COMITER, SINGER
BASEMAN & BRAUN
ATTORNEYS AT LAW

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2010 ESTATE TAX UPDATE

As you may have read, in December, President Obama signed into law the Tax Relief, Unemployment Insurance Authorization, and Job Creation Act of 2010 (the "2010 Act"). As a result of the 2010 Act, a unique opportunity is created for estates of individuals dying in 2010.

The personal representative of an estate of a person dying in 2010 may either (a) allow the estate tax to apply (1) using the new $5,000,000 estate tax exemption and (2) receiving a full "step-up" in basis for income tax purposes for the assets included in the decedent's estate or (b) make an election to opt out of the estate tax based upon prior law with the resulting limit on the adjustments to basis described in the next sentence. If the estate tax does not apply, then the personal representative may allocate a total of $1,300,000 in basis increase to appreciated assets owned by the deceased individual and, if such individual was married, may allocate an additional $3,000,000 of basis adjustment to appreciated assets passing – either outright or in a marital trust -- to the deceased individual's spouse.

If the personal representative intends the estate tax to apply, then, if the value at death of the deceased individual's estate (including adjusted taxable gifts) exceeded $5,000,000, the personal representative is required to file an estate tax return no later than 9 months after the deceased individual's death or, September 19, 2011 in the case of an individual who died prior to December 17, 2010. If the value at death of the deceased individual's estate (as increased by adjusted taxable gifts) is $5,000,000 or less, then the personal representative would likely not elect out of the application of the estate tax in order to receive the full "step-up" in the basis of the deceased individual's assets.

If the personal representative intends that the estate tax not apply, then the 2010 Act requires the personal representative to elect out of the application of the estate tax. As of today's date, the Internal Revenue Service has not provided guidance as to how this election should be made. Further, the allocation of increased basis among the deceased individual's assets is required to be made on a Form 8939. As of today's date, the IRS has not finalized this form. The IRS has advised that the due date for filing this form will be no earlier than 90 days before it is required to be filed.

If you are serving as a personal representative of an estate of a person dying in 2010 or are receiving assets as a result of a person dying in 2010 and have questions with respect to the applicable tax rules, please call to schedule a meeting.