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CLIENT ALERT

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Happy New Year! The Death Tax Lives.

Congress recently enacted the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (2010 Tax Relief Act). The new law extends many taxpayer-friendly changes to the federal estate tax for the next two years. Because this is only a two-year fix, estate tax planning is still full of uncertainty.

Estate tax rates and exclusions. Prior law repealed the federal estate tax temporarily for decedents dying in 2010. The 2010 Tax Relief Act revives the estate tax.

Under the new law, the federal estate tax will again apply to the estates of decedents dying after December 31, 2009 and before January 1, 2013. The new law sets a maximum estate tax rate of 35 percent with a \$5 million exclusion (\$10 million for married couples).

Unless Congress acts again, the estate tax exclusion is scheduled to drop to \$1 million and the maximum tax rate rises to 55 percent in 2013.

Portability. The 2010 Tax Relief Act provides for portability between spouses of the \$5 million estate tax exclusion after December 31, 2010. Portability allows a surviving spouse to use any of the unused portion of the estate tax exclusion of the predeceased spouse, if an election is made. This allows married couples to effectively shield up to \$10 million from estate tax. Unless Congress acts, portability also goes away in 2013.

With portability and the higher exclusions, many clients may need to change or eliminate their existing trusts to avoid unintended consequences. Old trusts might end up now providing insufficient assets for surviving spouses. Some clients may no longer need trusts, while others will have important non-tax reasons for trusts.

Generation Skipping Transfer (GST) Tax. The new law provides a GST tax exemption of \$5 million, with a tax rate equal to the highest estate tax rate in effect for the year (35 percent for 2011 and 2012). Portability does not apply for the GST tax. Most clients wanting to use the GST tax exemption for both spouses will still need to use trusts.

Gift tax rates. For gifts made in 2010, the 2010 Tax Relief Act provides that gift tax is computed using a rate schedule having a top tax rate of 35 percent and an applicable exclusion amount of \$1 million. For gifts made after 2010, the gift tax is reunified with the estate tax with a top gift tax rate of 35 percent and an applicable exclusion amount of \$5 million.

As with the estate tax, unless Congress acts, the gift tax exclusion is scheduled to drop to \$1 million and the maximum tax rate rises to 55 percent in 2013. This makes 2011 and 2012, an excellent time for some clients to make sizeable gifts while paying no gift tax. Making such gifts now removes the future income and appreciation from the donor's estate.

Medical (and educational) expenses paid on behalf of another person directly to the provider are exempt from gift tax. Under a recent favorable U.S. Tax Court decision, a parent's gift of paying medical bills for her daughter had the added tax benefit of providing an income tax deduction for the daughter, even though she did not pay the medical bill.

Gift tax audits. Kiplinger reports that the IRS is working on a major gift tax compliance program. The IRS estimates that 60 to 90 percent of taxpayers who make gifts of real estate do not report these gifts to the IRS. The IRS is checking deeds and other public records in 15 states, including Ohio. So far, over 500 people are under examination with many more to come. With proper planning, many times these transfers can be structured to avoid gift tax.

The federal estate tax and related provisions are among the most complex in the tax code. This letter presents a high-level overview of the provisions in the new law. Our attorneys are available to discuss any questions you may have on these issues. As this Alert illustrates, now is an important time, especially for those who have not updated their documents over the past few years, to have an estate planning review.

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**Bailey Cavalieri is proud to have been selected recently as a
Columbus top-tier practice in Trusts & Estates Law
by *U.S. News – Best Lawyers* “Best Law Firm” rankings.**