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MEMORANDUM

DATE: JANUARY 16, 2009
TO: ALL LIVING TRUST AND WILL CLIENTS
FROM: R. LEONARD DAVIS, III, ESQUIRE
RE: ECONOMIC GROWTH AND TAX RELIEF
RECONCILIATION ACT OF 2001 (the "2001 Act")

This is an updated version of my Memorandum originally dated March 8, 2002 and related Summary Sheet which shows how the 2001 Tax Act has impacted the federal estate tax, the generation skipping tax, the gift tax, and the stepped up basis provision for inherited property. The information contained in that Memorandum is still largely accurate and valid.

There is a BIG change for 2009 in the unified credit amount. Effective January 1, 2009, and continuing through December 31, 2009, the unified credit will shelter up to \$3,500,000 per taxpayer (up from \$2,000,000 during 2006-2008).

These changes in the tax laws do not necessitate a change in your Living Trust, Wills, or other estate plan documents. Those clients who have "A-B Trusts" built into your estate plan documents have a Formula provision which automatically takes into account the increase in the unified credit amount.

Those clients with total estates of substantially under \$3,500,000 may no longer need A-B Trust provisions, but those clients do not need not remove these provisions from their Estate Plan documents. If the "B" Trust does not need to be funded at the death of the first spouse to die (because it is then determined that the unified credit of the second spouse to die will exempt the entire estate), that client's B Trust provisions will be simply moot. However, due to uncertainties in the future of the Federal Estate Tax law, the safest course of action is to maintain your A-B Trust provisions just in case the Unified Credit is reduced below 3,500,000. (See discussion below.)

The combination of the changes in the estate tax and gift tax, and the change in the capital gains tax laws, whereby the "step up" in basis of inherited assets will be repealed effective 2010, will require many clients to carefully review their estate plans this year. This will be especially true of those clients having total estates in excess of \$3,500,000.

Note: the federal estate tax has not been “repealed”. Although the 2001 Act provides that there will be no Federal Estate Tax for Estates of decedents who die in the year 2010, this relief will last only one year. In the year 2011, the Federal Estate Tax will revert back to the law in effect in 2001, and the unified credit amount will be reduced again to \$1,000,000, unless Congress acts in the interim.

As you know, 2009 marks the beginning of a new Presidential administration and a new Congress. Both the Presidency and the Congress are now controlled by the Democratic Party. Accordingly, we expect changes (perhaps dramatic changes) in the tax laws this year, including the federal estate and gift tax laws. Early signals from the new Administration suggest that the elimination of the federal estate tax in 2010 will not be allowed to occur (as contemplated by the 2001 Act). Rather, a “permanent” cap on the unified credit amount will likely be enacted. The only question is what the amount of that cap will be. It will almost certainly not exceed \$3,500,000, and may be substantially less.

Budget deficits and increases in the national debt skyrocketed in 2008 due to governmental bailouts and stimulus packages in the context of reduced tax receipts. 2009 promises more of the same. In such a fiscal and economic environment, it seems doubtful that there will be any *true* tax relief legislation benefitting middle to upper income taxpayers for the foreseeable future.

If you have questions about how the 2001 Act may impact your particular estate plan or estate plan documents, please feel free to call our office to set up an appointment to review and evaluate the status of your estate plan.

R. Leonard Davis, III, Esquire