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Dear Clients and Professional Colleagues:

This is intended to be the first in a series of occasional letters regarding developments in the major areas of our practice, estate planning, estate administration and related estate and trust litigation.

1. NONTAXABLE GIVING.

As you may know, estate and gift tax planning strategies under current law are often based on use of the "unified credit" against federal estate and gift tax, which produces an exemption of otherwise taxable assets from gift and estate tax of up to \$600,000 per person for both lifetime and death transfers.

In recent months, we have received a number of inquiries from clients regarding the possibility that Congress might reduce the \$600,000 exemption. In fact, two bills were introduced in the last session of Congress that sought to reduce the exemption from \$600,000 to \$200,000 as part of a proposal to fund a national health care plan. Although these bills were not reported out of committee, it is possible, in the current political climate, that similar bills to reduce the \$600,000 exemption may be introduced in the next session of Congress.

If the exemption should be reduced to \$200,000, an additional \$400,000 of a decedent's estate would become taxable. Present tax rates range from 34% to 50% so that such a reduction could impose substantial additional death taxes in the range of \$133,333 to \$200,000.

A reduction of the \$600,000 exemption, might be made by Congress either prospectively or retroactively. Past experience suggests that such a law, if passed might be applied prospectively, and that prior tax protected gifts might be "grandfathered." As indicated below, however, the legislative detail would be critical.

Since it is speculative as to whether the \$600,000 exemption will be modified and, if so, what its effective date will be, clients who have substantial estates should be cautious in considering the desirability of making lifetime gifts in order to take advantage of the \$600,000 exemption. The problem is that, under present federal estate tax law, "prior taxable gifts" are factored back into the post death estate and then the total is reduced by the then effective exemption equivalent. Thus, there is a risk that a \$600,000 gift which is exempt from transfer tax at the time of the transfer will ultimately be brought back into the estate without the benefit of the present \$600,000 exemption. Congress would have to couple a reduction of the \$600,000 exemption equivalent with a provision that lifetime gifts would be protected to the extent of the then existing exemption in order to insure that a current \$600,000 gift would be tax free. Without such protection, the benefit of a present transfer might be limited to the fact that appreciation in value and subsequent income earned would be removed from the transfer tax system. Since large lifetime gifts, as indicated, have a significant tax impact (involving estate, gift and income tax considerations for both the donor and recipient), and also involve nontax and family issues, the feasibility of making such gifts should be evaluated with professional advice and counsel.

The \$600,000 lifetime exemption is in addition to the \$10,000 annual exclusion. This provides that each individual may make a gift of \$10,000 per year to each of any number of donees, generally without the gift being subject to the transfer tax system. The amount of the gift may be doubled by having a spouse join in the gift, although this must be done carefully to avoid having to file a federal gift tax return. The annual exclusion is limited to gifts of present interests in property and, without special planning, are not available for gifts in trust.

2. HEALTH CARE DECISION MAKING.

Senate Bill 3. In the last session of the Colorado Legislature, a bill was ultimately passed dealing with health care decision making. The legislation attempted to define and coordinate an individual's right (1) to define in advance his or her wishes as to the providing (or, in certain circumstances, withholding) of medical care (such as by the use of a living will); and (2) to delegate in advance to another person (by a power of attorney) the authority to make health care decisions in the case of incapacity. The legislation also authorized the use of an advance directive "do not resuscitate" order in the non-hospital setting. Our office practice has been either to combine the health care delegation with powers over property in a general durable power of attorney or to cover a delegation of authority in a separate health care power of attorney. We want you to know that we have modified our health care power of attorney form to comply with the new statutory provisions. The modification of our forms has been supervised by Steve Warden, the attorney in our office who is primarily responsible for guardianship, conservatorship and elderlaw. Part of the drafting of Senate Bill 3 was provided by the Colorado Governor's Commission on Life and the Law, of which Jim Wade is a member.

3. NEWS OF THE FIRM.

Jim Hill was recently elected Vice President Elect of the Probate and Trust Section of the Colorado Bar Association. During this past year Jim has served as co-editor of the Colorado Estate Planning Book (the "Orange Book"). Jim Wade, Walt Ash and Lew Woods are each the author of a chapter in the book. Jim Hill recently presented a paper to the National Elderlaw Institute at its annual meeting in Chicago.

Jim Wade is presently serving as a Regent of the American College of Trust and Estate Counsel and is Probate Acquisitions Editor for the Real Property, Probate and Trust Law Journal of the American Bar Association. His paper on "Current Developments in Ethical Problems Faced by Estate Planners" was published as a part of the program of the 14th Annual (1992) UCLA Estate Planning Institute.

In October Walt Ash coordinated the presentation of a full day legal education program for Professional Educational Systems on "Colorado Trust Law and Practice." Walt was assisted by Jim Hill, Lew Woods, Steve Warden and Connie Block.

Lew Woods was the featured speaker at the November meeting of the Denver Trust Officers Association; his subject: Qualified Personal Residence Trusts.

We continue to be available to work with you in the areas of our practice. In particular, if you have questions or needs in the areas of gift planning or health care authorization planning, as discussed above, please let us know.