

MEMORANDUM

TO: Our Clients

DATE: January 8, 2013

RE: American Taxpayer Relief Act of 2012

As we reached the scheduled expiration of many important tax provisions, the American Taxpayer Relief Act of 2012 (the “Act”) was passed by Congress, and, on January 2, 2013, it was signed into law by President Obama. The Act contains significant gift, estate, and generation-skipping transfer (“GST”) tax provisions, which create some potentially beneficial estate planning opportunities that would not otherwise have been available in 2013 and future years if the so-called “sunset” had taken effect.

Here is a brief summary of the key federal gift, estate, and GST tax provisions of the Act, which have no stated expiration date and are, therefore, considered to be permanent (unless the law changes again)¹:

Gift Tax - The lifetime exemption for taxable gifts continues to be \$5 million indexed for inflation. For 2013, the exemption is \$5.25 million (reduced by any prior lifetime taxable gifts based on a special formula). The top federal gift tax rate is now 40%.

Estate Tax - The estate tax exemption (also known as the “applicable exclusion amount”) continues to be \$5 million indexed for inflation. For individuals who die in 2013, the exemption is \$5.25 million (reduced by any lifetime taxable gifts). The top federal estate tax rate is now 40%, with a full basis step-up (or step-down) generally to date of death values.

GST Tax - The GST exemption continues to be \$5 million indexed for inflation. For 2013, the GST exemption is \$5.25 million (reduced by any prior allocation of GST exemption). The top GST tax rate is now 40%.

Portability - A surviving spouse can use the unused estate tax exemption of the first spouse to die (known as “portability”). Note that to take advantage of portability a federal estate tax return must be filed and a special election must be made (even if the estate would otherwise not be required to file a federal estate tax return).

¹ This memorandum does not address many of the income tax provisions of the Act, including the increase in the capital gains and ordinary income tax rates and the reinstatement of certain limitations on the tax benefit of itemized deductions.

Charitable Contributions from IRAs by Individuals at least 70½ - In general, until December 31, 2013, individuals who are 70½ or older can transfer up to \$100,000 annually from their IRA directly to a qualified charity and exclude that portion of the IRA distribution from federal taxable income. An individual who makes a transfer from an IRA of up to \$100,000 directly to a charity in January of 2013 can elect to treat that transfer as if it were made in 2012. In that case, such an individual will be able to make an additional \$100,000 transfer in 2013 for a total of \$200,000 (\$100,000 in January and \$100,000 during the remainder of 2013). Also, if an individual took a distribution from his or her IRA in December of 2012 but did not pay that distribution directly to a qualified charity, that individual can still exclude up to \$100,000 of that distribution from taxable income to the extent that the IRA distribution is actually transferred in cash to a qualified charity before February 1, 2013. Note that a qualified charity does not include a private foundation or a donor advised fund.

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There are some notable items that were not changed by the Act, including the following (all of which are potentially subject to revision by future legislation):

Gift Tax Annual Exclusion - As a result of an adjustment for inflation that has been in the law for several years, the annual amount that an individual will be permitted to give to an unlimited number of donees in 2013 (without reducing his or her gift or estate exemption amount) is \$14,000 (increased from \$13,000). In the case of a gift to a spouse who is a non-U.S. citizen, the inflation-adjusted annual exclusion amount is now \$143,000.

No Elimination of Discounts for Family Limited Partnerships and Family Limited Liability Companies - Although there have been discussions for some time that Congress would seek to eliminate the valuation discounts for lack of marketability and lack of control for interests in certain partnerships and limited liability companies, the Act does not contain any provisions that do so.

No Change in the Treatment of Grantor Trusts - Although there have been proposals to change the income tax and estate tax treatment of grantor trusts, no such changes were made by the Act.

No Limitation on Grantor Retained Annuity Trusts (“GRATs”) - There has also been a lot of discussion to require GRATs to have a minimum term of 10 years and to have a remainder interest with a value greater than zero. The Act, however, does not contain any provisions dealing with GRATs.

No Impact on NJ or NY Law - The Act did not change the treatment of state inheritance or estate taxes (which are deductible in calculating the federal estate tax). New Jersey’s estate tax exemption continues to be \$675,000, New York’s estate tax

exemption continues to be \$1 million, and the top estate tax rate in New Jersey and New York continues to be 16%.

We look forward to hearing from you if you have any questions or you would like to discuss your personal situation with us. Given the complexities of the income, gift, estate, and GST tax rules, we suggest that you do not take any planning actions without seeking the advice of a tax professional.

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