

Because 25% of 26% is 6.5%, the combined effect is marginal super-brackets of 21.5% (15% plus 6.5%) for most long-term capital gains and 32.5% for other categories of income (26% plus 6.5%). Once the taxable excess reaches the statutory amount (\$179,500 in 2013), the nominal rate of 28% kicks in, which translates, in real life, into marginal super-brackets of 22% (15% plus 25% of 28%) and 35% (28% plus 25% of 28%), while the taxpayer exhausts the rest of the rapidly dwindling AMT exemption.

Let's consider the 2013 tax consequences of Mr. and Mrs. John Q. Public, who own their house, subject to a mortgage, and have two dependent children. They will earn \$265,000 from wages. They will pay \$10,000 in real estate taxes, \$10,000 in state income taxes, and \$20,000 in mortgage interest. They will also donate \$5,000 to a charity.

Based on the above, the Publics' AGI is \$265,000, and their regular taxable income (after \$45,000 in itemized deductions and \$15,600 in personal

exemptions) is \$204,400. Thus, the household is comfortably residing within the 28% bracket for regular tax purposes. Enter AMT. The family's AMTI is \$240,000, which equals their AGI reduced by their mortgage interest and charitable deductions. As we know, they lose the benefits of personal exemptions and state and local taxes. What most people do not realize is that the Publics at this point crossed the 35% marginal AMT tax bracket. While for regular tax calculations, they are almost \$20,000 short of breaking the 28% and entering the 33% bracket, the last \$50,000 (out of \$265,000) of their salary was subject to a marginal rate of at least 32.5% (due to the AMT phase-out). Also regrettable and frequently shocking to taxpayers is the fact that every additional dollar they make at this point will be taxed at a marginal 35% AMT bracket (while the taxpayers here are nearly \$200,000 shy of reaching a taxable income of \$398,350 when the 35% threshold officially kicks in per the inflation-adjusted section 1 rate schedule). The 35% AMT rate will apply until they reach

an AMTI ceiling of \$477,100, at which point their alternative minimum tax rate reverts back to 28% (although they may now be entering the 39.6% rate for ordinary taxes). In our illustration, if Mr. Public receives a bonus of \$100,000 in the end of 2013, he will pay \$35,000 more in federal tax.

Conclusion

While the 2012 Act seems to have preserved reduced regular income tax rates for married taxpayers making \$450,000 or less, it made only a nominal attempt, by virtue of applying a COLA adjustment to the 1993 statutory amount, to rectify the creeping effect of the AMT exemption phase-out, instead touting the increase in the exemption itself. What the lawmakers should have done is permanently increase, and only then index for inflation, both the exemption and the income threshold at which the AMT exemption phase-out kicks in. ■

GOVERNMENT SUBMISSIONS BOXSCORE

Since August 1, 2013, the Section has coordinated the following government submissions, which can be viewed and downloaded from the Section's website at <http://www.americanbar.org/groups/taxation/policy.html>.

SUBMISSIONS AND COMMENTS ON GOVERNMENT REGULATIONS, ADMINISTRATIVE RULINGS, BLANKET AUTHORITY and ABA POLICY

TO	DATE	CODE SECTION	TITLE	COMMITTEE	CONTACT
Internal Revenue Service	10/1/2013	n/a	Comments Concerning User Fees for Processing Installment Agreements and Offers in Compromise	Pro Bono and Tax Clinics	Paul Harrison, Andrew VanSingel
Internal Revenue Service	9/3/2013	401(a), 403(b)	Comments Concerning Revenue Procedure 2013-12	Employee Benefits	Lisa A. Tavares, Mark A. Bodron
Internal Revenue Service	8/14/2013	n/a	Comments Concerning Proposed Regulations for Reliance Standards for Making Good Faith Determinations	Exempt Organizations	Morey Ward

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