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IMPORTANT FEDERAL TAX LAW PROVISIONS EXPIRE AT THE END OF 2012

Under current law and absent Congressional action, January 1, 2013 will bring with it numerous federal tax law changes that could *significantly increase your federal income (including capital gains) and gift and estate tax exposure for 2013 and subsequent years*. The remaining months of 2012 will be a critical time for you to evaluate your financial, tax and estate planning. You may be limiting your options for efficient financial, tax and estate planning if you don't act soon because many of the existing advantageous tax planning provisions may not be available after December 31, 2012. Here is a brief summary of some of the anticipated tax law changes.

1. Income Tax Law Changes. A new 3.8% Medicare tax will be imposed on the "net investment income," including dividends, interest and capital gains of individuals with income above certain thresholds amounts (e.g., \$250,000 for married persons filing jointly and \$200,000 for single persons). There will also be a 0.9% increase (from 1.45% to 2.35%) in the employee portion of the Hospital Insurance Tax (the Medicare portion) on wage income above these set threshold amounts. Ordinary income tax rates will increase for the top two income tax rates, the capital gains rate will increase to 20% from the current 15% and the tax rate on qualified dividends will increase from the current rate of 15% to a top marginal rate of 39.6%. The payroll tax cut of 2% will end.
2. Gift and Generation-Skipping Transfer Tax Exclusions and Rates. Through the final months of calendar year 2012, the lifetime gift tax exclusion amount is \$5,120,000 per person (the "applicable exclusion amount"). The maximum gift tax rate during the balance of calendar year 2012 for lifetime gifts in excess of the applicable exclusion amount (not counting "annual exclusion gifts" per recipient of \$13,000 per year) is 35%. Notably, a deceased spouse's unused exclusion amount is "portable" and can be used by his or her surviving spouse to increase the amount of lifetime gifts the surviving spouse can make to family members without federal gift tax. The gift tax applicable exclusion amount is scheduled to revert to \$1,000,000 per person on January 1, 2013. *Don't wait until the last days and hours of 2012 to utilize this benefit – if you plan to make sizable gifts, begin the process now*. In addition, for the remainder of calendar year 2012, the generation-skipping transfer tax exclusion is \$5,120,000 per person and the tax rate is 35%; beginning January 1, 2013, this exclusion will be reduced to \$1,400,000. Many opportunities remain during the balance of calendar year 2012.
3. Estate Tax Exclusion and Rates. For deaths occurring during 2012, \$5,120,000 per person can be passed to family members (in addition to the unlimited amounts that can be passed to a spouse or to charity) without estate tax. The \$5,120,000 exclusion amount available at death will be reduced by certain gifts made during lifetime. The maximum estate tax rate during 2012 is 35%, but will be increased up to 55% beginning January 1, 2013.

4. "Portability" of Exclusion Between Spouses. If a married individual dies during 2012, the unused portion of his or her estate tax exclusion amount can be utilized by his or her surviving spouse (in addition to the surviving spouse's own exclusion amount) to shelter transfers made by the surviving spouse to family members from estate tax at the surviving spouse's later death. This is referred to as "portability." The loss of gift and estate tax exclusion "portability" in 2013 could result in many couples suddenly facing federal estate tax exposure if their estate planning documents are not up to date.
5. Family Limited Partnership/Limited Liability Company and "GRAT" Planning. Opportunities to incorporate limited partnerships, limited liability companies and "grantor retained annuity trusts" ("GRATs") into your estate plan currently remain intact. However, the President's Budget proposals contain numerous changes to these estate and tax planning vehicles that, if enacted, could dramatically reduce, and in some instances eliminate, these planning techniques.
6. Low Interest Rate Environment and Low Valuations. You have heard the phrase "timing is everything" and this is very true in tax and estate planning. Tax planning is highly time-sensitive and your estate planning objectives could be derailed by changes in your insurability or capacity. There is no better time than the present to take advantage of the current low interest rate environment for intra-family loans and the low valuations to achieve your financial, tax and estate planning goals.
7. Bottom Line. While the political debate over how to address the federal deficit rages, especially during this election year, and the "fiscal cliff" of mandatorily imposed tax increases and spending cuts looms, no one knows for sure what will happen. The best solution is to prepare and plan now and control your financial goals by working with your financial, tax and estate planning advisors to ensure you are receiving timely information about how these changes will affect your situation and by making appropriate moves that are suitable for your situation.

Some questions you might ask now include: (a) should gain or income be accelerated into 2012 (e.g., sales of assets, acceleration of wages or bonuses, IRA conversions); (b) should my investment portfolio be restructured so that assets which are taxed in certain ways are rearranged (e.g., fully funding tax-deferred arrangements vs. investing in income producing assets); (c) how might life insurance, commercial or private annuity arrangements or other tax-deferred vehicles work to manage my tax exposure; (d) what are my options for asset transfers that utilize and leverage the current gift and generation-skipping transfer tax exemption amounts; and (e) how do I update my Will, Trust and other estate planning documents to respond to changing circumstances and tax laws.

It is not too early to discuss these questions and issues with your advisors; it may be too late to do anything if you wait until the last minute. If you have any questions about how these provisions and potential tax law changes could affect your financial, tax and estate planning, please call me.

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