Last Minute Tax Planning and A Glimpse of 2013
By Steven M. Weiser

By now, everyone should be well aware of the looming "fiscal cliff" that is receiving daily media attention. Attempts at a compromise between Republicans and Democrats seem a nightly highlight of evening news broadcasts. The specifics concerning the causes of the fiscal cliff are beyond the scope of this article, but it should suffice to say that a large reason for the concern centers on the so-called "Bush-era tax cuts" mostly enacted in 2001 and 2003. This is a particularly busy time of year for tax planners, and 2012 is one of our busiest year-ends in recent memory. With a few weeks to go it isn't too late for some last minute tax planning. In this article we offer some suggestions for last minute tax planning, broken down into strategies for individuals, businesses and then with respect to estate and gift tax planning, and also take a look towards 2013's tax laws (as best we can).

Individual Tax Planning

- **Retirement Savings**: Individuals who are not active participants in their employer's pension plan may make deductible contributions to an individual retirement account. For 2012 the limitation on contributions is $5,000 (though an additional $1,000 is available for taxpayers age 50 and older). Individuals who participate in their employer's pension plan can also make deductible contributions to IRAs though the limit on contributions is reduced depending upon adjusted gross income.
    - Additional limitations may apply to married couples filing joint returns.
    - Roth IRAs still present an attractive alternative for taxpayers. Nondeductible contributions of up to $5,000 may be made, but the opportunity to make contributions is phased out as adjusted gross income rises.
    - An opportunity to rollover amounts held in traditional IRAs and other retirement accounts to a Roth IRA still exists. The rollover is a taxable event, however. If you made a conversion earlier this year you actually have time to undue that transaction. This strategy may be useful if the value of your investments have decreased. Having the conversion occur later in 2012 may help reduce your tax liability.
    - The limitation on elective deferrals for 2012 is $17,000 ($22,500 if you are age 50 or older and your plan was amended to allow for catch-up contributions). The SIMPLE plan limit on elective deferrals for 2012 is $11,500 ($14,000 if you are age 50 or older and your plan was amended to allow for catch-up contributions).
    - $5,500 of catch-up contributions may be made to other retirement plans (SEP, 403(b) and 457 plans).
    - If you haven't previously elected to have the maximum deferral to a 401(k) made you may still have time to defer additional compensation and lower your 2012 adjusted taxable income and tax liability as a result.

- **Deferring or Accelerating Income**: Generally, if tax rates stay the same taxpayers are often advised to take steps where possible to defer the recognition of income to a later year. Given the scheduled increase in tax rates that might not be a wise decisions. Consider your expected 2012 and 2013 income, examine the applicable tax brackets and determine whether your tax liability will be greater if you wait until next year to recognize the income. We can assist with any calculations.
- **Deductions**: For 2012 the overall limit on itemized deductions does not exist, though certain deductions may still only be claimed if they exceed certain thresholds (e.g., 7.5% of AGI for medical expenses). In 2013 the overall limit is scheduled to be reinstated making deductions more valuable in 2012. Still, don't go hog wild as this could result in an alternative minimum tax liability. Also, in 2013 medical expenses are only deductible to the extent they exceed 10% of AGI (for taxpayers under age 65).
- **Education Planning**: Even if you already have a child in college it might not be a bad idea to establish a 529 plan account for that child's benefit through which tuition can be paid. You won't get a federal tax benefit, but if the account is opened with CollegeInvest in Colorado, you'll get a state tax deduction for the amount of your contributions.
- **Capital Gains**: The present maximum capital gains tax rate for long-term property (property held in excess of one year) is 15%. For 2013 that rate is scheduled to increase to 20%.
    - An additional 3.8% tax is levied on certain income in 2013. This tax applies on the lesser of net investment income or the amount by which "modified AGI" exceeds $200,000 ($250,000 for married persons filing joint returns). Very generally speaking, net investment income will include passive types of income (interest, dividends, rents, etc), other business income, and net gains from property sold (other than property attributable to an active business). This tax could cause the maximum capital gains tax rate to rise to 23.8%.

Tax Planning For Businesses

- **Deferring or Accelerating Income and Deductions**: Of course, the same principals concerning the acceleration/deceleration of income and deductions discussed above, apply.
    - Consider accelerating deductions by reviewing your accounts receivable and writing off bad debts. You may be able to complete this process after year-end.
- **S Corp Built In Gains**: An S corporation is generally not subject to tax. However, if a C corporation elected to be taxed as an S corporation, the S corporation is taxed at the highest corporate rate on all gains that were built in at the time the S election was made and if the gains are recognized during a special holding period. For 2011 that holding period was 5 years, but for 2012 and beyond the holding period is 10 years. If you have appreciated property in your S corporation and you are

considering selling that property, you may want to wait until the 10 year holding period expires.

- **Qualified Dividends**: For 2012 qualified dividends received are subject to tax at long-term capital gain tax rates. For 2013 these dividends are taxed as ordinary income.

Estate and Gift Tax Planning

- **Unified Credit**: For 2012, the federal estate and gift tax exclusion amount is $5.12 million per taxpayer. This is the amount of wealth a taxpayer may transfer free of estate, gift and generation skipping transfer taxes. Absent Congressional action this amount falls to $1 million in 2013. It may not be too late to transfer the additional wealth ($4.12 million) during 2012 to younger generations without incurring a tax liability.
- **Maximum Tax Rate**: The maximum tax rate for estate, gift and generation skipping transfer taxes is 35% for 2012. In 2013 the maximum rate is scheduled to increase to 55% with a 5% surtax on transfers exceeding $10 million. As a result, the failure to utilize the additional unified credit referred to above could result in an additional tax liability of over $2.2 million.
- **Annual Gift Tax Exclusion**: For 2012 the annual gift tax exclusion amount is $13,000. This applies without regard to the lifetime exclusion amount ($5.12 million in 2012) referred to above. For 2013 the annual gift tax exclusion amount will be $14,000. Donors to a 529 plan can still "front load" five years worth of annual exclusion gifts in 2012, a strategy addressed in a prior newsletter concerning dynastic education planning using trusts as owners of 529 accounts.

Here's a look at the main 2013 projected income tax brackets if the Bush-era tax cuts are extended:

Married Filing Jointly

If Taxable Income Is:	The Tax Is:
Not over $17,850	10% of AGI
Over $17,850, but not over $72,500	$1,785, plus 15% of the excess over $17,850
Over $72,500, but not over $146,400	$9,982.50, plus 25% of the excess over $72,500
Over $146,400, but not over $223,050	$28,457.50, plus 28% of the excess over $146,400
Over $223,050, but not over $398,350	$49,919.50, plus 33% of the excess over $223,050
Over $398,350	$107,768.50, plus 35% of the excess over $398,350

Single

If Taxable Income Is:	The Tax Is:
Not over $8,925	10% of AGI

Over $8,925, but not over $36,250	$892.50, plus 15% of the excess over $8,925
Over $36,250, but not over $87,850	$4,991.25, plus 25% of the excess over $36,250
Over $87,850, but not over $183,250	$17,891.25, plus 28% of the excess over $87,850
Over $183,250, but not over $398,350	$44,603.25, plus 33% of the excess over $183,250
Over $398,350	$115,586.25, plus 35% of the excess over $398,350

Here's a look at the main 2013 projected income tax brackets if the Bush-era tax cuts are NOT extended:

Married Filing Jointly

If Taxable Income Is:	The Tax Is:
Not over $60,550	15% of AGI
Over $60,550, but not over $146,400	$9,082.50, plus 28% of the excess over $60,550
Over $146,400, but not over $223,050	$33,120.50, plus 31% of the excess over $146,400
Over $223,050, but not over $398,350	$56,882, plus 36% of the excess over $223,050
Over $398,350	$119,990, plus 39.6% of the excess over $398,350

Single

If Taxable Income Is:	The Tax Is:
Not over $36,250	15% of AGI
Over $36,250, but not over $87,850	$5,437.50, plus 28% of the excess over $36,250
Over $87,850, but not over $183,250	$19,885.50, plus 31% of the excess over $87,850
Over $183,250, but not over $398,350	$49,459.50, plus 36% of the excess over $183,250
Over $398,350	$126,895.50, plus 39.6% of the excess over $398,350