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RE: 2006 Pension Law Update for 2006/2007 Charitable Giving

Dear Clients and Friends:

The last paragraph of this letter has been prepared in accordance with Circular 230. Please review the last paragraph before reading this letter.

In keeping with our commitment to “continuing client education,” we are writing to inform you of certain changes resulting from the Pension Protection Act of 2006 (the “Act”). This letter is not intended to be a comprehensive summary of the 2006 Pension Act but rather to alert you to certain provisions that are of importance to many of our clients. Please feel free to visit us at www.estatetaxlawyers.com for periodic updates posted to our web site.

Charitable Gifts from Individual Retirement Accounts

As a result of the 2006 Pension Act, persons age 70½ or older can make charitable gifts of up to \$100,000 per year directly from their Individual Retirement Account (IRA). This special provision is in effect for 2006 and 2007 only. Upon reaching the age of 70½ the IRS requires that a minimum distribution be made from your IRA, which is generally included in your gross income for the year. The Act allows you to exclude this amount from your gross income if it is given directly to a tax-exempt organization. Because the distribution is not included in your gross income, you will not be entitled to a deduction for the charitable donation. However, because charitable deductions generally cannot exceed 50% of your adjusted gross income for the year; and because making a charitable contribution directly from your IRA will result in your required minimum distribution (up to \$100,000) being totally excluded from your gross income, you would receive the benefit of a 100% deduction for the charitable contribution from your IRA. This can result in significant tax savings.

Requirements to Qualify Your Charitable Donation under the Act

First and foremost, you must be at least 70½ years of age before making the donation. Be careful, this is a tax trap; the Act only applies to donations made **on or after** reaching the age of 70 ½. Donations made prior to you reaching this age will not qualify. Next, the donation must be made directly from your IRA. Donations from other forms of retirement accounts, such as your §401(k), profit sharing plan, pension plan, or §403(b) annuity, will not qualify. In addition, the donation must be made directly from your IRA to a qualifying public charity, i.e. the charity must be one that would otherwise fully qualify for a charitable income tax deduction. There are a number of exclusions (i.e. gifts to

philanthropic funds) that do not qualify. Finally, the donation must be made from funds that would otherwise be considered a taxable distribution from your IRA. This may be favorable to you if you have made any nondeductible contributions to your IRA, because the charitable donation is deemed to have come from the taxable portion of your IRA, leaving the maximum amount of funds in your IRA for subsequent tax-free distribution (“tax-free funds”) to you or your beneficiaries. However, if a portion of your tax-free funds are used for the donation to the charity, that portion will not qualify for the exclusion.

Administrative Requirements of the Act

In addition to the provisions described above, the new Act also requires that you keep adequate records of all of your donations, whether cash or property, regardless of the amount. The record must specify the name of the donee organization, the date of your contribution, and the amount that you contributed. This provision is required for all charitable giving, not just those from your IRA.

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Conclusion

The purpose of this memo is to advise you of the possibility of taking advantage of the Act this year and next. However, there are a number of limitations that you need to consider before taking any action. I hope this letter has provided you with some insight. If you are considering making contributions in the near future please contact us or your CPA to determine if you are eligible to make tax advantaged contributions from your IRA for this year and next.

No one, without our express prior written permission, may use any part of this letter in promoting, marketing or recommending an arrangement relating to any federal tax issue. Furthermore, it may not be shared with any other person without our prior written consent other than as required by law or by ethical rules. However, this prohibition on sharing this letter does not preclude you from sharing with others the nature of this transaction or the fact that you consummate it.

Very truly yours,

BARRY A. NELSON
For the Firm

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