GUNSTER
PRIVATE WEALTH SERVICES

Year-End Update At A Glance
November 2012: Post Election Summary

Dear Clients and Friends:

As a service to our clients and friends, we have prepared the following summary of gift, estate, and income tax planning opportunities that should be considered by you prior to the end of the year. Although this review is necessarily general in nature, we are happy to discuss any item of specific interest in more detail with you.

Well, here we go again! The end of 2012 is fast approaching, and once again there is tremendous uncertainty regarding both the income tax and estate and gift tax rules that will be applicable in 2013. Although we now know who will be the President for the next four years, we do not know whether President Obama and Congress will be able to reach a consensus prior to year-end to avoid, or at least minimize, the impact of the expiration of the "Bush Tax Cuts." In late 2010, Congress and the President agreed to the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "2010 Tax Act") to extend the expiration of the "Bush Tax Cuts" to the end of 2012, increase and reunify the estate and gift tax exemption amounts, and enact additional tax savings such as the 2% payroll tax reduction. All of those extended provisions are now set to expire on December 31, 2012 resulting in tax increases and many new taxes are set to take effect beginning in 2013 to fund Obamacare. Many have described the scheduled tax increases combined with automatic government spending cuts all taking effect January 1, 2013 as a "fiscal cliff" that could send the U.S. economy into a recession. If new legislation is not enacted before the end of the year, the following table shows the changes and the maximum tax rates that will go into effect:

	2012 Law	2013 Law
Top Ordinary Income Rate (Wages)	35.00%	40.50%
Top Capital Gains Rate	15.00%	23.80%
Tax Rate on Dividends	15.00%	43.40%
Tax Rate on Interest, Rents, Royalties, and Other Passive Ordinary Income	35.00%	43.40%
Estate/Gift/GST Tax Exemption Amount	$5,120,000	$1,000,000 (Estate and Gift) $1,430,000 (GST – est.)
Estate/Gift/GST Tax Rate	35%	55%

Additionally, all income tax brackets below the highest bracket are scheduled to increase, the 33% rate increases to 36%, the 28% rate increases to 31%, the 25% rate increases to 28%, and, although the 15% rate remains, the 10% rate bracket is eliminated. The phaseout of personal exemptions returns along with the overall limitation on itemized deductions (which could eliminate up to 80% of certain itemized deductions such as charitable contributions). Finally, various tax credits (such as the child credit) are reduced and other tax rules reducing or eliminating the "marriage penalty" will cease to apply.

With the re-election of President Obama, the Democrats retaining control of the Senate, and Republicans maintaining their majority in the U.S. House of Representatives, the 2012 election ends up changing very

little in Washington, D.C. While both sides are talking about trying to work together and compromise on the long-term tax on budgetary issues, the sides remain far apart on actual policy proposals. Currently, it is unclear if a deal will be reached during the lame duck session of Congress to extend all or a portion of the "Bush Tax Cuts" and address other tax and spending issues that are part of the "fiscal cliff." It is possible that a deal will be reached to temporarily extend the provisions into 2013 to allow time to work on a more comprehensive plan. However, there is also the possibility that the President and Congressional Republicans will be unable to come to terms on the parameters of an extension before the end of the year.

The President's re-election virtually assures that there will be no repeal of the major portions of Obamacare, that the 3.8% additional tax on net investment income for individuals with more than $200,000 of Modified Adjusted Gross Income ($250,000 for joint returns), and the 0.9% increase in the employee portion of Medicare tax for the same taxpayers will take effect in 2013. Thus, even if all the "Bush Tax Cuts" are extended, the effective top income tax rate will increase to 35.9% (from 35%) and the top capital gains rate will increase to 18.8% (from 15%).

As discussed below, the most time sensitive items involve the ability to use the $5,120,000 gift tax exclusion and GST Exemption before the end of the year. To the extent the increased exclusion amount is not utilized in 2012, the amounts may be lost forever. The countdown to December 31, 2012 begins now!

*** GIFT TAX AND ESTATE PLANNING ISSUES ***

▸ ***Gifts Excluded from Gift Tax***

Annual Exclusion Gifts

The "annual exclusion" gift amount has not changed for 2012. In 2012, you may give any one or more persons up to $13,000 (each) during the year (by December 31st) without incurring gift tax. A married couple may effectively double this amount to $26,000. This may be done by (a) the spouses writing separate checks or (b) having one spouse write the check(s) (up to $26,000 in the aggregate per donee), then having the spouses file a Gift Tax Return reflecting the other spouse's consent to "split" the gift. The exclusion cannot be carried into 2013 and the donees must cash any checks given to them by or before December 31, 2012. In 2013, the annual exclusion amount will increase to $14,000 per donee.

Note that the marital deduction is not allowed for gifts made to spouses who are not U.S. citizens. However, the annual exclusion for gifts to non-citizen spouses is $139,000 (increasing to $143,000 in 2013) for gifts to non-citizen spouses which would otherwise qualify for the gift tax marital deduction.

Tuition & Medical Expense Gift Tax Exclusions

Direct payments of medical expenses (including insurance premiums) and tuition (including advance payments) are allowed in addition to the available annual exclusion. The key to these exempt gifts is that they must be made directly to the service provider rather than going through the hands of a third party or given to reimburse otherwise qualified expenses.

Only the "tuition" costs paid directly to the educational institution are exempt. Tuition is generally defined to include school fees required for enrollment. Room, board, student health fees, transportation, field trips, books, supplies, equipment, optional school fees, testing costs, etc. generally fall outside this exemption. You should also note that contributions to 529 Plans or Programs do not qualify for the tuition exclusion. You will need to use the annual exclusion or your lifetime exemption for gifts to such programs, as discussed below.

Direct payment of medical expenses that are excluded from treatment as gifts include expenses for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, or for related transportation. Costs of glasses, contact lenses, dentures, braces and other orthodontic or dental work are also included. Additionally, direct payments of medical and dental insurance premiums to the insurer are excluded from treatment as gifts. The medical exclusion does not apply to amounts paid for medical care that are reimbursed to the donee by the donee's insurance.

Special Rule for Contributions to 529 Plans

Section 529 Plans are tax-advantaged accounts to save for educational expenses. Earnings from 529 Plans are tax-deferred, and distributions are tax-free if used for qualified educational expenses. Unlike tuition payments that are excluded from gifts, 529 Plan distributions can be used for all qualified post-secondary education costs, including room and board, mandatory academic fees, books, supplies (including computers), and certain other expenses. If paid to parties other than the school, such as landlords or grocery stores, such amounts must be within the school-budgeted amount for students. If funds are withdrawn from a 529 Plan but not used on an eligible college expense, the withdrawing person is subject to income tax and a 10% federal tax penalty on the earnings attributed to the withdrawal(s).

Although not eligible for the gift tax tuition exclusion, contributions to 529 Plans can be "front-end loaded" by electing to treat a current contribution, for gift tax purposes, as though it had been made over a five-year period. Using the current annual exclusion amount, this means you could contribute as much as $65,000 (5 x $13,000) to the 529 Plan, yet use none of your lifetime gift tax exclusion and not incur any gift tax, if you file the appropriate tax return making that five-year election (a separate return is required for each year during the five-year term). If you use this technique and contribute the maximum amount, it means you will have used up all your personal annual exclusion gifts for the plan beneficiary for the next five years. Still, the money gets out of your estate more quickly than making the contributions each year. If you use the five-year averaging method to front-end load a 529 Plan, and you do not live beyond the fourth calendar year, your estate will have to include a portion of any contribution made with that election. Among the attractive features of using 529 Plans is that your contributed funds are out of your estate but not necessarily out of your control during your life.

► ***Estate Planning Review***

We recommend that you review your estate plan to ensure it is updated taking into account your current family situation, your current asset structure, your dispositive wishes and the tax provisions in effect at this time. You should also check to make sure that your assets are properly titled so that your estate plan operates as intended. If you are married, care should be taken to ensure that both you and your spouse will fully utilize your available federal estate tax credits, which may require the gift tax-free transfer of ownership of some assets between spouses (assuming the donee spouse is a U.S. citizen). Although we are not sure what changes (if any) will be enacted by Congress, the temporary provisions of the 2010 Tax Act combined with decreased asset valuations, historically low interest rates, and the possibility of future legislation curtailing some common estate planning techniques make now a very good time to consider in engaging in estate planning transactions.

Taxable Gifts – Use of Increased Lifetime Gift Tax Exclusion Amount

The most compelling estate planning opportunity created by the 2010 Tax Act is the ability to make substantial taxable gifts before the end of 2012 without incurring any gift tax. The 2010 Tax Act increased the estate tax exclusion amount to $5,000,000 and indexed the amount for inflation which caused the exclusion amount to increase to $5,120,000 in 2012. The 2010 Tax Act also reunified the gift tax exclusion with the estate tax exclusion. The reunification of the estate and gift tax exclusion amounts means that every individual has the ability to make at least $5,120,000 (less exemption used in prior years) of taxable gifts without incurring a gift tax liability. A husband and wife are able to make taxable gifts of at least $10,240,000 (less exemption used in prior years) without incurring gift tax.[1] Lifetime gifts are particularly beneficial from an estate planning perspective as all post-gift appreciation accrues outside of the donor's transfer tax base. Additionally, lifetime gifts can be made through irrevocable trusts that create asset protection benefits for the beneficiaries.

Without legislation, the estate and gift tax exclusion amounts return to $1 million on January 1, 2013. Therefore, the opportunity to take advantage of the increased exemption amounts could be lost if gifts are not made before the end of 2012. It may be easy to make an outright gift of cash or securities late in December,

[1] A split-gift election to allow all gifts to be treated as made one-half by each spouse is not available if one of the spouses is not a citizen or resident of the United States.

but often gifting strategies involving multiple millions of dollars will involve the use of trusts, closely held business entities, or other assets that are not as simple to transfer (such as real estate). The end of 2012 is fast approaching so we advise anyone interested in taking advantage of the increased exclusion amount to contact their attorney as soon as possible so that transactions can be completed before year end. To the extent that there is insufficient time to transfer certain assets before the end of the year, it may be possible to create a trust, fund the trust with cash (or other easy to value assets such as marketable securities), and then use a power of substitution in the trust to swap assets for the cash next year. The important thing is to complete the gift aspect of the transaction before the end of 2012.

The amount of one's available transfer tax exemption for gifting or at death is based on the exemption for that year, reduced by prior taxable gifts to which gift tax exemption has been applied. If the exclusion amount is reduced in future years as scheduled, there is the potential for the IRS to tax the $4,120,000 excess exclusion utilized in 2012 that is not available in future years as part of the individual's estate tax. This possibility is referred to as the "clawback" or recapture of the untaxed excess gifts, irrespective of the fact that the gifts were within the gift tax exemption limit when made. Most commentators believe that even if the gift and estate tax exemptions are reduced in the future, gifts made under higher exemption amounts will not be clawed back. However, because the 2010 Tax Act did not specifically address this situation, we do not yet know how such a situation will be handled, and only legislation can change it. Notwithstanding the potential risk of clawback applying, making a gift now is seen as preferable to waiting. Even in the event of an effective clawback of excess gifts, any appreciation in the value of currently gifted assets will be out of your estate and, as long as the gifted assets do not decline in value, you should not be any worse off than if you had never made the gifts in the first place.

Benefitting from Historically Low Interest Rates

In our year-end letter last year, we noted that the minimum interest rates required by the tax rules for estate planning transactions were at all-time lows. Little did we know that QE2 would turn into QE3 and that most interest rates would continue to decline in 2012. The applicable federal rates (the "AFRs") for November 2012 are 0.22% for short-term (3 years or less); 0.89% for mid-term (more than 3 years but not more than 9 years); and 2.40% for long-term (more than 9 years). The AFR is the minimum rate of interest that must be charged on loans to avoid interest being imputed for tax purposes. Many estate planning techniques such as grantor retained annuity trusts ("GRATs") and charitable lead trusts ("CLTs") require use of an interest rate equal to 120% of the mid-term AFR (the "Section 7520 Rate"). For November 2012, the Section 7520 Rate is 1.0%, a new all-time low.

A number of estate planning transactions such as sales to intentionally-defective grantor trusts, intra-family loans, GRATs, and CLTs can allow you to take advantage of the low interest rates and transfer appreciation in excess of the required interest rate without incurring estate or gift tax. For example, if a simple 9-year intra-family loan of $5,000,000 was made at the mid-term AFR and the asset were invested to earn a return of 6% annually, more than $2,800,000 could be transferred without any estate or gift tax.

GST Planning Opportunities

The 2010 Tax Act's increase in the estate and gift tax exclusion amount resulted in a corresponding increase to the GST Exemption amount to $5,120,000 for 2012. Absent legislation, the GST Exemption amount will be reduced to $1,430,000 (estimated) on January 1, 2013. You can allocate your GST Exemption to lifetime gifts to trusts and structure such trusts to continue for multiple generations (i.e., a "Dynasty Trust"). If all the gifts to a Dynasty Trust are covered by an allocation of GST Exemption, the Dynasty Trust will not be subject to a GST tax for as long as the property remains in the trust. Under Florida law, a Dynasty Trust may exist for up to 360 years; and certain other jurisdictions, such as Delaware, allow Dynasty Trusts to continue in perpetuity.

*** INCOME TAX, CHARITABLE GIFTS & DEDUCTIONS, IRA-ROTH ISSUES ***

► ***Accelerating Income and Deferring Deductions?***

The conventional wisdom is to try to delay taxation by delaying recognition of income and accelerating deductions. However, with the prospect of higher marginal tax rates in 2013, delaying income could result in

paying higher taxes than if the income was recognized in 2012. For that reason, you may wish to consider accelerating income and capital gains into 2012 and deferring expenses and deductions (other than itemized deductions) until 2013.

Recognition of Capital Gains

Long term capital gains recognized in 2012 will be taxed at 15%, but long-term capital gains in 2013 may be subject to tax at 23.8%. The additional tax on $1 million of gain deferred from 2012 to 2013 could be as much as $88,000, which is a significant "interest" cost for deferring $150,000 of tax (15% of $1 million) for 1 year. If a stock investment has significant appreciation but you still want to continue to hold the particular stock, you can sell it to trigger gain recognition and immediately re-purchase the same stock. The wash sale rule that prevents you from acquiring the same security within 30 days of a sale to be allowed to recognize a loss does not apply for purposes of gain. You should be aware that if you recognize gain in 2012 and reacquire the same investment, the capital gains tax will be due in April 2013, your holding period will start over so you must hold the stock for more than a year before it will qualify as long term again, and, if the investment declines in value, the loss will be a capital loss subject to the limitations on capital losses (you could pay capital gains tax at 15% and then recognize a capital loss that can only be used against other gains and up to $3,000 a year of ordinary income).

Installment Method Gains

If you engaged in a sale transaction this year where payments are going to be received over a number of years and gain recognized under the installment method, you may consider electing out of the installment method and recognizing all gain in 2012 at current rates. Additionally, if you have installment method gains from transactions before 2012 where you are to receive payments after 2012, there may be ways to accelerate those deferred gains into 2012 by disposing of the installment note or pledging the note as collateral for a loan.

▸ ***Itemized Deduction Limitations***

Although in general the strategy of deferring deductions if tax rates are anticipated to rise may be sound, there is a reason not to defer deductions that are classified as itemized deductions. If the "Bush Tax Cuts" expire, the overall limitation on itemized deductions (which does not apply in 2012) will be reinstated and taxpayers will have their itemized deductions reduced by the lesser of (i) 3% of Adjusted Gross Income above $174,450, or (ii) 80% of itemized deductions. Itemized deductions for medical expenses, casualty losses, and investment interest are not subject to the limitation. This limitation on itemized deduction effectively adds about one percentage point to the top two income tax brackets. As a result of the possibility of the reinstatement of the limitation on itemized deductions, we would generally not recommend deferring itemized deductions.

▸ ***Charitable Contribution Deductions***

Charitable Deduction Limitations

The deduction for contributions to a public charity in any given year may not exceed 50% of your Adjusted Gross Income (30% if the donation is of capital gain property). The deduction for contributions to a private foundation is limited to 30% of your Adjusted Gross Income (20% if the donation is of capital gain property). Any excess charitable deduction may be carried forward for five years, but the rules on this are complex and you should speak with your tax advisor before making excess charitable gifts.

Timing of Deduction

If you are making a year-end cash gift, there are rules which will apply to determine in what year the gift will be counted as a charitable deduction. For a contribution in actual cash, the organization must receive the cash and log it in by December 31, 2012. For contributions by check, the checks must be postmarked (or delivered) and noted as received by the charity by December 31, 2012. A credit card donation is deemed received by the charity on the date the transaction is processed by the credit card company. Untimely received/processed donations will move your deduction from 2012 into 2013 (and may subject it to the itemized deduction limitation described above).

▶ ***Direct Charitable Distribution from IRAs Rules Have Not Been Extended for 2012***

For a number of years, there has been a provision that allows individuals over age 70 ½ to make a direct distribution from their IRA to a charitable organization of up to $100,000 per year without including the distribution in gross income (no charitable deduction is allowed). The amount of the qualified charitable distribution counts as part of the individual's required minimum distribution for the year. This provision has not yet been extended for 2012. In 2010, the provision was not extended for 2010 until the 2010 Tax Act was passed on December 17, 2010. Again this year there are a number of expired tax provisions for 2012 that have yet to be extended. It is possible that some or all of these provisions will be extended for 2012 before the end of the year or in early 2013, but as of now, the rule that allows direct charitable distributions from IRAs is not in effect.

▶ ***Year-End Stock and Security Sales***

With the consideration that the capital gains rate may increase significantly next year and you may wish to defer losses so they can offset future gains taxed at a higher rate, there are rules you need to be aware of if you wish to sell loss assets before the end of the year. If you have stocks in your portfolio that have unrealized losses, you may want to consider selling them before the end of the year. Realized losses will cancel out realized capital gains and up to an additional $3,000 ($1,500 if married filing separately) of ordinary income. In order for the deduction to be effective, you cannot repurchase the same securities within thirty (30) days of the sale. Also, if you already have net realized losses over $3,000, which otherwise must be carried forward, you might consider taking enough long-term capital gains to eliminate the excess losses. Taking the gains will not increase your tax. You should avoid incurring any short-term capital gains since any gain realized on stocks held for less than twelve (12) months will be taxed at ordinary-income rates.

▶ ***Portfolio Considerations for Higher Tax Rates***

The most significant possible change in tax rates relates to changes in the tax rate applicable to dividends. Since 2003, qualified dividends have been subject to tax at the 15% long term capital gains rate. If the "Bush Tax Cuts" expire and the 3.8% Obamacare tax on investment income takes effect, the applicable rate for dividends will nearly triple from 15% to 43.4%. This substantial increase in the tax rate on dividends may cause corporations to pay less in dividends and look for other methods of returning cash to shareholders through stock buy-backs. In some respects, it may make dividend paying stocks less attractive investments. To the extent tax rates increase, tax-exempt investments such as municipal bonds may become more attractive investments. We would suggest you review your portfolio with your investment advisors to determine if you should change your overall asset allocation in advance of the potential tax changes coming in 2013.

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We hope the information in this letter is helpful to you in your year-end planning. If you have any questions, we would be happy to assist you.

Best wishes for a healthy and joyous holiday and New Year.

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In this Year-End Letter, we have deliberately simplified technical aspects of the law in the interest of clear communication. Under no circumstances should you or your advisors rely solely on the contents of this Year-End Letter for legal advice, nor should you reach any decisions with respect to your personal tax or estate planning without further discussion and consultation with your advisors.

In accordance with IRS Circular 230, we are required to disclose that: (i) this memorandum was not intended or written by us to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer; (ii) this memorandum was *not* written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the memorandum; and (iii) each taxpayer should seek advice on his or her particular circumstances from an independent tax advisor.