The Bankler Report

January 7, 2013

INTRODUCTION

On Wednesday, January 2, the Congress passed the 2012 Taxpayer Relief Act, which President Obama signed. A brief summary of some of the major provisions are below.

Individual Tax Changes.

Increase in Individual Marginal Rates.

The top individual rate will increase from 35% to 39.6% for income exceeding $400,000 ($450,000 for married taxpayers), effective 1/1/13. IN ADDITION, the new Medicare Tax (3.8%) will also be imposed on Unearned Income; thereby bringing the effective top rate to 43.4%.

Reinstatement of the Employee's 2% FICA tax.

Prior to 2011, employees paid 6.2% of their wages (up to the appropriate wage base) into Social Security. For 2011 and 2012, that amount was reduced to 4.2%. However, in 2013, this amount has been reinstated to the previous or 6.2%; thereby increasing payroll taxes for 100% of all individuals who receive wages (or are self-employed) up to $113,700, resulting in a maximum tax increase of $2,274.

In addition, the 0.9% increase in Medicare tax for wages (or self-employed income) in excess of $200,000 for individuals ($250,000 for married) enacted as part of the Affordable Care Act ("ObamaCare") in 2010, is now effective 1/1/2013.

Qualifying Dividend and Capital Gains Income.

Generally, effective 1/1/ 2013, the maximum rate for capital gains and dividends will permanently rise to 20% (up from 15%) for taxpayers with incomes exceeding $400,000 ($450,000 for married taxpayers). When accounting for the 3.8% surtax on investment-type income and gains for tax years beginning after 2012, the overall rate for higher-income taxpayers will be 23.8%. However, for taxpayers whose ordinary income is generally taxed at a rate below 25%, capital gains and dividends will permanently be subject to a 0% rate. Taxpayers who are subject to a 25%-or-greater rate on ordinary income, but whose income levels fall below the $400,000/$450,000 thresholds, will continue to be subject to a 15% rate on capital gains and dividends. The rate will be 18.8% for those subject to the 3.8% surtax.

Charitable IRA Transfers by taxpayers 70.5 and older is reinstated retroactively.

The law retroactively extends this provision for two years so that it's available for charitable IRA transfers made in tax years beginning before Jan. 1, 2014. The Act includes two elections to deal with the retroactive reinstatement of this provision:

1. A taxpayer may elect to have a distribution made in January of 2013 be treated as if it were made on Dec. 31, 2012.
2. A taxpayer may elect to treat any portion of a distribution from an IRA to the taxpayer during December of 2012 as a qualified charitable distribution, provided that (i) the portion is transferred in cash after the distribution to an eligible charitable organization before Feb. 1, 2013, and (ii) except for the fact that the distribution wasn't originally transferred directly to the organization, the distribution otherwise meets the requirements.

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Gift/Estate Tax.

The current lifetime exclusion of $5,000,000 per person ($10,000,000 per couple) was permanently extended, as well as indexed for inflation. However, the law also permanently increases the top estate, and gift tax rate from 35% to 40%, while also continuing the portability feature that allows the estate of the first spouse to die to transfer his or her unused exclusion to the surviving spouse.

Business Tax Changes.

Bonus Depreciation extended thru 12/31/13.

The new law extends 50% first-year bonus depreciation so that it applies to qualified property acquired and placed in service before Jan. 1, 2014 (before Jan. 1, 2015 for certain longer-lived and transportation property).

In addition, for any passenger automobile that is “qualified property”, the law increased the applicable first-year depreciation limit is increased by $8,000. For example: A calendar year taxpayer places a new $40,000 vehicle into service in his business on Jan. 5, 2013. Under this new provision, the first-year depreciation for 2013 is $11,160 ($3,160 presumed general first-year allowance for 2013 plus $8,000).

Expensing (IRC 179) is increased for both 2012 & 2013.

Retroactively effective for tax years beginning in 2012, the 2012 Taxpayer Relief Act increases the maximum expensing amount from $139,000 to $500,000. For tax years beginning in 2013, the maximum expensing amount increases from $25,000 to $500,000. The 2012 Taxpayer Relief Act also increases the investment-based phaseout amount for tax years beginning in 2012 or 2013 to $2,000,000. However, for tax years beginning after 2013, the maximum expensing amount is scheduled to drop to $25,000 and the investment-based phaseout amount is scheduled to drop to $200,000.

15 year write-off for qualified “real estate” extended.

The 2012 Taxpayer Relief Act retroactively extends for two years the inclusion of qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property in the 15-year MACRS class. Such property qualifies for 15-year recovery if it is placed in service before Jan. 1, 2014.

Numerous Miscellaneous Business provisions extended.

Some of the provisions retroactively extended by this law include:

- The railroad track maintenance credit for two years; it now applies for tax years beginning before Jan. 1, 2014.
- Extension and Modification of Reduction in S Corp Recognition Period for Built-In Gains Tax.
- New Markets Tax Credit Reinstated and Extended.
- Extension of Enhanced Deduction for Food Inventory by a C Corporation.
- Work Opportunity Tax Credit Extended.

Please feel free to contact me should you have any questions.

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