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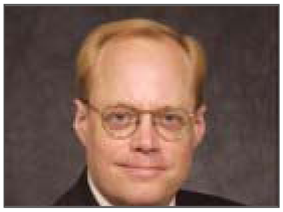

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THE TAX LAWYER

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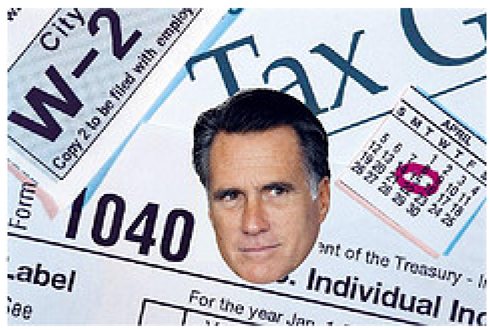
Five Tips About Capital Gain For Everyone (Not Just Mitt Romney)



With all the debate over types of income and whether capital gain rates should continue it's easy to lose sight of a fundamental fact: ***You too can benefit*** while capital gain rates remain a bargain. You don't even have to be a hedge fund king. See Carried Interests Taxed As Capital Gain? It's Poetry.

But act soon as rates go ***way*** up in 2013. Here are Five Tips:

1. Almost everything you own—personal or investment—is a capital asset. That includes your home, household furnishings, stocks and bonds. Even some lawsuit proceeds. See Sauage, Capital Gain, and Settlement Payments. When you sell, the difference between what you paid and the sales price is capital gain or loss.

2. The 15% rate ***expires*** December 31, 2012, so January 1st it's 20%. What's worse, under Obamacare, capital gain incurs 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.

3. If you held the 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 if you have a loss, you can deduct it only if you sold ***investment property***, not personal-use property.

4. 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 your capital losses ***exceed*** your capital gain, you can only deduct $3,000 on a joint return or $1,500 if married filing separately. You can carry over the remainder of your loss an unlimited number of years. See Litigation Settlements: Are They Ordinary Income or Capital Gain.

5. You may be accustomed to Schedule D for capital gains and losses. For 2011 and later years, use Form 8949 to calculate your capital gains and losses. See New Capital Gain Tax Reporting For 2011 Tax Returns. Carry the subtotals from Form 8949 over to Schedule D. See Schedule D and Form 8949 Instructions.

You can harvest gains and losses before year-end with an eye toward maximizing efficiency. More than most years, this is a great year to plan.

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.