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THE HIGHS AND LOWS OF TAX PLANNING

CHECK OUT MARGINAL TAX RATES

The tax on a dollar of income can vary greatly under the U.S. tax code. Today's graduated income tax rates range from zero to 39.6% for individuals. With FICA or self-employment tax, additional taxes added under the Affordable Care Act, phase-outs of itemized deductions and personal exemptions, and increased capital gain and qualified dividend rates for taxpayers in the highest tax bracket, marginal tax rates for individual taxpayers for 2014 can range from zero to well in excess of 50%.

After the standard deduction ($12,400) and personal exemptions ($3,950 each), a married couple with $20,300 of income will owe zero federal income tax. The same couple with two dependent children could earn $28,200 and owe zero federal income tax (without considering the child tax credit or earned income credit). If both parents fully fund a traditional IRA ($5,500 each), they could earn $39,200 and pay zero federal income tax (they would have FICA or self-employment tax but may also receive tax credits). This same family could then also receive up to another $73,800 from long term capital gain or qualified dividends and still owe zero federal income tax (qualified dividends and long term capital gains are taxed at a zero rate if overall income does not exceed the 15% bracket - $73,800 for married filing jointly). If the family had that same amount of added income ($73,800) but the source was wages, interest, business income, or other types of income, the federal income tax would be $10,162 (though tax credits may apply). Additional income would move the taxpayers into the 25% bracket.

For joint filing married taxpayers with any net investment income, modified adjusted gross income (MAGI) above $250,000 will trigger the 3.8% net investment income tax (NIIT). The NIIT is charged on the lesser of net investment income or the amount of MAGI in excess of the threshold amount ($250,000 for joint filers). Married filers who are subject to NIIT would typically be in at least the 28% marginal tax bracket (the 33% marginal tax rate starts at $226,850 of taxable income), and the 3.8% NIIT would be on top of the regular income tax rate. Strategies to control or reduce the NIIT could include reducing MAGI by deferring/smoothing income, making use of installment income, accelerating business expenses, claiming section 179 depreciation (limited to $25,000 under current law as this is written), and contributing to traditional IRAs or qualified retirement plans. Other strategies include reducing net investment income by structuring certain income so that it is not considered investment income (nor subject to self-employment tax).

For wage or business earned income over the threshold amount, the additional medicare tax applies at the rate of 0.9%. For joint filers, the threshold amount is $250,000.

The phase-out of certain itemized deductions and personal exemptions for higher income taxpayers, which had been eliminated for several years, was reinstated beginning in 2013. Married joint filers with adjusted gross income (AGI) of $308,050 or more begin to lose

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itemized deductions and their personal exemptions. The reduction (named for former representative from Ohio, Donald Pease) is the smaller of 80% of certain itemized deductions or 3% of the taxpayer's AGI over the threshold amount.

Joint filing married taxpayers reach the highest tax bracket (39.6%) at $457,600 of taxable income. At incomes above these levels, long terms capital gain rates and qualified dividend rates are increased from 15% to 20%. While perhaps intended to apply to the wealthiest taxpayers, these rates can apply to taxpayers of modest income who have a one-time event such as the sale of a farm, business, or investment.

The examples used in this article use brackets and rates for married taxpayers filing jointly. The rules also apply to other filing status taxpayers (single, married filing separately, head of household, etc.), though the numbers will be different.

& TAX ISSUES FROM THE AFFORDABLE CARE ACT

The federal health care legislation enacted in 2010 known as the Affordable Care Act (ACA) included a number of provisions that will affect individual's and business's 2014 income tax returns. These include 1) the individual mandate requiring health insurance coverage, 2) the penalty or tax (shared responsibility payment) charged to those who don't have minimum essential coverage or a qualifying exemption, and 3) calculation of the income based premium tax credit and repayment of excess advanced premium tax credits. Penalties related to the employer mandate were postponed until 2015.

Beginning with 2014, all individuals are required to have minimum essential health insurance coverage or to pay a penalty. The 2014 penalty is calculated as the higher of $95 per adult and $47.50 per child limited to $285 per month or 1% of household income. Payment is capped at the national average premium for a bronze level health plan available through the exchanges ($204 per individual per month for 2014). The penalties increase for 2015 and 2016, with the 2016 penalties essentially equivalent to the cost of bronze level coverage.

Individuals who are not eligible for employer or government health plan coverage with incomes between 100% and 400% of the federal poverty line for their family size are eligible for premium tax credits for plans purchased through the health care marketplace. The estimated credit can be paid monthly in advance to offset the premium cost through the year. The advance credit is based on estimated income as reported through the exchange. The actual credit is calculated on the tax return based on actual income for the year. If the estimated credit exceeds the actual credit, the difference must be repaid as part of the tax return for the year.

Individuals may obtain an exemption from the health coverage requirements in certain circumstances, such as: coverage is unaffordable (more than 8% of household income), the individual spent at least 330 days outside the U.S. during the year, the individual was incarcerated, gross income is below the filing threshold, existing coverage will not be renewed and other plans are unaffordable, etc. Note that in most cases, an exemption certificate must be obtained through the health insurance marketplace before an exemption is valid.

Coverage is determined monthly for the members of the household, and the penalty is computed based on the months where there was no coverage and no exemption. Taxpayers will need to be able to provide their tax preparer with evidence of coverage for each month for each household member, provide a valid exemption certificate if applicable, provide evidence of advance premium tax credits, and provide information on household members who file their own tax returns. If coverage was offered through an employee but was not accepted, the coverage and cost information may be needed in order to calculate whether the offered coverage was affordable. A plethora of new forms and worksheets will be used in the ACA reporting. Taxpayers may see an increase in tax preparation fees or will spend increased time preparing their returns for 2014.

TIME FOR YEAR-END TAX PLANNING

Year-end tax planning can be one of the most important annual activities for farmers and business owners. Ideally, tax planning is a year-round activity, since many times options are limited if you wait too close to the year's close. Planning for 2014 has been made more difficult by the expiration of more than 50 tax benefits, credits and exclusions, including the expiration of bonus depreciation and the reduction of the section 179 limit to $25,000. These expired tax benefits are currently being reviewed in Congress and could possibly end up reinstated retroactively. As things currently stand, there is no bonus depreciation for 2014, and the section 179 limit is $25,000 (which begins to be phased out when total capital purchases are greater than $200,000).

The greatest overall tax saving often result not from reducing this year's income to the lowest possible level, but from planning to achieve a stable level of net income over a period of years, while staying just below certain income thresholds. Large swings in net income from year to year can often result in next year's higher tax more than offsetting this year's low tax.

The planning tools available to taxpayers include a variety of strategies that can often be combined to achieve the best overall results. Farmers have the advantage of being able to use cash accounting in the reporting of income and expenses. This allows income to be managed by choosing whether to sell product this year or to defer it to a later year.

Expenses also can be managed at year end by choosing whether to pay or prepay items this year or wait until next.

Bonus depreciation (if it is reinstated) and section 179 expensing provide additional tools to manage income. Decisions on use of bonus depreciation and section 179 can be made after year end when taxes are being prepared, provided qualifying purchases were made during the year.

When farm incomes are rising or if the planning efforts weren't fully successful, farmers have the ability to use farm income averaging in the calculation of this year's tax. Farm income averaging allows an elected portion of this year's farm income to be taxed as if one-third of the elected amount were received each of the prior three years. The benefit results when income can be taxed in lower prior year tax brackets rather than current year levels.

Taxpayers that don't have farm or business income may have less ability to control their income, but they may still be able to make decisions about funding 401k plans and IRAs, or contributing to health savings accounts to control income levels, and to plan for the amount and timing of itemized deductions (such as property tax, estimated state and local tax payments, charitable contributions, and so forth). As with farm and business planning, starting the planning process early and considering more than one year at a time can also pay dividends for individual taxpayers.

IRS INFLATION ADJUSTMENTS

The IRS has released new inflation adjusted numbers for 2015. Here are some adjustments most likely to affect our clients:

- Applicable Exclusion amount for estate tax purposes - $5,430,000
- Agricultural Use Value reduction cap - $1,100,000
- Annual Exclusion for gift tax purposes - $14,000
- Annual Exclusion for non-citizen spouse - $147,000
- Personal Exemption for income tax purposes - $4,000
- Standard Deduction - $12,600 for joint returns, $6,300 for unmarried
- 39.6% income tax bracket applies for income over - $464,850 for joint returns, $413,200 for unmarried, and $12,300 for undistributed income in trusts.

OHIO SUPREME COURT TO DECIDE
ARE METAL BINS REAL PROPERTY FOR TAX PURPOSES?

The Ohio Supreme Court is set to decide whether metal storage bins used by farmers and agribusinesses are subject to taxation as real property. At present, some Ohio county auditors assess metal storage bins as real property, while others recognize that metal storage bins are personal property that can be disassembled and reassembled at another location.

This is an important case to Ohio's agricultural community. More than 50% of commercial grain storage and virtually all on-farm grain storage in Ohio are comprised of metal storage bins similar to the bins at issue in the case.

In Ohio, real property is subject to taxation based upon its value. Real property tax rates vary and are levied locally by school districts, counties, municipalities, townships and special service districts such as zoological associations.

The case being considered by the Ohio Supreme Court (*The Metamora Elevator Company v. Fulton County Board of Revision, et al.)* began when the local grain company (Metamora) objected to Fulton County's assessment and taxation as real property of corrugated metal storage bins. Metamora argued that metal bins are personal property because they are not permanent, can be removed and sold, and can be reassembled at another location. Metamora argued that metal storage bins are therefore different than permanent concrete silos, which can be taxed as real property. The Ohio Board of Tax Appeals agreed with Metamora and found that metal grain storage bins do not meet the definition of real property set forth in Ohio statutory law and cannot be taxed as real property by local taxing authorities. The Fulton County Board of Revision and the Fulton County Auditor appealed to the Ohio Supreme Court.

The Ohio AgriBusiness Association (OABA), the Fulton County Farm Bureau, the Ohio Farm Bureau Federation, and Central Ohio Farmers Co-op have filed what are called Amicus Curiae ("friend of the court") briefs with the Ohio Supreme Court supporting Metamora's position that metal storage bins are not subject to taxation as real property under Ohio law.

Contact David Barrett or Amanda Stacy if you have questions about the case or would like to obtain copies of the pleadings filed in the case.

UPCOMING SPEAKING ENGAGEMENTS

JANUARY 5-6

Kristi Wilhelmy, OSHA Compliance, Ohio Land Improvement Contractors Associate Annual Convention, Embassy Suites, Dublin

JANUARY 13

David Barrett – Grain Contracts and Contracting Issues, Michigan Agri-Business Association Annual Winter Conference, Lansing, MI

JANUARY 19

David Barrett, Amanda Stacy, and Carolyn Eselgroth -- Annie's Project, Washington County, Ohio

FEBUARY 17

Russell Cunningham – Farm Estate planning for accountants, attorneys, and bank trust officers, Fairfield County, Ohio

MARCH 27

Kristi Wilhelmy – Keynote Speaker, 2015 East Ohio Women in Agriculture Conference

REMINDER TO TRUSTEES: THINK ABOUT TRUST INCOME DISTRIBUTIONS

For those of you with irrevocable trusts, you should be thinking about distributions of trust income. Some trusts require the Trustee to distribute all of the income. Make sure that all of the trust income is distributed at least annually or more frequently if so directed by the terms of the trust.

If the trust is discretionary, the Trustee is not required to make distributions. In this case, the Trustee has up to 65 days after the end of the tax year to decide how much income to distribute and to which of the permissible income beneficiaries to distribute the income. This is a more complicated decision because it needs to take into consideration a mix of need, tax consequences, creditor protection issues and other intangible issues. For example, the Trustee should compare the marginal effective income tax rates for the trust as well as the beneficiaries.

In some cases, you may be able to minimize income tax by holding some of the income in the trust; however, if the trust has more than $12,000 of income, you may be able to minimize income taxes by making distributions before the end of the 65 day period. On the other hand, if a beneficiary is having creditor problems, it may be better to let the income accumulate in the trust, even though the trust may pay a higher income tax rate.

If a beneficiary has an estate that is large enough to be subject to the federal estate tax, it may not be a good idea to distribute income to that beneficiary, because the net income will increase the beneficiary's taxable estate, which could cause an additional 40% estate tax to apply to that income on the death of the beneficiary.

ESTATE PLANNING FOR A DIGITAL AGE

Many times after a person dies, the family is presented with a treasure hunt to figure out what was in the decedent's estate. This can be true of digital assets, as well. As people acquire more online accounts, web addresses, bitcoin wallets or other digital assets, it is a good idea to think about these things in putting together instructions for your heirs. You may want to keep a digital asset listing like you would a balance sheet for hard assets. You should keep a record of the user names and passwords to access the digital information. If the digital assets have significant value, you may want to keep a record of the value periodically. Without this information, your heirs may lose the ability to access the rights or information.

DID YOU KNOW?

In 2012 when the applicable exclusion for gift tax purposes was set to drop from $5 million to $1 million, 110,117 people made non-taxable gifts of more than $1 million. In total, individuals made $391 billion in non-taxable gifts in 2012.

BECE WELCOMES 4 NEW STAFF MEMBERS

We are pleased to announce Sharon L. R. Miller joined the firm "of counsel" on November 1. Sharon has focused her practice on estate planning and wealth preservation for individuals and their families. She has been certified by the Ohio State Bar Association as a Specialist in Estate Planning, Trust and Probate Law and has been practicing law in central Ohio for more than 30 years. She is a graduate of Kent State University, received her Juris Doctor from Ohio Northern University and a Master of Laws in Taxation from the University of Florida College of Law. Sharon has served as adjunct professor at Capital University Law & Graduate Center, where she taught charitable giving, federal estate and gift taxation and corporate taxation in the Graduate Tax Program; director of law and counsel for United

McGill Corporation; attorney at Isaac, Brant, Ledman & Becker; Ohio EPA; and law placement director for Ohio Northern University College of Law. She most recently was a shareholder at Blaugrund, Herbert, Kessler, Miller, Myers & Postalakis, Inc. in Worthington. She also serves on the legal advisory committee of The Columbus Foundation and is a member of WealthCounsel, LLC. Sharon originally hails from Hicksville, OH.

Mark W. Mason, BECE's newest associate, has returned to Madison County after serving his country. Mark graduated in 2004 from Mount Vernon Nazarene University, Cum Laude, with a Bachelor of Arts Degree in Integrated Social Studies. After working as a college admissions counselor for two years, Mark attended Capital University Law School, where he graduated Cum Laude in 2009. During undergraduate and law school, Mark was an aircraft firefighter in the Ohio Air National Guard in Springfield, Ohio. Upon graduation from law school, Mark accepted a commission to be

a JAG (judge advocate general) in the United States Air Force. Following training in Alabama, Mark was stationed in Oklahoma City, Oklahoma, and Panama City, Florida. During his 5 years of active duty, Mark headed various legal divisions, including military justice, labor and employment, and claims.

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If you hear a friendly voice on the other end of the phone, it's likely to be Pam Long, receptionist and legal secretary. Pam is originally from London and has worked for the Attorney General's office in several capacities. After retiring from the Attorney General's office, Pam worked as administrative assistant to the superintendent and chief of operations at Clark County Developmental Disabilities.

Donita Parizek is working part-time to help us with organization and scanning. Donita grew up on her family's farm in Nebraska and earned a B.S. in Home Economics Extension/ Education.

WRITE DOWN THOSE ORAL LEASE AGREEMENTS!

As 2014 draws to a close and farmers are finalizing their plans for the 2015 crop year, remember why all oral cash rent farm leases need to be executed in writing. Kristi Kress Wilhelmy and Troy Callicoat completed a 7-day bench trial in September 2014 that involved a dispute over an oral cash rent farm lease. In that case, our clients (the tenant) had been operating under a written 1-year lease that had been orally renewed since 2002. Over the years, the tenants developed a good relationship with the landlords, an elderly couple who merely wanted to rent their property to a farmer who would be a good steward of the land. After the last original landlord passed away in 2011, their children took over administration of the farm. The original landowners' children, who were not in any way involved in their parents' farm, brought a more profit-oriented approach to the landlord/tenant relationship.

Among other things, the new landlords sought additional rent from our clients, who orally agreed to pay a higher amount for the 2012 crop year. Nothing was initially reduced to writing when the oral agreement was reached. Moving forward with the oral agreement in mind, our clients proceeded to plant wheat on the landlords' property. There were no problems until March 2012, when our clients received notification that the landlords were terminating the lease effective immediately and had rented their farmland out to a new tenant. The new tenant sprayed and killed the growing wheat crop and began working the ground to plant corn. Our clients were left with a breach of contract claim related to the oral agreement between the parties.

Ohio's Statute of Frauds requires most contracts involving real estate to be in writing. As such an oral lease on real estate in Ohio is not enforceable unless it is in writing. There are some exceptions to this rule. For example, if a tenant has already partially performed under an oral lease, the Statute of Frauds does not act to render a contract unenforceable. Planting of a crop or making a partial lease payment may be considered partial performance of an oral lease.

Reducing oral agreements to writing eliminates any possible confusion regarding the essential terms of the lease. A written lease protects both the tenant and landlord should a dispute arise. A written lease can clearly set forth the obligations each party has under the agreement. A written lease also may include a provision that the non-breaching party is to be awarded his or her attorney's fees should a contractual dispute arise. Courts in Ohio typically do not award attorney's fees in a contractual dispute unless the agreement itself allows for such a remedy.

A lease also may require the parties to use alternative dispute resolution methods such as mediation or arbitration in the event of a dispute. Litigating in court is rarely a cost-effective method to resolve disputes. The parties to a written lease may choose to send all disputes into binding arbitration, which can eliminate many of the costs associated with litigation.

Perhaps one of the most important reasons to have a written agreement is to obtain certainty as to the party with whom you are contracting. Ohio landowners commonly place their real estate into a different legal entity, such as a limited liability company (LLC). Many tenant farmers have created a separate legal entity through which to run their farming operation. A written agreement can clearly bind the appropriate parties to a lease. A written agreement provides a tenant dealing with a landowner LLC with additional security should the members of an LLC change over time. If the membership of a landlord LLC changes over the period of a tenant's lease, the LLC is still legally bound to the agreement it made with the tenant.

As the competition for farm ground remains fierce, both parties to a farm cash rent lease need to protect themselves with a written agreement. Otherwise, parties to an oral lease agreement may find themselves sitting through a costly and lengthy trial in their local Court of Common Pleas. Such misunderstandings can often be avoided with a few simple strokes of the pen or keystrokes on a computer.

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The attorneys and staff at BECE thank all of our clients and friends for your continued interest in our Firm. We are honored to work with every one of you and hope you have a wonderful holiday season and prosperous new year!

HOLIDAY 2014 NEWSLETTER

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