

LEGAL UPDATE

January 2010 *Contributing Attorneys: Richard L. Kay, Tracy Green Landauer and Eric B. Woldenberg*

ESTATE TAX REPEAL AND ROTH IRA CONVERSIONS

Changes in our tax laws effective January 1, 2010 have presented us with two very important issues for your consideration. We urge that you review both carefully.

I. FEDERAL ESTATE TAX REPEAL

There is no federal estate tax for individuals who die in 2010 and there is no generation-skipping transfer tax for transfers during 2010. Absent some action by Congress, these taxes are scheduled to reappear on January 1, 2011, but at the 2001 exemption levels and tax rates (only a \$1,000,000 exemption and GST exclusion and a maximum tax rate of 55%). The Federal gift tax remains in effect for 2010, but at a maximum rate of 35%. In addition, property acquired from an individual dying in 2010 will have a tax basis equal to the decedent's tax basis or, if less, the fair market value of the property on the date of death. This is known as the so-called "carryover basis" rule. As an exception to this rule, the executor of an estate can increase the basis of property acquired from a decedent by \$1.3 million (\$3 million in the case of property inherited by a surviving spouse). This carryover basis rule differs from the law in 2009 and prior years under which inherited property received a basis "stepped up" to fair market value as of the date of death. State gift and estate tax laws generally remain unaffected by the federal changes for 2010.

While we, like most professionals, hope that Congress will act quickly to resolve the present situation, there is no guarantee that it will do so. It is possible that Congress may even attempt to make changes retroactive to January 1, 2010. We recognize the uncertainties created by the current state of the law and would be pleased to discuss with you the impact of the state of the law upon your existing estate plan and documentation.

II. ROTH IRA CONVERSION

The second important issue for your consideration relates to the potential for converting some portion of

your existing IRA (or 401(k), profit sharing, 403(b) or 457 plan) accounts to "Roth" status. This option became available to individuals without reference to adjusted gross income on January 1st (whereas prior to this date, a Roth conversion was unavailable to any individual whose adjusted gross income exceeded \$100,000). The benefits of a Roth IRA are that it provides tax-free growth and accumulation, requires no minimum distributions during the life of the original owner (or his or her spouse), and is paid out tax-free at time of distribution to either the original owner or his or her beneficiary. The cost, however, of such a conversion is the current payment of income tax on the amount converted. Although it seems counterintuitive to choose to pay tax earlier than required, the benefits over a period of years can be quite impressive. If you are in or near retirement and expect to need to withdraw most of the funds during your lifetime, or plan to donate your IRA to charity, a Roth conversion is unlikely to appeal to you. Otherwise, you should speak with your accountant or financial advisor about modeling the results of a conversion for you.

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The foregoing is intended to discuss estate tax repeal and IRA conversions, and does not constitute legal advice. Please contact the Pryor Cashman attorney with whom you work with any questions you may have. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Richard Kay at (212) 326-0844, Tracy Green Landauer at (212) 326-0253 or Eric Woldenberg at (212) 326-0865.

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