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2012 Tax Planning for Fiscal Cliff

Christopher G. Schultz

Now that the election is over, our federal government has to address the "Fiscal Cliff" created by the Budget Control Act of 2011. The Fiscal Cliff involves several tax increases, the expiration of the Bush Era tax cuts, along with cuts in government spending.

Unless the Senate and the House come to a resolution, there are several tax provisions that will expire or be replaced after December 31, 2012. These tax changes will have a significant impact on your individual income taxes, estate and gift taxes and taxes on businesses.

Without a resolution prior to the end of the year, below are some of the changes that will be made and some tips for your tax planning for 2012.

Individual Income Taxes

Below are the income tax provisions that will impact individuals after 2012.

Individual Income Tax rates will increase, depending on your income level, to 15%, 28%, 31%, 36% and 39.6%. Current tax rates are 10%, 15%, 25%, 28%, 33% and 35%.

The tax rates on capital gains will be increased to 15% and 20%. Currently, the tax rate on capital gains is 0% or 15 %.

Qualified dividends will be taxed at the ordinary income rate, which has a maximum rate of 39.6%. Qualified dividends are currently taxed at 15%.

A 3.8% Medicare Contribution Tax will be implemented for married couples with an Adjusted Gross Income of $250,000 or more. This is a tax on net investment income, which is interest, dividends, rental income and other passive income or non-wage income.

There will be an elimination of the payroll tax break. For the past two years, the employee's share of withholding taxes for Old Age and Survivors Disability Insurance (Social Security) was reduced from 6.2 % to 4.2 %. On January 1, 2013, this rate goes back to 6.2 %.

Typically when tax planning for the year end, the general rule is to defer income to another year and accelerate expenses into the current year. For 2012, the advice is to accelerate income into this year, and maybe even accelerate expenses into this year.

One of the proposals presented by President Obama is a change in the itemized deductions for 2013, either by limiting the maximum amount of itemized deductions allowed or adjusting the amount of itemized deduction allowed based on income levels. To take full advantage of the higher itemized deductions allowed, consider paying the expenses allowed as itemized deductions this year, such as property taxes, charitable contributions, etc.

To take advantage of the lower income tax rates in 2012, consider accelerating any wages, bonuses or other compensation which can be paid in 2012 to be actually paid in 2012.

It is recommended that you sell long-term gain assets, such as

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securities, which have increased in value to recognize the gain in 2012. If you believe that the investment will continue to increase in value, the advice would be to sell the investment and then repurchase it to share in the future appreciation. The limitations based on a "wash sale" apply to recognizing losses on a sale, but does not apply to recognizing gains.

If you own C Corporation or S Corporation stock and the corporation has earnings and profits, it may be beneficial to pay dividends by the end of the year. In 2012 qualified dividends are taxed at 15%. In 2013 these same dividends will be taxed at ordinary income rates which could be as high as 39.6% and may be increased by the 3.8% Medicare Contribution Tax.

High income individuals may consider converting their interests in limited liability companies and partnerships to a corporation, which will convert the self-employment income or wages to another type of income. For tax purposes, limited liability companies are typically taxed as a partnership. Earnings from partnerships are usually treated as wages or self-employment income, which in 2013 will be subject to the additional 3.8% Medicare Contribution Tax. If you have an S Corporation engaged in an active trade or business, you can still pay yourself wages and then make a distribution of the remaining share of income from the S Corporation which would avoid the 3.8% Medicare Contribution Tax, since it would not be investment income.

Estate and Gift Taxes

For estates and gifts, there is a significant change. Through the end of 2012 the maximum tax rate for estate and gift taxes is 35% and the exemption amount is $5,120,000. This means that you are allowed to transfer by inheritance or by gift $5,120,000 in 2012 without any estate or gift tax.

Unless the current rates are extended, in 2013 the estate and gift tax exemption drops to $1,000,000 in assets and estates with assets over $1,000,000 will have to pay taxes at a higher tax rate, with the maximum rate being 55%. In addition, the generation skipping tax exemption that is currently at $5,120,000 will be dropped to $1,400,000.

If you are considering making a substantial gift in the future, barring a change in the current legislation, it is in your best interests to make the gift in 2012.

The 3.8% Medicare Contribution Tax will also be applicable to earning of an estate and trust. To avoid the additional tax on the estate or trust, plan on distributing as much of the estate or trust earnings in 2013 as possible.

Business Taxes

For businesses, there are two changes that will impact current business owners. One is the loss of bonus depreciation. Currently there is a special 50% first year bonus depreciation allowance for the costs of qualified property which is placed in service by the end of the year. This 50% first year bonus depreciation is eliminated in 2013.

Section 179 allows a business to deduct the entire cost of qualified property in the first year in which it is placed into service instead of claiming a depreciation deduction over a number of years. In 2012, Section 179 expense is allowed up to a maximum of $139,000 of qualified property placed into service. In 2013, the dollar limitation is $25,000. There is an obvious advantage to place as much personal property used in a trade or business, including software, into service in the year 2012.

Due to the generality of the information provided in this article, the information provided here may not be applicable in all situations. No decisions should be made or any action taken without consulting with your professional tax advisor and should be based on sound financial planning principles.

Christopher G. Schultz

Christopher G. Schultz is a partner in our Livonia office where he concentrates his practice on corporate and business law, commercial litigation and estate planning. Additionally, Mr. Schultz is a Certified Public Accountant. He can be reached at (734) 261-2400 or cschultz@cmda-law.com.

Attorney Named 2013 dBusiness Top Lawyer

Congratulations to Jim Acho, a senior attorney in our Livonia office, who has been named 2013 dBusiness Top Lawyer in the Entertainment and Sports Field category.

Mr. Acho focuses his practice primarily in the areas of labor and employment law, entertainment and sports law, commercial law and personal injury law.

To select its Top Lawyers, dBusiness magazine polled more than 21,000 attorneys in Oakland, Macomb, Wayne, Washtenaw and Livingston counties among 51 specialized practice areas. The lawyers were asked to nominate up to three attorneys in a given area of law. Of the more than 900 honorees selected by votes cast electronically, special weight was given to lawyers chosen by attorneys working at firms other than their own.

He can be reached at (734) 261-2400 or jacho@cmda-law.com.

COMMUNITY COLLEGE CORNER

Patrick R. Sturdy

By taking proactive steps to anticipate legal issues on campus, college administrators can manage risk in the area of student affairs. Anticipating legal issues can be done in a couple ways.

Firstly, many colleges belong to associations that provide updates regarding the status of pending legislation. Typically these updates are provided to the college's liaison to the association. Administrators should seek out these updates as well. By doing so, administrators can quickly become familiar with developing legal issues.

Additionally, there are a plethora of trade journals and magazines in the academic community. By finding a journal or magazine that deals with student affair issues, administrators can develop a more detailed understanding of issues.

Thirdly, administrators can become better-informed by focusing on information that relates to how employment, civil rights and Constitutional issues are currently addressed by the Courts, as these issues are typically the most litigated in post-secondary education. Delegate staff to assist with keeping administrators updated on these topics, as this can be an effective time saver.

If you have any questions about what you have read or would like additional information, Mr. Sturdy can be reached at (734) 261-2400 or psturdy@cmda-law.com.

Court Rules:

Electrical Inspector's Actions Not Cause of Plaintiffs' Injuries

Greg Grant, an attorney in the Firm's Traverse City office, recently obtained dismissals of two cases on behalf of a Northern Michigan County building official and electrical inspector. In June 2011, the decedent, a 17-year-old male, and his friend were walking along a floating dock at a busy City-owned marina. The decedent jumped off the dock and into the marina water and was immediately electrocuted. His best friend, and plaintiff in the companion case, jumped in to save the decedent. He was also electrocuted. Decedent subsequently died as a result and his friend survived with alleged injuries.

Evidence indicated that a wire from an electrical junction box located underneath the dock had been leaking electricity into the water. Plaintiffs sued a number of defendants on gross negligence theories including the City and its City dockmaster, the general contractor who constructed the marina, the project engineers, the electrician, the County building official and electrical inspector. The County building official was dismissed voluntarily early in the case. Mr. Grant filed a motion for summary disposition before the close of discovery on behalf of the County electrical inspector arguing that the inspector properly approved the electrical system at the marina and that it was compliant with all applicable codes and regulations. The court agreed that the electrical inspector did not breach any legal duty and that his actions were not the proximate cause of Plaintiffs' injuries. The claims against the electrical inspector were dismissed with prejudice.

Mr. Grant can be reached at (231) 922-1888 or ggrant@cmda-law.com.

Attorney Joins Firm's Livonia Office

We are pleased to announce that Kali Lester has joined the Firm as an attorney in our Livonia office. She concentrates her practice in the areas of municipal law, utility law and appellate law. She handles municipal cases in both state and federal court. Additionally, she focuses on writing briefs for submission to all levels of state and federal courts, arguing cases in both the state and federal courts of appeals and performing research for all areas of law handled by the Firm.

Ms. Lester received a Juris Doctor degree from the University of Detroit Mercy School of Law and a Bachelor of Arts degree Michigan State University.

She can be reached at (734) 261-2400 or klester@cmda-law.com.

Cummings, McClorey, Davis & Acho

Office Locations

Cummings • McClorey
CMDA
Davis & Acho, P.L.C.

MICHIGAN

Livonia
33900 Schoolcraft Road
Livonia, MI 48150
Telephone: 734.261.2400
Facsimile: 734.261.4510

Grand Rapids
2851 Charlevoix Drive, S.E.
Suite 327
Grand Rapids, MI 49546
Telephone: 616.975.7470
Facsimile: 616.975.7471

Sterling Heights
43409 Schoenherr Road
Sterling Heights, MI 48313
Telephone: 586.731.5000
Facsimile: 586.803.1034

Traverse City
125 Park Street
Suite 415
Traverse City, MI 49684
Telephone: 231.922.1888
Facsimile: 231.922.9888

CALIFORNIA

Riverside
3801 University Avenue
Suite 560
Riverside, CA 92501
Telephone: 951.276.4420
Facsimile: 951.276.4405

MISSOURI

Kansas City
The Palace Building
1150 Grand Blvd. Suite 270
Kansas City, MO 64106
Telephone: 816.842.1880
Facsimile: 816.842.0046

GHANA

Accra, Ghana
P.O. Box 12556
Accra, Ghana
Telephone: +223-21-224260
Facsimile: +233-21-232262

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To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features should be addressed to the attention of Jennifer Sherman.

CMDA- On Law
33900 Schoolcraft Road
Livonia, Michigan 48150
(734) 261-2400
www.cmda-law.com
E-Mail: jsherman@cmda-law.com

Editor-in-Chief/
Graphic Designer:

Jennifer L. Sherman

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Attorneys & Counselors at Law
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Livonia, Michigan 48150