



Lahti, Lahti & O'Neill, LLC

Estate Planning and Elder Law



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CONTENTS OF THIS ISSUE

American Taxpayer Relief Act Of 2012 Introduces "Permanence"	1
LL&O Scores High On Client Satisfaction Surveys ..	3
Guardianship Is Often Not The Answer	3
An Interview With Michael T. Lahti	4

American Taxpayer Relief Act of 2012: Permanence in the Estate Planning Landscape

On January 1, 2013, the *American Taxpayer Relief Act of 2012* ("ATRA") enacted the first "permanent" set of estate, gift and generation skipping transfer tax exemptions in 12 years.

ATRA's only transfer tax law **change** was to set the estate, gift and generation skipping transfer tax rates at 40%, up from the 35% rate that had been established (by "TRUIRJCA 2010") for 2011 and 2012.

But ATRA is most impactful in terms of what it **did not change**. It did not reduce the federal estate, gift and generation skipping transfer tax exemption, which had been set by TRUIRJCA 2010 at \$5 million and is now set as of January 1, 2013 at an inflation-adjusted level of \$5,250,000.

It did not change the concept of "portability" of the deceased spouse's unused estate and gift tax

exemption amount ("DSUEA") to a surviving spouse, a concept also introduced by TRUIRJCA 2010. However, as under TRUIRJCA 2010, there is no portability of a deceased spouse's unused *generation-skipping transfer* tax exemption.

Thus with Rhode Island's inflation-adjusted estate tax exemption set at \$910,750 as of 1/1/13, Massachusetts' exemption frozen at \$1 million, and Florida's estate tax repealed since 2005, all three jurisdictions in which *Lahti, Lahti and O'Neill, LLC* practices now have a stable estate planning landscape -- for the first time in this millennium. Of course we all know that the landscape can destabilize if the political winds blow in a different direction. But with repeal seeming very unlikely and lowering of the exemption now seeming even more unlikely, we may be settling into a period of transfer tax détente.

In general, here's the transfer tax backdrop effective January 1, 2013:

- ❖ There is a \$5,250,000 federal estate, gift and generation skipping transfer tax exemption and a 40% tax rate; and all three exemptions are subject to inflationary adjustments beginning in 2014.

- ❖ For married couples, there is portability of the “DSUEA” -- the deceased spouse’s unused estate and gift tax exemption amount (but not the generation-skipping transfer tax exemption) -- to the surviving spouse (under an election to be made by the first spouse’s executor on a timely filed federal estate tax return), effectively allowing the surviving spouse’s estate to now have a federal estate tax exemption of up to \$10,500,000 subject to inflationary adjustments beginning in 2014 – but see our CAVEAT below.
- ❖ There is a \$910,750 Rhode Island estate tax exemption, subject to inflationary adjustments beginning in 2014, but unlike federal tax law there is **no portability** of a deceased spouse’s unused estate tax exemption. The first \$75,000 of the Rhode Island taxable estate is taxed at 39%. Thereafter the rate drops to 6.69% but then climbs until it tops out at 16% for estates in excess of \$20 million.
- ❖ There is a \$1 million Massachusetts estate tax exemption, but unlike federal tax law there is **no portability** of a deceased spouse’s unused estate tax exemption. The first \$100,000 of the Massachusetts taxable estate is taxed at 39%. Thereafter the rate drops to 6.4% but then climbs until it tops out at 16% for estates in excess of \$20 million.
- ❖ Florida has no estate tax
- ❖ Neither Rhode Island nor Massachusetts nor Florida has a gift tax

CAVEAT: if a DSUEA falls in your lap you should use it -- but portability of the “DSUEA” from one spouse to another will often be a wolf in sheep’s clothing, for the following reasons:

- Failing to shelter the federal estate tax exemption in a so-called “family” or “credit shelter” or “bypass” trust or “Q-Tippable” marital trust means that any growth in the estate of the first spouse to die between the first and second death will be included in the surviving spouse’s estate.
- Failure to shelter at least the amount of the state death tax exemption (Rhode Island: \$910,750; Massachusetts: \$1,000,000) in a so-called “family” or “credit shelter” or “bypass” trust will result in significant state death taxes at the second spouse’s death.

- Allocating some or all of the first spouse’s assets to a family or credit shelter or bypass trust can generate significant family income tax splitting savings and can shelter assets from creditors, predators and divorces.
- Because portability does not apply to the generation skipping transfer tax exemption, those who want to shelter the maximum amount from generation-skipping transfer taxes in order to save death taxes for their grandchildren and later generations are well advised to continue to use family or credit shelter or bypass trusts.

ATRA also made some significant personal federal **income tax law changes**:

- For individuals with taxable income under \$400,000 (\$450,000 for joint filers), the Bush tax cuts are made permanent. The top rate for income over those amounts will be 39.6%.
- Maintaining the 15 percent rate on capital gains and qualified dividends for individuals with taxable income under the same levels as above. The maximum capital gain/qualified dividend rate for those individuals in excess of those thresholds is now 20 percent.
- Reinstatement of the personal exemption phase out and the itemized deduction phase out for taxpayers with gross income over \$250,000 (\$300,000 for joint filers).
- The Alternative Minimum Tax (“AMT”) exemption amount is set at \$78,750 for joint filers for 2012 and at \$50,600 for single filers. And the AMT exemption amount is made permanent and will be automatically indexed for inflation from the 2012 levels.
- Extension of certain credits and deductions that would have (or in some cases, already had) expired.
- Expiration of the two-year payroll tax holiday.

The tax bracket increase for the highest income taxpayers comes along with the onset of the additional Medicare tax on earned income and net investment income, further increasing the effective tax rates for those making more than \$250,000 for joint filers (\$200,000 for single) – and those amounts

are currently NOT slated to be indexed for inflation.

In the spring of this year we'll provide you with an in-depth analysis of what this new stability means to clients in various planning categories. But there's no need to wait; come in soon for a review of your particular situation, i.e. a customized analysis against the backdrop of your particular mix of assets, objectives and beneficiaries, an analysis which will take into account not just the impact of wealth transfer taxes but all other relevant aspects of your estate plan. If it's been more than three years since you adopted or updated your estate plan, you qualify for a free consultation. Call us now so that we can get you on the calendar and send you our Estate Planning Update Questionnaire.

Congratulations Steve!

Stephen T. O'Neill was listed in the January 2013 issue of Rhode Island Monthly as a 2013 Rhode Island Five Star Wealth Manager. Five Star Wealth Managers represent less than 4 percent of the wealth managers in the Rhode Island Area. Separately, he was listed in the November 2012 issue of the same magazine as a Rhode Island Super Lawyer in the area of Estate Planning & Probate.

Lahti, Lahti & O'Neill Scores High on New Client Satisfaction Surveys

During 2012, all new Lahti, Lahti & O'Neill clients were asked to complete a short "Client Satisfaction Survey," once their legal work had been completed.

For the year, 77 new clients completed surveys expressing their feeling about the firm. Regarding general satisfaction, the firm earned an average score of 9.18, on a scale of one to ten, (with scores of 9 & 10 representing "Extremely Satisfied.")

Regarding the very important question, "How likely would you be to recommend the firm to a family member or colleague?" the same 77 new clients had an average score of 9.39, on a scale of one to ten, (with scores of 9 & 10 representing "Definitely Would.")

Individual testimonial remarks from new clients can be found on the Lahti, Lahti & O'Neill web site home page (www.llo-law.com) by clicking the home page link titled "Client Satisfaction and Testimonials."

Guardianship Is Often Not the Answer

by Mia Lahti

One of the areas that I cover in our office is guardianship and conservatorship. I assist families in obtaining a court-ordered guardianship and/or conservatorship when such a measure is necessary. However, guardianship and conservatorship are often not needed when one has a health care power of attorney, and an updated power of attorney.

I would like to share a situation where advanced planning in this area really helped our client. He was an elderly gentleman whose estate planning documents were all in order, including a Power of Attorney and Health Care Proxy. His appointed "agent" on both documents was his nephew. The client and his nephew contacted us after receiving notification from the court that two other family members had petitioned the court to get guardianship of their uncle. They had even found a doctor who had met with their uncle, and signed a medical certificate for the court, saying that our client was unable to make his own decisions.

This was very disconcerting to our client, who was obviously competent. Michael and I appeared in court with our client and his nephew. The other family members had hired an attorney, who showed pictures to the judge of what they felt were "messy conditions" at the client's home. (The conditions were, in fact, no messier than my house after my kids are done with it!) I showed the judge the client's Power of Attorney and Health Care Proxy, and the judge then met privately with our client to talk with him.

The verdict was immediate, the guardianship petition from the other family members was thrown out, and our client's documents, and independence, were affirmed. The courts' preference in Massachusetts and Rhode Island leans towards supporting an individual's self-reliance and independence. Estate planning documents that include a power of attorney and health care power of attorney can help to avoid the more intrusive and expensive alternatives of guardianship and conservatorship.

Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication is not intended or written to be used for, and may not be used for, the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

This Newsletter should not be construed as legal advice but rather as general guidance on matters as to which you may wish to consult with a qualified professional advisor.



An Interview With Michael T. Lahti

*Interviewed By
Brian McCarthy*

1. You had a very successful law practice in southeastern Massachusetts. Why did you merge your practice with Steve O'Neill in 2010, and expand into Rhode Island?

I have had significant connections to Rhode Island since childhood and have always wanted to expand into this area. A mutual friend introduced me to Steve O'Neill, knowing that I wanted to expand into Rhode Island and that Steve wanted to work with other estate planning attorneys. Upon meeting Steve, it seemed like a good time professionally to expand into Rhode Island.

2. Does practicing Estate Planning and Elder Law in Rhode Island differ much from practicing in Massachusetts?

There are subtle differences between the two states. The Massachusetts estate tax exemption is a little higher. Rhode Island's Medicaid rules are generally more lenient. However, in my experience working in the two states, Rhode Island tends to follow much of what Massachusetts does.

3. You are also licensed to practice law in Massachusetts, Rhode Island and Florida. Has your L.L.M. in Estate Planning from the University of Miami helped you with Florida law?

My L.L.M. has helped me significantly in all three states. The education I received when I obtained my L.L.M. allows me to handle many of the sophisticated estate planning issues that I deal with every day. I cannot imagine having done it any differently.

4. What do you enjoy the most about practicing Estate Planning & Elder Law? Enjoy the least?

It's very comforting to give families peace of mind knowing that they have certainty as to where and

how their assets will be passed and that things will be handled smoothly. What I enjoy the least are the late nights and weekends spent working on keeping up with the changing legal environment and laws. I cannot imagine how attorneys who do not specialize in these areas keep up.

5. You are one of only four Certified Elder Law Attorneys in Rhode Island, certified by the National Elder Law Foundation. Can you explain what this means?

To become certified as an Elder Law attorney, you have to have handled a certain number of elder law cases and have to have practiced in elder law for a certain number of years. In addition to that, there's a rigorous bar exam given to applicants testing them in all aspects of elder law. Furthermore, you have to have a pristine ethical record and you have to stay certified.

6. Since one of your law partners is your wife Mia, would you like to see one or more of your children follow you both into law?

My son has expressed an interest in law and I have to say it would be fun to have him at some point join us. That being said, he still has a long way to go (he's 17) and I would want all of my children to keep their options open.

7. What is the best general advice you offer clients?

I always encourage clients to think proactively when it comes to estate planning. Many times the biggest obstacle to successful estate planning is simply that clients have waited too long to move forward with protecting assets or setting things up. We also encourage all of our clients to revisit what they have done as many aspects of an estate plan tend to change often (assets, people, health and goals).

8. What do you do with your free time?

I like to exercise. I play tennis in two groups. I also like to relax with my family. I tend to be a homebody, so I really enjoy weekends where I can just hang out with my family, and we often go on local hikes. In the summer, I love to fish, and can be found on most weekends fishing from the beach.

Brian McCarthy is an independent marketing consultant