AGEEFISHERBARRETT

750 Hammond Drive, Building 17, Atlanta, GA 30328
(P) 404.250.4570 (F) 404.847.0511 www.afbllc.com

CLIENT TAX ALERT 2013-01 | January 2, 2013

Congress Passes Bill to Avert Fiscal Cliff Tax Consequences

On January 1, 2013, Congress passed H.R.8, the "American Taxpayer Relief Act" (the Act), which the President is expected to quickly sign into law, to avert the country from going over the "fiscal cliff" and to prevent many of the tax hikes that were scheduled to go into effect this year and retain favorable tax breaks that were scheduled to expire. However, the Act also increases income taxes for some high-income individuals and slightly increases transfer (Gift & Estate) tax rates. The following provides an overview of the key provisions of the Act.

Highlights of the Act:

Tax Rates - For tax years beginning after 2012, the income tax rates for individuals will stay at 10%, 15%, 25%, 28%, 33% and 35%, but with a 39.6% rate applying for income above a threshold of $450,000 for joint filers and surviving spouses; $425,000 for heads of household; $400,000 for single filers; and $225,000 (one-half of the otherwise applicable amount for joint filers) for married taxpayers filing separately. These dollar amounts are inflation-adjusted for tax years after 2013.

Two Old Phaseouts are Back –

1. **Personal Exemption Phaseout (PEP) -** For tax years beginning after 2012, the PEP, which had previously been suspended, is reinstated with a starting threshold for those making $300,000 for joint filers and a surviving spouse; $275,000 for heads of household; $250,000 for single filers; and $150,000 (one-half of the otherwise applicable amount for joint filers) for married taxpayers filing separately. Under the phaseout, the total amount of exemptions that can be claimed by a taxpayer subject to the limitation is reduced by 2% for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold. These dollar amounts are inflation-adjusted for tax years after 2013.

2. **Itemized Deduction Limitation -** For tax years beginning after 2012, the "Pease" limitation on itemized deductions, which had previously been suspended, is reinstated with a starting threshold for those making $300,000 for joint filers and a surviving spouse, $275,000 for heads of household, $250,000 for single filers, and $150,000 (one-half of the otherwise applicable amount for joint filers) for married taxpayers filing separately. For taxpayers subject to the "Pease" limitation, the total amount of their itemized deductions is reduced by 3% of the amount by which the taxpayer's adjusted gross income (AGI) exceeds the threshold amount, with the reduction not to exceed 80% of the otherwise allowable itemized deductions. These dollar amounts are inflation-adjusted for tax years after 2013.

Capital Gain and Dividend Rates - For tax years beginning after 2012, the top rate for capital gains and dividends will permanently rise to 20% (up from 15%) for taxpayers with incomes exceeding $400,000 ($450,000 for married taxpayers). When accounting for Code Sec. 1411's 3.8% surtax on investment-type income and gains for tax years beginning after 2012, the overall rate for higher-income taxpayers will be 23.8%.

For taxpayers whose ordinary income is generally taxed at a rate below 25%, capital gains and dividends will permanently be subject to a 0% rate. Taxpayers who are subject to a 25%-or-greater rate on ordinary income, but whose income levels fall below the $400,000/$450,000 thresholds, will continue to be subject to a 15% rate on capital gains and dividends. The rate will be 18.8% for those subject to the 3.8% surtax.

Transfer Tax Provisions - The Act prevents steep increases in estate, gift and generation-skipping transfer (GST) tax that were slated to occur for individuals dying and gifts made after 2012 by permanently keeping the exemption level at $5,000,000 (as indexed for inflation). However, the Act also permanently increases the top estate, gift and rate from 35% to 40%. The Act also continues the portability feature that allows the estate of the first spouse to die to transfer his or her unused exclusion to the surviving spouse. All changes are effective for individuals dying and gifts made after 2012.

Any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

750 Hammond Drive, Building 17, Atlanta, GA 30328
(P) 404.250.4570 (F) 404.847.0511 www.afbllc.com

Alternative Minimum Tax (AMT) - The Act provides permanent alternative minimum tax (AMT) relief. The AMT is the excess, if any, of the tentative minimum tax for the year over the regular tax for the year. In arriving at the tentative minimum tax, an individual begins with taxable income, modifies it with various adjustments and preferences, and then subtracts an exemption amount (which phases out at higher income levels). The result is alternative minimum taxable income (AMTI), which is subject to an AMT rate of 26% or 28%.

Retroactively effective for tax years beginning after 2011, the Act permanently increases these exemption amounts to $50,600 for unmarried taxpayers, $78,750 for joint filers and $39,375 for married persons filing separately. In addition, for tax years beginning after 2012, it indexes these exemption amounts for inflation.

Prior to the Act, for 2012, nonrefundable personal credits—other than the adoption credit, the child credit, the savers' credit, the residential energy efficient property credit, the non-depreciable property portions of the alternative motor vehicle credit, the qualified plug-in electric vehicle credit, and the new qualified plug-in electric drive motor vehicle credit—were to be allowed only to the extent that the individual's regular income tax liability exceeded his tentative minimum tax, determined without regard to the minimum tax foreign tax credit. Retroactively effective for tax years beginning after 2011, the Act permanently allows an individual to offset his entire regular tax liability and AMT liability by the nonrefundable personal credits.

Recovery Act Extenders - The Act extends for five years the following items that were originally enacted as part of the American Recovery and Investment Tax Act of 2009 and that were slated to expire at the end of 2012:

- The American Opportunity tax credit, which permits eligible taxpayers to claim a credit equal to 100% of the first $2,000 of qualified tuition and related expenses, and 25% of the next $2,000 of qualified tuition and related expenses (for a maximum tax credit of $2,500 for the first four years of post-secondary education);
- Eased rules for qualifying for the refundable child credit; and
- Various earned income tax credit (EITC) changes relating to higher EITC amounts for eligible taxpayers with three or more children, and increases in threshold phaseout amounts for singles, surviving spouses, and heads of households.

Historical Individual Extenders - The Act extends the following items for the period indicated beyond their prior termination date as shown in the listing:

- The deduction for certain expenses of elementary and secondary school teachers, which expired at the end of 2011 and which is now revived for 2012 and continued through 2013;
- The exclusion for discharge of qualified principal residence indebtedness, which applied for discharges before Jan. 1, 2013 and which is now continued to apply for discharges before Jan. 1, 2014;
- Parity for the exclusions for employer-provided mass transit and parking benefits, which applied before 2012 and which is now revived for 2012 and continued through 2013;
- The treatment of mortgage insurance premiums as qualified residence interest, which expired at the end of 2011 and which is now revived for 2012 and continued through 2013;
- The option to deduct State and local general sales taxes, which expired at the end of 2011 and which is now revived for 2012 and continued through 2013.
- The special rule (a taxpayer’s aggregate qualified conservation contributions are allowed up to the excess of 50% of the taxpayer’s contribution base over the amount of other allowable charitable contributions with a 15-year carryover of such contributions in excess of the applicable limitation) for contributions of capital gain real property made for conservation purposes, which expired at the end of 2011 and which is now revived for 2012 and continued through 2013;
- The above-the-line deduction for qualified tuition and related expenses, which expired at the end of 2011 and which is now revived for 2012 and continued through 2013; and

Any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

- Tax-free distributions (up to $100,000) from individual retirement plans for charitable purposes, which expired at the end of 2011 and which is now revived for 2012 and continued through 2013. Because 2012 has already passed, a special rule permits distributions taken in December of 2012 to be transferred to charities in cash before February 1, 2013. Another special rule permits certain distributions made during January of 2013 as being deemed made on Dec. 31, 2012.

Depreciation Provisions - The following depreciation provisions are retroactively extended by the Act through 2014:

- 15-year straight line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements;
- 7-year recovery period for motorsports entertainment complexes;
- Accelerated depreciation for business property on an Indian reservation;
- Increased expensing limitations and treatment of certain real property as Code Sec. 179 property;
- Special expensing rules for certain film and television productions; and
- The election to expense mine safety equipment.

The Act also extends and modifies the bonus depreciation provisions with respect to property placed in service after Dec. 31, 2012, in tax years ending after that date.

Business Tax Breaks Extended - The following business credits and special rules are also extended:

- The Research and Development Credit is modified and retroactively extended for two years through 2013.
- The Employer Wage Credit for employees who are active duty members of the uniformed services is retroactively extended for two years through 2013.
- The Work Opportunity Tax Credit is retroactively extended for two years through 2013.
- Allowance of the domestic production activities deduction for activities in Puerto Rico, for the first eight tax years of the taxpayer beginning after Dec. 31, 2005, and before Jan. 1, 2014.
- Treatment of certain dividends of regulated investment companies (RICs) as “interest-related dividends” is extended through Dec. 31, 2013.
- Inclusion of RICs in the definition of a “qualified investment entity” is extended through Dec. 31, 2013.
- Look-through treatment for payments between related controlled foreign corporations (CFCs) under the foreign personal holding company rules is extended through Jan. 1, 2014.
- Exclusion of 100% of gain on certain small business stock acquired before Jan. 1, 2014.
- Basis Adjustment to stock of S corporations making charitable contributions of property under Code Sec. 1367(a) in tax years beginning before Dec. 31, 2013.
- The reduction in S corporation recognition period for built-in gains tax under Code Sec. 1374(d)(7) is extended through 2013, with a 10-year period instead of a 5-year period.

Energy-Related Tax Breaks Extended - Various energy credits are extended. These include:

- The nonbusiness energy property credit for energy-efficient existing homes is retroactively extended for two years through 2013. A taxpayer can claim a 10% credit on the cost of: (1) qualified energy efficiency improvements, and (2) residential energy property expenditures, with a lifetime credit limit of $500 ($200 for windows and skylights).
- The alternative fuel vehicle refueling property credit is retroactively extended for two years through 2013 so that taxpayers can claim a 30% credit for qualified alternative fuel vehicle refueling property placed in service through Dec. 31, 2013, subject to the $30,000 and $1,000 thresholds.
- The credit for 2- or 3-wheeled plug-in electric vehicles is modified and retroactively extended for two years through 2013.
- The credit for biodiesel and renewable diesel is retroactively extended for two years through 2013.

Any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

750 Hammond Drive, Building 17, Atlanta, GA 30328
(P) 404.250.4570 (F) 404.847.0511 www.afbllc.com

- The credit for energy-efficient new homes is retroactively extended for two years through 2013.
- The credit for energy-efficient appliances is retroactively extended for two years through 2013.
- The alternative fuels excise tax credits for sales or use of alternative fuels or alternative fuel mixtures is retroactively extended for two years through 2013.

Retirement Plan Provision - For transfers after Dec. 31, 2012, in tax years ending after that date, plan provisions in an applicable retirement plan (which includes a qualified Roth contribution program) can allow participants to elect to transfer amounts to designated Roth accounts with the transfer being treated as a taxable qualified rollover contribution under Code Sec. 408A(e).

For further assistance, please contact your AgeeFisherBarrett,LLC tax advisor at 404.250.4570 or through our website at http://www.afbllc.com/Contact-Information.html.

Any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.