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As of April 14, 2014

PLEASE NOTE OUR NEW ADDRESS

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**IMPORTANT MATTERS**  
**REQUIRING YOUR ATTENTION**

With the passage of each year, our thoughts turn to . . . . . taxes? Well, yes, unfortunately, in our business, they must. Proper planning calls for the consideration of various matters at the first of each year. This correspondence is designed to remind you to preserve the programs we initiated, and to ensure annual implementation is complete.

Before jumping into the nitty gritty, you may want to see what is happening with us, if so, flip to the last page of this reminder.

**UPDATING ESTATE PLANS**

*Should your documents be changed because of changes in the TAX law?* On January 1, 2013 Congress passed the American Taxpayer Relief Act making permanent changes to the laws governing federal estate taxes, gift taxes and generation-skipping transfer taxes. As a result, the estate tax exemption, lifetime gift tax exemption and the generation-skipping transfer tax exemption have been indexed for inflation and have therefore increased. For 2016, the Estate Gift and Generation Skipping Tax Exemptions are \$5,450,000 and the Tax Rate is 40% on the excess.

On March 31, 2014 Governor Andrew Cuomo signed legislation which increases the New York Estate Tax Exemption gradually to equal the Federal Exemption as follows:

For Descendants on or after...	And before...	The Exemption is...
April 1, 2014	April 1, 2015	\$2,062,500
April 1, 2015	April 1, 2016	\$3,125,000
April 1, 2016	April 1, 2017	\$4,187,500
April 1, 2017	January 1, 2019	\$5,250,000
January 1, 2019	N/A	Equal to the Federal Exemption

While, this increase in the New York Exemption is quite favorable, the law includes some surprising provisions. For instance, gifts made within three years of death during the transition period will be subject to estate tax.

While we consider the increase in Exemptions to be good news, there are potentially negative consequences which can occur for the inattentive. For instance, a generous Federal estate tax exemption creates the possibility that your current estate planning documents may cause unintended consequences such as the disinheritance of spouses in favor of children, or the disinheritance of children in favor of

grandchildren. Additionally, state death taxes in many states (including, but not limited to, New Jersey and, temporarily, New York) have not followed these drastic changes in exemption amounts. This means that, if you reside in such states, your current documents may result in a significant state estate tax due at the first spouse's death. If you want to ascertain whether your current estate plan will create such unintended tax consequences, please call Jennifer Lota at (973) 376-9050. You may also email Jennifer through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

The increase in the gifting exemption to over \$5,000,000 opens the door to many opportunities for shifting wealth and taxable income. Please see the Annual Gifting section below to learn more about these benefits.

***Portability of Federal Estate Tax Exemption.*** The law continues to provide "portability" of the federal estate tax exemption between spouses. This is intended to allow a surviving spouse to utilize a predeceased spouse's unused Federal estate tax exemption. Relying upon portability to reduce estate taxes is in all probability a bad decision. Furthermore, in order for the surviving spouse to use this benefit, he or she will be required to file a Federal estate tax return for their predeceased spouse where one may not otherwise be required to be filed. If you have questions, please call Liza Chanco at (973) 376-9050. You may also email Liza through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

***Asset Ownership and Beneficiary Designations.*** Properly drawn Wills do not operate effectively unless coordinated with asset ownership (i.e. the titling of your accounts) and beneficiary designations. Your Wills may not be achieving your objectives if your asset ownership and beneficiary designations are not properly coordinated and monitored. The recent increases in the Federal and the New York state estate tax exemptions, and the potential imposition of state estate taxes at the first spouse's death forces us to review these matters on a regular basis. Despite our efforts to coordinate the planning, if you changed financial institutions or employment since we last met, a review of these matters is imperative. Furthermore, many of our clients have inadvertently altered asset ownership and beneficiary designations resulting in an ineffective estate plan.

***Changes in Estate Value.*** We have found that many of our clients have recognized significant increases or decreases in wealth since our last planning session. Significant increases or decreases in wealth dictate a review of ownership and beneficiary designations.

***These factors, coupled with the tax law changes, are likely to impact the effectiveness of your plan.*** If you feel these factors may have impacted your estate plan, or you are unsure and would like to reevaluate your planning, please call Adam Gregory at (973) 376-9050. You may also email Adam through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

***Should your documents be changed because of changes in factual circumstances?*** Changes in relationships often dictate changes to your estate planning documents. As an example, the guardians for your minor children may have divorced. Or, perhaps, you had a falling out with your Trustee (or, even worse, your beneficiary). Your executor may have passed away, become disabled, or moved out of the country. Or, maybe you no longer recall who you selected for these positions. As indicated above, changes in financial position can impact your plan. Along those lines, you may have made a dollar bequest in your Will, and with fluctuations in your net worth, you may want to change that amount. Alternatively, you may have provided that a house or other specific item be left to someone, and you have since disposed of this property. If you feel these factors or other similar events may have impacted your estate plan, or you are unsure and would like to reevaluate your planning, please call Adam Gregory at (973) 376-9050. You may also email Adam through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

**Instruction Letters** – If you think it might be difficult for you to organize your affairs, imagine the difficulties facing your families, heirs and representatives. This not only applies at your passing, but is equally applicable should you become incapacitated. In other words, organizing your affairs may also benefit you. We provided you with a checklist to help you prepare a letter of instruction to ease complications for those you selected to administer your affairs. If you have not prepared your letter of instruction, please do so. If you have not reviewed it lately, please do so. If you do not have the checklist designed to guide you in the preparation of your letter of instruction, please call Kim Hernandez or Jeanmarie Unish at (973) 376-9050 for another copy.

## ANNUAL GIFTING

**Increase in Lifetime Gift Tax Exemption** – The Federal lifetime gift tax exemption has been raised to \$5,450,000. If you desire to gift more than you have in the past, or have been restricted in your gifting as a result of the tax law, this may be the window of opportunity to take advantage of liberal tax laws. This will enable many to shift large amounts of wealth and/or taxable income through a variety of tax-favored strategies. If you wish to discuss this further please call Shawn McClelland at (973) 376-9050. You may also email Shawn through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

**Gifts Early** - Gifting at the beginning of each year more effectively utilizes your annual \$14,000 gift tax exclusion (yes, back in January 1, 2013 it went up from \$13,000). By gifting early, the growth and income earned by the funds gifted accumulates outside of your estate. Before gifting, however, one should consider the gifting programs previously instituted in order to coordinate all of the annual gifts.

**Should you file gift tax returns?** The answer is not always obvious. Consider the following:

- Any person generally can give any other person \$14,000 per year, free of gift tax. Suppose Dad gives Son a \$28,000 check from Dad's checking account on behalf of Mom and himself and Mom gives Daughter a \$28,000 check from Mom's checking account on behalf of Dad and herself. Is a gift tax return filing required? YES! No tax is due, but Dad and Mom must file to "elect" to treat one-half of Dad's gift as coming from Mom and one-half of Mom's gift as coming from Dad.
- For a variety of good reasons, many individuals have transferred their life insurance policies to irrevocable living trusts. Suppose Mom's trust provides the policy proceeds pass, in trust, to her children equally at her death. Upon a child's death, that child's children receive his or her trust fund. Although no tax is currently due, Mom's trust may be subject to a "Generation Skipping Tax" because her grandchildren can collect from the trust. Should Mom file a gift tax return? It depends. Although Congress passed legislation designed to alleviate the requirement that one "elect" to have their trust pass tax free intergenerationally, we must examine whether that legislation applies to the trust. If it does not apply to Mom's trust, she must file to "elect" to use her Generation Skipping Tax exemption.

**The point is**, it is not always obvious whether filing is required, and it is not always clear whether filing is recommended. However, when filing is required, it is necessary that the return be filed by April 15 (although extensions may be obtained). If you have a trust which may pass intergenerationally (i.e. to grandchildren or their descendants), it is imperative you evaluate these filing requirements. If this is the

case, or you are unsure as to your filing requirements, please call Adam Gregory at (973) 376-9050. You may also email Adam through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

***Crummey Letters*** - If your estate planning program calls for gifting into irrevocable trusts, then it is probable that you are required to distribute letters each year to trust beneficiaries notifying them of your gifts. The Internal Revenue Service has become obsessed with this procedure, and your strict compliance with this detail can make the difference between the success and failure of your program. We implore you to continue this procedure, or, if the ball has been dropped, contact us to assist you in reinstating same. If you have any questions regarding your trust or the above described letters, please call Amar Shah at (973) 376-9050. You may also email Amar through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## **IRA/KEOGH/PENSION DISTRIBUTIONS**

***Must you start withdrawing from your retirement plans?*** If you were born on or between July 1, 1945 and June 30, 1946, this is your first distribution year, and, generally, you must start withdrawing from your retirement plans by April 1, 2017.

***Are your beneficiary designations coordinated with your plan?*** Your selection of beneficiaries, and the terms of your plan (i.e., custodial agreements etc.) can bind your heirs with respect to your retirement funds. Furthermore, these factors can impact upon the income and estate taxation of the funds. For example, if you named minors as direct beneficiaries, this can result in unnecessary costs, delays, and court proceedings. Or, alternatively, you need to have your retirement plan fund your estate tax exemption, and failed to properly specify the beneficiary designation. Perhaps you originally did all of this properly, but since completing the planning you (1) switched jobs, (2) moved your retirement plans to new financial institutions, or (3) acquired new retirement plans. Have you structured the new beneficiary designations to comport with your estate plan? If you fail to properly coordinate and update beneficiary designations, it can be very costly to your heirs. If you are unsure as to the impact of your designations, please call Jennifer Lota at (973) 376-9050. You may also email Jennifer through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

***Have you designated a trust to be beneficiary of your retirement funds?*** The Internal Revenue Service, in their continuing effort to collect income taxes, recently ruled that, in certain circumstances, this can increase the amount of distribution, and thereby increase the income taxes. If a trust is the beneficiary of your retirement funds, it is important to revisit your planning to ensure income taxes are not unnecessarily accelerated. If you wish to pursue this analysis, please call Jennifer Lota at (973) 376-9050. You may also email Jennifer through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## **PRESERVING GOVERNMENT BENEFITS**

Many of our clients and members of their families put in place documentation for the management of their affairs under various circumstances. Sometimes our health dictates the need for care in a nursing home or similar facility. The costs associated with such care is often unaffordable. There are techniques which may enable people and families in such circumstances to preserve some level of wealth to care for such person or to pass on to their heirs. In a different, but related situation, where we seek to preserve or obtain public assistance for those either receiving awards as a result of injuries or inheriting money from family and friends, trusts are formed to collect such monies and public assistance is preserved provided this is done properly. If either of these issues impact you or your family or you have questions concerning these matters, please feel free to call Patrick Russo at (973) 376-9050. You may also email Patrick through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## **DISPUTE RESOLUTION**

While we go to great lengths to minimize disputes with respect to our clients' estate planning, very often disputes arise nonetheless. If you find yourself in a position where you are encountering difficulties in the administration of an estate, we very actively assist in these matters. We also provide assistance to those who encounter legal disputes in their businesses and related matters. Please feel free to call Patti Haddad at (973) 376-9050 to determine how we may assist you in these matters. You may also email Patti through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## **HIPAA IMPLICATIONS**

Despite assurances by the Department of Health & Human Services that HIPAA (the Health Insurance Portability and Accountability Act) will not affect our Living Wills and Medical Powers of Attorney, this legislation produced unintended results. Under the provisions of local law, your Health Care Agent may not be able to access your medical records or receive communications from your health care providers. Accordingly, in most instances, it would be prudent to review this documentation. If you would like to review this matter, please call Amar Shah at (973) 376-9050. You may also email Amar through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## **DEATH OF DOMA**

*2013 marked the death of the Defense of Marriage Act*, a federal law prohibiting recognition of same sex marriages. While marriage has its advantages, needless to say, it is a double edged sword. There are significant estate tax benefits to marriage, but it can increase (or decrease) income taxes, federal benefits and many legal obligations, including one spouse's obligation to pay for the nursing home of their institutionalized spouse. Furthermore, if you were married in a State where same sex marriage was legal prior to the demise of DOMA, you must absolutely review your planning. If you would like to meet to analyze or review this complex matter, please call Kim Hernandez or Jeanmarie Unish at (973) 376-9050 to schedule a conference.

## **SO YOUR CHILDREN ARE 18 NOW**

*The good news is* they no longer need guardians under your Will. The bad news is you no longer have the right to dictate their medical care or to advocate for them legally or financially. Almost invariably, you need them to execute Medical Directives and Powers of Attorney to afford you the ability to advocate on their behalf, or even access their medical records. If you would like to inquire what this would involve, please call Patrick Russo at (973) 376-9050. You may also email Patrick through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## **NEW YORK POWER OF ATTORNEY**

In 2009, New York State drastically revised its laws concerning Powers of Attorney. New York does not, however, require that you revise your existing Power of Attorney to conform to the change in law. If you have acquired property or engaged in new business in New York State since you last did your planning or you are considering changing appointees to act as your Power of Attorney, it may be a good time to review your existing documentation. If you would like to address any of these issues, please call Jennifer Lota at (973) 376-9050. You may also email Jennifer through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## DECANTING NEW YORK IRREVOCABLE TRUSTS

Newly enacted legislation allows irrevocable trusts, under New York law, to be changed as to how the trust assets pass to the beneficiaries. If you feel your current irrevocable trust no longer reflects your wishes, this can be an opportunity to repair your trust. If you would like to discuss this with us, please call Jennifer Lota at (973) 376-9050. You may also email Jennifer through our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## ELECTRONIC UPDATES

In an effort to expedite communications between us, our friends and our clients, we are reaching out to request you advise us of your email addresses. If you haven't provided us with your current email address, please forward same and any communications to us to our office manager, Jacqueline Eilbacher, at [jeilbacher@levinedesantis.com](mailto:jeilbacher@levinedesantis.com). Also, please feel free to update this information by visiting our website at [www.levinedesantis.com](http://www.levinedesantis.com).

## WHAT'S NEW WITH US

Clients regularly inquire about legal matters impacting them, their family and their friends. We are always happy to assist you in identifying competent counsel here in the US as well as abroad. As our firm grows, we have expanded our scope of services to include attorneys proficient in a variety of legal matters. If the need arises, please let us help you with:

Contracts  
Litigation  
Corporate Law  
Tax Controversies  
Real Estate Matters  
Trust Administration  
Medicaid Planning/Elder Law  
Corporate Planning and Litigation  
Sales and Purchases of Businesses  
Probate and Estate Administration  
Divorces, Separation and Prenuptial Agreements  
Estate Planning (Wills, Trusts, Living Wills, Powers of Attorney)

**DISCLAIMER OF TAX ADVICE.** Unless explicitly indicated in the content of this communication, any advice contained in this communication, including attachments and enclosures, is not to be relied upon. Reliable tax advice would require a detailed and careful analysis of the facts and applicable law. Unless explicitly indicated in the content of this communication, we have not made, and have not been engaged to conduct, that type of analysis in connection with any advice given in this communication. Accordingly, any advice rendered in this communication cannot be used for the purposes of avoiding penalties that may be imposed by the IRS. In the event you would like us to perform the requisite analysis and research to render an opinion without the aforementioned disclaimer, please feel free to contact us.