October 12, 2012

To: Clients and Friends of Carruthers & Roth, P.A.

Re: Unprecedented Estate Tax Uncertainty

Dear Clients and Friends:

For our clients, we are sending you this letter as our records indicate that, at some point, we provided estate planning services to you. For friends of the firm, we thought this was such an important topic that we should make as many people aware of it as possible.

While we always recommend that our clients contact us every few years to determine whether modifications to their particular plans are advisable (or more often when significant family or financial changes occur), we are writing to current and former clients now to remind them of this need and to point out that significant changes in the tax law scheduled to take effect on January 1, 2013 make a review of their plans particularly appropriate at this time. Specifically, for the following clients, this is an urgent matter:

- If your assets exceed $1 million, a review of your particular estate plan is needed to determine what, if anything, should be done to update your estate plan to account for the scheduled drop in the federal estate and gift tax exemption amounts to $1 million.

- If your assets exceed $5 million, in addition to updating your estate plan, you should consider implementing a gifting strategy *before the end of 2012*.

- Finally, if we prepared an estate plan for you several years ago (i.e., when the federal estate tax exemption amount was much lower) that was designed to create a family trust upon your death for estate tax purposes, an update to your estate plan may be necessary to prevent your plan from operating in an unintended manner due to subsequent changes in the tax law.

As you know, the media has widely reported on the tax increases and spending cuts (commonly referred to as the "fiscal cliff") scheduled to occur in just a few months. While the

235 North Edgeworth Street • Post Office Box 540 (27402) • Greensboro, North Carolina 27401
Telephone 336.379.8651 • Facsimile 336.273.7885 • Litigation Department Facsimile 336.478.1175 • www.crlaw.com

scheduled changes in the tax law will affect individuals and businesses in a number of ways, this letter focuses particularly on the upcoming changes to the federal estate and gift tax system.

**Background**. During the George W. Bush presidency, Congress enacted legislation that gradually phased out the estate tax through increased federal estate tax exemption amounts and outright repeal in 2010, but included provisions that caused the legislation to expire at the end of 2010 (the "sunset"). To avoid the dramatic impact of letting the legislation sunset, in late December 2010 Congress enacted the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "2010 Tax Relief Act"), which *temporarily* increased the federal estate and gift tax exemptions to the historic level of $5 million per individual ($5.12 million in 2012), with a maximum tax rate of 35%. The 2010 Tax Relief Act, however, is set to sunset on December 31, 2012, causing the federal estate tax and gift tax laws to revert back to 2001 levels, **with a federal estate and gift tax exemption amount of $1 million per individual, and a maximum tax rate of 55%**.

In recent months, a number of bills have been introduced in Congress to address the scheduled tax increases. The bills vary in their treatment of the estate tax, setting the exemption amount at $1 million, $3.5 million, $5 million or even completely repealing the estate tax. While it is possible that Congress will enact legislation before January 1, 2013 that would prevent the exemption amount from dropping to $1 million per individual, the current political environment makes any resolution seem remote.

**Impact on Current Estate Plans**. Considering that a person's taxable estate generally comprises all of his or her assets including life insurance proceeds, retirement plan assets and home equity, many more individuals will be subject to estate tax under the new estate tax regime. As a result, some estate plans may not fully utilize the available estate tax avoidance opportunities (including credit shelter trusts and generation skipping features) that may be appropriate in light of the dramatic drop in the exemption amount.

Additionally, if Congress acts to keep the exemption amount at an elevated level, estate tax planning documents that were prepared many years ago (when the exemption amount was much lower) may operate in an unintended manner. Thus, a review of your particular estate plan may be appropriate at this time.

**Gifting Opportunities in 2012**. In addition, the remainder of the year also presents an unprecedented planning opportunity for individuals looking to reduce the size of their overall estates by making large gifts to take advantage of the historically elevated federal gift tax exemption. The decision to make a substantial, irrevocable gift, however, requires consideration of a number of factors, including one's financial affairs, the asset to be gifted, the recipient and the appropriate transfer method. Careful planning and time is needed to implement a large 2012 gift if it is an appropriate component to your estate plan. Accordingly, a review of your particular estate plan to consider your 2012 gifting opportunities may be appropriate at this time.

On the other hand, it is fair and appropriate to point out that updating your plan now may only be a temporary solution, as further changes may be necessary when and if more stability is established in the estate tax system over the next several months. Moreover, we do need to be clear that we charge for our time in reviewing client files and responding to questions about whether updating a client's plan is warranted. We have not reviewed your particular file, but are sending this general letter to alert current and former clients of the greater need for review at this time. Of course, this letter should not be construed as tax advice to any specific client.

**Conclusion**. In summary, the federal estate and gift tax system continues to be fraught with uncertainty. The scheduled changes in the tax law make this an appropriate time to review your estate plan. Moreover, for the following clients, this is an urgent matter:

- If your assets exceed $1 million, a review of your particular estate plan is needed to determine what, if anything, should be done to update your estate plan to account for the scheduled drop in the federal estate and gift tax exemption amounts to $1 million.

- If your assets exceed $5 million, in addition to updating your estate plan, this is an urgent matter and you should consider implementing a gifting strategy *before the end of 2012*.

- Finally, if we prepared an estate plan for you several years ago that was designed to create a family trust upon your death for estate tax purposes, the change in the tax law may now cause the plan to operate in an unintended manner. Accordingly, a review of your estate plan is needed to determine what updates should be done to account for the changes in the tax law.

The situation remains fluid and we could see legislation in the coming months that may give us greater certainty regarding the future of the federal estate and gift tax law. If you would like to receive additional estate planning information and announcements, please email estateplanning@crlaw.com, as we will be providing further updates by email (and our firm's website at http://crlaw.com/news/topic/estate-tax-update/).

Please feel free to contact any of our attorneys to discuss whether it would be appropriate to modify your particular estate plan, or if you are considering making a 2012 gift.

Sincerely yours,

Carruthers & Roth, P.A.

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