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Re: 2012 Year-End Tax Planning

Dear Valued Client:

The fourth quarter is ordinarily a time to evaluate your circumstances and consider what investment, planning and tax strategies are optimal. 2012 is not an ordinary year. The "fiscal cliff" looms, increases in tax rates (with the expiration of the Bush-era tax cuts) and the mandated limits on government expenditures beginning in 2013 will all complicate year-end planning in 2012. The outcome of the Presidential and Congressional elections will impact whether or not any legislative action will be taken to address these changes, creating additional uncertainty. Though it is challenging to make decisions when the landscape is evolving, there are opportunities to consider in 2012 as well as strategies to implement in anticipation of a higher-tax environment next year.

Remember, the focus is on your marginal tax rate. That is the highest rate at which your last, or marginal, dollar of income will be taxed. Even though overall tax rates may rise in the future, if your income will be substantially lower in 2012 than in 2011, your marginal tax rate may decrease because of our graduated tax bracket system.

In drafting this letter, we have focused on tax planning opportunities that involve actions you can take during the remainder of 2011. This letter does not include every tax planning opportunity that may be available to you, and it is advised that tax projections confirm planning strategies.

Tax figures to note

Absent action by Congress, 40 federal tax provisions are set to expire at the end of the year. The following chart highlights some of the key scheduled changes.

	2012	**2013**
Maximum income tax rate	35%	39.6%
Maximum capital gains rate	15%	20%
Maximum qualified dividends rate	15%	39.6%
Medicare surtax on net investment income*	n/a	3.8%
Medicare payroll tax rate on employees*	1.45%	2.35%
Estate tax exemption	$5,120,000	$1,000,000
Maximum estate tax rate	35%	55%
Gift tax exemption	$5,120,000	$1,000,000
Maximum gift tax rate	35%	55%
Generation-skipping transfer (GST) tax exemption	$5,120,000	$1,430,000**
Maximum GST rate	35%	55%
Annual gift tax exclusion	$13,000 per donee	$14,000** per donee
Annual exclusion gift to non-citizen spouse	$139,000	$143,000**

* Applies to taxpayers with income over certain threshold amounts.** Projected inflation-adjusted amounts.

Tax planning strategies

Net gains and losses :

Examine your 2012 short-term gains and losses and long-term gains and losses and determine your capital gains and loss carry forwards to ensure that you are aligning them to the greatest extent possible. Note that you may be able to use up to $3,000 of net capital losses to offset ordinary income for 2012 as well.

Harvesting tax losses and capital gains :

Traditionally, investors consider selling assets at the end of the year in taxable (i.e., nonretirement) accounts that have losses because by realizing those losses when selling the asset, those losses can be used to offset taxable gains. Capital losses are first used to offset capital gains; however, if the capital losses exceed the capital gains, the losses can offset up to $3,000 of other income. Note that if you sell securities for purposes of recognizing a loss, you cannot immediately repurchase the same security to replace your market position (see discussion below on the “wash sale” rule) and claim the loss as a deduction. Since tax rates are scheduled to increase at the end of 2012, it may be beneficial to hold a security with a potential loss, thereby deferring that loss until it can be used to offset future gains that would otherwise be taxed at the scheduled new higher tax rates. Additionally, if you anticipate large short-term gains in 2013, you may consider delaying tax loss harvesting of short-term losses until January 2013 to use those losses to offset the anticipated 2013 short-term gains which would be taxed at the new higher rates.

In light of the significant increase in tax rates scheduled for 2013, some investors are wondering whether they should realize long-term capital gains in 2012 at the lower rates. While traditional wisdom holds that investors should defer the payment of tax, if you are planning to sell an asset in the near term, you should consider triggering the gain in 2012 to take advantage of the lower rates while they are still in effect. Before recognizing any year-end gains or losses in a portfolio, you should consult with your financial and tax advisors.

Reconsider installment sales :

If planning an installment sale, keep in mind that you may be postponing tax to a time when income tax rates may be higher. Consult with an advisor to weigh this issue against the general benefits of postponing tax payable.

Consider resetting the basis of certain assets :

You may even wish to consider “resetting” the basis of assets that currently have a low basis for income tax purposes. It may be possible to sell the asset and immediately buy it back, thus triggering a capital gains tax at the lower current long-term rates and establishing a new cost basis. Note that the wash sale rules, which prohibit the recognition of losses when you purchase a substantially identical security within 30 days before or after the sale, would not apply because you are purposely triggering a gain. This strategy would not be appropriate, however, if you plan to hold the asset until your death because of the unlimited step-up in basis at death.

Prior to engaging in a strategy focused purely on reducing tax exposure, be aware of the long-term effects. Accelerating the sale of a position only to reinvest the after-tax proceeds could have a detrimental effect. This is especially true for positions you intend to hold for an extended period of time (greater than about two years), because any potential tax savings from selling the position at the lower 2012 tax rates may be outweighed by the loss in compounded growth (due to the smaller after-tax reinvested amount). Therefore, look to reset positions you were going to sell within the next year or two regardless. If the positions have a low cost basis (under approximately 50% of fair market value) and are not expected to generate high returns, they may be good candidates for a reset (note, this strategy is not appropriate for assets intended to be held until death due to the unlimited step-up in basis at that time). Be sure to consider personal tax characteristics such as state income tax (if any), alternative minimum tax (AMT) and tax loss carry forwards prior to making a decision to reset basis.

Plan for the new 3.8% Medicare surtax:

Beginning in 2013, taxpayers will be subject to an additional 3.8% surtax on certain unearned income to the extent that the taxpayer's modified adjusted gross income (MAGI) exceeds certain threshold amounts ($250,000 for married couples filing jointly, $125,000 for married individuals filing separately and $200,000 for single filers). Your Financial Advisor can discuss potential strategies that can help mitigate the impact of the new tax. Shifting wages and income to qualified retirement plans, making deductible IRA contributions and deferring income when possible (e.g., timing an installment sale or 1031 exchange) may be good ways to keep your income below the MAGI thresholds. You may also wish to consider various investments that do not generate "net investment income" subject to the Medicare surtax, such as municipal bonds, tax-deferred annuities and life insurance. You can also structure your portfolio to reduce your taxable income by investing in tax-free bonds and tax-advantaged investments like Master Limited Partnerships (MLPs). For a detailed discussion of the Medicare surtax, see *"Planning for a Higher-Tax Environment: Sunset Provisions, Medicare Taxes and Potential Strategies"*

Review your deductions :

To accelerate tax deductions, pay deductible expenses (unreimbursed medical expenses, property tax) in 2012. Keep in mind that the medical expense deduction threshold, currently 7.5% of adjusted gross income, will increase to 10% beginning in 2013. You should also analyze whether you would benefit from deferring those deductions to future years as income tax rates rise.

Itemized deduction limitation in 2013 :

Prior to 2010, the amount of itemized deductions a taxpayer could claim was reduced for taxpayers with adjusted gross income (AGI) over a certain threshold. This limitation on itemized deductions was repealed in 2010, but the repeal is only scheduled to be in effect through 2012. Beginning in 2013, itemized deductions will be phased out for high income taxpayers by the lesser of (a) 3% of the excess of AGI over an "applicable amount" or (b) 80% of the total itemized deductions allowable. The phase-out rules for itemized deductions do not apply in 2012, therefore many income tax deductions, including charitable deductions, may be more valuable in 2012 than in future years. Carefully consider your own circumstances prior to accelerating certain itemized deductions as this could trigger Alternative Minimum Tax (AMT) liability in 2012.

Review your mutual fund capital gain distribution estimates:

Each year, mutual funds are required to distribute 98% of their net capital gains in order to avoid an excise tax. Mutual funds generally post their distribution estimates beginning in October, therefore you should estimate your potential tax liability associated with your mutual fund holdings to determine if you should consider offsetting a capital gain with losses or alternatively selling the shares in advance of the distribution. In addition, you may wish to postpone the purchase of shares of a mutual fund immediately before it distributes a substantial capital gain.

Roth IRA conversion :

Discuss with your Financial Advisor whether it makes sense to convert a traditional IRA to a Roth IRA. A change in the law in 2010 eliminated the income limit for converting to a Roth IRA, making this strategy available to high income taxpayers. When you convert to a Roth IRA, the converted amount of your traditional IRA will be taxed as ordinary income in the year of conversion at the income tax rates in effect on the date of conversion. Accordingly, triggering the income in 2012 at this year's lower tax rates may make a Roth conversion more compelling. A Roth IRA offers significant benefits, most notably tax-free growth of assets, tax-free distributions and no required minimum distributions during the account holder's lifetime.

If you convert to a Roth IRA in 2012, you will have an option until October 15, 2013 to recharacterize the Roth IRA back to a traditional IRA. This gives you time to monitor market conditions and make a decision to undo the Roth conversion if the account value decreases significantly from the time of conversion, thereby avoiding the recognition of income tax based on the higher value of the account on the date on which the conversion was made. The flexibility to undo a conversion to protect against falling asset values can be enhanced further by segregating the Roth IRA into separate accounts invested in non-correlated asset classes. You can then base your decision to recharacterize the Roth conversion on the performance of the particular asset class, rather than the performance of one diversified Roth IRA account.

AMT liability :

Review your circumstances with your tax advisor to see where you stand for 2012 relative to the AMT. The AMT imposes a minimum tax rate over certain taxable income thresholds. As of the date of this publication, Congress has not yet enacted a "patch" for 2012, therefore the exemption amounts for this year have decreased to $33,750 for individuals and $45,000 for married couples filing jointly. If you are subject to AMT, and you have the ability to defer income from 2012 to get below the threshold, consider deferring if you may not be subject to AMT in 2013. If you are not subject to AMT, consider accelerating the types of income (e.g. exercising incentive stock options) that would have negative AMT consequences. Also consider accelerating deductions (e.g. property tax payments) that would not provide an equivalent tax benefit in a year in which you were subject to AMT. In short, any analysis of the merits of accelerating or deferring income or gains should take potential AMT liability into account.

Options :

Consider exercising nonqualified stock options (NQSOs) in 2012 in anticipation of potentially higher income tax rates in future years.

Bonus depreciation :

Through the end of 2012, taxpayers can deduct a bonus depreciation amount of the depreciable basis of certain tangible property, over and above regular depreciation. As a result, the bonus allowance permits businesses to write off their costs more quickly and provides for 50% bonus depreciation for qualified property placed in service in 2012. In addition, businesses can accelerate some AMT credits in lieu of bonus depreciation for 2012. Both of these provisions are scheduled to expire at the end of the year.

Growth Investments :

With the expiration of the Bush tax cuts at the end of the year, qualified dividends will no longer be taxed at the long-term capital gains rate. Alternatively, qualified dividends are scheduled to be taxed at higher ordinary income tax rates. In response to the upcoming higher dividend tax rates, shifting your portfolio from income-producing investments to growth investments may be advantageous. Investing in stocks with little or no dividends (that instead generate capital appreciation) may reduce your taxable income while also deferring capital gains tax until you choose to sell your shares. As with all of these strategies, consult with your Financial Advisor before entering into any long-term investment strategy
Absent Congressional action, the following federal income tax changes will occur on January 1, 2013:

- The maximum marginal income tax rate for ordinary income will increase from 35% to 39.6%.
- The maximum tax rate for long-term capital gains will increase from 15% to 20% for individuals.
- Dividends will cease to be taxed at capital gains tax rates and will again be taxed at ordinary income tax rates (as high as 39.6%).
- An additional 3.8% Medicare tax on certain unearned income will be assessed on: individuals with modified adjusted gross income (MAGI) exceeding $200,000 and married couples with MAGI exceeding $250,000.
- An additional 0.9% payroll tax will be assessed on wage income over $250,000 (married couples) or $200,000 (individuals).
- The "marriage penalty" relief, which provided more advantageous tax brackets for married couples, will expire such that the standard deduction for married couples will cease to be calculated as 200% of the amount available to individuals.

We believe that the outcomes of the 2012 elections, both Presidential and Congressional, will have a significant impact on both near-term and longer-term tax policies. Hence, we suggest that while the risk of current tax rates expiring is real, they are more likely than not to be extended briefly for most, if not all, taxpayers. Extension of current estate tax rates will figure prominently in these post-election negotiations between the two political parties as well. In the longer term, lawmakers will aim to reduce income tax rates at the expense of current exemptions and deductions, including perhaps preferred rates for capital gains and dividends. Tax reform will be a difficult endeavor for Washington but it will be attempted in 2013. The process will likely prolong the current uncertainty over tax rates, and any outcome is likely to result in a more progressive tax code, not less.

Investment planning ideas

Concentrated stock positions:

The prospect of higher tax rates for the foreseeable future means that investors should consider accelerating planned divestment/diversification of appreciated positions before December 31. As the capital gains rate increases, the tax cost of diversifying out of a position also increases.

Wash sale rule:

In general, the "wash sale" rule prohibits you from recognizing losses if you purchase substantially identical stock or securities within 30 days before or after the sale. If you don't want to wait 30 days to buy the same stock or security, you may consider replacing the investment you sold at a loss with an exchange traded fund (ETF) tied to the company's industry or sector. In this way, the ETF effectively serves as a temporary proxy for individual stock holdings and still enables you to recognize the loss on your original position. You can also replace actively managed mutual fund shares sold at a loss with an

ETF, but if you plan to substitute one ETF for another, make sure the funds track different indexes to avoid triggering the wash sale rules.

Wash sale dates to note

November 30	Since the last trading day of the year is December 31, the last day to "double up" for 2012. Doubling up on a security means that you buy a second lot of a security in the same amount as the original holding, thereby allowing you to recognize a loss by selling on December 31 without missing any potential appreciation during the wash sale period. Note: undertaking this strategy will result in holding 2x the level of stock during the "doubling up" period. During this time, you would be exposed to twice the gains or losses in the stock.
December 31	Last day to sell a security in 2012 for a loss.
January 31	If you sold a security for a loss on December 31 without previously "doubling up," you must wait until January 31, 2013 or later to repurchase the same or substantially similar security in order to avoid the wash sale rule.

Purchase qualified small business stock before year-end to take advantage of exclusion of gain upon sale :

Taxpayers who acquire qualified small business stock (QSBS) and hold the stock for five years may exclude up to 50% of the gain from income upon the subsequent sale of the stock. (However, the QSBS gain is partially treated as a preference item for AMT purposes.) QSBS is stock in a small, domestic C corporation which operates an active business. To qualify, the corporation must use at least 80 percent of its asset value in the active conduct of one or more qualified trades or businesses, and the gross assets of the corporation, as of the date the stock was originally issued, cannot exceed $50 million. Note that certain transfers of QSBS from a partnership to a partner can be made without jeopardizing QSBS status. Confirm with your legal advisors whether stock you may acquire meets the definition of QSBS.

Portfolio review:

The end of the year is an excellent time to re-evaluate the goals of your portfolio, the risk level you are comfortable with and the liquidity events that are going to shape the next two, five or 10+ years of your life. The volatility of the past several years may have given you pause or concern, and it is important for you to discuss these concerns with your Financial Advisor. This can not only help give you peace of mind, but can be valuable in terms of identifying the best tax planning techniques to utilize.

Estate planning

Calendar year	Estate tax exemption	GST tax exemption	Gift tax exemption	Top estate, GST and gift tax rates
2009	$3,500,000	$3,500,000	$1,000,000	45%
2010	n/a*	n/a*	$1,000,000	35% (gift tax only)
2011	$5,000,000	$5,000,000	$5,000,000	35%
2012	$5,120,000	$5,120,000	$5,120,000	35%
2013	$1,000,000	$1,430,000**	$1,000,000	55%

Take advantage of the window to use your increased gift tax exemption :

The gift tax exemption is $5.12 million per person for 2012 and is scheduled to revert to $1 million per person in 2013. You may want to consider utilizing a substantial portion (or even all) of your $5.12 million gift tax exemption by making a gift to your family members, in order to remove the value of the gifted asset, plus future appreciation, from your estate. There are many strategies to utilize your gift tax exemption, from making a straightforward outright gift of cash to a family member to forgiving an outstanding loan to a child to creating an irrevocable trust for the benefit of family members. As the clock is ticking and complex gifts will require weeks, if not months, to implement, it is critical to engage your tax advisors and attorneys as soon as possible if you wish to take this action in 2012.

Lifetime credit shelter trust :

If you want to take advantage of the increased gift tax exemption this year but you are concerned that such a large gift would strain your assets and spending, you may want to consider creating a lifetime credit shelter trust, also known as a spousal lifetime access trust. You can name your spouse as a beneficiary of an irrevocable trust created to receive a gift in the amount of your increased $5.12 million lifetime exemption such that you may have indirect access (through your spouse) to the assets you have given away. The risks of a spousal lifetime access trust are early death of your spouse or divorce—if either of these happen, you will no longer be able to access the trust assets through your spouse.

Using your gift tax exemption to purchase life insurance :

You can also use part (or all) of your lifetime gift tax exemption to make gifts to irrevocable life insurance trusts to fund premiums on large insurance policies. This potentially provides an opportunity to leverage the gift tax exemption into a far larger estate tax-free death benefit. For example, a husband and wife who are each 45 and in excellent health could make a one-time premium payment of $3 million to an irrevocable life insurance trust, which is the owner and beneficiary of a second-to-die life insurance policy (a lifetime guaranteed universal life policy), and obtain approximately $35 million of death benefit which would not be subject to estate tax.

Annual exclusion gifts :

Make annual exclusion gifts by December 31. Each person may make annual, gift tax-free gifts of $13,000 ($26,000 for a married couple) to any number of individuals. Note that the annual exclusion amount is scheduled to increase to $14,000 in 2013.

Review estate planning documents:

You should review your estate planning documents to ensure that any formulas contained in your documents, which may transfer certain amounts to certain individuals or trusts based on the estate tax exemption or GST tax exemption, still make sense for you given the scheduled changes in those exemptions. Those clients who live in a state with an independent state death tax should also review formula allocations in their estate planning documents that take into account state death taxes to assess the effect of the federal estate tax exemption.

Fund education through 529 plans:

Consider funding 529 plans by December 31 to apply 2012 annual gift tax exclusion treatment to the contributions. You can “front-load” 529 plans by making five years’ worth of annual exclusion gifts to a 529 plan. In 2012, you could transfer $65,000 ($130,000 for a married couple) to a 529 plan without generating gift tax or using up any of your gift tax exemption.

Estate planning strategies for a low interest rate environment :

Take advantage of historically low interest rates by entering into intra-family loans or establishing Grantor Retained Annuity Trusts (GRATs), which are irrevocable trusts designed to transfer the appreciation in an asset to beneficiaries at a nominal gift tax cost. For GRATs created in October 2012, the hurdle rate is an extremely low 1.2%, meaning that the GRAT must have an internal rate of return greater than only 1.2% to succeed in transferring wealth estate and gift tax-free.

Note that the Obama administration has proposed restrictions on the ability to use certain short-term GRATs in the future. The proposal would require: 1) a 10-year minimum term for GRATs; 2) a remainder interest, valued at inception, to be greater than zero—thereby eliminating the use of “zeroed-out” GRATs (i.e., ones that do not generate a taxable gift); and 3) annuity payments to be structured so that the payments do not decrease over time.

Family limited partnerships:

If appropriate, consider discussing with your attorney or tax advisor whether to establish a family limited partnership or family limited liability company. Families set up these types of entities in order to provide for the consolidation of investments, centralization and succession of management, protection of assets from claims of creditors and transfer of wealth to family members. In addition, families often incorporate these entities as part of their wealth transfer planning, since the value of an interest in such an entity for gift tax purposes often is reduced due to restrictions on the ownership of the interest. The Obama administration has proposed limiting the availability of valuation discounts for transfers made between related parties by ignoring certain restrictions.

You may consider making transfers of interests in family-owned entities sooner rather than later while appropriate valuation discounts still may apply. Note that the value of interests in assets like these should be determined by a qualified appraiser, after consideration of all relevant factors.

Gift/sale to an intentionally defective grantor trust:

Consider making a gift to an intentionally defective grantor trust to use your gift exemption (and possibly your GST exemption as well). As donor, you would be responsible for any ongoing trust income taxes, which allows the assets to grow for the beneficiaries unreduced by tax. You could leverage your gift by selling additional assets to the trust for cash and/or a promissory note. This technique allows additional appreciation on the transferred assets to accrue to the benefit of your descendants (without additional transfer tax). The Obama administration has proposed significant changes to the grantor trust rules such that 1) the assets of a grantor trust would initially remain includible in the grantor’s estate, 2) distributions from a grantor trust to beneficiaries would be treated as gifts by the grantor (with gift tax imposed at that time), and 3) if the trust ceases to be a grantor trust during the grantor’s lifetime, the trust assets (including all appreciation) would be subject to gift tax. Under the proposal, the new rules would only apply to grantor trusts created or funded after the enactment of the law, so this strategy can still be implemented now.

Multi-generational trusts:

The Obama administration has proposed to limit the duration of so-called dynasty trusts (trusts extending over many generations). While any trust created before the law is enacted would maintain its GST exemption, any GST exemption allocated to a new trust or additions to an existing trust would expire in 90 years. This proposal, combined with the GST tax exemption decreasing in 2013, make the creation of a dynasty trust even more urgent for clients interested in multi-generational planning. By making a $5.12 million gift to a multi-generational trust in 2012 and allocating your GST exemption to that trust, you can protect the trust assets against federal transfer tax for generations to come.

Disappearing portability provisions:

The "portability" provisions allowing a spouse to take advantage of a deceased spouse's unused exclusion amount were originally enacted for 2011 and 2012 only. This law may or may not be extended, so it would be prudent to review how assets are titled between spouses and not rely on portability provisions for a spouse who passes away without owning sufficient assets in his or her own name to fully utilize his or her estate tax exemption.

Charitable planning

• Charitable income tax deduction:

In order to obtain an income tax charitable deduction for 2012, gifts must be made by December 31. If the gift consists of property that will require an appraisal (generally required for gifts of property with a value in excess of $5,000, other than publicly traded stock), you should start the process as soon as possible. Also, it may take several weeks for a transfer of stock via physical stock certificate or stock power to be complete, so you should plan ahead to ensure that the gifts are completed by year end.

You may want to consider the tax implications of your charitable gifts. Certain itemized deductions, including charitable deductions, are scheduled for additional phase-outs in 2013 unless Congress intervenes, and the Obama administration has proposed further limits to itemized deductions for high income earners. This means that you might benefit from a larger deduction in 2012 vs. 2013. However, as tax rates are scheduled to increase next year, a charitable deduction next year might be more valuable. While tax planning does not generally drive charitable giving, you may wish to consult your tax advisors to determine the potential tax consequences of a gift made in December or January.

Timing of charitable gifts :

Consider the timing of charitable gifts. If the deduction could benefit you more in 2013, it may make sense to wait to make the charitable gift in 2013. However, the potential phase-out of charitable deductions may be a factor in evaluating whether to delay charitable gifts.

IRA distributions donated to charity :

In 2011, individuals over age 70½ were permitted to exclude from income up to $100,000 of their required minimum distribution (RMD) where the RMD was made payable to a qualified charity. Private foundations and donor advised funds were not included in the definition of eligible charity, however most public charities were considered qualified. Although the provision expired at the end of 2011, it is possible for the Congress to reinstate the provision prior to the end of 2012. Accordingly, if you are interested in making a charitable gift you may wish to delay taking your RMD until it is clear whether or not the provision will be reinstated.

Choosing which assets to give to charity:

To avoid capital gains, you may want to consider giving appreciated property to charity (as opposed to selling the property, recognizing the gain and contributing cash to charity). Most people do not think of fixed income holdings when looking at low basis assets to give to charity. In part, this is because fixed income assets historically tend to have relatively small capital gains. However, the recent interest rate environment has created significant capital gains in many individual bonds and bond funds. If you believe interest rates are likely to rise in the future, now may be an opportune time for giving fixed income assets to charity at their higher valuations, which may have additional benefits if done as part of an asset reallocation strategy.

Donor advised funds :

Transferring assets to a donor advised fund can allow you to receive an immediate charitable income tax deduction (at the maximum amount allowed for gifts to public charities) while affording you time to decide on the ultimate charitable beneficiaries. If you would like to create a donor advised fund in 2012, you can establish one at selected Financial Institution as late as December 31, although it is not recommended that you wait until the last minute, especially if you are planning on funding the account with anything other than cash.

Charitable Lead Annuity Trust :

Consider establishing a Charitable Lead Annuity Trust (CLAT) to take advantage of low interest rates. A CLAT provides for annual payments to charity for a given term, with the remainder generally passing to your children (or continuing trusts for their benefit). These are often designed so that the value of the annuity payable to charity equals the total value of assets used to fund the trust. Consequently, the entire amount transferred to the trust qualifies for the gift tax charitable deduction, and, therefore, the transfer does not result in gift tax or use any of the grantor's gift tax exemption. As with GRATs, CLATs perform best when interest rates are low, keeping the hurdle rate low and thereby increasing the odds of successfully transferring wealth at little or no gift or estate tax cost.

Private foundations.

Managers of private foundations may wish to discuss the following ideas with their tax advisors to optimize the efficiency of the foundation:

—In order to minimize the 1-2% excise tax on net investment income, consider making grants of low basis stock in lieu of selling the stock to raise cash for the grants, which could trigger gains.

—Consider offsetting gains with losses. Private foundations cannot carry forward capital losses. If your foundation has significant losses, it can sell securities that have appreciated, recognize the gain and buy the securities back in order to establish a higher basis in the assets. Note that the wash sale rule does not apply here because the foundation is recognizing a gain (not triggering a loss).

—Note that approximately 5% of the value of the foundation's net investment assets for 2011 must be distributed for charitable and dministrative purposes by December 31, 2012. Accordingly, foundation managers should determine liquidity needs to meet the payout requirements.

—Consider making a "conduit election" so contributions to the foundation can be treated as though made to a public charity for income tax purposes. This can be useful if 1) the foundation will distribute all of the contributions it receives, 2) you have contributed assets to the foundation other

than publicly traded stock and do not want your deduction limited to your cost basis, or 3) the foundation has “banked” excess grants from prior years (when the foundation distributed more than the required 5%).
—Consider granting to a donor advised fund if you run out of time and cannot decide which charities should receive some or all of the 5% grant requirement.

Retirement planning

- **Maximize contributions to retirement accounts.** Make 2012 contributions to Roth or traditional IRAs by April 15, 2013. The following chart summarizes the 2012 annual contribution limits to IRAs and retirement plans:

Plan	Under age 50	Age 50 or older
IRA (traditional or Roth)*	$5,000	$6,000
401(k), 403(b), 457(b), SAR-SEP**	17,000	22,500
SIMPLE**	11,500	14,000

* The maximum contribution or deductible contribution may be reduced depending on your modified adjusted gross income.
** Salary deferral contributions

RMDs :

Required Minimum Distributions (RMDs) generally must be taken from retirement plans by December 31. (For both retirement plans and IRAs, the first RMD can be delayed until April 1 of the year following the year in which the taxpayer turns age 70½. Additionally, RMDs for retirement plans can be delayed if the taxpayer is still employed and the employer’s plan permits RMDs to begin at the later of 70½ or retirement.) The RMD rules apply to IRAs and all employer-sponsored retirement plans, including profit-sharing plans and 401(k), 403(b) and 457(b) plans. If you have more than one IRA (of which you were the original participant), you can take the RMDs for multiple IRAs from one account. The same holds true for 403(b) plans, but not for other types of employer-sponsored retirement plans, like 401(k) and 457(b) plans.

Asset selection for RMDs :

When taking your RMD, additional tax advantages may be available by distributing securities in-kind. When selecting assets for an RMD, you may wish to consider the in-kind distribution of an appreciated bond. If a bond has a high coupon, it may also have an elevated (premium) price resulting from the current low rate environment. If the bond is distributed in-kind as part of an RMD, your basis in the bond will be its (premium) price on the date of distribution. You can then amortize that premium over the remaining term of the bond, in effect realizing a capital loss each year. The high coupon would be earned in a taxable account rather than in the tax-free environment of the IRA, however, so that adverse consequence will need to be weighed against the benefit of the capital loss.

Charitable distribution from IRA :

As noted above, in prior years, taxpayers age 70½ or older could exclude up to $100,000 from gross income for distributions made directly from a traditional IRA or Roth IRA to a qualified charity. Although the provision expired at the end of 2011 and has not been extended for 2012, it is possible for the Congress to reinstate the provision prior to the end of 2012. Accordingly, if you are interested in making a charitable gift you may wish to delay taking your RMD until it is clear whether or not the provision will be reinstated.

Conclusion :

Despite the complexity caused by the uncertain state of the tax law as of now, small business and individuals can take a number of steps to help minimize their tax liability this year. If you have any questions about the business tax incentives we have discussed and year-end planning for 2012, please contact our office. We wish you a happy and successful new year!

Very truly yours,

Patrick J. Rubey.