WHAT THE AMERICAN TAXPAYER RELIEF ACT OF 2012 MEANS FOR YOU

2/18 *By Geoff N. Germane, JD*

On December 33, 2012 (not a typo), the American Taxpayer Relief Act of 2012 ("ATRA") was signed into law. It prevented many tax laws from reverting to 2001 versions and gave us some new laws and rates that don't have a built-in expiration date. As a result, the new rules under ATRA are "permanent"… until Congress decides to change them again.

A HANDFUL OF CHANGES

While space and time do not allow a full treatment of the new law, here are a few of the changes you'll want to be aware of:

- Tax rates increased and brackets changed. The new top federal rate is 39.6 percent, and it kicks in at $450,000 of taxable income for married couple filing a joint return. For single filers, the top rate starts at $400,000, and for estates and trusts it starts at an obscenely low $11,950.
- Long-term capital gains ("LTCG") rates increased for top earners. For those making between $72,501-$449,999 (including the capital gain, married filing jointly), the federal rate is still 15 percent. For those in the top bracket, the rate is 20 percent. On top of this, a new 3.8 percent surtax from the previously enacted Affordable Care Act will be added. This means that for a top earner, the LTCG rate has increased from 15 percent to 23.8 percent.
- A new Medicare surtax of 0.9 percent applies on payroll and self-employment income of $200,000 for single filers and $250,000 for married taxpayers filing jointly. There is no employer match. And remember the payroll tax holiday is over—employees' tax on wages will return to the former 6.2 percent from 4.2 percent.
- Estate, Gift, and Generation-Skipping Transfer Taxes now have a unified exclusion amount of $5,250,000 in 2013, and this amount is indexed for inflation in future years. This means that a person can transfer property during life or at death in total amounts up to this exclusion level without incurring "transfer" taxes.

WHAT DOES THIS MEAN FROM A PLANNING PERSPECTIVE?

Some old and some new planning techniques might be considered as a response to the recent tax changes. Here is some food for thought:

Many people think they don't need to undertake estate planning (how to efficiently transfer their property during life or at death, sometimes using wills, trusts, or similar instruments) now that the exclusion amount is $5,250,000. While the need for estate tax planning may have gone down for many taxpayers, one should not confuse purely "tax planning" with "estate planning". Planning to protect and provide for a surviving spouse and/or the joint children of a marriage, or to protect a child's inheritance from predators, creditors (and perhaps from the child him/herself) is just as important as ever, and perhaps even more so now. Other important planning issues must be addressed in the case of a second marriage, or a special-needs child, or a host of other scenarios that exist regardless of the amount of the estate tax exemption.

Moreover, certain estate planning vehicles can still provide meaningful tax savings. A charitable remainder trust can shield built-in capital gain from increased LTCG rates, including the 3.8-percent surtax. And good advance planning can minimize or eliminate the impact of the compressed tax rates for trusts and estates (remember, top rates begin at $11,950 of income).

Phil Barker, Director of Planned Giving of the Utah Valley Healthcare Foundation can help you begin to determine the impact of ATRA on your situation and consider appropriate planning techniques to address this impact. For more information or questions please contact the Utah Valley Healthcare Foundation at phil.barker@imail.org or (801) 357-7600.

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