

## Cushing & Dolan, P.C. Attorneys at Law

### Happy New Year to all of you from Cushing & Dolan, P.C.!

As we begin 2013, I would like to thank you all for your support, wish you a happy new year, and keep you updated.

#### **Fiscal Cliff - HR8 The American Taxpayer Relief Act of 2012**

Congratulations to all of you who took full advantage of what was the expiring gift giving exemption of \$5.12 million, sold assets and accelerated income before the end of 2012. The months of November and December simply were unprecedented.

President Obama's re-election, together with congressional gridlock, made year-end planning critical. New techniques and terms, such as SLATs (Spousal Limited Access Trusts) and IDIGTs (Intentionally Defective Irrevocable Grantor Trusts), Private Life Annuities and Self-Cancelling Notes all became buzz words. The American Taxpayer Relief Act does little to change the planning.

Let me summarize the Act and make some observations.

#### **Income Tax Rates:**

The top income tax bracket rises to 39.6% (from 35%) for individuals with taxable income in excess of \$400,000 and for married couples in excess of \$450,000.

#### **Capital Gains and Dividends:**

The top income tax bracket for capital gains and dividends rises to 20% (from 15%) for individuals with taxable income in excess of \$400,000 and for married couples in excess of \$450,000.

#### **Alternative Minimum Tax:**

Permanently solves (at least in theory) the AMT problem by indexing the AMT exemption amounts for



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inflation. The AMT exemption amount for 2012 is \$78,750 for married couples and \$50,600 for individuals.



#### **Itemized Deductions:**

A phase out of itemized deductions applies for 2013 for individuals who have an adjusted gross income of \$250,000, and married couples with an adjusted gross income of \$300,000.

#### **Estate, Generation Skipping, and Gift Tax:**

Transfers subject to the estate, generation skipping, and gift taxes will be subject to a top rate of 40% with an exemption amount of \$5 million per person to be indexed for inflation.

#### **Observations:**

The new \$400,000 and \$450,000 income tax brackets are virtually identical to the brackets previously scheduled for 2013 which had been indexed for inflation years ago.

#### **Obamacare Tax:**

The new capital gain and dividend tax rates are in addition to the 3.8% Obamacare tax on passive income for taxpayers who have taxable income over \$250,000 so that the new top rate will be 23.8% on passive income.

#### **Payroll Taxes:**

Every American will see less money in his or her paycheck starting this week since payroll taxes were allowed to increase from 4.2% to 6.2% and high income individuals also will be subject to a new 0.9% Medicare tax on earned income.

#### **Planning for 2013:**

Those who did not take advantage of gift giving in 2012 should consider it in 2013 using discounted assets, such as non-voting shares in businesses and conservatively valued real estate.

For those of you who took advantage of the gift giving opportunity in 2012, it is now time to leverage the gift by selling "hard to value" assets to the trust and/or borrowing and/or purchasing assets from the trust in exchange for promissory notes.

#### **Keeping You Updated:**

We are only now beginning to analyze the new legislation, so watch for more details!

Happy New Year!

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