ANDERSON KILL
ESTATE PLANNING & TAX
ALERT

December 2013

END-OF-YEAR ESTATE & TAX PLANNING:

"Checklist" for a Successful 2013 & Beyond

By Stephen H. Frishberg and Carole B. Sheffield

With this year's nearly unprecedented stock market rally, coupled with the unique tax challenges of 2013 arising from the American Taxpayer Relief Act of 2012, your estate plan may be outdated and your 2013 federal income tax bill may be significantly higher than expected.

To help achieve estate-planning peace of mind and control unexpected tax consequences, we have developed a checklist to assist you with year-end estate and tax planning.

Estate & Tax Planning Checklist

Here are five steps to consider and execute, if appropriate, by Dec. 31, 2013:

- ☐ **Pay Next Year's Estimated State Income Tax:** Calculate your projected end-of-year income taxes. If you find that (1) you owe tax in 2013 that could be offset by accelerating your estimated state income tax payment to December 2013 from January 2014, and (2) you will not be subject to the alternative minimum tax (AMT) for 2013, you should pay your estimated state income taxes in December 2013.
  Tax Tip: *Note that because the AMT does not allow deductions for state income taxes, the advantages of prepayment are lost in a year in which you pay the AMT.*

- ☐ **Retirement Savings Deadlines:** Certain types of retirement contributions must be made by the end of this calendar year to receive tax benefits, while you can wait to take advantage of others until you file your 2013 tax return.

- ☐ **Make Annual Gifts to Transfer Wealth:** For 2013, the federal annual gift tax exclusion is capped at $14,000 for individuals and $28,000 for married couples. The cap represents the maximum amount for gifts that can be made to an unlimited number of individuals without triggering any gift or generation-skipping transfer tax. Making federally qualified annual gifts is an excellent way to meaningfully transfer wealth to future generations while removing excess assets from your estate when you believe those assets will not be necessary in your future. If made by check, the check must be cashed or deposited by Dec. 31, 2013.

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who's who

Stephen H. Frishberg and **Carole B. Sheffield** are shareholders in Anderson Kill's Philadelphia office. Mr. Frishberg has extensive experience in the areas of estate and tax planning and trust and estate administration, including corporate and real estate matters. His clients include high net worth individuals, with a special emphasis on those in the sports industry, financial institutions, closely held businesses and not-for-profit organizations.

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☐ **Charitable Contributions:** Be sure to make your contributions to qualified charities by Dec. 31, 2013, if you want to deduct your donations on your 2013 tax returns.
Tax Tip: *Save all donation receipts in case of a tax audit. Print them out if you donate online.*

☐ **401(k) Contributions:** 401(k) contributions need to be made by Dec. 31, 2013 (up to $17,500 for workers plus an additional $5,500 for those 50 or older). Workers have until April 15, 2014, to contribute up to $5,500 to a traditional IRA or Roth IRA (or $6,500 if 50 or older), but not claim a deduction (for traditional IRAs only) on your 2013 income tax return. Investors over age 70 ½ must take required minimum distributions from their retirement accounts before year's end to avoid a tax penalty. For those 70 ½ and older, consider a gift from your IRA to a charity (up to $100,000) to satisfy the minimum distribution requirement and avoid income tax on the amount that would otherwise be added to your income.

"Focus" on Charitable Giving in 2013 — Long-Term Capital Gain Property

As we approach the holiday season, many of us think of making charitable gifts before year's end. Those with potential long-term capital gains (and the 3.8% Medicare surtax, if applicable) should give consideration to making gifts of such property in lieu of cash gifts. Doing so allows you to avoid the capital gains tax if the shares were sold, while still getting a charitable deduction for the full fair-market value of the donated shares. This is especially relevant for those subject to the higher 20% capital gains tax rate and the 3.8% net investment income tax.

Remember these rules governing gifts of securities to charity:

- Securities held one year or less when gifted are valued at the *lesser* of fair market value or your basis.
- Securities that have declined in value are limited to fair market value. If you want to gift such securities, first sell them to create a capital loss deduction and then donate the cash proceeds.
- Securities that are publicly traded are valued at the mean between the high and low on the day the gift is made, while mutual fund shares are valued at the net asset value on the date of the gift.
- For non-cash gifts of $5,000 or more (other than non-publicly traded securities) you must obtain a qualified appraisal and file IRS Form 8283. The threshold is $10,000 if the gift is of closely held stock.
- You are allowed a deduction of up to 30% of your adjusted gross income for gifts of appreciated securities to a public charity. Any excess may be carried over for up to five years. If you elect to only deduct the stock's basis, the limit is increased to 50% of your adjusted gross income. This limit is not applicable to charitable bequests, which are 100% deductible.

- As gifts of securities are not complete until received in a charitable donee's fund account, you should allow ample time for the gifts to be completed, alert the charity for transfer instructions and confirm receipt.
- The income tax charitable deduction for a gift of ordinary income property is generally your basis. For example, when an artist makes a gift of artwork, the value of the gift is limited to the artist's cost of the materials. Conversely, if an artwork is given to charity at death, this charitable deduction is generally equal to the fair market value of the artwork gifted at the date of the artist's death.
- The value of a lifetime gift of tangible personal property to a charity is dependent on the use of such gift by the charity. If the use is unrelated to a charity's exempt purpose or if the charity sells the property, the deduction is reduced by 100% of any long-term capital gain present in the property. This does not occur if the same tangible personal property is gifted at death.

While engaged in end-of-year tax planning, also remember these planning perennials, to be undertaken at intervals or as events may require:

- **Estate Planning Documents:** Review current wills, trusts, powers of attorney (financial and health care) and living wills, any or all of which may need to be updated after major life changes such as births, deaths, marriages, divorce or a move to another state. Also, if you have children who are minors, review appointed guardians in your instruments to make sure your selections are still appropriate.
- **Estate Inventory:** Prepare a written inventory of assets and liabilities in the event you update your estate plan. Be sure to include your broker's, accountant's and bank's information along with the location of your safe deposit box. It is also wise to take pictures or a video of the contents of your home and garage, and also share copies of your inventory and photos with family members and friends you trust.
- **Beneficiary Designations:** Review beneficiary designations in life insurance policies and retirement plans to ensure they reflect your current situation (e.g., to ensure you are not inadvertently designating a former spouse).
- **Passwords, Usernames and Security Questions:** In this digital age you may have bank and/or brokerage accounts you review only by email, along with blogs, Twitter, photo storage and countless other financially and emotionally valuable assets accessible only by computer. There are a number of cloud storage sites, such as Dropbox, where you can store passwords and then simply give someone that one password to access all of your information. Alternatively, you can leave the password to access your personal financial information in a safe deposit box.