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TO: OUR CLIENTS AND FRIENDS

FROM: JACKSON M. PAYNE

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RE: FINANCIAL STRATEGIES FOR YOUR LIVES AND BUSINESSES

HAPPY HOLIDAYS

As always, our staff joins with me in wishing you the very best for the holiday season. We have so much to be thankful for and are truly blessed in having strong client and professional relationships. For those who have stood by us over the years, we simply, but most sincerely, say thank you. You are the greatest and we welcome the opportunity to serve you in the upcoming year and beyond.

CRUMMEY TRUSTS FOR GIFTS TO CHILDREN

As I'm sure you know, everyone can give away up to the gift tax annual exclusion amount each year to each of an unlimited number of donees, free of gift and generation-skipping transfer tax.

Where the donee is a minor, many parents and grandparents make their annual gifts to a custodial account under the Uniform Transfers to Minors Act (UTMA). A UTMA account works well and is easy to create and maintain. However, it has one major defect: when the child (or grandchild) reaches age 21, the beneficiary can do whatever

he or she wants with the money in his or her custodial account. If, for example, the beneficiary wants to buy a sports car instead of going to college, there is nothing that you can do about it.

Few parents wish their children (or grandchildren) to receive significant amounts of cash at age 21. Fortunately, there is a special kind of trust that avoids this problem. It's called a "Crummey" trust, after a court case that paved the way for the use of this kind of trust. With a Crummey trust, the property can remain in trust for as long as you wish without forfeiting the gift tax annual exclusion. Thus, you can transfer property to remain in a Crummey trust for the beneficiary's entire lifetime or until an appropriate age (e.g., age 30) or event (e.g., graduation from college). You decide how the money is to be used and how much the beneficiary can receive.

There's one catch to a Crummey trust: annual contributions you make to the trust won't qualify for the gift tax annual exclusion unless you notify the beneficiary that you've made the contributions, and give him or her a limited period of time (usually 30 days) in which he or she can withdraw the contributions from the trust. It's usually understood that the beneficiary won't exercise his or her right to withdraw the contributions, but will let them remain in the trust. However, that expectation should always remain unwritten because, if there's any evidence of it, IRS will use that evidence to say that the beneficiary didn't really have a power of withdrawal. If the beneficiary violates the unwritten understanding by withdrawing property from the trust, there's nothing you can do about it, except to show your displeasure by not making any further contributions to that beneficiary's trust.

QTIPING AN IRA

If you're like many people, you have substantial sums invested in individual retirement accounts (IRAs). In fact, it's not unusual for a rollover IRA-one holding distributions from a qualified retirement plan-to be a family's most important asset.

While owning these assets may make you rich on paper, this wealth could go up in smoke if the IRA isn't handled correctly. If you take the money out of the IRA, you

must pay income tax on it. If you leave it in the IRA until death, the date-of-death account balance will be subject to estate tax. Plus, your beneficiaries will still have to pay income tax on what's left.

By designating a qualified terminable interest property (QTIP) trust as the beneficiary of your IRA, you can postpone paying estate taxes on the property until your spouse's death, and provide for your spouse during his or her lifetime. And you can do this while protecting the property for ultimate distribution to your children.

An IRA-to-QTIP trust arrangement can minimize your taxes and meet your non-tax objectives. But, the arrangement must be carefully structured, or your spouse and children may lose the benefit of income tax and estate tax deferral. Payout of an IRA must comply with technical provisions of the income tax law. QTIP trusts must satisfy estate tax requirements. Meshing the two sets of rules is complicated.

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