HARTOG & BAER
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THE NEW DUTY OF CONSISTENCY AND REPORTING FOR ESTATE TAX PURPOSES

Dear Clients and Friends:

Investment assets acquired from a decedent receive a new income tax basis equal to their fair market value as of the decedent's death. Until now, a decedent's beneficiary could claim a basis greater than that reported on the estate tax return, avoiding a capital gain or related income tax on the difference. Inconsistent income tax reporting is no longer allowed for:

- Estate tax returns filed after July 31, 2015; and
- Property that generates or increases an estate tax liability.

For beneficiaries subject to this new duty of consistency, the income tax basis in inherited property may not be greater than the finally determined estate tax value. That value is tentatively the amount reported on the estate tax return. If that value is adjusted after an examination of the estate tax return or litigation, the adjusted value becomes the finally determined value. If the beneficiary sells or begins depreciating the asset and the value is subsequently adjusted after examination or court proceeding, the beneficiary would need to file amended income tax returns to report a tax basis consistent with the adjusted value.

A beneficiary who claims an income tax basis greater than the reported or adjusted estate tax value is subject to penalties of 20% or more on the underreported income. The underreporting may also allow the government six years, instead of the normal three years, to examine the beneficiary's income tax return.

The duty of consistency applies only to property which generates or increases an estate tax liability. Property that qualifies for an estate tax marital deduction is not subject to this duty. This duty also does not apply to property reported on an estate tax return filed solely for the purpose of claiming the Deceased Spousal Unused Exclusion Amount ("DSUEA").

The executor of a decedent's estate who has responsibility for filing an estate tax return after July 31, 2015 must send a statement identifying the reported value of each interest in property to:

(1) A beneficiary who receives the interest in that property; and

(2) The Internal Revenue Service.

The statement must be provided within 30 days after filing the estate tax return or 30 days after the due date of the return, whichever is earlier. If the estate tax return is examined and the values are adjusted, the executor must provide a supplemental statement within 30 days after that adjustment is made. A failure to provide a statement may subject the executor to a $250 penalty. **For statements otherwise due prior to February 29, 2016, the government has extended the deadline to February 29, 2016**.

The reporting requirements follow from the duty to file a return, and are therefore not limited to taxable estates or to property that is subject to estate tax. An executor of a nontaxable estate must provide the statements if an estate tax return is required to be filed. An estate tax return is required whenever the gross value of the estate tax assets and the decedent's taxable gifts exceed the exclusion amount, without consideration of allowable deductions. The exclusion amount is $5,430,000 for 2015, and is indexed annually for inflation. In comparison, a return filed solely for the purposes of claiming the DSUEA is not a required return and would not be subject to the reporting requirements.

We would be pleased to discuss this new duty of consistency and notification requirements with you in greater detail.

Kind regards.

Very truly yours,

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