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CURRENT ESTATE PLANNING ISSUES: INCREASE IN APPLICABLE EXCLUSION AMOUNT, NEW FEDERAL REGULATIONS ON DISCLOSURE OF HEALTH-CARE INFORMATION, AND *STRANGI V. COMMISSIONER*

JANUARY 9, 2004

Increase in the Federal Applicable Exclusion

An applicable exclusion (sometimes called the unified credit exemption amount) is available with respect to an aggregate amount of taxable transfers made during life or at death. In 2003, the applicable exclusion exempted from gift and estate tax transfers totaling $1 million ($2 million per married couple). Under current Federal law, this amount increases gradually for estate tax purposes to $3.5 million in 2009, is effectively unlimited in 2010, and returns to $1 million in 2011, but remains constant throughout that period at $1 million for gift tax purposes. In 2004, the Federal applicable exclusion amount is $1.5 million for estate tax purposes.

If you are married and you predecease your spouse, your estate planning documents may direct that an Applicable Exclusion Trust or Family Trust for your spouse and descendants be funded at your death with an amount equal to the Federal applicable exclusion you have remaining at death. The remainder of your assets may pass to your spouse, outright or in trust. Please note that as the applicable exclusion amount rises, the amount that passes to the Applicable Exclusion Trust or Family Trust will increase, increasing the amount that can pass gift and estate tax-free to your descendants. You should consider whether this will diminish the amount passing to or exclusively for the benefit of your spouse below the amount you wish your spouse to receive. For example, if you die in 2004 with $3 million in assets and your estate planning documents direct that your Applicable Exclusion Trust or Family Trust be funded with the full Federal applicable exclusion amount, then $1.5 million will pass to the Applicable Exclusion Trust or Family Trust and $1.5 million will pass to your spouse, either outright or in trust.

Additionally, if you are a New York resident, New York estate tax will be imposed on any amount over $1 million passing to the Applicable Exclusion Trust or Family Trust because current New York estate tax law specifically limits the applicable exclusion to $1 million. For example, if you die in 2004, and your Applicable Exclusion Trust or Family Trust is funded with the full Federal applicable exclusion, $1.5 million, no Federal estate tax will be due at your death, but New York estate tax in the amount of $64,400 will be payable because for New York estate tax purposes the applicable exclusion will remain at $1 million. In subsequent years, the

New York estate tax cost will grow as the applicable exclusion amount is scheduled to rise for Federal estate tax purposes.

Implications of New HIPAA Regulations on Documents That Involve the Release of Health-Care Information

This past spring the privacy rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) took effect. The privacy rules apply to virtually every health-care provider in the nation and affect access to health-care information so that particular care must now be exercised when drafting documents that involve the release of health-care information, including health care proxies. Stiff penalties are imposed for each disclosure violation so we believe health-care providers will comply strictly with these regulations. Language incorporating specific provisions and terminology from the regulations may have to be inserted into your documents to ensure that health care providers are authorized to release your health care information to the designated agent under the new HIPAA regulations.

STRANGI v. COMMISSIONER

Strangi v. Commissioner, a recent Tax Court decision about the application of the estate tax in a family limited partnership situation, has broad language that is troubling. *Strangi* raises the possibility that where an individual has transferred interests in a family limited partnership or limited liability company to a trust or family member, and retains an economic interest in, or control over, the partnership or LLC, the value of all of the partnership or LLC (including the assets held by the trust or family member) will be included in his or her estate for estate tax purposes. Although we and many practitioners believe that *Strangi* is wrong and should be reversed, we recommend that it be taken seriously. Please contact us if your estate planning includes a family limited partnership or a limited liability company and you want to take steps to minimize *Strangi* risks.

If you have any questions about the estate planning issues described in this update, please contact Mildred Kalik (mkalik@stblaw.com; 212-455-2778), Pamela L. Rollins (prollins@stblaw.com; 212-455-3468), David J. Stoll (dstoll@stblaw.com; 212-455-2766) or any other member of our Personal Planning Department.

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