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New Tax Provisions for 2013 Under the American Taxpayer Relief Act of 2012

Prior to the successful "fiscal cliff" negotiations, the law was set to revert back to 2000 levels, with an estate and gift exemption of only $1 million and an estate and gift tax rate of 55%. However, thanks to last minute Congressional action, on January 2 President Obama signed into law the American Taxpayer Relief Act of 2012 (the 2012 Act), which will provide some relief to almost all taxpayers. The 2012 Act addresses the estate and gift tax rules and modifies a number of income tax provisions.

In 2013, the estate and gift tax law will be as follows:

- The federal gift, estate and generation-skipping transfer tax exemption amounts remain at $5 million, adjusted annually for inflation (predicted to be $5,250,000 for 2013).
- The gift, estate and generation-skipping transfer tax rate for transfers above the exemption is 40% (an increase from 35%).
- The gift tax annual exclusion increases from $13,000 per year, per donee, to $14,000 per year, per donee.
- The capital gains tax basis of assets acquired from a decedent will be the fair market value of the property at the date of the decedent's death.
- Estate tax exemption "portability" continues to be an option for surviving spouses. A surviving spouse can elect to take advantage of any unused portion of the estate tax exclusion of his or her predeceased spouse, allowing married couples to effectively shield up to $10 million, adjusted for inflation, from estate tax.
- There is no reintroduction of a credit for state death taxes, so the 2012 Act will not change most state death tax regimes. Wisconsin will continue to have no death tax.
- The IRA charitable rollover has been reinstated for the years 2012 and 2013. An individual age 70 1/2 or older may roll over up to $100,000 from his or her IRA directly to a qualified charity without incurring any federal income taxes on such funds. A rollover made by January 31, 2013, may be counted retroactively for the 2012 tax year. Please note that a direct IRA charitable rollover will incur Wisconsin income tax.

The continuation of the $5 million exemption from estate and gift taxes surprised

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https://www.reinhartlaw.com/people/caitlyn-sikorski many observers. President Obama negotiated for a reduced exemption, and most experts predicted that the gift and estate tax exemption would be significantly lower. Additionally, unlike most recent estate and gift tax legislation, the $5 million exemption and 40% rate under the 2012 Act is not automatically set to expire and is permanent until Congress enacts a new tax law.

The favorable federal transfer tax system in 2013 provides an excellent opportunity to reduce future gift, estate and generation-skipping transfer taxes. Congratulations to those of you who triggered gifts in 2012. Making gifts sooner rather than later can reduce future estate tax liability because the asset's post-transfer appreciation will pass to the beneficiary free of estate or gift taxes. For those of you who did not make gifts in 2012, you now have time to take advantage of this opportunity.

In addition to the estate, gift and generation-skipping tax provisions, the 2012 Act also addresses numerous income tax provisions. The key changes are as follows:

- The federal income tax rate for taxpayers with income over $400,000 (single) or $450,000 (joint filers) will increase from 35% to 39.6%. The Bush-era tax cuts will be permanently retained for all other taxpayers.
- Capital gain and dividend rates for taxpayers with income over $400,000 (single) or $450,000 (joint filers) will increase from 15% to 20%. Rates will remain the same for all other taxpayers.
- Personal exemptions will be phased out and itemized deductions will be limited for taxpayers with income over $250,000 (single) or $300,000 (joint filers).
- The alternative minimum tax will receive a permanent patch to annually adjust for inflation. Such patch will be made retroactive to 2012.
- The 2% cut in the Social Security tax for all earners up to the Social Security wage base, which expired on December 31, 2012, will not be extended.

While the fiscal cliff legislation averted some of the fear of tax increases, the legislation increases taxes for many taxpayers and it did not address long-term budget issues. The budget discussion is expected to continue in the months to come, and we will continue to follow the progress of any tax law changes. If you have any questions, please contact your Reinhart attorney or any member of the Reinhart Trusts and Estates or Tax Practice Areas.

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