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To: Clients and Friends
From: The Attorneys at Bove & Langa
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THE BOVE & LANGA REPORT
SPECIAL EDITION: FEDERAL ESTATE TAX REPEAL

"I'm spending a year dead for tax reasons."

Douglas Noel Adams, author, *The Hitchhiker's Guide to the Galaxy*

On January 1, 2010, taxpayers entered the alternate universe of a one year federal estate tax repeal. The generation skipping transfer tax ("GST tax") followed the estate tax into the one year black hole. But, as famously stated in *Monty Python and the Holy Grail*, the federal estate and GST tax are "not quite dead", because there is the possibility that Congress will pass a law retroactively reviving the two taxes, an action that may or may not be constitutionally permissible. So much for the old adage about the certainty of death and taxes.

What is a client to do? Some firms are telling each client to have a full review of their estate plan to avoid unintended consequences if a death occurs in 2010 and repeal is applicable. If there is no GST tax, for example, the statement – "I give my grandchildren all I can without triggering a GST tax" – may mean your grandchildren get everything, or it may mean they get nothing. Other firms are recommending no action, so as to avoid unnecessary legal work given the possibility of retroactive reinstatement of the taxes. Here are our thoughts:

- Review the "Fast Facts of Repeal" on the flip side to familiarize yourself with the effect of repeal.
- Undertake a review of the estate plan where health is poor and death a distinct possibility in 2010.
- Undertake a review of the estate plan if estate tax uncertainty keeps you awake at night.
- Otherwise, sit tight, and keep your eyes on our website's homepage for developments as the year unfolds.

How about that? It *is* rocket science!

THE FAST FACTS OF REPEAL

- The federal gift tax remains in full force and effect, with a lifetime exclusion amount of $1 million. The maximum gift tax rate for 2010 is 35%. The gift tax rate increases to 55% in 2011.

- The federal estate tax is repealed for 2010. The federal estate tax springs back in 2011 with an exclusion amount of $1 million and a maximum estate tax rate of 55% (with a surcharge for larger estates).

- The federal GST tax is repealed for 2010. The federal GST tax springs back in 2011 with an exclusion amount of $1 million (indexed for inflation) and a GST tax rate of 55%.

- The federal "step-up" in income tax basis at death is repealed for 2010, and comes back in 2011.

- Property acquired from a decedent has a "carry-over" of the decedent's income tax basis for federal purposes in 2010.

- Under the carry-over basis regime, an additional $1.3 million of basis may be allocated by the executor to assets acquired from a decedent.

- Under the carry-over basis regime an additional $3 million of basis may be allocated by the executor to assets that pass to a surviving spouse in a qualified manner (outright or in a "QTIP" marital deduction trust).

- It appears that to take advantage of the allocation of additional basis in the carry-over basis regime some sort of estate tax return will be required for the decedent. No such form has yet been issued by the IRS.

- The Massachusetts estate tax is alive and well. The exclusion amount is $1 million. As a rule of thumb, the Massachusetts estate tax has an effective tax rate of 16%.

- There is no Massachusetts gift tax or generation skipping transfer tax.

- The step-up in income tax basis at death applies for Massachusetts estate tax purposes for property acquired from a decedent, with the result that the income tax basis of an inherited property may differ for federal and Massachusetts income tax purposes.