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Gordon Gekko Tax Moves

“Greed is good,” Gekko famously intoned. More than 20 years later, in Gekko’s old age (and Michael Douglas’ too, not that 66 is actually *old* these days), our need for thrift is in higher gear than our lust for avarice. But thrift, after all, is its own brand of avarice.

Besides, wanting to come out a winner—by a nose, a few percentage points or a few bucks—is human nature. And in any decade, our rakish-at-any-age man Gekko would have liked the strong thread in the tax law—really more of a hawser-sized rope—about keeping your taxes as low as possible.

In fact, whenever someone is accused of trying to manipulate tax rules to their advantage, they invariably trot out famous tax cases eloquently enunciating the proposition that it’s OK to pay less. Hey, everybody does it. Most famous of all was the rule laid down by Judge Learned Hand a decade before Michael Douglas was born:

> “Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one’s taxes. Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands.” *Gregory v.*

Helvering, 69 F.2d 809, 810 (2d Cir. 1934), aff'd, 293 U.S. 465 (1935).

This year is shaping up to be a doozey, and investment advisers, consultants, tax lawyers and accountants all seem to agree it's hard to figure what to do. You *think* you know tax rates are going up in 2011, yet as we keep saying like automatons, the Bush tax cuts *may* get extended, and that extension (if it comes) may even apply to everyone, despite President Obama's missive that high income taxpayers shouldn't get the nod. See Obama Says U.S. Can't Afford Tax Cut for Wealthy.

Mr. Obama may want to disinter an infamous line from then candidate but ever gaffemeister Joe Biden, who quipped that it was patriotic to pay higher taxes. See Biden Calls Paying Higher Taxes a Patriotic Act. The silver-tongued Veep may not have heard of Judge Learned Hand.

So what should you do between now and New Years Eve? Here are some ideas:

Sell Gain Assets at the 15% Rate. With capital gain rates set to rise to 20% in January, the 15% rate is sure attractive. In fact, it has never been lower. If you can—and if it makes economic and business sense (more important than taxes!)—sell now. If you think you'll make more by holding until mid next year, and you think the increased sales price you can expect will exceed the extra taxes in 2011, just hold. Gather whatever intelligence you can, do some calculations, and try to make reasoned judgments. Get some professional help too.

Consider Installment Reporting vs. Electing Out. If you do sell, and you'll be receiving installment payments over more than one tax year, consider electing *out* of the installment method. Under the tax code, when you sell an asset and receive installment payments, you report your gain proportionately over the years as you receive payments (each payment is allocated part to basis and part to gain). If tax rates go up as scheduled, that means any installments you receive in 2010 qualify for the lower 2010 rates, but not your 2011 and subsequent year payments. So you might consider electing *out* of the installment method and reporting all your gain on your 2010 tax return, so all your gain is taxed at the 15% rate.

You'd make this election on your 2010 tax return, filed in 2011. With an automatic extension you'd have until October 15, 2011 to file your return and make this election. For information about extensions, see IRS Topic 304 and IRS Form 4868. By then you'll hopefully know what tax rates will apply to capital gains in 2011!

Still, there can be big downsides (perhaps, you won't end up collecting the cash installments after all). Get some professional help before you jump one way or the other. For more about installment sales, see IRS Publication 537.

Amazingly, even if you file your return by April 15, 2011 and *fail* to elect out, you have until October 15, 2011 to file an amended tax return making the election for your 2010 installment sale. You should write: "Filed pursuant to section 301.9100-2" at the top of the amended return and file it where the original return was filed. See IRS Publication 537. For more tips on amending a tax return, see Ten Tips for Amending Your Tax Return.

State Income Tax Deductions. Paying tax early is counterintuitive. So if you'll owe significant state income taxes in 2011 for your 2010 tax year, why would you pay these state taxes early, by December 31, 2010? To get a deduction on your federal tax return for 2010 of course. Yet the fact that you *can* do this doesn't mean you *should*.

If tax rates are higher in 2011 as expected, the state income tax deduction could be worth more to you in 2011. However, 2011 is slated to bring back big phase outs of deductions and exemptions for high earners, and that may make your deduction worth more in 2010. Run the numbers both ways and compare them. If you're really sophisticated, you can even factor in the time-use value of the money.

Like everything else in 2010, this is a challenging year. Think carefully, and get some professional help.

For more tax tips about the end of 2010, see Tea Leaves And Tax Moves In 2010.

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