

**December 20, 2001**

I trust this note finds you and your family in good spirits and good health. This is my firm's year end memorandum updating your knowledge on various legal issues and recent activities within our offices.

This past year has brought several changes. We learned that the IRS issued simplified rules for determining minimum distribution from our qualified plans providing us with greater preservation. In June, we watched Congress drastically modify the federal estate and gift tax systems. And in September, we all watched as terrorists rearranged our priorities and heightened our sense of caution. We are all adjusting to these changes in the best way we know how and I pray that all of you are coming to terms with this new environment.

I hope you enjoy the legal information contained in this update and of course, should you have any questions, please contact Joyce at (704) 597-7337 to arrange a consultation. My office hours are Tuesday through Thursday 10:00 a.m. through 4:00 p.m.

**NEW PROPOSED REGULATIONS IN MINIMUM DISTRIBUTIONS** Generally, you must begin taking minimum annual distributions from your IRAs, 401(k)s and other qualified plans when you reach a certain age. For most people, the required beginning date for payouts is April 1 following the year in which you turn age 70½. The IRS has just simplified the rules that determine the minimum annual distribution that must be withdrawn from these types of retirement accounts. In general, you will have to withdraw less each year under the revised rules than you did under the old rules. The new rules will result in a lower tax bill, a longer-lived tax shelter for the family and potentially larger payouts for the owner's beneficiaries. The following are 3 major simplifications you should be aware of:

1. *Simplified payout rules mean smaller distributions for most people.* Under the new rules, one simple table is used by virtually all people to calculate the minimum annual distribution. The new table results in smaller required distributions. If you are already receiving required distributions, please call me to discuss how much lower they would be under the new rules. If you want to withdraw the absolute minimum from your IRA, then you will have to tell the trustee or fiduciary of the account to make smaller payments to you from the account.

2. *New rules for post-death payouts.* The balance remaining in a retirement account after its owner dies must be paid out within a certain period of time. These death payout rules have been simplified as follows:

a. If there is a designated beneficiary, then the account balance may be paid out over the beneficiary's remaining life expectancy. A designated beneficiary must be an individual, not an institution or trust/estate.

b. If the account has no designated beneficiary and the owner dies AFTER his required beginning date, then the balance must be paid out over the remaining life expectancy of the account owner, determined just before he died.

c. If the account has no designated beneficiary and the owner dies BEFORE his required beginning date, then the balance must be paid out within 5 years after the owner's death.

3. *When designated beneficiary must be named.* Under the new rules, the designated beneficiary of a retirement account is determined as of the end of the year following the year of the account owner's death, allowing you to change beneficiaries during your lifetime easily.

**ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001.** The 2001 tax act provides many changes to the tax code and we will focus on the estate and gift tax changes. Under the act, the estate tax rates are reduced and the exemption amount is increased between 2002 through 2009. In 2010, there is complete repeal of the estate tax; however, the current estate tax system will be

reinstated in 2011 due to the “sunset” provision. The gift tax exemption increases in 2002 to \$1 million but remains at that level throughout the years. The following chart indicates the numbers

Year	Top Estate Tax Rate	Estate Tax Exemption Amnt.	Gift Tax Exemption Amnt.
2002	50%	\$1 million	\$1 million
2003	49%	\$1 million	\$1 million
2004	48%	\$1.5 million	\$1 million
2005	47%	\$1.5 million	\$1 million
2006	46%	\$2 million	\$1 million
2007	45%	\$2 million	\$1 million
2008	45%	\$2 million	\$1 million
2009	45%	\$3.5 million	\$1 million
2010	repealed	repealed	\$1 million
2011	55%	\$1 million	\$1 million

As you can see, while the estate tax exemption increases, the gift tax exemption remains at \$1 million. This is to prevent excessive gifting of appreciated property from high income tax bracket taxpayers to low income tax bracket taxpayers.

An immediate impact of the changes applies to married couples who have incorporated an A/B tax plan in their estate documentation. Generally, the document states that the exemption amount passes to the B trust with the remainder passing outright to the surviving spouse or A trust. Because the estate tax exemption will be increasing drastically between now and 2009, under the traditional funding language, a greater proportion of the estate will fund the B trust. **THUS, IT IS IMPERATIVE TO REVIEW THE VALUE OF YOUR ASSETS AND YOUR DOCUMENTS TO BE SURE THE FUNDING OF THE B TRUST IS CONSISTENT WITH YOUR WISHES.** This is especially true for those who left the B trust amount to someone other than their spouse.

In addition to the changes in the estate and gift tax systems, we will also see a change in the capital gains tax system. As you may know under current law, upon an individual’s death, his or her assets generally receive a “stepped-up” basis to their date of death value. Thus, if a beneficiary immediately sells an inherited asset, little gain or loss will result. Under the new rules, when the estate tax is repealed in 2010, the tax act will require the person acquiring property from a decedent to retain the decedent’s basis in that property (no step-up). There are exemptions that will be available for offsetting potential gain but careful planning will be required. Estate planning documents may need to be revised prior to 2010 to take advantage of any step-up exemptions. Nonetheless, it is prudent to ensure that all tax basis records are retained until an asset is sold.

**IMPORTANT NOTE:** The annual gift exclusion amount for 2002 is \$11,000, up from \$10,000.

**YEAR-END CHECKLIST.** All clients should be sure to fully review their estate planning with their family, review their financial holdings with their family, let the family know where your important papers are kept, and be sure that your revocable living trust is completely funded with no probatable asset still in your individual or joint name. In addition, make sure you have a named individual as beneficiary on all retirement accounts, life insurance policies and annuity contracts. Finally, make sure you know where your original estate planning documents are kept. This year we have had several clients misplace their originals which is a timely and costly oversight for the family.

*This Newsletter is meant to advise you of recent changes in federal and NC law which may affect your estate planning and/or corporate and/or other matters. If any of this information affects your situation, then please contact this office.*

Christine J. Sylvester, Attorney at Law  
 2720 E. WT Harris Blvd., Suite 100  
 Charlotte, North Carolina 28213  
 (704) 597-7337; cjs@preservingyourwealth.com