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High Net Worth Family TAX REPORT

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CONTENTS

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Foreign Bank Account Reporting Update – Final FBAR Regulations and New 2011 Offshore Account Voluntary Disclosure Program 1

New Foreign Reporting under the Foreign Account Tax Compliance Act (FATCA) . . . 3

Ongoing Tax Litigation Highlights the Importance of Putting Steps in the Proper Order When Creating a Family Limited Partnership. 3

Executors Must Be Careful When Requesting an Extension of Time to Pay Estate Tax . . . 4

Home Purchased with Funds Provided by children is Included in Parent's Estate 5

Federal Circuit Upholds Retroactive Application of Regulation Dealing with the Six Year Statute of Limitations for the Overstatement of Tax Basis 5

Taxpayer Attempt to Avoid Self-employment Tax Fails . . . 6

President's Budget Proposal Calls for Some Taxes to Increase in Two Years. 7

Proper Documentation is Required for Charitable Contributions 7

Defense of Marriage Act and Planning for Same-sex Spouses: Update 8

IRS Announces that Basis Allocation Form for 2010 Decedents Does Not Have To Be Filed by April 18, 2011 . . . 8

Foreign Bank Account Reporting Update – Final FBAR Regulations, Revised FBAR Form, and New 2011 Offshore Account Voluntary Disclosure Program

Foreign bank account reports (FBARs) for 2010 are due on June 30, 2011 (and no extension is available). Recent guidance as well as a revised FBAR form and instructions provide insight into who is required to file an FBAR and what is considered to be a "foreign financial account" that must be reported on an FBAR. In addition, the IRS recently announced a new offshore voluntary disclosure initiative that would allow U.S. persons to report unreported foreign financial accounts and other foreign assets to the IRS and obtain a significant reduction in civil penalties as well as in the risk of criminal prosecution.

FinCEN Final Regulations – Applicable to FBARs for 2010 and Subsequent Years

On February 24, 2011, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) published final regulations related to FBAR filing requirements for foreign financial accounts maintained in calendar year 2010 (required to be filed by June 30, 2011) and thereafter. The IRS published a revised Form FBAR with instructions that reflect the amendments made by the final regulations.

The final FinCEN regulations limit the FBAR filing requirement to U.S. citizens, U.S. residents, and domestic entities. This limitation is important because in FBAR instructions issued in 2008 the IRS had extended the definition of "U.S. person" required to file an FBAR to include non-U.S. persons "in and doing business in the United States." However, for 2008 and 2009 FBARs (due in June 2009 and 2010, respectively), the IRS allowed taxpayers to disregard its extended definition of U.S. person. For 2010 and subsequent years, the final regulations make clear that only U.S. citizens, U.S. residents, and entities created or organized in, or formed under the laws of the United States are required to file an FBAR.

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The new rules include a revised definition of "signature or other authority" of an individual over a foreign financial account. Under these new rules, such signature or other authority will exist only if the foreign financial institution will act on a direct communication from such individual regarding the disposition of assets in the account. The final regulations retain the general rule, with certain exceptions, that U.S. persons with such signature or other authority over, but no financial interest in, a foreign financial account must file an FBAR reporting such account. The IRS previously extended to June 30, 2011, the FBAR filing due date for such persons for 2009 and earlier calendar years. (Notice 2009-62 (8/7/09), Notice 2010-23 (2/26/2010)). As a result, those persons with signature or other authority over a foreign financial account likely will have to file FBARs for 2010, as well as for prior years, by June 30, 2011.

The new rules also clarify that, generally, an account is not foreign, and therefore is not required to be reported on an FBAR, if the account is maintained with a financial institution in the United States. For example, using a U.S. bank as a global custodian for international assets does not trigger the filing requirements, as long as the custodial services customer cannot directly access his foreign assets maintained in a foreign institution.

A foreign mutual fund or similar pooled fund is treated as a reportable "foreign commingled account" for FBAR purposes. The final rules clarify that the definition of "mutual fund" includes a requirement that the shares be available to the general public, as well as having a regular net asset value determination and regular redemption feature. FinCEN has reserved on the treatment of investment companies other than mutual funds or similar pooled funds (e.g., foreign hedge funds and private equity funds) as reportable commingled funds. Until further guidance is provided, interests in investment companies other than mutual funds or similar pooled funds should not have to be reported on an FBAR for 2010 and later years.

2011 Offshore Voluntary Disclosure Initiative – August 31, 2011 Deadline

On February 8, 2011, the IRS announced a new voluntary disclosure program for U.S. persons with unreported foreign financial accounts and other foreign assets. The 2011 Offshore Voluntary Disclosure Initiative (2011 OVDI) is based on a similar voluntary disclosure program that ran through October 2009 and generated over 15,000 voluntary disclosures.

Under the 2011 OVDI, eligible taxpayers have until August 31, 2011, to file all original and/or amended tax returns and include payment for (or good faith arrangements to pay) taxes, interest and accuracy-related penalties for the years from 2003 to 2010 for which there are unreported foreign accounts or assets. Those taxpayers who make the voluntary disclosure and fully cooperate with the IRS in the process generally should avoid the risk of criminal prosecution. Those taxpayers who currently are under civil examination or criminal investigation by the IRS are not eligible for the 2011 OVDI.

The penalty framework under the 2011 OVDI requires to be paid a penalty equal to 25% of the value of the previously unreported foreign accounts and assets held in the year with the highest aggregate value of such foreign accounts and assets during the eight year period from 2003 through 2010. (It appears that the 2010 year is included in the penalty calculation even if the 2010 FBAR and/or other information returns are timely filed in 2011.) This 25% penalty is higher than the 20% penalty that applied to those taxpayers that filed under the 2009 disclosure program. Participants in the 2011 OVDI also must pay back-taxes and interest for any year from 2003 to 2010 for which tax is due, as well as paying any applicable accuracy-related and/or delinquency penalties. The 2011 OVDI provides for reduced penalties of 5% and 12.5% in limited circumstances.

Taxpayers who came in under the 2009 voluntary disclosure program may apply for a review if their penalty would have been lower under the 2011 OVDI. In addition, those taxpayers who voluntarily disclosed their foreign accounts and assets after the 2009 program ended in "quiet disclosures" will be eligible for the 2011 OVDI, so long as they follow the procedures, and meet the August 31, 2011, deadline, thereunder.

Taxpayers who reported and paid tax on all their taxable income for prior years but did not file FBARs or other information returns related to reporting foreign income and/or assets (e.g., Form 3520 and Form 5471) can file their delinquent returns outside the 2011 OVDI, without being subject to a penalty for the failure to file if such returns are filed by August 31, 2011. However, taxpayers may need to be cautious about relying on this "safe harbor" rule. If the taxpayer files the returns outside the 2011 OVDI, and, on a later audit, the IRS were to discover an unreported tax liability in a prior year, while not entirely clear, it is possible that the taxpayer may be liable for the maximum penalties that can be imposed on late FBARs or other information returns rather than the reduced 25% penalty under the 2011 OVDI. The details of the 2011 OVDI are provided in a series of Frequently Asked Questions available at www.irs.gov.

Call us if you have questions about the new FBAR guidance discussed above, or you think you may have unreported foreign accounts or assets for 2010 or prior tax years.

New Foreign Reporting under the Foreign Account Tax Compliance Act (FATCA)

FATCA was enacted in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act. The legislation added two significant reporting obligations related to foreign financial accounts and assets that are held directly (or in certain cases indirectly) by U.S. taxpayers.

New for 2011 - Foreign Financial Account Reporting

Starting with taxable years beginning after March 18, 2010, individuals holding financial assets outside the United States with an aggregate value exceeding $50,000 for such years must report those assets to the IRS on a new Form 8938 (only a draft of which, without instructions, has been released by the IRS to date) that must be attached to their annual tax return. The definition of "foreign financial asset" is broader than, and overlaps, the definition of "foreign financial accounts" for FBAR purposes. The definition includes not only the typical depositary and custodial accounts held at foreign financial institutions, but also foreign stock or securities, foreign financial instruments (e.g., a debt instrument issued by a foreign person) and any interest in a foreign entity. The penalty for failing to file such form is $10,000 (and a penalty of up to $50,000 may be imposed for continued failure after IRS notification). In addition, underpayments of tax attributable to non-disclosed foreign financial assets will be subject to an additional substantial understatement penalty of 40%. At this point, no guidance beyond the statutory provision has been issued. It is expected that the IRS will issue the much needed guidance on the filing of Form 8938 before the 2011 returns are due.

New for 2013 – Foreign Financial Institution Reporting

Beginning in 2013, FATCA will require foreign financial institutions ("FFIs") and certain other foreign entities to report directly to the IRS certain information about financial accounts held by U.S. taxpayers or foreign entities in which U.S. taxpayers hold a substantial ownership interest. If the FFIs and foreign entities do not supply the required information about their U.S. owners, the payors of U.S. source income to such foreign entities must withhold 30% from any such payment, including proceeds of sales of items producing interest or dividends from U.S. sources. The IRS has issued limited guidance on this new reporting obligation to date, but is expected to provide substantial guidance in the form of treasury regulations before 2013.

Ongoing Tax Litigation Highlights the Importance of Putting Steps in the Proper Order When Creating a Family Limited Partnership

Currently ongoing litigation between taxpayers and the government serves to remind us of some very important concepts when creating a family limited partnership or limited liability company. These entities are commonly used to allow parents to make gifts to children and obtain a significant discount from the value of the underlying assets because those assets are owned by an entity in which the donee is given only a minority interest and has only limited ability to transfer his interest. The parents would typically form the entity, usually a limited partnership or limited liability company, and fund it with the assets they wish to give to their children. After a period of time, they make gifts of interests in the entity to their children, or in some cases may sell interests to their children. The gifts or sales are often made to trusts that have been set up for the children. In either case,

an appraisal is obtained which usually ascribes a significant discount to the value of the partnership interest because it is a minority interest which cannot exert control over the partnership and is not easily transferable.

This works well when properly implemented; however, *Linton v. United States, (9th Cir. January 21, 2011)*, provides a good example of how things can go awry. The Lintons met with their attorney on January 22, 2003, and at the same meeting signed all of the documents to transfer assets to a limited liability company that had been formed a couple of months previously, create trusts for their children, and transfer interests in the limited liability company to the trusts as gifts. The documents creating the trust and making the gifts were signed but not dated at the meeting. The attorney later wrote the date "January 22, 2003" on those documents.

The IRS contended upon audit that because everything happened on the same date, the proper characterization was that the Linton's made gifts of the underlying assets to their children, which were then contributed to the limited liability company. Under that characterization, no discount for minority interest would be available. The attorney testified that he mistakenly dated the trust and gift documents January 22, 2003, and that they should have been dated January 31, 2003. The District Court found his testimony not to be controlling and agreed with the IRS. Everything happened on the same day and the transaction was appropriately treated as a gift of the actual assets that were transferred to the limited liability company.

The Ninth Circuit reversed the decision and sent the case back to the District Court to do some more fact finding in order to be able to determine on what date or dates the various actions were taken. The Ninth Circuit noted the Tax Court's decision in the *Holman* case in 2008, where the court had to identify whether the subject of the gift was an interest in the entity or the underlying assets. The *Holman* court concluded that in order for the gift to be of the interest in the entity, the assets would need to be contributed to the entity enough time prior to the gift that their value could have changed by the time the gift was made. The Tax Court did not think that this needed to be a long period and in that case, where the assets were marketable securities, the court found that five days was sufficient.

The taxpayers in *Linton* may ultimately prevail and obtain their valuation discount, but they are certainly incurring a lot of costs that could have been avoided. If you form a family entity for purposes of making discounted gifts or sales of interests in the entity, you should form the entity and transfer to it the assets that you eventually want to transfer to your children. Attention to detail is very important. You need to be sure that legal title to the assets is registered in the name of the entity, whether the assets are brokerage accounts, individual stocks, real estate, partnership interests, etc. You must have clear records and documentation of the dates on which these transfers occur.

After the assets have been transferred to the entity, the best practice, where feasible, it to wait some identifiable period of time before completing the gifts or sales of interests in the entity. The documents must be accurately dated to reflect the actual dates on which transfers occur. The optimal amount of time you should try to wait depends on the nature of the assets. With marketable securities, the Tax Court has indicated that a period of five days is sufficient although clearly a longer period would be better. Longer periods should be observed with less volatile assets such as real estate. We recognize that circumstances do not always permit such careful delineation of the steps, but where possible, these transactions should now be planned with enough time for the optimal staging.

Executors Must Be Careful When Requesting an Extension of Time to Pay Estate Tax

The federal estate return and the payment of any estate tax are both due nine months after the date of a decedent's death. A six month extension of time to file the estate tax return can be obtained by filing Form 4768 by the original nine month due date. While that will extend the due date to file the return, it does not by itself extend the due date to pay the tax.

Internal Revenue Code Section 6161 (hereafter "IRC") provides that the IRS may grant a discretionary extension of time to pay the estate tax of up to 12 months. Form 4768 is also used to apply for this extension of time to pay the estate tax. Part III of the form is completed to make this

request and a statement must be attached explaining why an extension of time to pay is needed. The form contains a box where the extended due date requested must be noted.

In *Ronald B. Baccei, Trustee of the Eda O. Pucci 2004 Revocable Trust v. U.S., (9th Cir. February 16, 2011)*, the executor's accountant prepared and filed Form 4768, where he completed Part II, requesting an extension of time to file the estate tax return, but did not complete Part III to request an extension of time to pay the tax. The transmittal letter which accompanied the filing of the Form 4768 did make clear that an extension of time to pay the tax was being requested and gave the reasons therefor.

When the return was filed, the IRS assessed a penalty for late payment of the estate tax. When the case reached the Ninth Circuit, the court affirmed the prior holding of the district court that the IRS was correct: no extension of time to pay the tax had been obtained. The Ninth Circuit considered and rejected three separate arguments raised by the executor. The first was that the executor "substantially complied" with the requirements to obtain an extension of time to pay the tax. The court said there is no substantial compliance doctrine that is applicable in this instance. The executor then argued that the IRS had a duty to provide notice to the executor that the application was defective and allow the executor time to correct it. The court found no such obligation on the part of the IRS. Finally, the executor argued that the late payment of the tax was due to "reasonable cause." The court found that relying on the accountant to apply for the extension of time to pay was not reasonable cause for the late payment.

The IRS routinely grants payment extensions of up to one year. However, as this case shows, you must properly complete the Form 4768 and have a good reason for requesting the extension.

Home Purchased with Funds Provided by children is Included in Parent's Estate

The recent case *Estate of Adelina C. Van (January 27, 2011)*, goes a long way toward proving the old maxim that "no good turn goes unpunished." Mrs. Van purchased a home in which she had previously been residing. The money to purchase the home was provided by her daughter and son-in-law; however, title was taken in Mrs. Van's name. Prior to her death, she transferred title to the home to her daughter and granddaughters but continued to reside in the home.

The IRS took the position that the value of the home must be included in Mrs. Van's estate for estate tax purposes under IRC Section 2036. This section provides that one's estate includes the value of property the taxpayer transferred prior to his death but with respect to which he retained possession or enjoyment of the transferred property. The Tax Court agree with the IRS. In this case, the proscribed right was that Mrs. Van continued to live in the home after she transferred title to her daughter and granddaughters. Her occupancy of the home did not need to be based on any kind of legally binding agreement. It was sufficient that there was express or even implied understanding that she would continue to occupy the home after she transferred title.

Mrs. Van's estate argued that even though title to the home was taken in her name, she was merely holding the home "in trust" for her daughter and son-in-law who had provided the money for the purchase. The court rejected this argument because the requirements for creating a resulting trust under California law were not met. The court also rejected an alternative argument that Mrs. Van was simply holding title as the agent of her daughter and son-in-law.

The problem that resulted here could have been avoided through proper planning. If Mrs. Van's daughter and son-in-law had taken title to the home in the first instance, Mrs. Van would not have owned any property the transfer of which could give rise to inclusion under IRC Section 2036.

Federal Circuit Upholds Retroactive Application of Regulation Dealing with the Six Year Statute of Limitations for the Overstatement of Tax Basis

We have reported previously (see, Vol. 4, No. 2, September, 2009, Vol. 2, No. 2, November, 2007) about a few cases that have considered whether the longer six year statute of limitations applies where a taxpayer overstates the tax basis of an asset. Normally, IRC Section 6501(a) requires that the IRS assess any additional tax it believes is owed within three years after a taxpayer files his return. However, under IRC Section 6501(e), if the return omits gross income that is more than 25% of the

amount of gross income reported on the return, then the IRS has six years. A controversy developed over whether overstating the basis of an asset (and thereby underreporting the correct amount of gain) constitutes an omission from gross income.

After taxpayers prevailed in a couple of the early cases, the IRS resorted to self help and wrote a tax regulation that adopted its position. The regulation said that other than the case where goods are being sold in a trade or business, the overstatement of basis does result in an understatement of the taxpayer's gross income.

In *Grapevine Imports v. United States, (March 11, 2011)*, the IRS had issued its notice proposing a deficiency more than three but less than six years after the tax return had been filed. In the Court of Federal Claims, the court ruled in favor of the taxpayer based on the interpretation of an old Supreme Court case called *Colony*. However, that happened before the IRS issued its regulations. The case went before the Federal Circuit after the purportedly retroactive regulations were issued.

Another panel of the Federal Circuit had previously held for the taxpayer on this same issue, but that was also before the regulations were issued. This time, the Federal Circuit held in favor of the government. It found that the regulations were within the authority of the IRS to issue under IRC Section 7805 which empowers the IRS to issue regulations to interpret the Internal Revenue Code. A recent Supreme court case, *Mayo Foundation v. United States*, played a role in the outcome. The *Mayo* case will make it far more difficult for a taxpayer to get a court to overturn or invalidate a regulation that has been issued by the IRS. Under *Mayo*, in order for a tax regulation to be valid, there only need be an ambiguity in the statute it interprets, and the regulation must present a reasonable interpretation of the statute. The Federal Circuit found both of those requirements were satisfied so the government prevailed based upon its own regulation. The law applicable to regulations for this period of time also permitted regulations to be applied retroactively.

There is a good chance that this issue will now go to the Supreme Court for resolution. Two other circuits (the Fourth Circuit in *Burks v. United States (February 9, 2011)* and the Fifth Circuit in *Home Concrete Supply v. United States (February 7, 2011)*) have rejected the same regulation post-*Mayo*, finding that the statute was not ambiguous on its face, so under *Mayo* a regulation is not permitted.

Taxpayer Attempt to Avoid Self-employment Tax Fails

It's amazing the lengths to which people will go to try to avoid paying self-employment taxes. The social security tax rate for self-employed taxpayers is 10.4% for 2011 and 2012 and thereafter will be 12.4%. In 2011, it applies only to the first $106,800 of net earnings from self-employment. The rate for the Medicare tax is 2.9% and applies to all net earnings from self-employment. This unlimited feature of the Medicare tax has caused taxpayers to go to extremes to avoid it.

In *Tony L. Robucci, (January 24, 2011)*, the taxpayer was a psychiatrist who operated his practice as a sole proprietorship. On the advice of counsel, he formed two corporations, Robucci PC and Westsphere, and one limited liability company, Robucci LLC. Robucci PC and Dr. Robucci were the two members of Robucci LLC, holding 5% and 95% interests respectively. Dr. Robucci's 95% interest was characterized on the LLC's tax return as being a 10% general partner interest and a 95% limited partnership interest. There is no explanation as to how a limited liability company has general partner and limited partner interests. The LLC paid management fees to Westsphere. On his own tax return, Dr. Robucci reported his income attributable to his "limited partner" interest as passive income and did not pay self-employment taxes on it.

The IRS chose to attack this structure by arguing that there was no business reason for the two corporations that Dr. Robucci formed so they should be disregarded for income tax purposes. The court agreed, basically finding that none of the entities did anything and that nothing really changed in the manner that Dr. Robucci's practice was conducted. There were no employment or management agreements in place. When the corporations were disregarded, the LLC became a single member LLC which is also disregarded for income tax purposes so all of Dr. Robucci's income was net earnings from self-employment.

Even if this structure had been respected, it is difficult to imagine that Dr. Robucci would have ever

saved enough in employment taxes to offset the fees and costs he incurred in setting it up. This case is an example of a taxpayer whose aversion to a particular tax likely overcame his better judgment.

President's Budget Proposal Calls for Some Taxes to Increase in Two Years

If President Obama has his way in the ongoing budget discussions, the two year tax deal he made with Republicans last December will be just that: a two year deal. Under that compromise legislation, for 2011 and 2012, the maximum tax rate on capital gains and qualified dividends remained at 15% and the maximum rate on ordinary income remained at 35%. The estate, gift, and generation skipping taxes were restored beginning in 2011 (with a taxpayer option to apply the estate tax in 2010) with a maximum rate of 35% in effect for 2011 and 2012. The lifetime exemption for the estate, gift and generation skipping taxes is $5,000,000 and is portable between spouses in 2011 and 2012.

In his budget proposal released in February, the President would increase the capital gain and qualified dividend rate to 20% beginning in 2013. The maximum rate on ordinary income would increase from 35% to 39.6%. Beginning in 2012, new limitations would be placed on itemized deductions for upper income taxpayers.

The budget does not contain specific proposals for estate and gift tax rates and exemptions; however, the revenue forecast used assumes that after 2012, the maximum rate will go back to 45%. The lifetime exemption for the estate and generation skipping tax would be $3.5 million and for gift tax would be $1 million. The budget does propose making permanent the portability of the lifetime exemption between spouses.

There are several other proposals in the estate and gift tax area. There would be a new rule restricting the tax basis of an asset acquired from a decedent to the final estate tax value of that asset. There is no such rule currently and some taxpayers have later claimed higher values for income tax basis purposes than the value that had previously been shown on the estate tax return. Another proposal would further restrict taxpayers' ability to obtain discounts for factors like minority interests and restricted transferability. GRATS would be required to have minimum terms of at least 10 years and could not be set up with remainder interests having zero value. Finally, trusts that are exempt from generation skipping taxes would only remain exempt for 90 years.

Proper Documentation is Required for Charitable Contributions

Recent IRS audit activity serves as a reminder that when you make a charitable gift, you must obtain the proper documentation in order to be able to take an income tax deduction. This documentation includes an acknowledgement letter from the charity and a qualified appraisal for non-cash gifts.

For all charitable contributions of $250 or more, IRC Section 170(f)(8) requires that the donor obtain contemporaneous written acknowledgement of the gift from the charity. The acknowledgement must include: i) the amount of cash and a description (but not value) of any property other than cash contributed; ii) whether the donee organization provided any goods or services in whole or in part for the gift; iii) a description and good faith estimate of the value of any goods and services provided by the donee other than intangible religious benefits; and iv) if the only goods and services provided by the donee consist of intangible religious benefits, a statement to that effect. In order to meet the requirement that the statement be "contemporaneous," it must be received by the donor on or before the earlier of the date the donor files his original income tax return for the year of the donation or the due date (including extensions) for filing the original income tax return for that year.

When you make a charitable contribution, you must be sure that you receive the donee's written acknowledgement and that it satisfies the above requirements. We have seen a number of these that fail to state whether the donee provided any goods or services to the donor. The statement is not filed with the donor's return but the donor must retain it with his tax records. In some recent audits, the IRS has asked people to fax copies of their donation acknowledgement forms to an IRS office.

The other requirement you must be sure you satisfy is to obtain a qualified appraisal for any non-cash gifts. IRC Section 170(f)(11)(C) requires that a qualified appraisal be obtained for any contribution of property for which a deduction in excess of $5,000 is claimed. You must complete and attach From

8283 to your income tax return, including Section B. The appraiser must complete and sign Part III of the form and donee must complete and sign Part IV. Both the qualified appraisal and the appraiser must satisfy a series of very specific requirements set forth in Treas. Reg. Section 1.170A-13(c). If you file your income tax return electronically, you must still mail in the completed and signed Form 8283 along with transmittal Form 8453. If a deduction in excess of $500,000 ($20,000 in the case of art) is claimed, the qualified appraisal must be attached to the donor's income tax return. An appraisal is not required for gifts of publicly traded securities. Paying careful attention to these requirements will help you insure that your deduction is allowed if your return is audited.

Defense of Marriage Act and Planning for Same-sex Spouses: Update

Estate planning can be a challenge for same-sex spouses. Even if a couple of the same sex has a marriage that is valid under the laws of their state, the marriage is not recognized for any federal tax purposes due to the operation of the Defense of Marriage Act (DOMA), enacted by Congress in 1996. DOMA prohibits the use of the marital deduction for property passing by gift or bequest to a same-sex spouse, with the result that if an individual's estate is in excess of the exclusion amount, estate tax will be payable on that excess even if the entire estate is given to a same-sex spouse (while no such tax would be due for an estate given to a spouse of the opposite sex).

Last November, the executor of the estate of a New York woman who passed away in 2009 leaving her entire estate to her same-sex spouse filed a constitutional challenge to DOMA and requested a refund of the estate taxes paid. On February 23, 2011, the U.S. Department of Justice issued a statement that it would no longer defend the constitutionality of the portion of DOMA at issue in this case (and one other, similar case), as it does not believe that it is, in fact, constitutional.

Many have asked what this means for tax planning purposes. Since DOMA has not been overturned, it remains law. No decisions have been issued in these cases to date and it is possible that members of Congress may intervene to defend DOMA in the pending litigation. However, some same-sex spouses with marriages recognized as valid in their state are revising their estate planning documents to provide for different plans depending on whether the marital deduction is available at the time of the death of the first spouse, in order to ensure that they will have the benefit of the marital deduction for federal estate tax purposes should DOMA ultimately be overturned on constitutional grounds.

IRS Announces that Basis Allocation Form for 2010 Decedents Does Not Have To Be Filed by April 18, 2011

On March 31, 2011, the IRS announced (IR-2011-33) that Form 8939, used to allocate that tax basis increase permitted under IRC Section 1022 to the assets of persons who died in 2010, does not have to be filed by April 18, 2011, and ***should not*** be filed with the decedent's final income tax return. The IRS will issue guidance announcing the due date for filing this form at a later date. The form itself will be released shortly after the guidance is issued. The IRS assured that a reasonable period will be given between the release of the guidance and the due date that it imposes.

The IRS also stated that the same guidance would explain how to make the election to have estate tax not apply to the estates of decedents who died in 2010. Please contact us if you have any questions.

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