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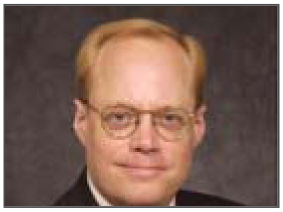

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Post-Turkey Tax Planning Anyone?

You may still feel stuffed with turkey and fixings but not with knowledge about the tax rates you'll face a mere 32 days from now. In fact, it would be nice to have a mere morsel, wouldn't it? Well, get used to going hungry. After 30 years as a tax lawyer, I can't recall such year-end confusion. Call it chaos, Congressional sloth or a collective turkey-in-the-headlights stare, but we're stuck with it.

Investors usually know long before now whether they should take gains this year, harvest losses or both. Ditto for the usual acceleration and deferral planning applicable to both receiving income and claiming deductions. See Gordon Gekko Tax Moves. Indeed, you can usually improve your tax numbers with a little effort. Of course, you can't really make those decisions without running some comparisons. Yet how can you run comparisons when you can't run any figures for 2011?

You want to compare Column A (selling in 2010) with Column B (selling in 2011). But now you need more columns, with B representing the same 2010 tax rates (if they apply!) and Column C representing a return to the pre-Bush tax cut rates. Odds are you may also come up with a Column D and E too, since a number of hybrids have been suggested, including the recent idea of extending the Bush tax cuts for anyone with less than $1 million of income. See Tax Talks Set Stage for 2010 Race. Add that to the more prevalent view the cutoff should be $250,000. See House Democrats: We'll Vote on Tax Cut Extensions For All But High Earners.

In the face of such uncertainty, of course, many people are just throwing up their hands, not bothering to run comparative figures. We knew in early November we wouldn't have answers to these tax questions until at least November 15th, but we still don't know. Congress ***should*** act any day now, but the sad reality is that these tax rate questions might not be resolved this year ***at all***. See Democrats Gird for Tax-Relief Battle. Hey, look what happened with the estate tax!

Everyone said we would know sometime in 2009, but Congress let the law lapse on January 1, 2010. Now nearly one year later, we still don't know what estate tax rates or exemptions will apply starting in January. See Estate Tax Steps For This Year. That's caused some ghoulish behavior. See Ghoulish Estate Planning Before New Year's? The Bush tax cuts and estate tax may even be linked. See Return of Estate Tax Looms as Final Impediment to Extending Bush Tax Cuts.

Despite tax anarchy, here are some year-end tax thoughts. While there are many other year end actions to consider, many people seem especially distraught over the capital gain confusion.

Capital Gains. Will you pay a 15% or 20% rate? You can't lock in the 15% rate for sure unless you sell this year. If you don't want to sell in 2010 but insist on the 15% rate you could wait. However, consider establishing a drop dead date for yourself. Congress simply might not act by December 31. If they do act (and let's assume they extend the 15% rate for all taxpayers), you can hold. But if they act and don't extend the 15% rate, will you still have time to sell? See Sell Or Hold (Given Year-End Tax Rates)?

Capital Losses. You can't fully consider the capital gain rates without considering your losses too. Odds are you have loss assets as well as gain assets. "Loss harvesting" (now there's a euphemism!) involves selling and realizing losses. You might have to sell some gain assets to sop up some of your losses. After all, unlimited offsetting of gains and losses is allowed as long as your gains exceed losses.

But if you end up with excess capital losses, beware. The law severely limits the amount of ordinary income you can offset with capital gains. In fact, you can use only $3,000 per year. That means you'll spend decades burning through a large loss unless you come up with other capital gains to offset your losses more robustly.

Losses are arguably worth more if tax rates go up. That may argue for waiting to realize losses until next year, since (unless Congress acts) tax rates will rise in 2011. There's also the emotional aspect, since selling at a loss is hard for many of us to do. If you need the loss, that can make that emotional part of the decision easier.

For a reprise of what we're still facing this year, see Tea Leaves And Tax Moves In 2010.

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