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The Parachute Congress Made

*Bart A. Basi, CPA/Attorney at Law
The Center for Financial, Legal & Tax Planning, Inc.*

Introduction

Although at the stroke of 12:01am New Year's Day, this country officially fell off the fiscal cliff (the combination of increased taxes and decreased spending which would have slowed the economy), Congress and the President agreed to measures that allowed us to glide to a soft landing. The president has signed the bill, via autopen from Hawaii. Although it has been criticized in the media, the fact is that the law contains a lot of good rules to help business owners and individuals.

Capital Gains and Dividends

First, for those making under \$200,000 individually / \$250,000 per couple (200/250 taxpayers), the capital gains rates stay the same at 15%. Taxpayers making over the 200/250 threshold, pay an additional 3.8% on investment amounts under the Patient Protection and Affordable Care Act (PPACA). For those making \$400,000 individually and couples making \$450,000 (400/450 taxpayers) capital gains tax rate is now 20% plus 3.8%. This makes the capital gains tax rate 23.8% on high income 400/450 taxpayers

Ordinary Tax Rates

The law permanently extends the lower income brackets to middle class families. This means that income tax rates generally remain where they were in 2012 for the majority of Americans in 2013 and beyond. For couples earning over the 200/250, an additional 0.9% tax will apply under the Patient Protection and Affordable Care Act (PPACA) For taxpayers earning 400/450, taxes go back to 39.6% for upper income amounts in addition to the 0.9% increase under the PPACA.

Unemployment Insurance

Unemployment Insurance Extensions has been extended for the year of 2013. Without the extension 2 million people would have lost their benefits in January.

Child Tax Credit

The law also continued the extended child tax credit and the earned income credit. These are substantial credits for many middle class families and have been extended for one year.

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A CASE STUDY

Employee v Independent Contractor

In a Memo, the Tax Court concluded that an adjunct professor was an employee for tax purposes as opposed to an independent contractor. As a consequence of being an employee as opposed to an independent contractor, the professor was not eligible to deduct expenses on schedule C, but instead on schedule A. In the situation, the professor taught 4 online courses and was not under an exclusivity agreement with the university.

The taxpayer went ahead and deducted the expenses on Schedule C taking his chances at a positive ruling. Because the university exercised sufficient control to establish an employer-employee relationship, among other factors, the taxpayer was considered to be an employee and not an independent contractor.

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Section 179

Section 179 is \$500,000 for 2012 and 2013. Even though it is not permanent, it keeps the door open this year to purchase more equipment and immediately depreciate the expenses. It is subject to a \$2,000,000 phase out, dollar for dollar until \$2,500,000.

Bonus Depreciation

The 50% deduction on business investment on new equipment has been extended for 2013 for most purchases. However, for certain long-term assets and transportation equipment, the law is extended through the 2014 tax year

Estate and Gift Tax

Under the new law, the estate tax exemption generally stays at the \$5,000,000 mark established in 2011. It was indexed to inflation for 2012 at 5,120,000. The tax rate in 2013 goes from 35% in 2012 to 40% in 2013. Portability remains in place.

Payroll Tax

The payroll tax will increase for most Americans. In 2011 and 2012, the regular 6.2 reserved for social security on the employee's end was reduced to 4.2%. As of January 1, 2013, the rate will return to 6.2%.

Got Milk?

This law also extends the farm bill, avoiding the "Dairy Cliff", which would have likely shown us a 100% rise in dairy prices.

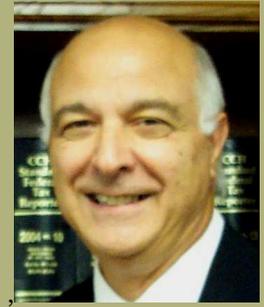
Mortgage Debt Relief

The mortgage interest deduction also stays with us. It had been considered for cutting; however, many in Congress consider this middle class benefit to be too important to abandon.

Our Recommendations

Tax planning has become even more important for those planning on selling a business or passing a business. Taxes on wealthy individuals will certainly be higher this year and in the future. It is our recommendation that any planning include tax planning. This is particularly important for those selling businesses and those having estates worth more than \$5,000,000. There are tools to utilize if you wish to sell or pass on your business. Please call the Center for further advice.

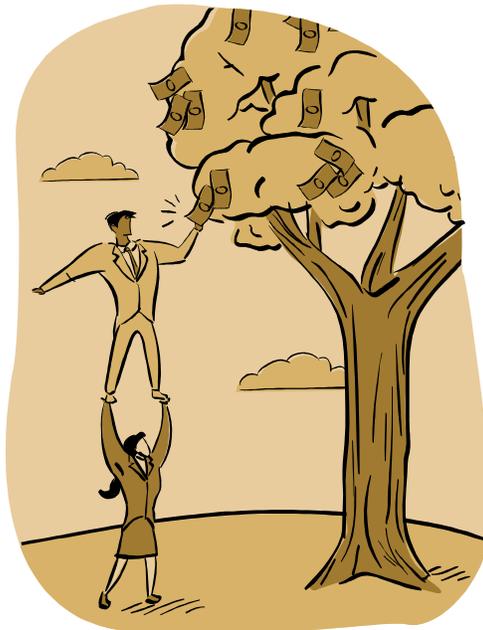
Known as the "American Taxpayer Relief Act of 2012", the law contains 9 titles within it affecting business, individuals, energy, agriculture, and various other items. Dr. Basi and his staff will be publishing articles and speaking on the subject well into 2013.



Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

Points of Interest

- Although it has been criticized in the media, the fact is that the law contains a lot of good rules to help business owners and individuals.
- Section 179 is \$500,000 for 2012 and 2013.
- The 50% deduction on business investment on new equipment has been extended for 2013 for most purchases. However, for certain long-term assets and transportation equipment, the law is extended through the 2014 tax year.



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A CASE STUDY CONTINUED:

Editor's Comment:

Many employers look to classify workers as independent contractors as opposed to that of an employee. In this case, the worker wanted to be the independent contractor in order to take expenses and reduce the applicable taxes. While the professor had a good case for this, the fact that he received a W-2 and was on the University payroll as an employee, went a long way to make him an employee for tax purposes. It is my advice that those in this ambiguity between an independent contractor and employee make sure they get the designation right. Getting this wrong can cost some money.



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My Favorite Prayer

Admittedly, this will be a bit of a departure from my usual op-ed piece on the process of buying or selling a business, but over the holidays one is occasionally called upon to lead one's family in prayer before a holiday feast, and this is my personal favorite.

Lord, Thou knowest better than I know myself that I am growing older and will someday be old.

Keep me from the fatal habit of thinking that I must say something on every subject and on every occasion.

Release me from craving to straighten out everybody's affairs. Make me thoughtful but not moody, helpful but not bossy.

With my vast store of wisdom, it seems a pity not to use it all, but I want a few friends at the end.

Keep my mind from the recital of endless detail; give me wings to get to the point.

Seal my lips on my aches and pains; they are increasing and love of rehearsing them is becoming sweeter as the years go by.

I dare not ask for grace enough to enjoy the tales of other's pains, but help me to endure them with patience.

I dare not ask for improved memory, but for a growing humility, and a lessening cocksureness when my memory seems to clash with the memory of others.

Teach me the glorious lesson that occasionally I may be mistaken.

Keep me reasonably sweet. I do not want to be a saint - - some of them are so hard to live with -- but a sour old person is one of the crowning works of the devil.

Give me ability to see good things in unexpected places and talent in unexpected people, and give me, O Lord, the grace to tell them so!

Happy Holidays and a Happy and Prosperous New Year!

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Frequently Asked Questions...



Q: What form is the manufacturing deduction calculated on?

A: IRS Form 8903 is the appropriate form to calculate and report the manufacturing deduction.

Q: Can the section 179 expenses be carried forward into future years if all of the deduction cannot be used in the current year?

A: Yes, 179 expenses can be carried forward if enough income is not present to be used in the current year.

Q: How broadly does the Domestic Productions Activity Deduction apply?

A: The Domestic Productions Activity Deduction is intended to be liberally interpreted. Activities not traditionally associated with manufacturing qualify for usage of the deduction. With this deduction, if you are in doubt as to whether the deduction applies or not, you are ahead in attempting to take the deduction if it can be reasonably justified.

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