PacificCPE

High Net Worth Individuals: Part 2

Course #32552B

Taxes

2 Credit Hours

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HIGH NET WORTH INDIVIDUALS: PART 2

This course explores the strategic shift from transfer tax to income tax basis planning in estate and asset protection. The reader will learn to identify high-impact basis planning opportunities, avoid outdated valuation discount strategies, and apply rules for basis step-up, gifts, and grantor trusts. Emphasis is placed on maximizing post-death asset value, handling general powers of appointment, and understanding planning implications for high-net-worth clients. Practical tools for updating legacy estate plans are also provided.

LEARNING ASSIGNMENTS AND OBJECTIVES

As a result of studying each assignment, you should be able to meet the objectives listed below each individual assignment.

SUBJECTS

Basis Planning: Fixing Outdated Estate/Asset Protection Plans

Study the course materials

Complete the review questions at the end of each chapter

Answer the exam questions 1 to 10

Objectives:

- Recognize estate planning techniques for the asset protection of high net worth taxpayers.

NOTICE

Program publication date **8/25/25**

EXAM OUTLINE

- **TEST FORMAT:** The final exam for this course consists of 10 multiple-choice questions and is based specifically on the information covered in the course materials.

- **ACCESS FINAL EXAM:** Log in to your account and click Take Exam. A copy of the final exam is provided at the end of these course materials for your convenience, however you must submit your answers online to receive credit for the course.

- **LICENSE RENEWAL INFORMATION:** This course qualifies for **2** CPE hours.

- **PROCESSING:** You will receive the score for your final exam immediately after it is submitted. A score of 70% or better is required to pass.

- **CERTIFICATE OF COMPLETION:** Will be available in your account to view online or print. If you do not pass an exam, it can be retaken free of charge.

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BASIS PLANNING: FIXING OUTDATED ESTATE/ASSET PROTECTION PLANS

Objective

After completing this course, you should be able to:

- Recognize estate planning techniques for the asset protection of high net worth taxpayers.

¶3.01 GENERALLY — THE NEW TAX ENVIRONMENT

Since the passage of the American Taxpayer Relief Act of 2012 (ATRA), the Tax Cuts and Jobs Act of 2017 (TCJA), and the One Big Beautiful Bill Act (OBBBA), the tax focus of estate planning and asset protection planning has shifted from transfer tax planning (*i.e.*, estate, gift and GST tax planning) to income tax planning, and, in particular, income tax basis planning. Today, basis planning is the primary focal point of tax planning for asset protection and estate planners.

This course focuses on tax basis management and planning in the context of estate/asset protection planning and how to repair outdated estate/asset protection plans to reflect this shift in focus.

This change in focus began with legislative changes beginning in 2001 and culminated with the enactment of the OBBBA. More specifically, in 2001, before the passage of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the federal estate and gift tax exclusion amount was $675,000, just a fraction of the current $15 million exemption for 2026. Moreover, the top marginal transfer tax rate was 55 percent as opposed to today's 40 percent rate. In contrast, the prevailing combined state and federal income tax rates at the time were substantially lower than the top marginal transfer tax rates, especially for capital gains property. Therefore, the primary focus of estate and asset protection planners was to reduce clients' transfer tax exposure and any cost in terms of lost income tax basis due to such estate planning was generally outweighed by the transfer tax savings.

Since 2001, the following key tax changes have occurred, which have contributed to today's paradigm shift:

- EGTRRA gradually increased the unified credit from $675,000 to $3.5 million, albeit temporarily due to a sunset provision. It also eliminated the dollar for dollar credit for state estate taxes. This, in turn, contributed to the reduction in the number of states with estate taxes from approximately 50 states to the present number of approximately 11 states that currently have a state estate tax. This reduction is due to the fact that the state estate tax is no longer completely offset by the reduction in the federal estate tax.
- The passage of the ATRA permanently increased the applicable exclusion amount for taxpayers to $5 million per person, indexed for inflation. This resulted in the federal estate tax being a non-issue for approximately 995 individuals out of 1,000. The ATRA also set the maximum estate and gift tax rate at 40 percent.

- The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRA 2010) added, and the ATRA made permanent, estate tax portability. Portability allows the unused estate tax exemption amount (*i.e.*, the applicable exclusion amount) to be transferred to a surviving spouse without the necessity of using a credit shelter trust. This allows a married couple to obtain a basis step up upon both the death of the first spouse to die and the surviving spouse on assets equal to the combined applicable exclusion amount, which is significant. Importantly, portability allows for a second step up in basis for assets covered by the applicable exclusion amount on the surviving spouse's death. Previously, it was difficult to obtain a second step up in basis on the surviving spouse's death for assets in a credit shelter trust.

- The passage of the so-called Obamacare legislation (Health Care and Education Reconciliation Act of 2010 and the Patient Protection and Affordable Care Act) increased the top marginal income tax rates by enacting the 3.8% Net Investment Income Tax, thus increasing the importance of income tax planning vis a vis estate tax planning by increasing the marginal income tax rates applicable to affluent individuals and making such rates closer to the marginal transfer tax rates.

As a result of the foregoing legislative developments, in many cases it is more advantageous for planners to focus on income tax planning than on estate tax planning. This is especially the case for married couples owning less than a combined $30 million in 2026, as there is zero estate tax exposure for such couples but there is income tax exposure. Such clients generally consider the estate and gift tax to be a non-issue.

Note

For taxpayers with assets exceeding the applicable exclusion amount, planning has become much more complicated. For such taxpayers, planners must now consider the following factors, among others, for their clients:

- Net worth and the estimated size of the estates at death;
- Estimated life expectancy, and costs of maintaining the client's lifestyle and spending habits;
- Estimated income and return on investments;
- Tax nature of the client's assets and anticipated future assets;

  This would include consideration of whether the client's assets are high-basis or low-basis assets. Low basis assets could, for example, include depreciated real estate, self-created assets such as intellectual property or artwork created by the client. In addition, whether such assets are income in respect of a decedent (IRD) should be considered;

Note (continued)

- The taxpayer's domicile (*e.g.*, is it in a high-tax jurisdiction such as California or New York, or a low-tax jurisdiction such as Florida);
- The beneficiaries' anticipated domiciles; and
- The domicile of any fiduciary, especially where the fiduciary's domicile may trigger state taxation of trusts.

This course will discuss the following aspects of basis planning:

- A summary of tax principles applicable to basis, especially basis of assets received from a decedent and by means of gifts; and
- Strategies to maximize basis as part of an asset protection/estate plan.

¶3.02 WHAT IS BASIS?

Generally

"Basis" is the starting amount on which gain or loss on a sale or exchange is determined.

Generally, gain or loss equals the difference between the amount that a taxpayer paid for the property (less certain required adjustments for such items as claimed depreciation and amortization) and such property's sale proceeds. However, in some cases, a taxpayer has no cost basis. For example, when the property has been acquired by gift or inheritance, the property will have no cost basis. In these situations, the Code provides special deemed basis rules, which are discussed below.

Caution!

The Code provides extensive basis rules to cover numerous special situations, such as stock splits, tax-free transfers, etc. Most of these rules are not discussed in this Guide. Instead, this Guide will focus primarily on basis of property received from a decedent or by gift. Planners are referred to the following Code Sections and regulations thereunder for these additional rules:

- Code Sec. 1011 – adjusted basis for determining gain or loss;
- Code Sec. 1012 – basis of property – cost;
- Code Sec. 1013 – basis of property included in inventory;
- Code Sec. 1016 – adjustments to basis;
- Code Sec. 1017 – discharge of indebtedness;
- Code Sec. 1019 – property on which lessee has made improvements;
- Code Sec. 1021 – sale of annuities.