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FOR IMMEDIATE RELEASE:

Handler Thayer, LLP Tax Alert - Spring 2011

Income tax, gift tax and estate tax planning have taken on a new level of importance due to the effects of the Tax Reform Act of 2010 ("the Act"). Because the Act sunsets on December 31, 2012, there is increased urgency to act sooner rather than later. Further, current planning should be viewed as opportunistic and short-term rather than long-term in nature. In fact, the 2012 budget proposals recently announced by the Obama Administration raise tax rates and change the lifetime gift tax exclusion amount as of January 1, 2012. Consequently, there is no assurance that the current, highly-favorable income tax and estate tax laws will be available in 2012, much less in 2013.

This significant new tax legislation was enacted on December 17, 2010. It will materially impact your tax and estate planning over the next twenty months. Under the Act, the estate tax which was phased out in 2010 returns with a lower tax rate of 35 percent (reduced from 45 percent) and a $5 million exclusion per person for years 2011 and 2012 **only**. Also, this exclusions amount is portable between spouses with proper planning and an affirmative election.

ESTATE PLANNING

The critical message is that all affluent individuals and high-income taxpayers should review their estate plans in 2011. The planning opportunities presented by these temporary new laws coupled with the current economic environment present, a **once-in-a-lifetime opportunity**, the so called "perfect storm."

The Act increased the exclusion amount for estate, gift and GST purposes, but the exclusion will drop to $1 million (somewhat higher for GST tax purposes) after 2012. Varying exclusions can result in a significant shift in wealth depending upon the timing of someone's passing. Your estate plan should be reviewed to ensure that it reflects your wishes no matter what your estate and GST exclusions are when your wealth passes to your loved ones.

In addition, the top estate, gift and GST tax rates will be capped at 35% for this year and (possibly) next year. Beginning in 2012, the rates are scheduled to increase to 55% (and 60% for some). The effective tax rate for estate and GST taxes can result in significant changes in what each of your family members receives. We think it is appropriate for you to review your plans for the disposition of your property whether the rates of tax are very high or not. Also, it is highly appropriate for taxpayers to consider using their increased gift and GST tax exclusions as soon as possible. For some, a lifetime gift of $5 million may be too large; however, a smaller gift using a part of the larger exclusion may be wise to consider in such cases. By making gifts now, the

appreciation of assets will be removed from your estate and you may also avoid estate, gift and GST taxes.

This extraordinary wealth transfer opportunity is amplified by several factors including historically low interest rates, low real estate and business values, and the lowest transfer tax rates since the Great Depression.

A number of articles which have appeared in the popular press and technical journals have extolled the virtues of **"portability"** and claimed that portability eliminates the need or urgency for formula trust planning or estate planning, in general, for all but the most affluent Americans. These authors are misinformed and are distributing imprudent advice. For the first time under U.S. law, portability allows a surviving spouse to utilize the unused lifetime exclusion of their deceased spouse.

Reliance on this provision of the Act, however, is attended by several complexities. First, portability expires by operation of law; at the end of 2012. Consequently, we do not recommend relying on portability. Second, even if portability becomes permanent, it further complicates estate planning for married couples. Third, in the event of divorce, it is uncertain how the exclusion amount will be allocated. Finally and most importantly, the use of portability requires an affirmative tax election on the part of the executor. This election opens up the applicable statue of limitations which may otherwise avoid IRS examination of the estate of the first spouse to die. Such an examination could call into question tax positions and valuations of an otherwise closed estate. We deem this to be an unreasonable risk for our clients to take.

In addition, significant changes in the estate tax and inheritance tax regimes which exist in 22 states and the District of Columbia, warrant review of estate plans. Many of these laws have changed dramatically in recent years. The high rates of current state taxation and historically low exclusions further encourage thorough review of existing estate plans. In sum, now is the time to update, build or modify your estate plan.

GIFT TAX

One of the most significant provisions of the Act is the increase of the federal gift tax exclusion from $1 million to $5 million. The increased gift tax exclusion allows married couples to make lifetime gifts of up to $10 million without incurring gift tax. The law allows individuals who have made prior taxable gifts totaling $1 million to make additional gifts of up to $4 million during 2011 and 2012 without triggering gift tax (or couples who have made taxable gifts totaling $2 million to make additional gifts of up to $8 million).

WHAT THE CHANGES MEAN FOR YOUR ESTATE PLAN

The Act allows for increased gifting opportunities for individuals who are contemplating significant lifetime gifts to children, grandchildren or more remote descendants. However, the Act provides only temporary relief and expires on December 31, 2012, unless Congress acts before then. Beginning on January 1, 2013, the federal estate and gift tax exclusion is scheduled to decrease to $1 million and the estate tax rate will rise to 55%. Therefore, there is a window of opportunity of less than two years to maximize estate planning strategies utilizing the increased gift and GST tax exclusion of $5 million (or $10 million per couple) and the decreased 35% gift tax rate.

INCOME TAXES

The Tax Reform Act of 2010 extended President Bush's income tax rate reductions for all taxpayers for two years, through December 31, 2012. The fiscal year 2012 budget proposals, however, call for elimination of these reduced tax rates for all "High-Income Taxpayers," defined as single individuals with incomes above $200,000 and married couples filing joint returns with income over $250,000. In addition, itemized deductions would be capped at 28% for High-Income Taxpayers no matter how high their income tax rate may be. Under the proposals, the current 15% maximum rate for capital gains and dividends would be increased to 20% for all High-Income Taxpayers.

Although the major trading partners of the United States have maximum corporate rates in the neighborhood of 20% to 25%, there was no proposal for a corporate rate reduction in the Administration's proposal, despite reports to the contrary.

Additional proposals include:

- Additional expenditures on tax administration and compliance;
- Repeal of LIFO inventory accounting;
- Taxing carried interests at ordinary income rates;
- Modifications to information reporting;
- Revamping of IRS oversight of worker classification;
- Elimination of pooling in determination of the foreign tax credit; and,
- Limiting of "earnings stripping" by foreign businesses.

A significant tax planning opportunity exists under the current reduced income tax rates. Given the likelihood of higher federal rates coupled with fewer deductions and more prohibitions and caps, 2011 may be the ideal year in which to voluntarily recognize income. For example, existing S corporations which are cumbersome for financial and estate planning purposes may be

terminated and restructured into LLCs or other entities, thus triggering income tax recognition in 2011. Similarly, income can be voluntarily accelerated into 2011 by making sales of appreciated assets or securities. Further, the urgency to consider this kind of income tax planning is increased by recent and expected state income tax rate increases resulting from large state and local government deficits, benefit shortfalls and other budget woes.

About Handler Thayer, LLP

Handler Thayer, LLP is one of the premier private client law firms in the U.S. Its national and international practice, based out of Chicago, Illinois utilizes interdisciplinary teams of advanced planning attorneys. Handler Thayer, LLP is dedicated to providing distinctive, technologically-current and responsive services to affluent families, privately held businesses and family offices. Firm clientele include prominent entrepreneurs, celebrities, and family offices.

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