ]Members Admitted in
New York and New Jersey

355 LEXINGTON AVENUE
20TH FLOOR
NEW YORK, NEW YORK 10017

TEL: (212) 286-7700
TEL: (212) 686-6866

FAX: (212) 481-2488
E-mail: Ivenesq@aol.com

WESTCHESTER OFFICE
550 MAMARONECK AVENUE
SUITE 510
HARRISON, NEW YORK 10528

TEL: (914) 381-7400
FAX: (914) 381-7406
BY APPOINTMENT ONLY

TO: **OUR CLIENTS AND THEIR ADVISORS**

RE: **GENERATION SKIPPING TAX ALERT**

DATE: **March 28, 2002**

As part of The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") enacted June 7, 2001, important changes were made to the Generation Skipping Tax ("GST") structure. April 15, 2002 represents the first deadline to address planning elections/opportunities on Form 709, United States Gift (and Generation Skipping Transfer) Tax Return, to maximize the use of the GST exemption.

1. Effective for lifetime transfers beginning January 1, 2001 (reportable on or before April 15, 2002 unless a timely extension is filed on Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return), the GST exemption which was previously automatically allocated only to direct skips (outright transfers to an individual two generations removed from the transferor) will now also be automatically allocated to indirect skips. Newly enacted Section 2632(c)(3)(A) of the Internal Revenue Code ("IRC") defines an "indirect skip" to be a transfer of property subject to gift tax which is made to a GST trust. While six exceptions to classification as a GST trust are provided in the definition, no one exception addresses the common situation of a discretionary life insurance trust, created for the grantor's spouse and descendants that terminates upon the death of the spouse for the benefit of the children at stated ages. Certain planning scenarios which were not intended to encompass GST planning will be subject to the automatic GST allocation unless specific action is taken. The grantor must elect out of the automatic GST exemption allocation on Form 709 for those specifically identified transfers occurring during 2001.

2. IRC Section 2632(d) has been enacted to allow, in the event of the untimely death after December 31, 2000, of a non-skip person (one generation removed from the transferor) a retroactive allocation of the transferor's GST exemption. In many instances a trust will be created for the benefit of a child which will terminate upon the child attaining a given age. If the child dies prior to attaining that age, the trust will continue for the benefit of grandchildren, thus constituting a taxable GST trust under such circumstances. This statute presents the opportunity to avoid the unintended creation of a taxable GST trust. The retroactive allocation must be made on a timely filed Form 709 submitted for the calendar year within which the non-skip person died. The amount of the transferor's GST exemption allocation will be based on the value of the original transfer.

3. EGTRRA has created the ability to request an extension of time to allocate the GST exemption or to make an election pursuant to IRC Sections 2632(b)(3) or (c)(5), which can be submitted pursuant to the guidelines provided under Treasury Regulations Section 301.9100-3, so long as there is "evidence of intent" concerning the GST exemption in the instrument of transfer.

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, personal residence 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, real estate and retirement planning issues.