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Gift Planning and the New Tax Law





Date: January 31, 2013

Time: 1:00 – 2:30 Eastern Time

Presenters: Gary M. Pforzheimer
President

Bill Laskin
Vice President




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Agenda

- Introduction - Gary
- Income Taxes - Gary
- IRA Rollover - Bill
- Deductions - Gary
- Transfer Taxes - Bill
- Miscellaneous– Bill
- Conclusion - Bill


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Introduction

- The Affordable Care Act of 2010
- American Taxpayer Relief Act of 2012
- It could have been worse
- Certainty, for now
- Importance of charitable deduction?


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Income Taxes


- Federal Rates for Income Taxes
- Capital Gains and Qualified Dividends
- Medicare Surtaxes
- Payroll Tax Changes
- AMT Thresholds

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Federal Rates for Income Taxes

Type of Filer	Top Rate Income Level
Married Filing Jointly	\$450,000
Head of Household	\$425,000
Single	\$400,000




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Federal Rates: Married Filing Jointly

Taxable Income	Tax	% on excess
\$0	\$0	10%
17,850	1,785	15%
72,500	9,983	25%
146,400	28,458	28%
223,050	49,920	33%
398,350	107,768	35%
450,000	125,846	39.6%


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Capital Gains and Qualified Dividends

Type of Filer	Top Rate Income Level
Married Filing Jointly	\$450,000
Heads of Households	\$425,000
Single	\$400,000


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Capital Gains and Qualified Dividends Tax Schedule: MFJ

Taxable Income	% Tax
\$0	0%
17,850	0%
72,500	15%
146,400	15%
223,050	15%
398,350	15%
450,000	20%

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3.8% Medicare Surtax

Type of Filer	Top Rate MAGI Level
Married Filing Jointly	\$250,000
Heads of Households	\$200,000
Single	\$125,000

Compare to Income Tax Rates

Type of Filer	Top Rate Income Level
Married Filing Jointly	\$450,000
Heads of Households	\$425,000
Single	\$400,000


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3.8% Medicare Surtax: Example

- George and Ann McNeil, married filing jointly
- \$100,000 income and \$200,000 of long-term gain
- 25% income tax bracket and 15% capital gains tax bracket.
- \$50,000 excess MAGI over threshold (\$300,000 - \$250,000)
- \$150,000 of gain taxed at 15%, \$50,000 at 18.8%.


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3.8% Medicare Surtax: Life Income Payments

- Gift Annuities
- CRTs
- PIFs
- Lead Trusts


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Payroll Tax Changes

- Effect of payroll taxes on charitable deductions
- Social Security tax back to 6.2%
- .9% Medicare surtax from Affordable Care Act kicks in for high income earners

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.9% Medicare Surtax: From the IRS FAQs

- Will Additional Medicare Tax be withheld from an individual's wages?

"An employer must withhold Additional Medicare Tax from wages it pays to an individual in excess of \$200,000 in a calendar year, without regard to the individual's filing status or wages paid by another employer."


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AMT Thresholds

- Purpose of AMT is to prevent zeroed-out tax returns
- For donors in the AMT, tax savings from deductions limited to 28%
- New thresholds and inflation adjustments should eliminate need for repeated patches


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IRA Rollover: Background

- History of the Charitable IRA Rollover
- Can fulfill minimum distribution requirements from an IRA
- Can fulfill a pledge to charity
- Easy to do
 - One step: IRA administrator sends check to charity
 - Don't report as income and no deduction


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IRA Rollover: Terms

- Donor is 70½ or older
- Traditional IRA or Roth IRA
- Total of all IRA rollover gifts \$100,000 or less
- Public charities only
- Nothing in return (outright gifts only)
- Documented


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IRA Rollover: Advantageous

- For donors who do not itemize their charitable deductions
- For donors who would lose tax deductions due to the Pease limitation
- For donors who regularly contribute 50% of their AGI
- If no state charitable deduction available

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IRA Rollover: Not Advantageous

- Live in a state that exempts retirement distributions but allows a charitable deduction on the state income tax return
- Can use all of charitable deduction and have highly appreciated securities that could be contributed instead
- Have an uncooperative IRA administrator


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IRA Rollover: Timing Considerations

- Qualified 2012 distributions
- Unqualified December 2012 distributions
- January 2013 can count for 2012
- Any 2013 qualified distribution
- IRS guidance: <http://www.irs.gov/Retirement-Plans/Charitable-Donations-from-IRAs-for-2012-and-2013>


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Deduction Reductions

- Pease limitation
 - Reduce itemized deductions by 3% of excess over applicable AGI threshold
 - Reduction cannot exceed 80% of itemized deductions
- Personal exemption phase-out
 - Reduce exemptions 2% for every \$2,500, or fraction thereof, over applicable AGI threshold


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Pease Limitation

Filing Status	AGI Threshold
Married filing jointly/Surviving spouse	\$300,000
Head of household	\$275,000
Single	\$250,000
Married filing separately	\$150,000


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Pease Limitation: Example 1

- Mr. and Mrs. Smith file a joint tax return
- Joint AGI of \$500,000
- Itemized deductions
 - \$20,000 real estate taxes
 - \$10,000 mortgage interest
 - \$50,000 charitable deductions
 - \$80,000 total deductions


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Pease Limitation: Example 1

- Itemized deductions will be reduced to \$74,000:
 - $\$500,000 - \$300,000 = \$200,000$
Amount subject to 3% deduction reduction
 - $\$200,000 \times 3\% = \$6,000$
Amount of deduction reduction
 - $\$80,000 - \$6,000 = \$74,000$
Itemized deductions after reduction
- But ... reduction is absorbed by mortgage interest and real estate taxes

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Pease Limitation: Example 2

- When does 80% limitation come into play?
- Suppose Smiths had combined AGI of \$2.5 million

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Pease Limitation: Example 2

- Tentative reduction would be:
 $3\% \times (\$2,500,000 - \$300,000) = \$66,000$
- But $80\% \times \$80,000$ itemized deductions = \$64,000 which is the limit




Personal Exemption Phase-out

Filing Status	AGI Threshold	AGI w/100% Phase-out
Married filing jointly/Surviving spouse	\$300,000	\$422,500
Head of household	\$275,000	\$397,500
Single	\$250,000	\$372,500
Married filing separately	\$150,000	\$211,250



Personal Exemption Phase-out

- Phase-out 2% of exemptions for every \$2,500 AGI exceeds threshold for married filing jointly
- \$1,250 if married filing separately

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Personal Exemption Phase-out


- Phase-out = $((AGI - \text{Threshold})/\$2,500) \times 2\% \times \text{Exemption}$

Married Filing Jointly Example

AGI =	\$400,000
Threshold =	\$300,000
Two exemptions = $2 \times \$3,900 =$	\$7,800
Permitted exemption =	\$1,560

$((\$400,000 - \$300,000)/2,500) \times 2\% \times \$7,800 = \$1,560$


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Transfer Taxes

- Gift, Estate, and GST Exemptions
- Gift, Estate, and GST Rates
- Gift Tax Annual Exclusion Amount
- State Death Tax Deduction

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Gift, Estate, and GST Exemptions

- Exemptions were due to drop to \$1,000,000
- Instead, now set at \$5,250,000 with indexing for inflation
- Portability rules can double exemption between spouses to \$10.5 million

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Portability Exemption: Example

- Karen McNeil dies in 2013
- Made \$1 million in lifetime taxable gifts
- Leaves \$10 million estate to husband Jerome
- No estate tax is due at her death



Portability Exemption: Example

If election made on Karen's estate tax return:

- Her unused \$4.25 million estate tax exclusion transferred to Jerome
- Jerome's available exclusion amount now \$9.5 million: Karen's unused \$4.25 million + Jerome's \$5.25 million
- Jerome can use \$9.5 million exclusion for lifetime gifts and any unused amount for gifts at death



Gift, Estate, and GST Rates

Taxable Transfer	% on Excess
0	18%
10,000	20%
20,000	22%
40,000	24%
60,000	26%
80,000	28%
100,000	30%
150,000	32%
250,000	34%
500,000	37%
750,000	39%
1,000,000	40%



Gift and Estate Taxes: Example

Sarah Shulman, who never married, dies in 2013 with an estate worth \$8 million. She made \$2 million in taxable gifts during her lifetime. If she includes no bequests to charity in her estate plan, her estate tax will be computed as follows:

Estate value	\$8,000,000
Prior taxable gifts	+\$2,000,000
Charitable bequests	-\$0
Taxable estate	=\$10,000,000
Estate Tax Exemption	-((\$5,250,000))
Taxable Estate	=\$4,750,000
Tax owed (\$4,750,000 x 40%)	\$1,900,000



Gift and Estate Taxes: Example


If Sarah includes a \$1 million charitable bequest in her will, her estate tax will decline by \$400,000, 40% of her \$1 million gift, as shown below.

Estate value	\$8,000,000
Prior taxable gifts	+\$2,000,000
Charitable bequests	-\$1,000,000
Taxable estate	=\$9,000,000
Estate Tax Exemption	-((\$5,250,000))
Taxable Estate	=\$3,750,000
Tax owed (\$3,750,000 x 40%)	\$1,500,000



Annual Gift Tax Exclusion


- \$13,000/recipient in 2012
- \$14,000/recipient in 2013
- Increase is an inflation adjustment; not related to ATRA
- With gift-splitting, spouses can double exclusion to \$28,000

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State Death Tax Deduction

- Before 2002, it was a credit
- Since 2005, it's temporarily been a deduction
- ATRA makes deduction approach permanent


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Miscellaneous

- Conservation contribution provisions extended
 - 50% AGI deduction limit, even for appreciated property
 - 15-year carryforward for unused deduction
- Sub S corp. gift provisions extended
 - Shareholders claim pro rata share of gift
 - Shareholders adjust basis by pro rata share of their basis in donated property (not market value, as in past)


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Conclusion

- On balance, ATRA is favorable
- IRA Rollover great opportunity for 2013
- Higher top income tax and estate tax brackets will affect relatively few donors
- Temporarily permanent rather than permanently temporary?
- Momentum for tax reform?

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Questions and Answers





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Still Have a Question?

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