The

Estate Analyst®

Extra Edition

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Expanded Chart & Overmatter

By Robert L. Moshman, Esq.

Dear Reader,

My eyes desire larger print and a better chart than would fit in this month's recently released issue.

And there were additional portions of text that could not fit in the normal four pages of the newsletter.

I have therefore decided to provide an expanded chart with larger print and more categories along with the overmatter that was cut from the main edition.

Thank you for your patience and positive words of encouragement.

—Bob Moshman

Presented With Our Compliments

Overmatter from January issue:

The AMT

The perpetually problematic alternative minimum tax (AMT) has been addressed numerous times by Congress. Instead of providing another "patch," ATRA adopted the higher exemption level from 2011 and indexed it for inflation going forward. As a result, it was projected that the AMT would effect 4 million taxpayers for 2012 instead of 30 million. For 2014, an exemption of $52,800 applies to single taxpayers ($82,100 for joint filers). The top AMT rate of 28% applies above a threshold amount of $182,500.

The AMT doesn't effect taxpayers who are in the lower brackets, of course; with a rate of 28%, it won't effect taxpayers in the top brackets, i.e., those paying 35% or 39.6%. As a general rule of thumb, the taxpayers most likely to be effected by the AMT are those with income between $250,000 and $750,000 who take advantage of many tax deductions.

Affected taxpayers should have professionals calculate the likely income tax without the AMT, as well as with the AMT, and then see how much tax can be avoided or deferred by deferring income to next year, accelerating expenses to reduce current business income, or increasing retirement plan contributions. Although these adjustments are often made toward the end of the year, it can be very useful to project income and expenses at midyear.

Note: Taxpayers will not avoid the AMT by virtue of being subject to the additional 3.8% tax on investment income exceeding certain thresholds ($250,000 for joint filers).

Trust Modifications

Gifts in trust at the end of 2012 to exploit the potentially expiring gift tax exemption may have resulted in transfers that require repairs. Increased income taxation on trusts may also provide an incentive to modify arrangements. Not every trust can be modified. Available options are determined by state statutes, trust terms, and factual context. Professional advice is critical.

Decanting a trust where it is permitted by statute and/or the terms of the trust can allow the trust to start over (within limits). Other forms of trust termination are possible, and each has ramifications. Once clear of an existing trust, assets can be established in a different entity or trust with more useful terms and protections.

Some assets should be shifted back to the grantor's estate to obtain a stepped-up basis at death. Other assets should be shifted to trusts that distribute income to beneficiaries in lower tax brackets. In some instances, trust assets can be sold to the beneficiary. Moving assets around without professional guidance is risky because not all techniques are permitted, and every action has ramifications that must be anticipated.

Gift Tax Returns

REMINDERS: Many people making gifts that are exempt from gift tax overlook the requirement to file gift tax returns.

Grantors who decanted trust assets to avoid high income tax rates on trusts need to follow through with tax returns when those trust assets are subsequently gifted.

When large gifts are made, it is also important to obtain valuation information.

Where gift splitting was employed, the return must elect gift splitting.

Gift tax returns for gifts made during 2013 are due by April 15, 2014.

An extension of time until October 15, 2014, can be obtained by filing Form 4868; however, where taxable gifts were made (i.e., gifts in excess of $5.25 million), the tax must be paid by April 15, 2014.

Gift tax returns should be filed for gifts being made during 2014 as well.

TRANSFER TAXES IN TRANSITION

Expanded Chart

2009	2010	2011-2012	2013	2014
Top estate tax rate of 45%	Estate tax repealed (optional election to apply 2011 rates and get stepped up basis)	Top estate tax rate of 35%	Top estate tax rate of 40%	Top estate tax top rate of 40%
Estate tax exemption of $3.5 million	Estates of decedents dying in 2010 are able to elect to apply estate tax under 2011 rules	Estate tax exemption of $5 million for 2011, $5.12 million for 2012	Estate tax exemption of $5.25 million	Estate tax exemption of $5.34 million
No portability of exclusion	No portability of exclusion	Portability of deceased spouse's unused exemption (DSUE) for surviving spouse	Portability of DSUE becomes a permanent feature	Portability of DSUE remains
Gift tax top rate is 45% with $1-million lifetime exemption (not unified with estate tax exclusion)	Gift tax top rate is 35% with $1-million lifetime exemption (not unified with estate tax exclusion)	Gift tax top rate is 35% with $5-million lifetime exemption that is reunified with estate tax exemption	Gift tax top rate is 40% with $5.25 million lifetime exemption that is permanently reunified with estate tax exemption	Gift tax top rate remains at 40% and exemption remains unified with estate tax—$5.34 million for 2014
$13,000 annual gift tax exclusion	$13,000 annual gift tax exclusion	$13,000 annual gift tax exemption	$14,000 annual gift tax exemption	$14,000 annual gift tax exemption (subject to ongoing COLA)

Taxes in Transition—*Expanded Chart #2*

2009	2010	2011-2012	2013	2014
Stepped up basis for capital gains at death Top capital gains rate of 15% No Medicare surtax	Carry over basis for capital gains at death or stepped- up basis if election is made Top capital gains rate of 15% No Medicare surtax	Stepped-up basis for capital gains at death Top capital gains rate of 15% No Medicare surtax	Stepped-up basis for capital gains at death Top capital gains rate of 20% Medicare surtax of 3.8%	Stepped-up basis for capital gains at death Top capital gains rate of 20% Medicare surtax of 3.8%
Top income tax rate of 35% applies to trust income over $11,150	Top income tax rate of 35% applies to trust income over $11,200	Top income tax rate of 35% applies to trust income over $11,350 for 2011, $11,650 for 2012	Top income tax rate of 39.6% applies to trust income over $11,950	Top income tax rate of 35% applies to trust income over $12,150
Attorney Fees: For 2009, the attorney fee award limitation under IRC §7430 is $180 per hour, up from $170per hour for the past two years	Attorney Fees: For 2010, the attorney fee award limitation under IRC §7430 is $180 per hour	Attorney Fees: For 2011 and 2012, the attorney fee award limitation under IRC §7430 is $180 per hour	Attorney Fees: For 2013, the attorney fee award limitation under IRC §7430 is $190 per hour	Attorney Fees: For 2014, the attorney fee award limitation under IRC §7430 is $190 per hour

Sources: IR-2013-87, Oct. 31, 2013; Revenue Procedure 2013-35