SPRING 2013 ISSUE

CLIENT UPDATE & WEALTH ADVISOR

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IN THIS ISSUE

WEALTH MANAGEMENT

ESTATE PLANNING

TAX PLANNING

MISCELLANEOUS

PARACHUTING OFF THE FISCAL CLIFF

-THE LANDING WAS SOFT, BUT THE WINDS ARE STILL BLOWING ON THE CHUTES! -

What will likely be recorded as the year of the largest movement of wealth in US history, 2012 ended with that movement appearing fortuitous given the prospects for the largest increase in the estate, gift, and generation skipping ("EGG") tax in US history.

see FISCAL CLIFF on page 11

WHAT TO DO NOW?

- SHIFTS IN PRIORITY BUT COMPREHENSIVE TAX REFORM REMAINS ON THE HORIZON -

The Congressional Tax Writing Committee has spent a lot of time laying out comprehensive tax reform. Under the American Tax Relief Act of 2012 ("ATRA"), there is said to be permanence in

see WHAT TO DO NOW on page 15

WHAT HAS PARACHUTING BROUGHT

- THE GOOD, THE INDIFFERENCE, AND COMPLIANCE -

Most of the planning measures undertaken in anticipation of the fiscal cliff necessitate gift tax compliance, which will become extremely important because of the magnitude of wealth

see PARACHUTING... on page 6

SOMETHING SIMPLE: LOANS TO FAMILY MEMBERS

-GETTING TO KNOW THE AFR AND HOW TO MANAGE LOANS-

The value of intrafamily loans as a family wealth building vehicle was demonstrated soundly by the Rothschild family, whose banking empire was built on funding the expansion of family human and financial capital throughout Europe with such loans. In our

see LOANS TO FAMILY on page 10

JOBS ACT OF 2012 BREEDS CLIMATE FOR ELDER INVESTMENT EXPLOITATION

- CROWDFUNDING AND THE PUBLIC'S INVESTMENT KNOWLEDGE -

Congress's goal was to jump start the economy, and one way they are attempting to do it is by reducing the burdens imposed by securities laws on start-up companies seeking to raise capital. No longer will start-up ventures be limited to financing through "accredited investors" (wealthier individuals) under this "crowdfunding" legislation. As a result, an entire industry is forming to market investment opportunities to the mass public, with limited disclosure of the risks inherent in the investment as the SEC has historically required. More and more are recognizing that this new law will increase fraud and abuse, and the retired elderly may be most vulnerable. What is interesting is that this is

see JOBS ACT on page 14

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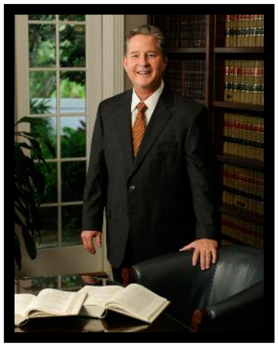

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A New Year With "Perhaps" Greater Certainty

-Tax Laws, Our Economy, and Markets Remain Vulnerable -

The year 2012 closed with us having the busiest year-end in my career and this Firm's history. Years of trust and estate planning work were crammed into less than two months after the elections to confront the fiscal cliff, and our staff got the job done- 327 trusts or other entities were created and funded. The sacrifices made by families to accomplish this are and continue to be appreciated. The work isn't yet done and important tax compliance to report the transactions remains. Those that confronted the cliff participated in the largest movement of family wealth in US history. Those that didn't parachute off the cliff still have time to build their parachute before a possible overhaul of our entire tax system.

The 2012 Tax Reform Act ("ATRA") is said to have made permanent change. Permanence is welcome in business and estate planning, because it is hard to plan without knowing the rules. But, only half of the war has been fought, with the debt ceiling battle remaining. Increased deficits, vulnerable markets, and teetering unemployment can cause permanence to be transitory. Congress can change the laws it passes. QE3, gold forecasts, and prognosticators warn of the risk of inflation and imminent market declines. As PIMCO's Bill Gross said it: "The great question is whether the world economy really is at the start of a fresh cycle of growth, or whether … [it] is another false driven [cycle] driven by central bank liquidity that is failing to gain … traction." "The future price tag of printing $6 trillion… comes in the form of inflation and devaluation of currencies relative to each other or to commodities, … such as oil or gold." Signs warrant attention and demonstrate great risk, as for example the relative value of gold to the Dow. Based upon this historic measure, something has to give - either gold or the Dow must capitulate to the other.

The demands of our clients for wealth management have been increasing and so too have been the demands for assistance with the management of their health and welfare. We are satisfied we are adequately staffed to confront these demands, as can be seen through this note and the articles within this Client Update.

God bless and all the best for the rest of 2013!

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Beware of Broker and Banker Good Intent

-Ignorance Causes Great Damage-

Within the last month, two clients passed away and a review of their affairs while settling their estates revealed a common error: a broker at one of the largest financial firms in the US had altered beneficiary designations, designated accounts "pay on death," and orchestrated the rollover of the decedents IRA without coordinating with us, the decedent's estate planning attorney. When questioned, the broker said the client approved the rollover and that the "pay on death" designation was done to avoid probate. In reply we commented: "But what about the 'estate plan' and millions of dollars of lost tax benefits caused by your unauthorized practice of law?" The "estate plan" had in any event been designed to avoid probate using a revocable trust, but while capturing substantial tax and protective benefits. The broker destroyed that planning out of ignorance and a failure to seek the advice of the client's lawyer. The broker's manager thereafter directed all communications to come through her, and the family is now considering whether to file suit for damages. The broker perhaps had good intent, but shouldn't be providing advice with legal consequences without conferring with the estate planning lawyer.

New laws have enabled nonlawyers (brokers and bankers) to designate how assets pass on death through "transfer on death" designations. This means that accounts so designated will pass by contract directly to those named, but outside of the "estate plan" (will or trust

see Beware of Good Intent page 14

Why Irrevocable Trusts Can and Often Should Be Changed

-Action Prior to Obama Administration Further Getting Its Way May Benefit Families -

Most people dislike "irrevocable," and they should if there are appropriate alternatives. Most base estate plans (Phase 1 documents), involve revocable trusts, that can be changed just as a will can be changed. There are many occasions, however, where irrevocable trusts are used and should be used. Often individuals already have irrevocable trusts, such as inherited trusts, insurance trusts, or qualified personal residence trusts, that were created years ago, perhaps from parents or grandparents. If a person is likely to have a taxable estate, one of the first things they would want to do is transfer any insurance policies to an irrevocable insurance trust. The next thing they would likely do is create qualified personal residence trusts in order to remove the value of their homes from their taxable estate. There are many other reasons to create irrevocable trusts, including protection of heirs from divorce and other threats.

These days irrevocable doesn't really mean that the words in the document can't be changed. The laws of most states now permit a variety of ways to change irrevocable trusts. These laws have evolved out of a need to address inevitable changes in laws and circumstances as the typical duration of trusts increases. The most common changes made involve (1) updating them to conform with an evolving estate plan, often to protect wealth passing to children and grandchildren from divorce, law suits, and a pyramiding of estate tax exposures, and (2) to avoid waste of their generation skipping tax ("GST") exemption.

Most existing irrevocable trusts are structured to terminate during the life of beneficiaries or to terminate after the death of the senior most surviving generation, exposing their assets to risks and potentially adverse taxes. Many of these trusts are so-called "pre-1987 trusts," which are grandfathered for generation-skipping tax ("GST") purposes.

see Irrevocable Trusts page 8

Plan of Care

A Plan of Care is a holistic appraisal of a person's particular situation taking into account current health, physical environment, particular needs, working diagnosis (if any), and anticipated future. It can and often does involve both legal and medical issues. It should ask three questions: where are you now, where are you going, and how this should be accomplished. Obviously, as the goals of care change, the method of approach also changes. The most important feature in a Plan of Care is maximizing and maintaining a person's quality of life for as long as possible. When that goal is no longer viable, the goal changes to helping the person and their family through the dying process in such a way that the person's dignity and pain are adequately addressed and the family unit is supported.

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Some Things To Consider When Looking At Retirement Communities

- Through The Cracks - A Near Miss -

When considering a move to a retirement community, there are a few situations to consider besides the marketed apartments amenities and social niceties displayed in brochures and tours. The first consideration should be whether the community is a "life care" community. A life care community provides the entering individual, couple, or subsequently widowed spouse with care through life. Unless so stated the community may provide for only limited situations and no seamless progression through end of life. Very often healthy elders have no idea the challenge this can present. One needs to specifically ask this question and be guided accordingly.

The second question to ask is what kind of support is provided for those in independent living should a medical/nursing question arise in the course of normal daily life. Many retirement communities do not provide a nurse for a threshold check on a resident. What they provide instead is a call to EMS, which you could make yourself. Oftentimes this theatrical call is both unnecessary and potentially embarrassing to the resident. The question to ask is: "Were I to call with a concern about my health, what kind of help do you provide?" The response at many retirement communities is they provide nothing different then if the resident were in any other home in the outside world. And so the resident is completely alone to make a determination as to whether to seek immediate medical help.

"Life care" communities usually have a nurse on staff who will visit the resident and determine the next step indicated.

The following story illustrates some of the pitfalls a widowed elder may encounter in a less inclusive retirement community than one who contracts to provide life care.

PRESERVING THE HEALTH AND INDEPENDENCE OF A WIDOW

Johanna, a very sweet lady, lives alone in an "independent living" section of an expensive retirement community. This article is about how she nearly died or, according to her, worse, nearly lost independent living.

Johanna and her husband had been married sixty-two years when he died eighteen months ago, and her pervasive sadness has resulted in some reclusive habits. She began to exhibit some mild cognitive decline.

Johanna has a good primary care physician as well as other doctors with whom she has regular and frequent check-ups. There are no children available to assist her in either her loneliness or to monitor for subtle changes in health.

On July 11th, Johanna drove herself to St. Lucie West Emergency room for evaluation of an acute abdominal pain and a urinary tract infection. She was prescribed antibiotics. Weight and vital signs were noted to be within normal limits, and she was discharged to her home.

Her health did not improve. On July 18th , she visited her doctor. Thereupon, her primary care physician had her transferred from his office to the same ER she had visited a week earlier. She was again evaluated. Although her prescription was changed, no further intervention was planned. Johanna was to be again discharged home. Our office intervened. (Since the death of her husband, Johanna had appointed our office her "Health Care Surrogate" and we hold daily calls as a form of checkup.)

A second evaluation was requested. After re- examination, a review of her vital signs and weight from the prior week's visit, and a discussion with us, as her Health Care Surrogate, it was determined that Johanna had lost seven pounds in the intervening week, had not improved, and was in fact declining. She was admitted to the hospital that evening. At the hospital, Johanna was diagnosed to be in acute renal failure secondary to dehydration and metabolic imbalance. Had there

see Through The Cracks on page 8

Some Improving, Some Not

Bank	Rating
Bank Atlantic[1]	**Acquired**
Bank of America	**C**
BankUnited	**B+**
BB&T	**C+**
Citicorp Trust Bank[2]	**Acquired**
Deutsche Bank and Trust	**A-**
Enterprise National Bank	**C**
First Citizens Bank & Trust	**B**
Grand Bank and Trust	**E-**
Gulfstream Business Bank	**B-**
Integrity Bank	**Failed**
Ironstone Bank[3]	**Acquired**
JP Morgan TC NA	**D+**
Lydian Private Bank[4]	**Acquired**
Northern Trust NA	**C+**
Riverside NB of Fla[5]	**Acquired**
Sabadell United Bank	**C+**
Seacoast NB	**C-**
Stonegate Bank	**B-**
Sun American Bank [6]	**Acquired**
TD Bank NA	**C**
Wachovia Bank NA [7]	**Acquired**
Wells Fargo Bank NA	**C+**
Wilmington Trust Co.	**B**

1/ Acquired by BB&T
2/ Acquired by Citibank
3/ Acquired by First Citizens Bank
4/ Acquired by Sabadell Bank
5/ Acquired by TD Bank Bank
6/ Acquired by First-Citizens Bank
7/ Acquired by Wells Fargo Bank

Source: Weiss Ratings/The Street.com as of January, 2013. Please note that other rating organizations may have higher or lower ratings for these institutions and that these ratings may have changed.

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FDIC Insurance coverage on Bank Deposits

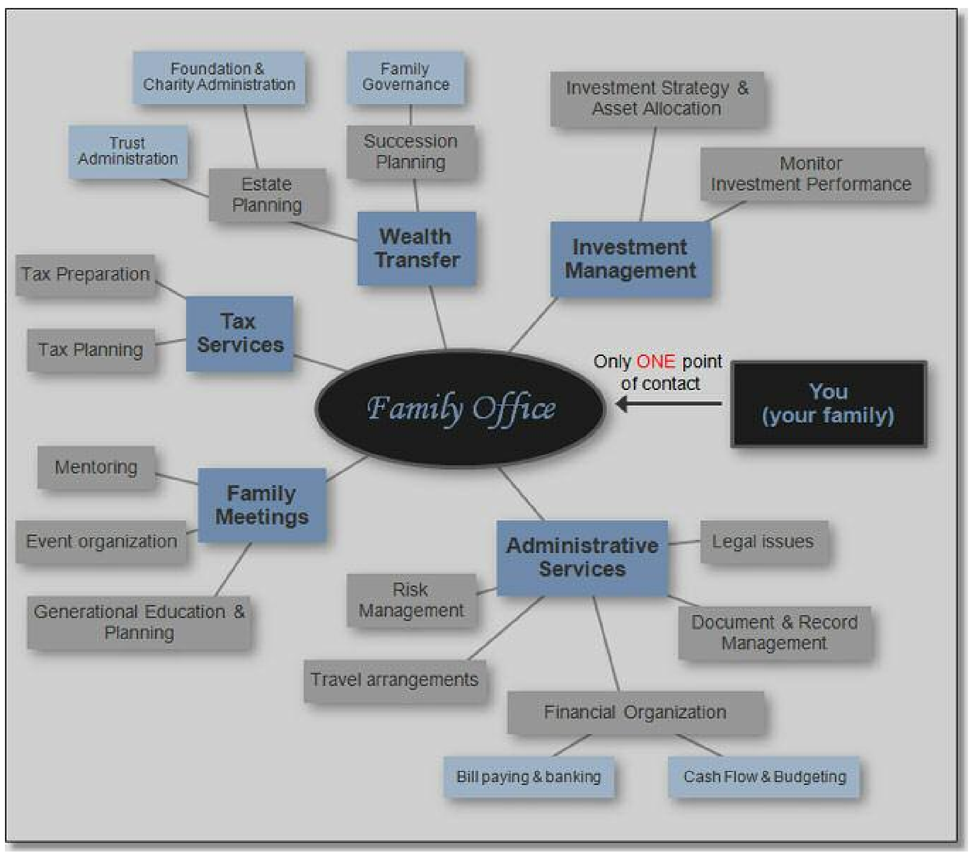
- A Reminder of Coverage Limits -

The temporary increase in 2008 of the insurance limit to $250,000 was set to expire on December 31, 2013. However, the Wall Street Reform and Consumer Protection Act (P.L.111-203), which was signed into law on July 21, 2010, made the $250,000 insurance limit permanent. In addition, the Federal Deposit Insurance Reform Act of 2005 (P.L.109-171) allows for the boards of the FDIC and the National Credit Union Administration (NCUA) to consider inflation and other factors every five years beginning in 2010 and, if warranted, to adjust the amounts under a specified formula. It is also noteworthy to mention that the “unlimited” coverage for certain transaction accounts has expired. Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provided temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts at all FDIC-insured depository institutions from December 31, 2010 through December 31, 2012. It has since expired.

Clients should keep in mind that the coverage is per owner. Trusts and other ownership forms often offer additional protections. For example, some trusts may multiply the protection afforded under FDIC insurance by the number of owners, beneficiaries, or both. We recommend that those who haven’t incorporated FDIC guidance in their trusts do so.

Family Office Services

-Demand Increasing with Our Aging Population –



7520 Rate History

	2012	2011	2010	2009
Jan	1.4	2.4	3.0	2.4
Feb	1.4	2.8	3.4	2.0
Mar	1.4	3.0	3.2	2.4
Apr	1.4	3.0	3.2	2.6
May	1.6	3.0	3.4	2.4
June	1.2	2.8	3.2	2.8
July	1.2	2.4	2.8	3.4
Aug	1.0	2.2	2.6	3.4
Sept	1.0	2.0	2.4	3.4
Oct	1.2	1.4	2.0	3.2
Nov	1.0	1.4	2.0	3.2
Dec	1.2	1.6	1.8	3.2

The section 7520 rate for January, 2013 is 1.0%.

The section 7520 rate for February, 2013 will be 1.2%

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Leverage and the AFR

- Transfers of Wealth Without Gift Tax -

Those that parachuted off the fiscal cliff by implementing Phase 2 and Phase 3 estate planning measures captured one of the lowest interest rate environments in history, which remains true today - they have risen slightly since 2012. The IRS publishes the applicable federal rate ("AFR") on a monthly basis, and this rate has significance under various tax laws. In estate planning, it sets forth the rate of interest on loans and the discount rate ("7520 Rate") that must be used when determining the gift tax consequences of various techniques. Intrafamily sales or techniques that employ financial discounting principles create the most benefit when interest rates are low. For example, selling a $10 million asset that is growing at 6% to a trust that is exempt from estate tax, in exchange for a promissory note bearing less than the 1% interest required by the AFR, causes a $500,000 gift tax free shift of wealth every year during the term of the note. This is a simple example, and there are many even more complex techniques that produce a greater benefit from the discount rate and leverage.

Leverage is often a bad word, because it compounds losses realized on investments. For most, use of leverage is generally not a prudent investment policy. Within family estate planning, however, it is a good thing because there is no downside or possibility of loss. It is all internal financing among family entities with no third party risk or payment. A common tool used by individuals who are suffering from disease with their life expectancies shortened is a "private annuity." A private annuity is generally structured as a senior family member's sale of a block of assets to a trust for junior family members, where the trust agrees to pay the senior family member a fixed periodic dollar amount. Given our low interest rate environment, the required payment to avoid any estate or gift tax is less than in a high interest rate

see Leverage and the AFR on page 10

Parachuting

(continued from cover)

transferred during 2012. (Properly reporting transactions and carefully preparing gift tax returns- audit avoidance and securing statute of limitations protection - is dealt with in a separate section of this Client Update on page 9.) Most who have parachuted will likely maintain the status quo, because substantial benefits will have been achieved. What's more, if that planning was done properly, flexibility will exist to achieve alternative objectives. For example, those who transferred assets to grantor or defective trusts may want to reclaim them by exchanging and swapping those assets for less desirable assets or a promissory note. Alternatively, those that have larger estates may choose to build off of the benefits achieved through the structures created in 2012, by using the value that has shifted to leverage further planning to reduce estate tax exposure.

Most structures created by those who parachuted involve trusts or holding companies. The continued viability of these structures will necessitate ongoing maintenance and tax compliance. Proper maintenance and compliance will likely cause the growth of the achieved benefits over time, but at the cost of that compliance. Effectively cleaning up and considering methods of consolidating entities and related tax reporting will reduce this cost. Unwinding holding companies may be desired and can often be done tax free, but the long term benefits of the structures should be weighed before doing so. Many of the trusts created are likely grantor trusts, sometimes called intentionally defective trusts, that offer tremendous flexibility to change the status quo to produce a more beneficial result. They also offer a means to avoid the adverse income tax consequences that would normally occur in building exempt wealth that will ultimately pass free of estate taxes to junior family members

We are Pleased to Announce that Janice B. Richardson, Esq., Has joined the Firm

Mrs. Richardson has joined our Fiduciary Administration Department. She has been involved with estate planning and administration for 16 years, as both a legal assistant and an attorney. She began her legal career in 1996 and obtained her Certified Legal Assistant and Certified Legal Assistant Specialist designation in Wills, Trusts and Estates in 1997. Her interest in the law drove her to obtain a law degree from the Shephard Broad Law Center at Nova Southeastern University in 2005. She is a 2000 Phi Beta Lambda graduate of Middle Tennessee State University.

Mrs. Richardson joins us after practicing 11 years in Stuart, Florida with estate planning firms. She has become a member of our Fiduciary Administration Department, where she assists with estate and trust administrations.

Telephone and Web Conferences

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In order to obtain periodic notices and invitations to our special lectures and forums, and more timely updates, please email us at joekempe@jckempe.com. We will then send you links to our events, and provide you with periodic updates, news, and current events.

Save Paper

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Portability: The Albatross of Government Simplicity

- The Governments Intentions Were Good, But... -

On January 17, 2013, Forbes staff writer Deborah L. Jacobs, in her article The Deadline Every Married Couple (and Financial Advisor) Needs to Know, wrote: "I'm on a campaign to educate married couples about an important new financial strategy that they may only need once in their lives. It has a very strict deadline. Miss it, and the opportunity will be lost. [Potentially millions are at risk, even for those who otherwise wouldn't have estate tax exposures.]"

Ms. Jacobs is dismayed about "portability" (see our Winter 2011 Client Update on page 13) of the estate tax exemption, which allows a surviving spouse to obtain the unused estate and gift (but not generation skipping) tax exemption of their deceased spouse. What Ms. Jacobs points out is that those who rely on it increase their burdens after the death of a spouse and must react to a fixed deadline by filing an estate tax return. For those under the estate tax exemption, this becomes a post-death burden that otherwise would be unnecessary. Furthermore, what isn't discussed in Ms. Jacobs article is that reliance on portability doesn't work within many estate plans, because of the need to preserve the first spouse's generation-skipping tax exemption (which isn't portable) and a desire to protect the wealth of the first deceased spouse from second marriage divorce risks and third party liability exposures. What Ms. Jacobs further points out, is that financial advisors who are not attorneys need to be careful with the advice they are providing or not providing their clients. See also Beware of the Broker and Banker Good Intent on page 3.

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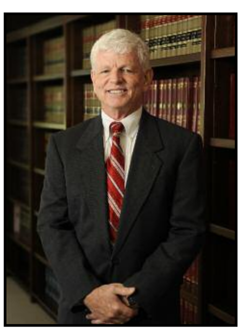
Another Market Guru Supports Passive Investment Styles

Billionaire hedge fund manager, George Soros, was quoted by Bloomburg on January 25th saying "hedge funds can't, as a group, beat the markets because they are now a dominant force in the marketplace." Economic principles dictate that less and less success can be realized as information and groups grow. He also was quoted as saying "Outperforming the market with low volatility on a consistent basis is impossible."

As we have been writing now for years, passive investing is the best approach for most - seeking alpha can be a risky proposition.



JOHN L. AVERY JR., ESQUIRE

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THROUGH THE CRACKS

(CONTINUED FROM PAGE 4)

been no demand for a second evaluation and subsequent hospital admission by us, it would not be out of the realm of possibilities that Johanna would not have survived the initial planned second discharge from the ER to her home.

While in the hospital, a discharge plan coordinated by us to a skilled rehabilitation facility was immediately initiated. The importance of nursing home rehabilitation placement cannot be overstated and should be undertaken long before the patient is ready for discharge. That way, the goals for care are consistent with the assisted living environment to which the patient is eventually discharged.

Upon admission to a rehabilitation and skilled nursing facility a week later, another "care plan" (see page 4) was started with the staff. The goal: to prepare Johanna for return to independent living. With physical rehab and consistent high protein nutrition, her cognition and physical stamina improved. Three weeks later, she was ready for discharge home with follow-up rehabilitation and privately hired early morning and evening companion support.

Very often patients are discharged to assisted living facilities from skilled nursing facilities, not because they necessarily require such care, but because there has not previously been established a better and less restrictive discharge plan ultimately to the patient's own home. Both the client and we share a concern about her being moved too quickly into assisted living on a permanent basis. Johanna has a much coveted unit within the independent living facility. Such a unit enjoys a very nice resale market, while many other less desirable units are available in the assisted living section. In a case like Johanna's, there exists an apparent conflict between the facility's management corporation and the resident. To have assisted living available is a wonderful resource. However, it should not be a means of freeing up highly desirable units for resale. Johanna may need to relocate in the future, but not until it is the proper time.

IRREVOCABLE TRUSTS

(CONTINUED FROM PAGE 3)

Others have been created on or after September 25, 1986 and are not grandfathered, but may be GST exempt or have GST exemption allocated to them.

Existing irrevocable trusts (especially insurance trusts) should be reviewed for purposes of (i) their generation skipping tax exempt status and (ii) potential modification to effectively use that status. For example, if senior family members created an irrevocable trust (life insurance or otherwise) it is possible that their generation skipping tax exemption is being wasted through automatic allocations. Under a special rule, this is especially applicable if the beneficiaries of the trust have reached age 46. Where GST exemption is being automatically allocated, it is commonly being wasted which can often be overcome by modification of the trust. (Modification of irrevocable trusts has become common now that the rules have become statutory.) Similarly, trusts created by senior family members who have since passed away are oftentimes GST exempt, but they are not drafted to avoid tax in the estate of the next generation. These trusts too are often modified to perpetuate their estate tax exempt status and other benefits. When modifying, it is extremely important to assess the tax consequences.

Reasons to File Gift Tax Returns

1. Required if gift is over annual exemption - $14,000 in 2013.

2. Required to split gifts with a spouse - when gifts of one spouse exceeds $14,000 in 2013.

3. Required to allocate GST exemption.

4. Required to elect out of automatic GST allocation, for example where beneficiariess of some irrevocable trusts are over age 46 or QPRTs terminate in further trust.

5. Required to commence the statute of limitations, preventing the IRS from indefinitely imposing taxes, interest, and penalties on unreported gifts even 20 years ago.

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Common Gift Tax Return Filing Misconceptions

- Crummey Notices and Other Filing Oddities -

If a donor makes gifts of "present interests" in property and the total value of those gifts to any one donee exceeds the annual exclusion amount ($13,000 in 2012 and $14,000 in 2013), the donor is required to file a Form 709, United States Gift and Generation-Skipping Transfer Tax Return. If not absorbed by an exemption, the tax is 40% of the amount gifted. A donor also has to file a return in order to split gifts with their spouse; i.e., a gift by one spouse of over $13,000 in 2012 necessitates the filing of a return even though they both could have gifted $26,000 tax free using their annual exclusions. Furthermore, often gift tax returns should be filed to allocate generation skipping exemption ("GST" exemption), or to elect out of automatic allocation, even when a gift tax return is not otherwise required to report gifts.

Code Section 2503(b) specifies that the annual exclusion from gift tax is available only for "present interests" in property. If a gift of a "future interest" in property is made, a gift tax return is required to be filed regardless of the amount of the gift, and the available lifetime gifting exemption ($5,250,000 in 2013) is accordingly reduced. Transfers to trusts are not considered gifts of present interests and do not qualify for the annual exclusion. They are considered gifts of future interests because the gift is to a trust in which the beneficiary may not have the immediate right of enjoyment and control of the gifted property. Such gifts must be reported on a Form 709 regardless of the amount of the gift.

In order to convert the future interest in the property to a present interest so that the gift to the trust qualifies for the annual exclusion from gift tax, a "Crummey" withdrawal power is generally used. In general, a Crummey withdrawal power refers to the right granted in the trust instrument to a class of beneficiaries that allows those beneficiaries to withdraw the gift made to the trust for a specified period of time after the gift is made, i.e. 30 days. The donee must be notified of this right to withdraw the property within the stated period of time. There are some technical rules that must be followed. If properly drafted and implemented, the gift referenced in the Crummey notice is a gift of a present interest and will qualify for the annual gift tax exclusion.

Each donor has a GST exemption that may be allocated during the donor's lifetime to gifts that may now or in the future cause a GST tax. This is generally done to keep family assets from being taxed in successive generations. These gifts should be timely reported on a Form 709 and the donor's GST exemption allocated in order to avoid future estate and GST taxation. Furthermore, allocation of GST exemption helps to perfect the wealth transferred from claims of creditors, from divorce or otherwise. Furthermore, the Form 709 should often be filed to elect out of automatic allocation of the GST exemption where it is otherwise wasting the exemption because it is not intended. This is most often applicable where beneficiaries of a trust have reached age 46.

We often find that gifts to life insurance and other trusts are not reported on gift tax returns due to misconceptions. All gifts, current and prior, should be reviewed and brought to the attention of your tax preparer, as corrective action can be taken to avoid significant tax exposure and loss of various protections. Furthermore, often any prior waste of GST exemption can be overcome by modifying the irrevocable trust to capture the protections and benefits that would otherwise be lost.

Note: Crummey notices are based upon Estate of Crummey v. Comm'r, 397 F.2d 82 (9th Cir. 1968). See also Estate of Turner v. Commissioner, T.C. Memo. 2011-209, for the consequences of a donor's direct payment of premiums on trust owned insurance to the insurance company.

Joseph C. Kempe
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

2013 Advisor Summary

Our review of market advisor data produces the following common themes:

1. A fear the US debt will spark inflation.

2. A fear that the equity markets are due for a correction.

3. A concern that earnings increases are often a result of cost cutting and not revenue growth.

4. GDP growth will encourage the equity markets, but fears of another recession could cause them to stumble.

5. China and Emerging Markets are leading the recovery.

6. Most aren't selling gold, and many are buying.

7. The dollar is at risk of weakening.

8. Most are cautious of fixed income investments, while others feel there remains some room for nominal gain in the short term.

Note: Data compiled through various investment advisors and does not constitute our investment advice. We are not investment advisors.

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Wealth Management

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Loans to Family

(continued from cover)

present interest rate environment the benefits can be easy to see, once you become familiar with the AFR or "applicable federal rate." See AFR discussion on page 6. The AFR is a minimum interest rate that the IRS monthly publishes, and the best way to understand the AFR is to realize that a transfer to a family member is presumed a gift, unless there is a bona fide obligation to repay that loan with adequate interest. Even if there is an obligation to repay, if there isn't interest stated at the AFR, the free use of money will be a gift, calculated as the difference between the present value of what was loaned and the present value of the payments that will be made back to the lending family member. For example, if a family member in January 2013 is loaned $1 million and has to repay it in 9 years without interest, a taxable gift of $75,000 will be made. Furthermore, that uncharged interest will be imputed to the lending family member as taxable income.

Nevertheless, what has been achieved? If the borrowing family member earned a total return of 5% annually, the $1 million will have grown to $1,551,328. The borrowing family member owes $1 million, so a net $551,328 has been shifted and removed from a 40% estate tax, saving $220,532 of estate taxes. Assuming the AFR is charged as interest on the loan to avoid an upfront taxable gift and imputed income, in January 2013 that rate would be .87%, necessitating $81,081 of interest to be paid if delayed until maturity. If paid, the junior family member has netted $470,247 of tax free wealth and the family has saved $188,099 of estate and gift tax, per million.

A transfer of property to a family member, whether cash or other assets, is presumed by the IRS to be a gift unless "full and adequate consideration" is received in return. In the context of an intrafamily loan, the presumption of gift can only be overcome under IRS regulation by an affirmative showing of a bona fide loan with "a real expectation of repayment and an intention to enforce the debt." The IRS has published its position that a series of forgiveness's, after a family loan has been made, may be viewed as a prearranged plan to make the gift on the original date of the loan. Rev. Rul. 77-299. As such, principal balance forgiveness should not be expected or routinely made without risking the IRS taking the position that the entire loan amount was a taxable gift at the outset.

Note: Unreported gifts may be subject to assessment, penalties, and interest indefinitely and until an estate or gift tax return is filed. The gift tax rate is 40%.

Leverage and the AFR

(continued from page 6)

environment. For example, if Dad at age 75 transfers $10 million to a trust during January 2013 and the trust promises to pay him $242,300 a quarter for so long as Dad lives, no gift or estate tax is due even if Dad dies 2 years later. A total of just under $2 million will have been paid to Dad, but a net $8 million is shifted out of his estate with no estate or gift tax. The quarterly payment would have been $60,000 more ten years ago, when rates were 4.2%, resulting in total payments of $480,000 more and a reduced tax free wealth transfer of a net $7.52 million. Still a significant benefit, but the difference demonstrates how lower interest rates work to the advantage of the estate planner.

There are numerous strategies that use the AFR and 7520 Rate. Some are fairly simple and routine, while others are customized to meet the particular objectives of the client. Generally, the most customized strategies are what we call Phase 3 techniques, and involve consideration of cash flow needs of all parties involved, on an after tax basis.

Considerations in Unwinding QPRTs
-Affect on Family Requires Evaluation-

With so-called "permanence" of the estate tax at $5.25 million in 2013, some may wish to terminate existing qualified personal residence trusts. Doing so involves four principal considerations: (1) the projected estate tax of the senior family member, considering the exemption used when creating the QPRT, (2) the gift tax consequences to junior family members who consent to the modification/termination, (3) the capital gains tax advantage to both the senior and junior family members of the termination, and (4) the generation skipping tax advantage of removing the value of the home from the taxable estates of junior family members.

Fiscal Cliff

(continued from front cover)

However, what appeared to be fortuitous the next day (January 1, 2013) appeared to have become unnecessary. Or, was it?

The threat of a reduction of EGG tax exemptions and increases in rates caused many individuals to pursue traditional, more advanced Phase 2 and 3 estate planning techniques, before 2012 ended. These techniques often involved moving assets to different ownership forms that offered EGG and other tax advantages. The issue now confronting those that used these techniques is whether to maintain the status quo or to seek to unwind what was done. In order to assess this, three primary questions must be asked: (1) what is the client's present and projected estate tax exposure given the projected growth of their estate, future estate tax exemptions, and rates, (2) what is the prospect for elimination of the Phase 2 and 3 techniques that were used in 2012 as Congress confronts imminent budget debates, and (3) what is the EGG or income tax benefit or detriment in changing the status quo. Most individuals will likely decide that it is best to maintain the status quo after considering these issues, particularly because some tax reform winds are still blowing on the parachutes that many used.

The Treasury Department's 2013 Revenue Proposal (referred to as the "Greenbook") puts many of the Phase 2 and 3 techniques used by individuals to parachute off the fiscal cliff on the chopping block. The beneficial use of family partnerships, grantor or income defective trusts, long term generation skipping tax exempt trusts, among other planning techniques, are proposed to be curtailed. Even though the Republican Congress has stated no revenue measures (tax increases) will be considered in addressing the debt ceiling, elimination of many of these techniques can be viewed as closing loopholes or exceptions to normal rules that may not be viewed as tax increases. Furthermore, the revenue compromise between Democrats and Republicans obtained in creating the American Taxpayer Relief Act ("ATRA") of 2012 added $3.63 trillion to the deficit, from what it would have otherwise been had the Bush tax cuts expired without reform. Though ATRA 2012 is said to offer permanent rates and exemptions, nothing is permanent if Congress can find reasons to change them and there are an increasing number of those reasons.

For most, the planning that was done in 2012 should be maintained. For others, where the benefits obtained become unnecessary given the projected size of the estate and exemption, certain planning measures taken may be appropriately unwound. In other circumstances, the planning that has been done may just need to be simplified and streamlined to reduce ongoing maintenance costs.

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Don't Misunderstand tax deduction Phaseouts

-Income Tax Impact is Less than may appear-

Both donors and charitable organizations have expressed concern about the effect on the charitable deduction of the 3% phase out of itemized deductions for certain high-income taxpayers enacted as part of the ATRA. The concern expressed by donors and others is in most cases unwarranted. The phaseout is not a new limitation. It is a reinstatement of prior law that had been suspended for the 2010 – 2012 tax years.

Effective for tax years beginning after December 31, 2012, itemized deductions are phased out for certain high-income taxpayers. The phase out applies to taxpayers with adjusted gross income ("AGI") above the following thresholds: $300,000 for married taxpayers filing a joint return, $250,000 for single individual taxpayers, $275,000 for heads of households, and $150,000 for married taxpayers filing separately. The thresholds are adjusted for inflation after 2013. The phase out amount is the lesser of: (a) 3% of the excess of AGI

see Phaseouts on page 14

New Tax Laws Bring Marriage Penalty Back For High-Income Couples

The marriage penalty is coming back for high-income earners due to the combination of higher tax rates under the American Taxpayer Relief Act combined with new taxes established by the Affordable Care Act that took effect Jan. 1. Though Congress passed marriage penalty relief in years past, high-income earners are looking at the possibility of significantly higher tax bills for 2013. Married couples filing jointly face a much lower threshold of $250,000, at which the ACA's additional 3.8 percent Medicare tax kicks in compared to individual filers at $200,000. This additional tax stacks up on top of the maximum tax rate of 39.6% on regular income, as well as the additional 0.9 % tax on earned income for taxpayers above these same thresholds.

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2013 TAX RATES SUMMARY AFTER THE AMERICAN TAXPAYER RELIEF ACT OF 2012

	2012	2013	2013 Medicare Tax	2013 Highest Tax
Long Term Capital Gain	15%	20%	3.8%	23.8%
Short Term Capital Gain	35%	39.6%	3.8%	43.4%
C Corporation Dividend Income	15%	20%	3.8%	23.8%
Ordinary Income	35%	39.6%	3.8%	43.4%
Medicare Taxes	Employer: 1.45% Employee: 1.45% Total: 2.9%	Employer: 1.45% Employee: 2.35% Total: 3.8% (The additional .9% only applies as shown to the right.)	Additional 0.9% on wages exceeding $200,000 for single taxpayers and $250,000 or married taxpayers.	3.8% total
FICA/FUTA Taxes	6.2% Employer/ 4.2% Employee on wages up to $110,100.	6.2% Employer/ 6.2% Employee on wages up to $113,700.		12.4% on wages up to $113,700.
Estate Tax	$5,120,000 Exemption 35% Rate	$5,250,000 40% Rate	N/A	40%

Income Tax Planning in Light of ATRA 2012

- Rates Up and Deductions Reduced -

Tax Rate Changes Effective 2013. ATRA 2012 establishes all the individual marginal rates at the so-called Bush era tax rates, but with a new top rate of 39.6% on taxable incomes over $450,000 for married taxpayers filing jointly and $400,000 for single taxpayers. While the 15% long-term capital gains and qualified dividends tax rates continues to apply, a 20% tax rate applies for individuals above those top income thresholds. Additionally, a 3.8% Medicare surtax is effective starting in 2013. For individuals, the 3.8% tax will be imposed, generally, on “net investment income” that exceeds certain thresholds ($250,000 for married individuals filing jointly or $200,000 for unmarried individuals). There is also a modified threshold (“MAGI”) level for some taxpayers.

Dividend Income. Coupled with the 3.8% Medicare surtax on dividend income for high-income taxpayers, the rate could be as high as 23.8% on both dividend income and long term capital gains. High income earners should consider the benefits of switching investment strategies by investing in tax-exempt state or local government bonds, since the 3.8% Medicare contribution tax is not imposed on this type of income. A shift in investment strategy from dividend-paying equities to a growth investment strategies should also be considered, where tax on unneeded cash flow may be deferred.

Long-Term Capital Gains. Timing long-term capital gains will be of primary importance for taxpayers approaching the top-level threshold. Taxpayers with substantial capital gains can now have more certainty when rebalancing investment portfolios. Business owners who sold their business in 2012 should consider whether accelerating the gain on sale by electing out of the installment method in 2012 would benefit them given the rise in long-term capital gain rates. Electing out of the installment method could be made as late as October 15, 2013, although the income tax resulting from gain on the sale would have to be paid by April 15, 2013.

see Income Tax Planning In Light of ATRA on page 13

INCOME TAX PLANNING IN LIGHT OF ATRA

(continued from page 12)

Summation of the Economy and Analyst Forecasts

1. Housing is improving with some markets appreciating while inventory decreases.

2. Inflation at the present is almost nonexistent.

3. Consumers are spending, but that is a lagging indicator.

4. Economic recovery is broad.

5. Banks appear to be improving and may begin to lend.

6. China and Emerging Markets are leading the way.

7. A steady increase of GDP through 2015 to 3%.

8. A steady decrease of unemployment to 6.4% by December 2015.

9. A steady rise in inflation to 2.5% by December 2015.

Note: Data compiled through various sources sought to be reliable, including The Wall Street Journal, Economic Forecasting Survey, January 2013.

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Phase Out of Itemized Deductions. The personal exemptions and itemized deductions phase-out is reinstated for taxpayers married filing jointly with AGI of more than $300,000 ($250,000 for individuals). Itemized deductions (charitable contributions, mortgage interest, state and local property taxes, and miscellaneous itemized deductions) are reduced by 3% of the amount by which AGI exceeds the applicable threshold adjusted for inflation ($300,000 for joint filers, and $250,000 for single filers in 2013), up to a maximum reduction of 80%. Similarly, the personal exemptions are reduced by 2% for each $2,500 (or portion thereof) integral of AGI that exceeds the applicable threshold ($300,000 for joint filers, and $250,000 for single filers in 2013). Tax planning to reduce the impact of this phase-out will involve assessing the extent to which expenses constituting phased-out deductions can be legitimized as business expenses. See, Don't Misunderstand Tax Deduction Phaseouts,on page 11.

Passive Income vs. Non-Passive Income. Income from non-passive sources is not included as part of investment income subject to the 3.8 percent Medicare contribution tax. Business owners should carefully plan ahead, specifically, by considering whether it is more advantageous to become "non-passive" in the business as opposed to "passive" for purposes of this tax. Taxpayers would need to plan now to take the appropriate steps to become non-passive income recipients. However, consideration should be given to certain traps, such as triggering self-employment tax from the conduct of an active business. Investors in pass-through entities should review the relevant entity agreements for provisions pertaining to future tax distributions to partners and owners to account for this new tax. In other words, entity documents may need to be revised to incorporate a tax distribution to the partners for this additional tax.

Retirement Accounts. Income earners approaching or surpassing the top-level thresholds should consider tax planning that can lower their adjusted gross income, by investing in tax-exempt municipal bonds, for example, or contributing pre-tax dollars to their retirement accounts.

The Act allows for planning opportunities using individual retirement accounts (IRAs) and 401(k) accounts. For example, ATRA extends the ability to convert traditional IRAs to Roth IRAs regardless of income levels. In addition to receiving tax-free growth, there is no minimum distribution requirement with Roth IRAs. Individuals should revisit their retirement plans and consider whether to convert their traditional IRAs to Roth IRAs. Distributions from traditional IRAs and 401(k) plans are exempt from investment income for purposes of the 3.8% Medicare contribution tax, but the income increases MAGI and may place the individual above the MAGI threshold, subjecting the individual's other investment income to the tax. Conversely, distributions from Roth IRAs or Roth 401(k) plans do not increase MAGI and are not included in investment income. Factors to assess when considering a Roth conversion are age, current and expected income tax brackets, time value of money, and intended use of IRA funds.

For 2012 and 2013, the Act also extends the ability of individuals age 70 ½ or older to direct distributions from their IRAs, up to $100,000 per year, to a charity, while excluding the distribution from income. Additionally, they have the option to disburse their IRA distribution received in 2012, up to $100,000, by contributing it to a charity on or before January 31, 2013 and exclude it from their 2012 income. Conversely, taxpayers can direct IRA distributions on or before January 31, 2013 be paid directly to a charity and have them treated as made in 2012 and excluded from income.

Jobs Act

(continued from cover)

recognized by the government. Ironically, Congress asked the SEC in the Dodd Frank Act of 2010 to study how knowledgeable is the investment public. The SEC's 212 page study released in 2012 concluded that most U.S. retail investors "lack basic financial literacy, " "have a weak grasp of elementary financial concepts," and "lack critical knowledge of ways to avoid investment fraud." The study also found that "certain subgroups, including women … and the oldest segment of the elderly population …have an even greater lack of investment knowledge than the average general population."

Investment decisions require receipt of timely and relevant information. Unfortunately, the elderly can lose a sense of both, but fortunately states like Florida offer recourse and define "elder abuse" to include financial exploitation. Elder abuse laws generally provide severe punitive damages to aggrieved parties. These laws extend to those over age 65 or those over 18, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, in addition to the infirmities of aging.

Beware of Good Intent

(continued from page 3)

of the account owner). The entire estate plan is thus ignored and becomes meaningless. All the protections and tax advantages the estate plan may offer a surviving spouse, children, or grandchildren are wasted. Furthermore, often IRA and insurance beneficiary designations are designed to allow a surviving spouse to make a decision to either receive the account or proceeds directly or to divert them to an exempt and protective trust that they control and from which they benefit. A decision should be made after proper legal counsel on which alternative produces the optimum result. In our recent cases, the option was foreclosed because the broker caused the irrevocable rollover without proper legal counsel - and then the broker blamed the surviving spouse for directing the transfer. Most surviving spouses won't recognize this opportunity unless it is explained, and the broker was not qualified to do so. This is the reason we routinely inform surviving spouses and other heirs not to retitle any assets until the circumstances are reviewed. Millions of dollars of wealth becomes at risk by failing to, as these brokers and clients discovered.

Phaseouts

(continued from page 11)

over the applicable phase out threshold, or (b) 80% of the otherwise allowable itemized deductions.

For example, if a single individual with $1,000,000 in AGI and $200,000 of deductions the phase out amount is $22,500 (the lesser of: (a) 3% of $1,000,000 - $250,000 ($22,500), or (b) 80% of $200,000 ($160,000)]. Thus, the taxpayer's overall itemized deductions are reduced from $200,000 to $177,500. Charities should recognize that this may have little impact on them and that the tax deduction may not be lost. This is because the phase-out formula is the lesser of, so that if $177,250 of the above $200,000 were charitable deductions the entire $177,250 would be deductible.

New Resident Migration to Florida

-Momentum Increases-

More people are expected to move to Florida in 2013 than during 2008, 2009, and 2010 combined. Florida's net migration hit a low of 34,000 in 2008 and remained weak in 2009 and 2010. More than 171,000 people are expected to move to Florida in 2013. Economists expect the migration, which is said to be driven by the retirement of baby boomers, to peak in 2016. The new normal migration pattern is anticipated to result in 250,000 new Florida residents per year. The historical peak is 300,000.

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Talk of Tackling Tax Reform Baucus Says Premature

Senate Democratic leaders raised the possibility of trying to advance tax reform through the use of the budget process, but Senate Finance Committee Chairman Max Baucus (D-Mont.) told reporters Jan. 22 that such discussions are premature. The budget reconciliation process would help expedite reform by allowing the tax bill to pass the Senate with only a simple 51-vote majority, rather than the 60-vote majority that is typically needed to limit debate and prevent a filibuster. The option of using the reconciliation process became much more attractive for lawmakers after the majority of the 2001 and 2003 tax cuts were made permanent because it removed the need to either find $4 trillion in revenue raisers to offset the cost of the tax cuts or sunset the tax cut extensions after 10 years, as Congress originally did with the Economic Growth and Tax Relief Reconciliation Act. Sen. Charles Schumer (D-N.Y.), the third-highest ranking Senate Democratic leader and a member of the Finance Committee, said Jan. 20 that he is convinced the Senate will pass a budget in the coming months that includes a plan for [overall] "tax reform."

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ADVENT AXYS

WHAT TO DO NOW

(continued from cover)

many areas, but this legislation was not the comprehensive reform that many have been studying and urging. The last major tax reform was in 1986 and many believe the Tax Code is too complex (the Code has over 2.3 trillion words), is unstable and unpredictable, is unfair, and still has many provisions that routinely expire. There is a consensus among economists that rates should be lowered and the base broadened, as was done in 1986. Ninety percent of tax expenditures (tax law exceptions) favor individuals. Half of the $3.63 cost of ATRA 2012 was making the alternative minimum tax relief permanent.

For many, ATRA 2012 causes the maintenance of an estate planning status quo and a shift in priority to income tax planning. This is a result of income tax rates and estate tax rates being essentially the same at the margins. However, one must remember that the estate tax is on total wealth, and capital gains and income taxes are on income from and appreciation of that wealth. Estate tax is a much larger tax exposure. As such, for those who did not react to the "fiscal cliff," there remains a window of opportunity to utilize current laws to benefit themselves and their families prior to either changes of law as a result of imminent Congressional debt reduction talks or overall tax reform.

See our Tax Reform research White Paper at www.jckempe.com.

ANNUAL PROPERTY TAX VALUATIONS

-THE TIME TO ACT IS NOW -

For real estate tax purposes, your Florida real property is assessed at "market" or "just value" as defined in the Florida Constitution and Florida Statute 193.011. Valuations are recalculated annually and entitlements to exemptions are examined each year. Each year the county Property Appraiser ("PA") uses January 1 as the value determination/exemption qualification date and that status applies throughout the year.The PA has until July 1 of each year to complete its valuation and to notify a property owner of the denial of any exemption or classification application. It is within these two dates that an owner has an opportunity through informal discussions with the PA's office to adjust valuations or address potential denials of exemption/classification applications.

Applications for 2013 homestead exemptions must be submitted by March 1 and you must have resided in the home as of January 1 to qualify for 2013.Though the homestead application is fairly straightforward, applications for other exemptions may require legal assistance and often meetings with the PA's staff are worthwhile. Clients contemplating Florida residency should compare the homestead benefits of their current state with the Florida exemption, as generally only one homestead is permitted per family unit.

Other property classifications also offer benefits. One of the best classifications for tax savings is "agricultural" because an agricultural parcel is assessed based upon the bona fide agricultural use as of January 1 as opposed to the property's market value, often a much higher number. It is essential that the applicant timely establish use, properly complete the application, and document the foregoing. Some clients have won agricultural "use" status by maintaining and managing honey bee hives.

As for valuation issues, the owner can provide "assistance" to the PA between January 1 and July 1. Often substantial valuation reductions can be obtained to reduce tax, which is quite common given our recession. Each year the PA must qualify or disqualify each sales transaction; obviously a subjective decision. Depending on whether a sale

see PROPERTY VALUATIONS *on page 16*

PROPERTY VALUATIONS

(CONTINUED FROM PAGE 15)

price from a prior year was low (which you want the PA to use) or high (which you want disqualified), there are actions you can take to influence the decision. Obtain a sales qualifier form from the PA so you can provide details of the transaction. Although short sales and bank owned property sales may cause the PA to disqualify the sale, there may be facts, e.g., the property's condition, which if brought to the PA's attention would avoid disqualification. For bank owned properties, if it was marketed in the same manner as other properties, i.e., with a realtor, listed on MLS, and resulted in an arm's length sale, it could qualify for assessment purposes.

For income producing commercial property, many PAs send income questionnaires to owners annually. As an owner there is no legal obligation to reply to such requests; however, if you own a poorly performing property relative to the market, it may be worthwhile to provide such information. The PA is not obligated to rely on this information, but it may prove beneficial during a future Value Board Adjustment hearing if they did not give it proper consideration.

Proactive buyers are frequently constructing their purchase agreements to pay for certain costs, such as documentary stamps, title, and commissions that might typically be paid by the seller. The result is a lower purchase price. Furthermore, contracts can allocate the purchase price to certain personal property, that is not assessed. With either, significant tax savings can be achieved.

By law the PA must complete its valuations by July 1 and submit them to the Department of Revenue. After July 1 and before the mailing of the annual TRIM notices in late August, an owner can find out the new value and decide whether it is acceptable. If it is not, you are entitled by law to an informal meeting with the PA and can provide the support for your opinion that the property has been overvalued and provide evidence to support your opinion of the correct value.

From this writer's experience, the Palm Beach, Martin, St. Lucie, and Indian River County appraisers are extremely competent and fair minded and willing to consider valid information and adjust the assessment if warranted. Should you wish any assistance in a future valuation matter, we can help you with the informal process or filing the petition if the informal discussions are not successful.

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REAL ESTATE SYNDICATION AND INVESTMENT

- THE REAL ESTATE MARKET ON THE TREASURE COAST –

SINCE THE SPRING OF 2011 WE HAVE WITNESSED A MARKED INCREASE IN REAL ESTATE ACTIVITY. BOTH RESIDENTIAL AND COMMERCIAL ACTIVITY IS ON THE RISE, PARTICULARLY "PRIZE" PROPERTIES!

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Joseph C. Kempe
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