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The lawyers of ***John A. Hartog****, Inc*. are skilled practitioners in Trust and Estate law. Our focus on this practice area, and the wisdom based upon our collective experience, enables us to provide nimble and creative solutions to the challenges facing our clients. We invite you to see how this integration of experience, dedication and specialization translates into responsive representation of the highest quality.

October 13, 2010

Dear Clients:

2010 Small Business Jobs Act

The recently enacted 2010 Small Business Jobs Act (*Act*) includes several tax benefits and incentives. For tax years beginning in 2010 and 2011, a taxpayer may expense up to $500,000 for qualifying property (e.g. machinery, equipment and software) placed in service during the tax year. This $500,000 amount can include up to $250,000 of qualified leasehold improvement, restaurant and retail improvement property. The Act extends the first-year 50% deduction for capital expenditures to qualifying property placed in service in 2010. The Act allows taxpayers to deduct up to $10,000 in trade or business start-up expenditures for 2010, reduced by the amount by which such startup expenditures exceed $60,000.

The 2010 Act permits individuals to exclude 100% of their gain on the sale of qualified small business stock (*QSBS*) held for at least five years that is acquired after September 27, 2010. In addition, the Act eliminates the alternative minimum tax (*AMT*) preference item attributable to such sales. Beginning in 2010, eligible small businesses can now carry back unused general business credits for five years. Eligible small businesses are sole proprietorships, partnerships and non-publicly traded corporations with $50 million or less in average annual gross receipts for the prior three years. The Act also allows eligible small businesses to use all types of general business credits to offset their AMT in tax years beginning in 2010.

The 2010 Act allows business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in calculating their 2010 self-employment tax. Cell phones can now be deducted or depreciated like other business property, without onerous recordkeeping requirements.

Generally, a C corporation converting to an S corporation must hold any appreciated assets for 10 years or face a built-in gain tax at the highest corporate rate. The 2010 Act temporarily shortens the holding period of assets subject to the built-in gains tax to 5 years if the 5th tax year in the holding period precedes the tax year beginning in 2011.

Revenue raisers. Information reporting will generally be required for rental property expense payments made after Dec. 31, 2010, and increased information return penalties will be imposed for failures to comply.

Gift Tax Planning

2010 also offers a rare opportunity to transfer wealth to grandchildren in a tax efficient manner. 2010 has the lowest federal gift tax rate (35%) since 1934. At present, the gift tax rate is scheduled to increase to 55% on January 1, 2011. The estate tax rate will also be at that level, as will the generation-skipping transfer tax (GSTT).

The net benefit of taxable gifts can be substantial, and becomes even greater when the gifted assets increase in value between the time of the gift and the date of the donor's death. These transfer tax savings are magnified when the gifts are made to "skip persons," that is, grandchildren or younger persons. For example, a donor who makes a taxable gift of $100,000 in 2010 rather than in 2011 will save the recipient approximately $20,000 in gift taxes. If the donor dies in 2011 without making a gift in 2010, the “lost savings” will approximate $40,000. These savings become even more dramatic if one assumes that the asset gifted will increase in value between the date of the gift and the date of the donor's death.

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An outright gift to a grandchild or other "skip person" in 2010 rather than 2011 increases this taxable benefit by a factor of three. The GSTT, like the estate tax, has been suspended in 2010. The effect of this suspension is that the donor pays only a gift tax on transfers to skip persons, rather than a gift tax *and* a GSTT. The consequence is that these transfers can be leveraged substantially more than in prior years (or that may be available in future years).

A continual challenge for estate planners is persuading clients to make lifetime gifts of their property. No matter how powerful the math, or how logical the tax savings, individuals naturally resist surrendering control of their property. Nevertheless, taxpayers who are interested in transferring their wealth in a tax advantaged manner to the natural objects of their bounty should seriously consider the benefits of making *inter vivos* gifts in 2010. Estate planning professionals in future years may well view 2010 as a golden opportunity that was frittered away

Very truly yours,

JOHN A. HARTOG, INC.

4 Orinda Way, Suite 250-B, Orinda, CA 94563 | Tel: (925) 253-1717 | Fax: (925) 253-0334 | info@calteclaw.com | Top 100 Lawyers