

The CPA's Role in Estate Planning After the American Taxpayer Relief Act

By Martin M. Shenkman



By now, every practitioner should be well aware of the changes made by the American Taxpayer Relief Act of 2012 (ATRA) to the estate tax in which the \$5 million inflation adjusted exemption amount was made permanent, as was portability of the exemption. This can permit the surviving spouse to use the deceased spouse's unused exemption. Because ATRA was enacted following the end of 2012 and just before tax season, many practitioners

may not have had time to digest the act's impact on their practices.

ATRA has changed estate planning in a profound way. It certainly will not be business as usual, but we can make it better than usual with proactive and creative steps.

New Estate Planning Psychology

Estate planning from the perspective of most clients has changed dramatically and permanently. In 2013, the inflation-adjusted exemption for a couple is \$10.5 million, and that amount will increase in future years. Few



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Chairman's Corner



In the fall of last year, the AICPA's governing Council granted the Personal Financial Planning (PFP) Executive Committee standard-setting authority, paving the way for the creation of enforceable PFP professional standards. These new professional standards will provide AICPA members who offer personal financial planning services with practice and competency guidelines.

As with any new AICPA standard, there will be an exposure period during which members

can submit comments. While the official release date has not yet been determined, the anticipated date likely will be in early June. Watch AICPA and PFP communications for more information, and [learn more](#) about the responsibilities of CPAs as it relates to providing financial planning advice.

*Dirk Edwards, CPA/PFS, JD
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clients will exceed this level, so for the vast majority of clients, the federal estate tax is irrelevant.

These clients, however, will continue to need the guidance of the CPA as an estate planner, but what planning will be appropriate, and desired by clients, in the absence of an estate tax?

- What will get new estate planning clients in the door?
- How can you motivate existing clients to return to plan?
- What estate planning and related services can you offer clients?
- How will these services differ from those that CPAs have traditionally offered?
- What will clients be willing to pay for estate planning services?
- How can you cost-effectively serve these clients to maintain their business?

Until the end of 2012, clients were aware of the possibility of a \$1 million exemption and a 55% rate, a fear that drove many to undertake estate planning and create irrevocable trusts, among other endeavors. However, with a permanent \$5 million inflation adjusted exemption, the fear that drove much of the estate planning business is gone—most likely forever.

The CPA as a Catalyst for Growth

Planning will be fundamentally different for clients, including the wealthy who are beneath

the new high federal estate tax exemptions. CPAs need to understand the impact on the role they play as part of the estate planning team, as well as the varying effects on other professionals involved in the estate planning process, in order to best target their efforts to serve clients and grow their estate planning practices.

The high exemptions could commonly dissuade a client with a family net worth of perhaps \$3 million to more than \$5 million as an individual, or even \$6 million to more than \$10 million for a couple, from returning to their estate planning attorney to be certain that their documents and planning are current. The perspective of many clients, even those who have these substantial amounts of wealth, is that they are sufficiently below the exemption amounts. As a result, they may believe that planning is not important for them and that they may not need to monitor it to the degree they did when tax worries were paramount. Unless a natural event such as birth, death, divorce, and marriage occurs, clients are likely to see their estate planning attorney less frequently. All this means a more important role, and more business opportunity, for the CPA.

In the past, many CPAs presumed that the client's attorney was handling estate planning and, therefore, viewed the attorney's role as more ancillary in nature. Although the attorney will continue to draft documents, it will be the

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CPA, with the annual or more frequent contact with the client, who may now be in the central position to start the estate planning discussion. Because of the periodic contact with clients regarding ongoing financial planning and tax compliance matters, the CPA will have opportunities to address estate planning and fill the planning void. Simply put, CPAs can, and in many cases should, assume the role of catalyst for estate planning that had largely been within the purview of estate planning attorneys in the past.

Modify Checklists and Marketing Efforts

To address this new and more significant role, practitioners should update the checklists they use at meetings with planning or business clients, tax return review, or intake meetings to enhance attention to estate planning issues. Marketing efforts should emphasize the consulting instead of the drafting role CPAs can provide in the estate planning process. Staff, even those outside of a trust and estate group, should be trained to identify estate planning opportunities, especially business succession planning, asset protection, and other concerns that are common to clients who may no longer focus on planning because their estates are safely under the \$10.5 million 2013 exemption available to a couple.

What Estate Planning Will Entail

Although the federal estate tax may not be an issue, other planning topics remain important:

- State estate tax planning in a decoupled state.
- Succession planning for family and closely held businesses, including reviewing all existing plans focusing on estate tax concerns that may no longer be relevant.
- Asset protection planning. Regardless of the status of the estate tax, the litigious nature of society will not change, so some degree of planning is appropriate for most clients.
- Divorce planning, which is a priority for many clients. This will often entail the use of trust planning, similar to that used to minimize estate tax, but perhaps with a different goal or emphasis.
- Retirement planning will remain interrelated with estate planning. This includes not only planning for retirement plan distributions, but most importantly the basic budgeting and financial planning most clients are loath to do.
- Maximizing basis step-up at death to minimize capital gains, with consideration to the state (if any) and federal (if any) estate taxes.
- Repurposing existing trusts and entities to have continued relevance after ATRA, or liquidating or winding them down if they are not relevant.

The CPA's role is more essential than ever because none of these issues is likely to be addressed if the client is not motivated to have an estate planning conversation. Even intelligent and well-informed clients will require education and encouragement by their CPAs to address planning.

Costly and Sophisticated Planning

Although some estate planners assert that clients living in decoupled states will continue to benefit from sophisticated planning techniques to save state estate tax, that argument won't be nearly as powerful a motivator for planning as the federal estate tax had once been. Consider the following:

- Although 21 states and the District of Columbia decoupled from the federal estate tax system, the exemptions in some decoupled states is relatively high, and most states still have no estate tax.
- Even when the client is domiciled in a decoupled state, the marginal cost of a state estate tax is not nearly as significant as the federal estate tax had been.
- Even though in absolute dollar terms the cost of a state estate tax may be significant, in many cases, it may not convince a client to bear the cost and complexity of the more complex and costly planning options. Even if those options are pursued, there

Resources to Plan for the Future

The [Proactive Planning for 2013 toolkit](#) provides resources, articles, web seminar recordings (including "Top 10 Estate Planning Ideas for 2013"), podcasts, and more to help you plan for estate and income tax changes enacted under the American Taxpayer Relief Act of 2012.

The 2013 edition of one of the most popular PFP/PFS member benefits will be available soon! [The CPAs Guide to Financial and Estate Planning](#) is a comprehensive 1,000-page, 4-volume downloadable publication that is available free to PFP/PFS members. It provides guidance to CPAs who advise clients in estate, tax, retirement, investment, and risk management matters. The 2013 guide will cover planning implications under the American Taxpayer Relief Act of 2012. Watch *PFP News* for an announcement about volume 1, which will be available soon.

is no guarantee of a net tax savings. If assets grow outside the estate, the incremental capital gains tax that may be incurred may outweigh the savings in state estate taxes. Benefit may only be achieved if a basis step-up is assured.

- Many clients move their residences to save state income and estate taxes. If moving could eliminate any state estate tax benefit that costly and complex planning might provide, will clients pursue the planning?

There's no doubt that planning will continue, and, in many instances, state estate tax planning will justify some advanced planning. In most situations, planning will have to be done creatively, more simply, and at lower cost to persuade clients to proceed.

What might some of this planning entail? One technique that is likely to be more commonly used will be gifts to lifetime trusts. Because no state other than Connecticut has a gift tax, clients who transfer adequate wealth to trusts pre-death can avoid state estate tax. Because few clients will put wealth out of their reach, these trusts will have to be structured so that a spouse, or even the client himself or herself, can access the assets. This latter type of trust, referred to as *self-settled* because the client set up the trust and is a beneficiary, will have to be established in states such as Delaware that permit these trusts. As this planning becomes more commonly used, it will become more readily accepted by clients, more standardized, and less costly.

The Income Tax is the New Estate Tax

For most clients, the income tax will be the new estate tax. This is a significant change in focus. Numerically, few clients will be subject to a federal estate tax, but many more will be subject to the higher post-ATRA income tax rates and the 3.8% Medicare tax on passive investment income. As a result, family limited partnerships that were formed to create discounts for estate tax savings may be counterproductive. Instead, practitioners can have those entities repurposed to provide a mechanism to shift income to lower bracket family members to save income taxes.

As the shift in emphasis from estate tax to income tax aspects of estate planning takes hold, the role of the CPA as the quarterback for the estate planning team will grow.

What We've Learned

There are many services CPAs can provide to clients after ATRA. Whereas some are certainly the same as before, many are different. Also, given the new high exemption amounts, the portion of services in the different categories will likely change substantially. For example, there will likely be far fewer qualified personal residence trusts and more work on business succession planning. Consider the following:

- Very few clients will be subject to the federal estate tax. The elimination of the fear of the federal estate tax decimating a lifetime of savings will result in fewer clients seeking estate planning help. This can actually work to the advantage of practitioners who proactively advise clients about planning opportunities.
- A tremendous number of decedents will need to file federal estate tax returns (namely Form 706) solely to elect portability of the deceased spouse's exemption. Because no tax will be due, proactive CPA firms may use this as an opportunity to significantly expand their involvement in this work at the expense of law firms that have higher billing structures. With no risk of a tax due, most clients will not view the incremental cost as worthwhile.
- Clients who are domiciled in decoupled states will want simpler and lower cost planning options to address state estate tax. Most will not accept the cost and complexity that they would have accepted as recently as 2012 when they feared a possible reduction in the federal estate tax exemption to a mere \$1 million. CPAs who gain the knowledge of how to creatively and cost-effectively minimize state estate tax can play an active role in the estate planning process.

ATRA is a game changer. Although the initial reaction of many CPAs is a reduction in estate planning work, the opposite is likely to be true! However, in order to capitalize on what could be a business development bonanza, practitioners need to rethink how they market estate planning services, what services they offer, and how they network with allied professionals such as estate planning attorneys. For those practitioners who are proactive and creative, the act will provide great business opportunities and the potential to provide new and valuable services to a broad range of clients.