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CLIENT BULLETIN

With the New Year underway, we wanted to provide you with some information which may be helpful to you as you navigate through today's economic turbulence. Below are recent changes to Federal and Florida law which may have an impact upon your affairs.

FLORIDA'S NEW TRUST CODE

Effective July 1, 2007, the State of Florida enacted new laws regulating the administration of trusts created under the laws of the State of Florida.

While this new legislation applies to all Florida trusts, it has particular application to those trusts which are currently irrevocable. The most common of these trusts are the "Family," "Credit Shelter," or "By-Pass" Trusts that generally come into being at the death of the first spouse in a husband and wife marital context.

Oftentimes married couples will establish Revocable Trusts where the surviving spouse is either the sole beneficiary or a beneficiary with the couple's children of a trust which is funded at the first spouse's death with the equivalent of the amount of money that can be transferred without being subject to the payment of Federal estate tax. For deaths occurring in the years 2006 through 2008, this exemption amount is \$2,000,000. For 2009, the exemption amount is \$3,500,000, and for 2010 the amount is currently unlimited. We

will have to wait and see what the new Congress comes up with in terms of future legislation.

When the first spouse dies, the revocable or “living trust” becomes irrevocable and many times the surviving spouse is named as the trustee or as a co-trustee of the exemption amount which stays in trust for the lifetime of the surviving spouse and sometimes for the lifetimes of the surviving children as well. In most cases, the surviving spouse receives the interest and dividend income of the trust and may also have a discretionary interest in the principal of the trust. At the surviving spouse’s death, trust principal passes to the children or grandchildren as the case may be. As previously stated, the most common names used to describe this type of trust are “Family Trust,” “Credit Shelter Trust,” “By-Pass Trust,” or the “B Trust”.

For calendar year 2008 and for future years, these types of trusts and other irrevocable trusts such as Irrevocable Life Insurance Trusts, Irrevocable Charitable Trusts (such as Charitable Remainder Trusts or Charitable Lead Trusts), Grantor Retained Annuity Trusts, known as “GRATS” and others are now required to comply with the newly mandated provisions of Florida’s New Trust Code.

Essentially, the new law is requiring greater transparency between the trustee and all “qualified beneficiaries” of the trust. The identity of a “qualified beneficiary” is one which will vary from trust to trust depending upon the actual terms of each trust. However, in most cases where there is a lifetime beneficiary followed by a remainder beneficiary who receives the trust funds when the lifetime beneficiary dies, both parties will be considered to be qualified beneficiaries.

During the term of the irrevocable trust, the trustee(s) have a legal duty to keep the qualified beneficiaries reasonably informed of the trust and its administration. This legal duty to inform now includes, among others, the following:

1. Providing the qualified beneficiary with the trustee's name and address;
2. Disclosing the identity of the creator or "settlor" of the trust;
3. Advising the qualified beneficiary of the right to obtain a copy of the trust document;
4. Upon reasonable request, providing relevant information about the assets and liabilities of the trust and particulars relating to its administration; and
5. Providing each qualified beneficiary with a trust accounting annually and also on termination of the trust or on the change of a trustee.

While the creator or settlor of the irrevocable trust cannot eliminate or circumscribe the trustee's duty to make the annual accounting to qualified beneficiaries, the qualified beneficiary may waive the trustee's duty to account. A qualified beneficiary may also withdraw a waiver previously given.

The accounting of the trustee is to be a reasonably understandable report which identifies the trust, the trustee and the time period covered by the accounting. It must show all cash and property transactions and other significant transactions that affect the administration of the trust during the relevant accounting period. It is to show all gains and losses, receipts and disbursements and amounts paid to the trustee and any agents of the trustee. Values of the assets are generally given for the beginning and end of the accounting period.

The changes made to the trust laws of the State of Florida by the new Florida Trust Code are quite extensive and complex. The purpose of this letter is to advise all present trustees of irrevocable Florida trusts of their duty to inform and to account to qualified beneficiaries and to seek assistance if necessary to comply with Florida law.

Federal Gift Tax Inflation Adjustment for 2009

The Federal gift tax annual exclusion for gifts of present interests (i.e., outright transfers) to third parties has been increased to \$13,000.00 per person. For married couples who wish to make a joint gift, the annual amount is now \$26,000.00 per individual. The number of people to whom you may make the annual gift is unlimited.

Federal Estate Tax Exemption Amount for 2009

Under current law, the Federal estate tax exemption amount for deaths occurring during 2009 will increase to \$3,500,000.00 per individual.

Congress Increases FDIC Deposit Insurance

On October 3, 2008, Congress temporarily increased its FDIC deposit insurance protection from \$100,000.00 to \$250,000.00 per depositor through December 31, 2009. Also, banks generally treat the specific type/title of an account whether individual, joint, Living Trust or IRA, separately from an FDIC coverage perspective. People with multiple accounts with different ownership categories, or with multiple account owners, may receive greater levels of FDIC protection.

Congress Extends the Charitable Contribution Rollover from an IRA

As part of the Emergency Economic Stabilization Act recently signed into law, the IRA charitable rollover was extended through 2008 and 2009. The charitable rollover IRA benefit provides that any IRA that is maintained for a participant who has attained the age of 70 _ may make a “Qualified Charitable Distribution” for the tax year that will not be

includible in the participant's gross income, but will apply against the participant's Minimum Distribution Requirement for the tax year.

To qualify, the contribution must come from an Individual Retirement Account and it must be made directly by the IRA account Trustee to the charitable organization which is a public charity and not a private foundation, donor advised fund or a split interest charitable trust such as a charitable remainder trust or charitable lead trust. The amount of the contribution may not exceed \$100,000.00. However, a married couple filing jointly may each exclude \$100,000.00 to the extent that each has an IRA.

The IRA rollover contribution must be used entirely for a charitable purpose (without receiving back any personal benefit) and the charity must provide substantiation for the receipt of the gift. If the deductible amount is reduced because of a benefit received in exchange, or if a deduction is not allowable because the contributor did not obtain sufficient substantiation, the exclusion is not available with respect to any part of the IRA distribution. Only that portion of the charitable contribution that would otherwise be included in gross income is excluded (proper adjustment is made for the non-deductible IRA contributions).

The benefit to an individual in making the IRA rollover contribution to charity includes:

1. The contributions are not subject to the usual percentage limitations of the Internal Revenue Code;
2. The full amount of the contribution is excluded from gross income whether standard or itemized deductions are used;
3. The contributions do not raise AGI for purposes of itemized deduction limits (i.e., medical deduction and itemized deduction phase-out);

4. The required annual Minimum Distributions (“RMD”) are reduced; and
5. The charitable distribution is considered to come first from what would have been a taxable distribution up to the RMD amount for the year.

This provision can benefit a wealthy person who currently has an excess charitable contribution deduction carryover or an itemized deduction phase-out for 2008 and 2009. And, it can also benefit a modest taxpayer who is over 70 _ years old and on a fixed income who does not itemize but still wishes to contribute annually to charity.

Miscellaneous Tax News

Congress has acted to “patch” the AMT problem for 2008 and has retroactively reinstated a number of tax breaks (such as the option to deduct state and local general sales tax instead of state and local income tax and the above-the-line deduction for higher education expenses). Congress created new tax breaks that go into effect for the 2008 tax year (including a tax credit for first-time homebuyers, a non-itemizers’ deduction for state and local property tax and a non-itemizers’ deduction for certain disaster losses). For 2008, income tax rates remain unchanged, ranging from 10% to 35%.

Suspension of RMDs for 2009

On December 23, 2008 President Bush signed into law a bill which suspends the requirement for people over 70_ to take the required minimum distribution “RMD” from their retirement accounts (this includes all “defined contribution plans” such as 401(k) plans, 403(b) plans, 457(b) plans and IRAs) for 2009. For most IRA owners, the distributions are paid out under the following Uniform Table based upon the account value on January 1. More senior persons must take a larger withdrawal.

Age	IRA Approximate Payout
71	3.8%
75	4.4%
80	5.3%
85	6.8%
90	8.8%
95	11.6%

Since account values have declined significantly in 2008, if you do not need the distributable amount for living expenses in 2009, you might be wise to forego the distribution in 2009 in hopes that the value of your retirement savings will see an upward bound in the coming year to make up for severe market losses.

Note that the RMD is computed on the value of the account at the beginning of the year, so your 2008 RMD was based on January 2008 values. Thus, the result can be unfair if your 2008 withdrawal was based on your account before the stock market declined so sharply but was paid out afterwards. For many retirees, the opportunity to skip a year of required distributions in 2009 may make up for this. You should contact your investment advisor or plan custodian to review your options.

Expanded kiddie tax. For 2008 and thereafter, the kiddie tax (where a child is taxed at the parent's rate) is expanded to apply to any child who is under 19 years old or is a full-time student over the age of 18, but under age 24. The kiddie tax will not apply to these children who have earned income that exceeds half of their support for the year.

Exclusion of principal residence gain for post-death sale by surviving spouse. Also for 2008 and thereafter, a surviving spouse who has not remarried and who sells a principal residence within two years of the spouse's death can exclude up to \$500,000 in gain on the sale. The new provision effectively provides surviving spouses with the same

benefit that is normally available to married persons filing jointly.

What is Set to Expire?

Those tax benefits that we have been enjoying which are scheduled to expire at the end of 2010 (or perhaps sooner under the new Congress), include such items as the following:

(1) The 15% capital gains tax rate. Barring congressional action, it will revert to 20%.

(2) The 15% tax rate on qualified dividends will end in 2010. Thereafter, qualified dividends will be taxed at an individual's ordinary income tax rate.

(3) The Federal estate tax in 2011 is scheduled to revert back to its 2001 level where individuals with a Federal gross estate in excess of \$1,000,000.00 are subject to Federal estate tax, with the top Federal estate tax rate being reset to 55%.

As we all know too well, our laws change frequently and this is by no means an exhaustive summation. Rather, these are some of the items which may warrant attention.

Sincerely,

From the Law Firm of
Haile, Shaw & Pfaffenberger, P.A.