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PRIVATE CLIENTS GROUP CLIENT UPDATE **NOVEMBER 2010**

Dear Clients and Friends:

No one would have guessed one year ago that our federal tax rules would be bogged down in so much uncertainty for so long a time. As we send this annual message to press, we know no more about the future of the federal estate and gift tax than we did on January 1 of this year. Should the United States Congress actually pass tax legislation that affects the subjects in this letter, we will be sure to let you know.

In the meantime, we want you to know that we are opening a new office in the Palm Beach area in January 2011. The partner-in-charge will be Rani Newman Mathura, who arrives in Palm Beach via our Greenwich, Connecticut and, most recently, Bonita Springs, Florida offices. Rani actually started her legal career as a staff attorney in the Palm Beach Circuit Court, Probate Division. The office gives the firm a needed presence on the Florida east coast to complement our Naples and Bonita Springs offices on the west coast.

We welcome this opportunity each year to share with you some changes in the law and recent developments that may affect your estate planning. Please let your Cummings & Lockwood attorney know if you have any questions or wish to discuss any of these issues in additional detail.

With best wishes for a happy holiday season and New Year.

Sincerely,

Howard S. Tuthill III
Co-Chairman
Private Clients Group
Stamford, Connecticut

Edward F. Rodenbach
Co-Chairman
Private Clients Group
Greenwich, Connecticut

STATUS OF FEDERAL TRANSFER TAXES

As you know, both the federal estate tax and generation-skipping transfer ("GST") tax do not apply for the 2010 tax year. (The federal gift tax remains with a top marginal tax rate of 35% and a $1,000,000 lifetime exemption.) Although we are very close to the end of 2010, there is still a possibility that Congress will enact tax legislation reinstating both the federal estate tax and GST tax, perhaps retroactively. If there is no tax legislation before the end of the year, the federal estate tax will be reinstated as of January 1, 2011. The federal estate tax and federal gift tax will once again be unified with $1,000,000 exemptions for each and a top marginal tax rate of 55%. Federal GST tax will also be reinstated as of January 1, 2011 at a rate of 55% and each person will once again have a GST tax exemption of $1,000,000 (adjusted to $1,340,000 for inflation). Applicable state death taxes may also be affected by the reinstatement of the federal estate tax.

We recommend that you conduct a periodic review of your estate plan from time to time, regardless of the status of federal tax laws. Nevertheless, if you are an unmarried individual whose assets exceed $1,000,000 or a couple whose assets exceed $2,000,000, we strongly encourage you to contact your Cummings & Lockwood attorney and revisit your estate plan in the coming year.

2010 YEAR-END STRATEGIES

As we near the end of 2010 and anticipate significant tax changes in 2011, there are a number of year-end tax strategies to consider. Some are specifically reviewed later in this letter. Here are a few additional strategies for thought:

1. ***Make generation-skipping transfers***. Since the GST tax does not apply to 2010 transfers, gifts can be made to your descendants in 2010 without any GST tax being imposed or any GST exemption being used to shelter gifts from the GST tax. In 2010, gifts made in excess of the $1,000,000 gift tax exemption will be subject to gift tax at 35%. In 2011, such gifts are expected to be subject to a gift tax of 55% and, if the gift is to grandchildren or more remote descendants, the gift also is expected to be subject to an additional GST tax of 55% (or will use a portion of your GST tax exemption). However, as the GST tax does not apply in 2010, transfers made in 2010 directly to grandchildren should not ever be subject to GST tax so long as the GST tax is not retroactively reinstated.

It is not clear that transfers made to a trust for the benefit of grandchildren would similarly be free of GST tax for all time. It is possible that Congress and the IRS may treat distributions from such trusts as taxable generation-skipping transfers when the distributions are made (in 2011 and beyond). The GST exempt status accorded to the initial funding of such trusts in 2010 may not carry through to distributions in future years. Accordingly, if you intend to make gifts to a trust for your grandchildren or more remote descendants before the end of the year, consult your Cummings & Lockwood attorney before doing so.

On a related note, for clients who have trusts in existence, either for family members or for themselves, distributions that would have been subject to GST tax prior to January 1, 2010 will not be subject to such taxes this year. Now might be the right time to make generation-skipping distributions from those trusts to beneficiaries. Under the law as it existed in 2009 and is scheduled to exist in 2011, distributions made from trusts not otherwise exempt from GST tax to beneficiaries more than one generation below the grantor are taxed at the GST rate (expected to be 55% in 2011) in the year the distributions are made. In 2010, the GST tax does not apply so distributions made from these trusts this year should not result in a GST tax. Again, it is possible that the GST tax might be retroactively reinstated. Thus, discuss the advisability of such distributions and their amounts with your Cummings & Lockwood attorney.

2. ***Trigger capital gains, accelerate ordinary income and re-evaluate dividend-yielding investments.*** Capital gains tax rates are scheduled to increase to 20% in 2011 and to 23.8% in 2013. You may want to realize capital gains in 2010, to take advantage of this year's much lower 15% capital gains rate. The top ordinary income tax rate is also scheduled to increase from 35% to 39.6% next year. If you are able to take certain income distributions in December (in lieu of deferring them until next year), you may want to do so. Finally, the tax rate on dividend income is scheduled to increase from 15% to 39.6% in 2011 and to 43.4% in 2013. Consult with your financial advisor and accountant to evaluate the effect of these significant increases on your future income tax liability.

3. ***Make taxable gifts.*** Many clients have at some point considered or are considering making lifetime gifts in excess of their lifetime exemptions and paying a current gift tax in order to reduce estate taxes. For those who are willing to pay gift tax on large gifts that are not covered by their remaining gift tax exemption, making such gifts before December 31, 2010 might be attractive. Although the gift tax is in place in 2010, the rate of tax on gifts is lower than it has been in a decade. The 2010 gift tax rate is 35%, as compared to a 45% rate in 2009 and a 55% maximum rate scheduled for 2011 and beyond.

Additionally, if you expect that (1) you will survive for three years after making a current gift, and (2) federal estate tax will be assessed against your estate upon your death, paying gift tax now potentially decreases the overall transfer tax liability you (and your estate) will pay during your life and after your death. This advantage is a result of the difference in the way the gift tax and the estate tax are calculated. The gift tax is calculated on a "tax exclusive" basis. The gift tax is assessed on the amount the recipient actually receives and the donor pays the tax from assets other than those gifted. In contrast, the estate tax is calculated on a "tax inclusive" basis. The estate tax is assessed on the value of the decedent's taxable estate at his or her death, regardless of the amount the beneficiaries actually receive. Since the estate tax is paid from decedent's taxable estate, taxes are essentially assessed against the same dollars that are used to pay the tax.

Before making any taxable gifts this year, keep in mind that Congress still might retroactively raise the gift tax rate for gifts made in 2010. If Congress does this, you will pay gift tax at a rate higher than 35% for any 2010 gifts.

4. ***Enter into an installment sale.*** IRS interest rates for certain estate planning transfers are at their all-time low this month. If you sell assets to your beneficiaries or to a trust for their benefit in exchange for a promissory note these low rates will apply. If you anticipate that an asset will grow in value, selling that asset is a technique you can use to remove the future growth from your taxable estate, particularly if you are uncomfortable with paying gift tax. The sale technique is even more attractive if you can sell assets with current values that are depressed but are expected to rebound in the future.

5. ***Make charitable gifts.*** The federal income tax phase-out rules for itemized charitable deductions do not apply in 2010. Thus, high-income earners can take optimal advantage of deductions generated by their charitable gifts. Keep in mind, however, that adjusted gross income limitations will still apply.

These year-end strategies are time sensitive. Consult with your Cummings & Lockwood attorney as soon as possible before implementing these strategies to discuss the pros and cons.

GRANTOR RETAINED ANNUITY TRUSTS AND FRACTIONAL INTEREST GIFTS

Because of low interest rates, the use of Grantor Retained Annuity Trusts ("GRATs") has become very popular. GRATs allow you to transfer certain assets to your beneficiaries at a discounted gift tax value. This is because you retain the right to receive payments from the GRAT for a limited number of years before the GRAT terminates in favor of your beneficiaries. The amount of the payments you can receive can be calculated so that you will be deemed to have made a "zero gift" upon funding of the GRAT. In 2010, proposed legislation nearly curtailed the use of GRATs, particularly the "zeroed-out" GRAT. Although that legislation did not come to pass, legislation to end this estate planning technique may be proposed in the coming year. Now would be the best time to implement a GRAT plan, before adverse legislation is passed. IRS interest rates used for GRAT calculations are quite low, adding to the current attractiveness of these trusts.

Gifts of fractional interests in property (including gifts of interests in limited partnerships or limited liability companies) to your beneficiaries may be made at a discounted gift tax value. This is because gifts of a fractional interest are often not freely marketable and the underlying asset is not one that can be freely controlled by the donee. Valuation discounts are justified as a result of this lack of marketability and lack of control. Just as the GRAT technique was under fire in 2010, the use of fractional interest discounts for property being transferred to or for the benefit of family members is equally vulnerable. Thus, if you are interested in any gift or sale technique that involves a fractional interest discount, we encourage you to implement the transaction as soon as possible.

If you are interested in learning more about zeroed-out GRATs or fractional interest gifts, contact your Cummings & Lockwood attorney.

2010 ROTH IRA CONVERSIONS

Last year, modified gross income limitations applicable to Roth IRA conversions were repealed. 2010 is the first year in which you can convert all or any part of your IRA to a Roth IRA, regardless of your income or age. If you convert your traditional or rollover IRA to a Roth IRA in 2010, you can report one-half of the resulting income in tax year 2011 and the other half in 2012 (meaning you pay the taxes in 2012 and 2013), unless you elect to recognize all of the income in the 2010 tax year and pay the tax in April 2011. While conventional wisdom holds that you should defer paying taxes as long as possible, the Roth conversion tax is imposed at the ordinary income tax rates in effect for 2011 and 2012, absent an election to accelerate the tax. You may wish to report all of the conversion income in 2010 to take advantage of increased itemized charitable deductions (due to the suspension of the phase-out) and lower tax income rates (if you believe that the rates will be higher in 2011 and 2012).

If you do convert to a Roth IRA, you have until October 15, 2011 to recharacterize all or any converted amounts as traditional IRA funds. If the assets you converted decrease substantially in value after the conversion, you may want to take advantage of this recharacterization option. Keep in mind, however, that to do so, you must transfer the funds subject to the recharacterization out of the Roth IRA and into a traditional IRA account. These same rules and considerations apply to the conversion of 401(k)s to Roth 401(k)s. Assessing the benefits of a Roth conversion requires careful analysis of your particular situation.

ADMINISTRATION OF QUALIFIED PERSONAL RESIDENCE TRUSTS AFTER TERMINATION

A Qualified Personal Residence Trust ("QPRT") is an estate planning tool that allows you to transfer your primary or seasonal residence to your beneficiaries during your lifetime at a discounted gift tax value. Once the QPRT terminates, ownership of the residence passes to those designated in the QPRT agreement. This may be one or more individuals or a continuing trust. Nevertheless, you will no longer have any ownership interest in the residence. As a result, certain steps need to be taken. First, the Trustee of the QPRT must execute and record a deed in favor of the new owners. Second, any homeowners' insurance policies must be amended to reflect the new ownership. If you wish to have continued use of the QPRT residence after the QPRT term, there are a number of important considerations.   Foremost, you will need to enter into a formal lease of the residence with its new owners. The rent paid must be commensurate with the fair market rental value of the residence. If your QPRT has terminated or will terminate in the near future, contact your Cummings & Lockwood attorney to review any required actions. It is important to realize that often the success of a QPRT is ultimately decided after the grantor's death when the trust and its proper administration have been reviewed by the tax authorities. Adhering to the administrative requirements of the QPRT both before and after the QPRT term is an essential piece of the QPRT transaction.

LIFETIME SPOUSAL TRUSTS

During your lifetime, you can establish a "Lifetime Marital" or "QTIP" Trust for the benefit of your spouse to which you can transfer assets without gift tax because the trust qualifies for the marital deduction. This type of trust often is used to equalize estates between spouses. In lieu of transferring assets from one spouse to the other, a donor spouse can fund a Lifetime QTIP Trust for the benefit of the other spouse with assets of sufficient value to utilize the donee spouse's available federal estate and GST tax exemptions. This can be done free of federal gift taxes. The Florida legislature recently increased the benefit of these types of trusts in that state by adding a creditor protection component to the transaction. Effective as of July 1, 2010, the donor spouse may now be a beneficiary of the Lifetime QTIP Trust upon the death of the donee spouse. The donor spouse's retained beneficial interest in the Lifetime QTIP Trust will be insulated from the claims of the donor spouse's unforeseeable creditors. Consequently, you may wish to fund a Lifetime QTIP Trust (even above your spouse's available exemption amounts) to take advantage of this new creditor protection benefit. Although there are many important considerations before establishing a Lifetime QTIP Trust, this is an attractive planning tool if you are interested in protecting assets that would not otherwise be protected. Contact your Cummings & Lockwood attorney if you are interested in the advantages of the Florida Lifetime QTIP Trust.

UPDATE ON FOREIGN TAX REPORTING

Congress has been sharply focused on requiring taxpayer reporting of foreign bank and financial accounts for the last two years, worried that offshore tax evasion is widespread. During 2009, the IRS began diligently pursuing taxpayers who failed to file information reports called "FBARs" (Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts"). In March 2010, the President signed the Foreign Account Tax Compliance Act ("FATCA") into law. FATCA includes additional reporting requirements applicable to individuals, trustees, private foundations and public charities. Now, in addition to having to file a FBAR with the Treasury Department to report an interest in a foreign bank or brokerage account, a foreign mutual fund or trust, information must be attached to the taxpayer's income tax return (Form 1040) regarding those interests if the aggregate value of all the foreign assets exceeds $50,000. Although the FBAR filing threshold is $10,000, certain interests, such as those in foreign trusts and foreign entities (e.g., hedge funds), will be caught under the new reporting requirements even though an FBAR may not be required.

FLORIDA TRUST DISCLOSURE AND DESIGNATED REPRESENTATIVES

Trustees of Florida Trusts should become familiar with Florida's trust disclosure rules. A Trustee of an irrevocable Florida Trust is required to provide annual accountings to "qualified beneficiaries," which include present and possible future recipients of trust income and principal. The Trustee must also provide other trust information upon request by any qualified beneficiary, including copies of the trust and information about the trust's assets and liabilities. Under these disclosure requirements, your beneficiaries may access

information that you might otherwise want to keep private. If you have a revocable trust and want to limit the information that some or all of your beneficiaries receive after the trust becomes irrevocable, consider appointing a "designated representative" to receive annual accountings and other trust information on behalf of those beneficiaries. Your Cummings & Lockwood attorney can help you amend your revocable trust to include this appointment. Your Cummings & Lockwood attorney can also review an irrevocable trust to determine whether there is an avenue by which designated representative provisions can be added to the terms of that trust.

UPDATE ON FLORIDA SINGLE MEMBER LIMITED LIABILITY COMPANIES

Creditor protection is one benefit of establishing a limited liability company ("LLC"). Generally, a creditor of an LLC member cannot take the member's interest in the LLC. Instead, the creditor receives a "charging order" against the member's interest in the LLC. That is, the creditor will have the right to receive the member's distribution if made by the LLC. However, the Florida Supreme Court recently held that a creditor is not limited to a charging order as to a Florida LLC if the debtor is the sole member of the LLC. Thus, the judgment creditor can seize the sole member's interest in the LLC. If you are the sole member of a Florida LLC, you might want to consider converting your Florida LLC into a Florida limited liability limited partnership ("LLLP") because Florida Statutes provide that a charging order is the only remedy for a creditor of a partner in an LLLP.

CONVERTING FLORIDA GENERAL PARTNERSHIPS AND LIMITED PARTNERSHIPS INTO LIMITED LIABILITY PARTNERSHIPS AND LIMITED LIABILITY LIMITED PARTNERSHIPS

General partnerships ("GPs") and limited partnerships ("LPs") are common business entity forms. However, a drawback of the GP is that each general partner is ultimately personally liable for the debts and obligations of the GP. Similarly, a drawback of the LP is that the general partner of the LP (but not a limited partner) is ultimately personally liable for the debts and obligations of the LP. Under Florida law, GPs and LPs now have the ability to limit the liability of a general partner for the partnership's debts and obligations. A change in status to an LLP or LLLP means that no partner will be liable for the partnership's future debts and obligations (although a general partner will still be liable for existing debts and obligations and neither LLP nor LLLP status will protect any partner from claims relating to his or her own personal actions, such as personal negligence). If you are a general partner of a Florida GP or LP, talk to your Cummings & Lockwood attorney about converting your GP or LP into a Florida LLP or LLLP.

NEW YORK POWERS OF ATTORNEY

As we reported in last year's annual update, New York changed its law regarding Powers of Attorney effective September 1, 2009. The new law and forms contained pitfalls for the unwary. However, New York addressed the majority of these concerns in legislation that took effect in October of this year. While Powers of Attorney signed in New York and/or signed by New York residents before September 1, 2009 remain valid, powers of attorney signed after that date must comply with the new law. If you have any questions about New

York powers of attorney or if you plan to execute any New York powers of attorney, please contact your Cummings & Lockwood attorney.

NEW YORK RESIDENT TRUST TAX FILING REQUIREMENTS

Under current New York law, certain irrevocable New York resident trusts are not subject to New York state income tax. Generally, a resident trust is not taxable if there are no trustees domiciled in New York, none of the trust property is located in New York and there is no New York source income generated from assets owned by the trust. Such trusts are not required to file any New York tax returns if these three requirements are met. Earlier this year, the Governor's proposed budget bill contained a provision to eliminate the tax exemption for such trusts. The provision was removed from the bill before it was passed, so New York resident trusts meeting the three requirements are still exempt from New York income tax. However, effective as of January 1, 2010, most New York resident trusts will be required to file a state income tax return, even if they are exempt from New York income tax. If you are the Trustee of an irrevocable New York resident trust and do not know if the trust owes New York taxes and/or needs to file New York income tax returns, please contact your Cummings & Lockwood attorney to discuss your circumstances.

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In this Update, we have deliberately simplified technical aspects of the law in the interest of clear communication. Under no circumstances should you or your advisors rely solely on the contents of this Update for legal advice, nor should you reach any decisions with respect to your personal tax or estate planning without further discussion and consultation with your advisors.

In accordance with IRS Circular 230, we are required to disclose that: (i) this Update is not intended or written by us to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer; (ii) this Update was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by such materials; and (iii) each taxpayer should seek advice on his or her particular circumstances from an independent tax advisor.