Vol. 15, No. 1 **Choate's Notes** Spring 2013

A free newsletter for estate planners, from Natalie B. Choate

Dear estate planning professional:

The American Taxpayer Relief Act of 2012 (enacted in January 2013) provided "relief" for taxpayers in the form of higher rates (maximum estate tax rate increased from 35% to 40%; maximum income tax rate from 35% to 39.6%; capital gain rate from 15% to 20%) and reinstatement of the phaseout of personal exemptions and itemized deductions for high-income taxpayers. So how do those changes relieve taxpayers exactly? It's a relief because at least the new law is stated to be *permanent*. Even though we know that the tax code can and will still change constantly, at least (for the first time since 2001) we have a tax law that does not have a built-in expiration date or "sunset." To read about ATRA's impact on planning for retirement benefits, see my free "Recent Developments 2013" report posted for a limited time at www.ataxplan.com.

Also check out: http://fairmark.com/retirement/roth-accounts/roth-conversions/isolating-basis-for-roth-conversion, which has an excellent long NEW thorough article by Kaye A. Thomas, Esq., on how to determine a client's basis in his/her plans and IRAs and whether it is possible to "isolate" basis for separate distribution or Roth conversion.

If you don't subscribe to *Ed Slott's IRA Advisor* (www.irahelp.com), then you missed the excellent article by Marty James, CPA, PFS, in the April 2013 issue detailing why, when one spouse dies, the surviving spouse's income taxes suddenly go much higher, and suggesting planning strategies to prepare for that event.

Did you know you can purchase *The QPRT Manual* in electronic form as a big pdf? Visit http://www.ataxplan.com/thebooks/tocQPRT.cfm to read the detailed Table of Contents of the book. You don't want to draft, administer, or unwind a qualified personal residence trust without this resource.

Just after I recommended (in my free monthly MorningstarAdvisor.com column) that sole proprietors keep contributing to their retirement plans even after their retirement needs are fully funded, President Obama came out with a budget proposal attacking this strategy. Apparently he read my column and was outraged. The budget proposal would prevent further contributions to an individual's retirement plans once he has accumulated about $3 million (but would not force distribution of, or impose any special tax on, the excess). I shoulda kept my mouth shut.

The budget would also limit the "tax benefit" of certain deductions, including "employee contributions" to retirement plans, to 28%, regardless of the individual's actual tax bracket. If as a result of this you pay some income tax on your plan contribution your basis in the plan will be adjusted to reflect the fact. (Presumably this is not part of the "simplification" section of the budget proposal). Other retirement plan-related proposals in the President's budget: Mandatory 5-year payout for all retirement plan death benefits (no more life expectancy payouts) (with several exceptions) (applicable to deaths after 2013); 60-day rollovers to be allowed for benefits inherited by nonspouse beneficiaries; and no minimum required distributions for individuals with less than $75,000 of benefits. The 5-year payout is the only one I violently object to, but make it 21 years instead of 5 years (and delete all the exceptions) and I'm on board.

Until the next issue,
Natalie B. Choate

Ideas for Underemployed Estate Planners

With a federal estate tax exemption of $5.25 million, portable between spouses, there's suddenly a whole lot less need for federal estate tax planning in general and "credit shelter" planning (the bread and butter of estate planning for at least the last 40 years) in particular. Many estate planning lawyers have no clients with more than $5 million of assets, and few estate planners have many such clients. Before you close up shop and look for a new job ("Would you like fries with that?"), consider the following areas where average Americans still desperately need your skills:

- ✓ **Disability, special needs, and elder law.** The National Academy of Elder Law Attorneys (NAELA; www.naela.org) is the leading association of estate planning lawyers who specialize in helping clients qualify for various government means-tested disability benefits for themselves and their dependants. The need for these services is growing exponentially.

- ✓ **State tax planning.** Some states are "tax havens" while others are growing increasingly aggressive in stretching to collect tax dollars as they fiscally sink. Clients are moving out of the sinks into the havens, and need your help in planning and executing such moves. Not sure how you find these mobile clients though.

- ✓ **Foreign tax planning.** High-income and high-net-worth individuals have assets and earn income in more than one country. Lawyers who understand this field have guaranteed business for years to come. Don't call me please—my knowledge stops at the border! To see how one financial planning firm built its business around its expertise in Canadian and American tax and benefits laws and how the two nations' systems interact, see http://www.keatsconnelly.com/.

- ✓ **Retirement benefits.** For a number of years (a big number) I've made my living exclusively as a specialist in tax and estate planning for retirement benefits....planning, cleanup, opinion letters, the lot. There is plenty of room for specialists in this topic, because the average estate planner can't master it all. Be a resource for your community or your bar association and you're guaranteed to get business.

- ✓ **Asset protection**. Here's another specialty that some "mainstream" estate planners won't touch, but that is desperately wanted and needed by clients who fear divorce (their own or their children's), lawsuits, and other threats to their fiscal health. Like retirement benefits and disability law, this specialty requires mastering a substantial and ever-changing body of law. The payoff is that "average" estate planners will need to consult or refer their clients to you to handle asset protection needs.

- ✓ **Animals.** Almost every client has a pet, and almost no client has done the necessary planning to provide for the animal after the client's death. Last year I urged every estate planner to read *Who Will Care When You're Not There* by Bob Kass (see pic at http://www.ataxplan.com/resources/books.cfm) but maybe a few lawyers should specialize in this and take referrals from the rest of us!