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ATRA —American Taxpayer Relief Act of 2012

For estate planning practitioners and their clients, the past decade has been a period of unpredictability and uncertainty. Over this period we experienced drastic increases in the federal estate tax exemption, "sunset" provisions, the lure of the portability of the exemption as between spouses, concern over the "fiscal cliff" and the threat of the federal exemption returning to $1 million from $5 million. On New Years's Day 2013, with the American Taxpayer Relief Act of 2012 (ATRA), Congress approved the first *permanent* estate, gift and generation-skipping transfer (GST) tax provisions in 12 years.

By making permanent the $5 million exemption and the concept of "portability," which allows one spouse to utilize the unused exemption of the other even after death, ATRA has been touted as having made estate tax planning irrelevant. Do not be fooled. Anyone with assets exceeding $1 million will still have a tax liability to New York State that must be addressed, and federal estate tax planning that was undertaken in 2012, in contemplation of the expiration of the existing rules, should now be reviewed in light of ATRA's enactment and because there may be additional filing requirements.

For those who made gifts at the end of 2012 in an attempt to take "last minute" advantage of the $5 million federal exemption before it expired, a federal gift tax return (form 709) must be filed by April 15, 2013. This date can be extended, until October 15, by utilizing form 4868. It is important to realize that even if no gift tax will be due, because the gift was less than the $5 million exemption amount, a return must still be filed if the gift was more than $13,000. If a gift was made to one of several children, the donor may now want to revise the estate plan to account for this "advance" inheritance and equalize the provisions for the other children. Moreover, those who engaged in expedited, last minute planning might not have had ample opportunity to consider the provisions of their instruments. Certain strategies called for the naming of a "placeholder" trustee, others may have granted or withheld powers to a trustee that should now be reconsidered. Under New York's liberal decanting statute, even assets in irrevocable trusts can be transferred to a new trust with more favorable provisions under the right circumstances. We recommend that anyone who engaged in this type of planning review their trust documents and wills to ensure that they comply with their wishes and that the gifts

made at the end of 2012 do not affect the overall plan of distribution. We are happy to review these issues with prospective clients who would like to ensure that their plans will accomplish
their goals.

Additionally, there is no better time than the present to become educated about the effect of New York State estate taxes on your estate plan. New York's independent estate tax regime will continue to play a significant role in estate planning. New York continues to impose its own transfer tax on estates in excess of $1 million. Additionally, the concept of "portability" made permanent by ATRA does not apply to the New York estate tax. Therefore, proper planning is still necessary to reduce or eliminate New York estate taxes.