American Taxpayer Relief Act of 2012, Pub. L. No. 112-240

Neil E. Harl
Iowa State University

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digirep@iastate.edu.
American Taxpayer Relief Act of 2012,
Pub. L. No. 112-240

-by Neil E. Harl*

After a long anticipated and hotly contested debate in both the U.S. Senate and the U.S. House of Representatives, the Congress on January 1, 2013, passed the American Taxpayer Relief Act of 2012, and sent the bill to the President for signature. The legislation marked the first significant step in resolving the “fiscal cliff” issue which involved a self-imposed deadline of January 1, 2013, for dealing with the federal budget deficit. The vote was 89 to 8 in the Senate on December 31, 2012, and a vote of 257 to 167 in the House of Representatives on January 1, 2013. The legislation changed the Internal Revenue Code in a major way with the provisions modifying, repealing or making permanent enactments in the Economic Growth and Tax Relief Reconciliation Act of 2001, and the Jobs and Growth Tax relief Reconciliation Act of 2003, as extended by the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010. The legislation also extended, with exceptions, some provisions of the Food, Conservation, and Energy Act of 2008 for one year, through September 30, 2013.

New tax rates for upper income taxpayers

Effective January 1, 2013, the Act imposes a 39.6 percent tax rate on ordinary income and a 20 percent maximum tax on long-term capital gains for taxpayers above $450,000 for married couples filing jointly and surviving spouses, $425,000 for heads of households and $400,000 for unmarried individuals (other than surviving spouses and heads of household).* The 10, 25, 28 and 33 percent marginal rates remain in effect after 2012 with the 35 percent rate applicable to those in that rate bracket who are not subjected to the higher 39.6 percent rate. As was the case before 2013, all brackets are subject to inflation adjustment after 2013. All of the rates are considered “permanent” although Congress could change the rate structure at any time in the future. The Act extends the marriage penalty relief from earlier law.

The Act raises, effective in 2013, the top rates for long-term capital gains and dividends to 20 percent, up from 15 percent, for those subject to the 39.6 percent rate as discussed above. For other taxpayers, the rates remain at 15 percent for long-term capital gains and dividends except for those with incomes below the top of the 15 percent rate who will have a zero rate for long-term capital gains and dividends. The 28 percent rate on collectibles and the 25 percent rate on unreaptured Section 1250 gain remain for 2013 and future years.

* Charles F. Curtiss Distinguished Professor in Agriculture and Emeritus Professor of Economics, Iowa State University; member of the Iowa Bar
Alternative minimum tax

The Act provides for permanent alternative minimum relief on an inflation adjusted basis beginning in 2012. For 2012, the exemption amounts are $39,375 for married taxpayers filing separately, $50,600 for unmarried individuals and $78,750 for married taxpayers filing jointly. For 2013, the proposed figures are $40,375, $51,900 and $80,750, respectively.13

Phase-out of itemized deductions

The Act imposes higher threshold levels for the phase-out of itemized deductions than was previously in effect (before being eliminated by the Tax Relief Act of 2010).14 For 2013, the applicable threshold for phase-out is $300,000 for married couples and surviving spouses, $275,000 for heads of households, $250,000 for unmarried taxpayers and $150,000 for married taxpayers filing separately.15

Phase-out of personal exemptions**

The Act also imposes a phase-out of the personal exemption for higher income taxpayers.16 The threshold levels are the same as for the itemized deduction phase-out.

Changes in federal estate tax, federal gift tax and generation-skipping transfer tax

Contrary to the 2010 Act which mandated a “sunset” back to 2001 levels,17 the American Tax Relief Act of 2012 provides for an inflation adjusted applicable exclusion amount of $5 million (inflation adjusted) on a permanent basis.18 The applicable exclusion amount was inflation adjusted to $5.12 million for deaths in 2012.

The Act did, however, increase the rate on taxable estates from 35 percent (for deaths in 2011 and 2012) to 40 percent for deaths after 2012 on taxable estates above $1,000,000 (above the exemption -- the rates are 37 percent and 39 percent below the 40 percent rate).19

The Act continues the unification of federal estate tax, federal gift tax and generation-skipping transfer tax with the three taxes vying for the $5 million inflation-adjusted figure. Thus, taxable gifts as well as taxable estates and generation-skipping transfers are subject to a 40 percent tax after utilization of the single applicable exclusion amount.

Portability

The Act makes permanent the “portability” of the remaining, unused applicable exclusion amount from the estate of the first spouse to die to the estate of the surviving spouse.20

Section 179 depreciation

The American Taxpayer Relief Act of 2012 extends, through 2013, Section 179 expensing up to $500,000 per year with a $2 million phase-out.21 The depreciation allowance for computer software has been extended through 2013.22 The 2012 legislation extended the date by which a Section 179 could be revoked through 2013 without consent of the Secretary of the Treasury.23

The 2012 legislation extended the period of eligibility under I.R.C. § 179 through 2013 for qualified real property which includes qualified leasehold property, qualified restaurant property and qualified retail improvement property.24

“Bonus” depreciation

The Act extended the availability of “bonus” depreciation through 2013 at the 50 percent level.25

Energy provisions

- Extension of incentives for biodiesel and renewable diesel through 2013.26
- Extension and modification of cellulosic biofuels production credit through 2013.27
- Extension of the credit for energy-efficient new homes through 2013.28
- Extension of the credit for energy-efficient existing homes through 2013.29
- Extension of the credit for energy efficient appliances through 2013.30
- Extension of the wind facilities production tax credit through 2013.31

Five-year extensions

- Five-year extension for the American Opportunity Tax Credit through 2017.32
- Five-year extension of the child tax credit through 2017.33
- Five-year extension of the earned income credit through 2017.34

Other provisions

The Act also extends eligibility for –

- Extension of the reduction in the recognition period for S corporation built-in gains for 2012 and 2013 after the fifth taxable year.35 The Act also specified that, for installment sales, the treatment of all payments received by S corporations is governed by the taxable year in which the sale is made.36 Remember, installment payments received generally are subject to the tax rates for the year of payment, not the year of sale.37
- Extension of deduction for state and local general sales taxes through 2013.38
- Extension of the rule governing contributions of capital gain real property for conservation purposes through 2013.39
- Extension of the above-the-line deduction for qualified tuition and related expenses through 2013.40
- Extension and modification of the research credit through 2013.41
- Extension of the work opportunity credit through 2013.42
- Extension of the deduction for expenses of elementary and secondary school teachers through 2013.43
- Extension of the rule allowing reduction of the income tax basis for discharge of qualified principal residence indebtedness through 2013 (limited to acquisition indebtedness, set at $2,000,000 on a joint return for this purpose).44
ENDNOTES
7 I.R.C. § 1(a).
8 I.R.C. § 1(b).
9 I.R.C. § 1(c).
10 Act, § 101(b). Note that the rate structure in the Act is not the same as the Clinton-era rates of 15, 28, 31, 36 and 39.6 percent rates.
11 I.R.C. § 1(f).
12 I.R.C. §§ 1(h)(5)(A), (6).
13 Act, § 104, amending I.R.C. §§ 26(c), 55(b)(1).
14 See note 4 supra.
21 Act § 315(a).
23 Act § 315(c), amending I.R.C. § 179(c)(2).
26 Act § 405(a), amending I.R.C. § 40A(g).
28 Act § 408, amending I.R.C. § 45L(g).
29 Act § 401(a), amending I.R.C. § 25C(g)(2).
30 Act § 409, amending I.R.C. § 45M(b).
32 Act § 103(a), amending I.R.C. § 25A(i).
33 Act § 103(b), amending I.R.C. 24(d)(4).
34 Act § 103(c), amending I.R.C. § 32(b)(3).
35 Act § 326(a), amending I.R.C. § 1374(d)(7).
37 See Snell v. Comm’r, 97 F.2d 891 (5th Cir. 1938).
40 Act § 207, amending I.R.C. § 222(e).

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr

BANKRUPTCY

FEDERAL TAX

DISCHARGE. The debtors filed for Chapter 7 in February 2012. The bankruptcy case included taxes for 2007. After the 2007 taxes were assessing in 2009, the debtors filed a Form 12153, Request for A Collection Due Process Hearing. The due process hearing was concluded in March 2010. The debtors sought to have the 2007 taxes declared discharged in the Chapter 7 case but the IRS argued that the three-year period in Section 507(a)(8) was tolled during the due process hearing and the taxes were not dischargeable. The court looked at the restraints on the IRS collection efforts during a due process hearing and held that the three-year period of Section 507(a)(8) was tolled during the hearing, making the 2007 taxes nondischargeable. In re Lastra, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,116 (Bankr. D. N.M. 2012).

REFUNDS. The debtors (the case involves three separate bankruptcy debtors) filed for chapter 13 prior to 2011 and received a discharge in 2011. The debtors received a refund of 2011 taxes which the trustee sought to include in the estate under General Court Order 2010-01 which provided for distribution of refunds paid directly to trustees by the IRS. In 2011 the IRS stopped the policy of paying refunds to trustees and the trustee in these cases had to file a motion to obtain the debtors’ tax returns and refunds. The court held that refunds arising after confirmation were estate property but that the trustee could not compel turnover from the debtors. In re Hymond, 2013-1 U.S. Tax Cas. (CCH) ¶ 50,115 (Bankr. N.D. Tex. 2012).

FEDERAL FARM PROGRAMS

ANIMAL WELFARE ACT. The APHIS has adopted as final regulations amending the Animal Welfare Act regulations to add