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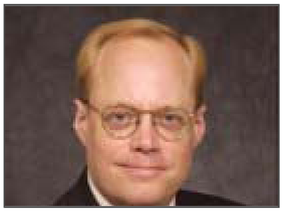

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THE TAX LAWYER

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Obama Or Romney, Higher Capital Gain Rates Hit Soon

It is common knowledge that the 15% rate on long-term capital gains expires December 31, 2012. Will it be extended as it was two years ago? Maybe, but it's unlikely. That means in just a few months, you will pay 20% on long-term gains, right?

US Tax Rates (Photo credit: mSeattle)

Not really. Under Obamacare, staring January 1st capital gains incur an additional 3.8% Medicare tax for single filers with incomes over $200,000 and married joint filers over $250,000. That means long-term rates jump from ***15% to 23.8%***, the highest rate since 1997.

If you held property more than a year, it's long-term. If you held it a year or less, it's short-term. You must report ***all*** capital gains (with the exception of certain special rules on your residence). See Capital Gains, Losses, Sale of Home.

But you can deduct losses only if you sold ***investment property***, not personal-use property. If your long-term gains ***exceed*** your long-term losses, the difference is net capital gain. Subtract short-term losses from net capital gain to determine your net capital gain. If capital losses ***exceed*** capital gains, you can deduct only $3,000 on a joint return or $1,500 if married filing separately. See [Litigation Settlements: Are They Ordinary Income or Capital Gain].

What if the 15% rate is extended after all? Neither Mr. Obama nor Mr. Romney can extend the rates without Congress, but even if Congress extends the 15% rate, it won't change the 3.8% surtax post-December 31st. That means an 18.8% rate if the 15% is extended and 23.8% if it is not.

Mr. Romney promises to repeal Obamacare and its 3.8% surtax but that too takes Congress. Besides, even if Congress passes a tax extender (which most experts do not expect) it could come very late in the year. You may want to grab the 15% rate now. That could mean selling a residence, vacation home or investment property.

So that tax goals do not overtake economic, family and life plans, I'd focus on investment property. Depending on economic conditions and other factors, an unsatisfactory sales price may offset any tax savings. Get some sound investment advice, some tax help if you need it, and don't focus on only one aspect.

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