1971

A Study of the Accountant's Role in Estate Planning.

Edward Earl Milam
Louisiana State University and Agricultural & Mechanical College

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The Louisiana State University and Agricultural and Mechanical College, Ph.D., 1971
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IN ESTATE PLANNING

A Dissertation

Submitted to the Graduate Faculty of the
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in

The Department of Accounting

by
Edward Earl Milam
B.S. Delta State College, 1965
M.S. Louisiana State University, 1967

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## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACKNOWLEDGEMENT</td>
<td>ii</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>vi</td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>vii</td>
</tr>
<tr>
<td>CHAPTER</td>
<td></td>
</tr>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>Purposes and Limitations of Study</td>
<td>3</td>
</tr>
<tr>
<td>Research Methodology</td>
<td>6</td>
</tr>
<tr>
<td>Organization of Study</td>
<td>7</td>
</tr>
<tr>
<td>Definition of Terms</td>
<td>8</td>
</tr>
<tr>
<td>II. THE SCOPE OF ESTATE PLANNING</td>
<td>18</td>
</tr>
<tr>
<td>History of Estate Planning</td>
<td>19</td>
</tr>
<tr>
<td>Necessity of Estate Planning in Personal Finance</td>
<td>20</td>
</tr>
<tr>
<td>Estate Planning Process</td>
<td>21</td>
</tr>
<tr>
<td>Gathering the Facts</td>
<td>22</td>
</tr>
<tr>
<td>Evaluating the Obstacles of Estate Impairment</td>
<td>26</td>
</tr>
<tr>
<td>Designing the Plan</td>
<td>34</td>
</tr>
<tr>
<td>Implementation of the Plan</td>
<td>42</td>
</tr>
<tr>
<td>The Estate Planning Team</td>
<td>43</td>
</tr>
<tr>
<td>CHAPTER</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>III. SELECTED ACCOUNTANTS DISCUSS THEIR ROLES IN ESTATE PLANNING</td>
<td>46</td>
</tr>
<tr>
<td>Estate Planning Clients</td>
<td>47</td>
</tr>
<tr>
<td>Origin of Clients</td>
<td>47</td>
</tr>
<tr>
<td>Nature of Clients</td>
<td>49</td>
</tr>
<tr>
<td>Motivating the Client</td>
<td>52</td>
</tr>
<tr>
<td>Services Provided for Estates</td>
<td>61</td>
</tr>
<tr>
<td>Use of Estate Planning Devices</td>
<td>70</td>
</tr>
<tr>
<td>Trusts</td>
<td>70</td>
</tr>
<tr>
<td>Gifts</td>
<td>78</td>
</tr>
<tr>
<td>Private Annuities</td>
<td>81</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>84</td>
</tr>
<tr>
<td>Other Services</td>
<td>86</td>
</tr>
<tr>
<td>Background and Training</td>
<td>89</td>
</tr>
<tr>
<td>Accountants View Their Responsibility In Estate Planning</td>
<td>95</td>
</tr>
<tr>
<td>IV. OTHER SELECTED PROFESSIONALS (ATTORNEYS, TRUST OFFICERS, CHARTERED LIFE UNDERWRITERS) DISCUSS THE ACCOUNTANT'S ROLE IN ESTATE PLANNING</td>
<td>100</td>
</tr>
<tr>
<td>The Accountant's Present Contribution in Estate Planning</td>
<td>101</td>
</tr>
<tr>
<td>Member of Estate Planning Team</td>
<td>103</td>
</tr>
<tr>
<td>Services Currently Performing</td>
<td>106</td>
</tr>
<tr>
<td>The Accountant's Proper Role in Estate Planning</td>
<td>108</td>
</tr>
<tr>
<td>Background and Training</td>
<td>109</td>
</tr>
<tr>
<td>CHAPTER</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Responsibilities</td>
<td>115</td>
</tr>
<tr>
<td>Opportunities</td>
<td>119</td>
</tr>
<tr>
<td>Services Accountants Should Perform in Estate Planning</td>
<td>121</td>
</tr>
<tr>
<td>Estate Planning Process</td>
<td>121</td>
</tr>
<tr>
<td>Trusts</td>
<td>123</td>
</tr>
<tr>
<td>Gifts</td>
<td>126</td>
</tr>
<tr>
<td>Private Annuities</td>
<td>126</td>
</tr>
<tr>
<td>Others</td>
<td>127</td>
</tr>
<tr>
<td>V. SUMMARY AND CONCLUSIONS</td>
<td>129</td>
</tr>
<tr>
<td>The Accountant's Qualifications for Estate Planning</td>
<td>130</td>
</tr>
<tr>
<td>The Accountant's Responsibilities in Estate Planning</td>
<td>144</td>
</tr>
<tr>
<td>Estate Planning Services the Accountant Should Perform</td>
<td>148</td>
</tr>
<tr>
<td>Summary</td>
<td>155</td>
</tr>
<tr>
<td>APPENDIX A</td>
<td>157</td>
</tr>
<tr>
<td>APPENDIX B</td>
<td>161</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>164</td>
</tr>
<tr>
<td>VITA</td>
<td>172</td>
</tr>
</tbody>
</table>
### LIST OF TABLES

<table>
<thead>
<tr>
<th>TABLE</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Number of Firms Indicating the Origin of Their Clients</td>
<td>48</td>
</tr>
<tr>
<td>II.</td>
<td>Number of Firms Answering Whether or Not It Serves as Executor</td>
<td>62</td>
</tr>
<tr>
<td>III.</td>
<td>Number of Firms Answering Whether or Not It Serves as Adviser to an Executor</td>
<td>63</td>
</tr>
<tr>
<td>IV.</td>
<td>Number of Firms Answering Whether or Not It Attempts to Influence Clients to Name It as Tax Adviser?</td>
<td>66</td>
</tr>
<tr>
<td>V.</td>
<td>Number of Firms Answering Whether or Not It Prepares Estate and/or Fiduciary Tax Returns</td>
<td>68</td>
</tr>
<tr>
<td>VI.</td>
<td>Number of Firms Answering the Question as to Accountants' Responsibility in Estate Planning</td>
<td>116</td>
</tr>
</tbody>
</table>
ABSTRACT

In recent years the term "estate planning" has become increasingly popular. The expression is very broad and has been defined several ways. To many the term "estate planning" is used to describe the plans which an individual makes to secure the welfare and security of his family after his death. A broader definition of estate planning describes it as an approach to the accumulation of property, the conservation of property, and the distribution of property. Thus, according to this last definition, estate planning is not limited to the distribution of property at the death of the estate owner, but also has as its objectives the creation and preservation of an estate in a manner that most efficiently helps attain the objectives of that individual. Also, estate planning has been defined as the process of planning for human needs. According to this definition an estate plan should attempt to achieve a balance between the attainment of an individual's personal goals and his economic potential. One of the most difficult problems estate planners encounter stems from the fact that they are planning for people.
Estate planning is a process which, if well performed, can make an important contribution to the realization of the goals of an individual and his family. The tools employed in this field are not difficult to understand but they possess legal and economic characteristics which require specialized skills. Effective estate planning normally requires the skills and knowledge of the attorney, the trust officer, the life underwriter, and the accountant.

This dissertation presents the results of an exploratory investigation of the role and responsibility of the accountant in the estate planning of his clients. Personal interviews were conducted with selected attorneys, trust officers, chartered life underwriters, and certified public accountants. The purpose of these interviews was to ascertain the opinions of these professionals as to what is and what should be the extent of the accountant's involvement in the use of such estate planning tools as trusts, life insurance, private annuities, and gifts as well as the accountant's responsibilities to his clients in the area of estate planning.

The results of this research are presented in three parts. The first part consists of an analysis and description of the information obtained in the interview
with the attorneys, trust officers, and life underwriters.
In the second part an analysis and description of the
opinions expressed by the members of the accounting
profession is presented. In the third part conclusions
based upon information obtained from the literature and
the personal interviews are drawn concerning the
accountant's role and responsibilities in the estate
planning of his clients.

The most significant conclusion from this research
is that in the opinion of the professionals interviewed
the accountant has the responsibility to initiate an
estate planning program for any of his clients who need
such a service. These professionals emphasized that the
accountant is the only professional in a position to
determine client's need for an estate planning program.
They also indicated a belief that the client depends
upon the accountant for advice in all financial matters
including estate planning. In the opinion of the
professionals interviewed the accountant must become more
involved and active in the entire estate planning process
of their clients. The results of this study indicate
that the accounting profession should re-evaluate its
position on the responsibilities of its members in the
field of estate planning.
CHAPTER I

INTRODUCTION

Estate planning is a process which, if well performed, can make an important contribution to the realization of the financial goals of an individual and his family. The individual tools employed in this field are not in themselves difficult to understand but possess legal and economic characteristics which require specialized skills. The government's fiscal structure is such that a program can be devised which will effectively minimize or postpone the erosion of one's wealth by taxation and thus help to carry out the objectives of the estate owner. The greater part of a person's working life is spent creating an estate. He owes it to himself to develop a carefully planned estate program.

To effectively plan an estate, many specialized and professional talents are required. Objectives must be formulated, values fixed and forecasted, estate taxes minimized, liquidity provided, management of assets assured, and family security planned to the fullest extent possible. The activities listed, in the previous sentence only summarize the tasks necessary in the planning process
and draw attention to the services and the many professional skills required. No one person can possess all the skills required for efficient estate planning. Thus, one may logically ask what qualifications are necessary for the preparation of an estate plan which would further the estate owner's objectives at the least possible costs (tax and otherwise).

Effective estate planning normally requires the knowledge and skills of an attorney, a trust officer, a life underwriter, and an accountant. Usually these professional groups work together providing the client with several professional skills. However, even where a team effort is utilized, problems may arise. On occasions, problems have developed which have resulted in unhappy consequences for the client because some member of the estate planning team attempted to perform services in areas in which he was not competent. Consequently, guidelines should be established to define the proper relationships and responsibilities of each team member.

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PURPOSES AND LIMITATIONS OF THIS STUDY

In the past accountants have not been very active in the field of estate planning. Many accountants believed that estate planning was the exclusive domain of the attorney who called upon other groups only to solve specific problems. In many cases, the only estate planning functions the accountant performed were those that he was specially requested to perform by either the client or another member of the estate planning team. The remainder of the estate planning tasks were left to other members of the team. However, in the past few years accountants' interests in and emphases on estate planning have significantly changed. The American Institute of Certified Public Accountants has recognized the importance of estate planning to the profession and has taken

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3 Several members of the accounting profession have realized and indicated in their publications that there are many services in the estate planning process for which the accountant is either the best equipped or the only team member qualified to perform. For example see: Samuel Becker, "The CPA's Challenge in Estate Planning," The Journal of Accounting, CXV (February, 1963), pp. 64-69; Norman E. Schley, "The CPA and Estate Planning," The Journal of Accounting, CXVI (July, 1963), pp. 59-64; Michael D. Bachrach, "Accountant's Role in Initiating Estate Planning," Trusts and Estates, C (February, 1961), pp. 100-102; Briloff, op. cit., pp. 65-72; James W. Park, "An Accountant Looks at Estate Planning," Trusts and Estates, CII (September, 1963), pp. 826-828; Professional Development Division of the American Institute of Certified Public Accountants, Estate Planning and the CPA, (New York: American Institute of Certified Public Accountants, Inc., 1964), pp. 1-20.
appropriate steps to shoulder its responsibility in this area. The Institute set up a committee on estate planning with the following objectives:

(1) To further acceptance of the C.P.A. in an essential role in estate planning by other professional groups in the field.

(2) To increase participation of the C.P.A. in estate planning councils and estate planning teams.

(3) To make information about estate planning problems available to certified public accountants.4

Every other month in 1968, the Journal of Accountancy devoted its section on taxation to articles concerning estate planning. The course on estate planning has been one of the most successful courses offered by the Institute's professional development division.5 Currently, the Institute is offering a series of five seminars on estate planning. Of these five, two were offered for the first time in 1969, two were revised for 1970. The last one was offered for the first time in 1970.6 Based upon the


professional development courses offered by the American Institute, it appears that the Institute expects accountants to be instrumental in the estate planning programs of any of their clients.

The overriding purpose of this research is to describe the status of accountants' involvements in estate planning as seen by selected members of the profession and selected members of the other professional groups comprising the estate planning team. Specifically this research is an attempt to determine what services selected accountants working in the area of estate planning are presently performing and what they feel is their responsibility in this area. Secondly, an attempt is made to determine what services other selected professionals (such as lawyers, trust officers, and insurance underwriters, who practice in the area of estate planning) think accountants are performing and what they feel the accountant's responsibilities are in this area. Finally it is hoped that this study will stimulate interest and research in this area by other members of the accounting profession.

The primary limitations of this study result from the research methodology employed. Because of a lack of prior research in this specific area, this study was undertaken to provide a broad, generalized sketch of an
area of increasing concern to the accounting profession. Descriptive empirical research by its nature does not allow absolute declarative explanations of the phenomena studied. Rather, the purpose of descriptive research is exploration. Hopefully this first effort will break the ground for future explanatory research.

Since a non random, purposive sample was taken, no valid statistical conclusions can be drawn. The results are merely summaries of opinions voiced by selected individuals and may or may not represent the opinions of the entire accounting, legal, insurance, and trust management professions.

RESEARCH METHODOLOGY

In the course of this research, structured personal interviews were conducted with selected accountants in the Baton Rouge and New Orleans areas. The purposes of these interviews were to attempt to determine what services these accountants were then performing in the area of estate planning, what responsibilities these accountants felt that they have in this area, and what services they thought they should be providing. Structured personal interviews with selected attorneys, trust officers, and chartered life underwriters, who practice in the field of estate planning, were conducted to determine what services
these groups thought accountants were performing, what services they felt they should be performing, and what they felt their responsibilities to be in this area.

A comprehensive survey was made of the relevant literature in the field of accounting and of the literature of the other team members (i.e., lawyers, trust officers, and insurance underwriters) of the estate planning group. This included journals, books, and publications of relevant professional societies and of governmental agencies.

ORGANIZATION OF THIS STUDY

This chapter includes a statement of the purposes of the study, the methodology of research used, and definitions of terms. The second chapter includes a discussion of the estate planning process, the forces of estate impairment and risks, the devices used in estate planning, and the role of the team members involved in the estate planning process. The third chapter is based primarily upon the information acquired through the personal interviews conducted with accountants practicing in the area of estate planning. This chapter describes the services that these accountants have been performing in this area. The fourth chapter describes the accountant's role in estate planning as seen by selected trust officers, lawyers, and insurance underwriters. It also discusses
what these groups think accountants have been doing and what they think they should do in the area of estate planning. The information was obtained through personal interviews conducted with selected professionals in each of these groups. Chapter five is the concluding chapter. This chapter attempts to set forth accountants' qualifications for and responsibilities in estate planning, based upon information obtained from the literature and the interviews with the various selected professional groups.

DEFINITIONS

There are several terms which are used throughout the text of this study. Many of these terms have legal connotations or definitions. Others are terms coined by the writer for specific usage in this study.

Estate Planning

In recent years the term "estate planning" has become popular. The term "estate planning" is used to describe the planning process through which an individual assures the welfare and security of his family after death. According to a broader definition of estate planning, it is an approach to the accumulation of property, the conservation of property, and the
distribution of property. Thus, estate planning is not limited to the distribution of property at the death of the estate owner but also has as its objective the creation and preservation of an estate during the lifetime of the individual in a manner that most efficiently helps attain the objectives of that individual with regard to the future security of his family. The term has a range which encompasses both the small estate, which is exempted from Federal estate taxation and is handled by a simple will, and the large estate, which makes use of many different forms of property transfer.

**Estate Owner's Objectives**

Every estate owner's objectives are probably quite different from other estate owners. An individual may want to accomplish several purposes with an estate plan. One's estate planning objectives might include but are not limited to the following: (1) to maximize the value of the residual assets, (2) to provide for the security or luxury of his beneficiaries, (3) to make charitable donations, (4) to minimize taxes and other expenses, (5) to avoid probate, (6) to establish scholarships, (7) to continue his business, (8) to build.

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a monument in his or another person's honor, or (9) to distribute his assets in some prescribed manner.

Trusts

Since there is not one exact or perfect definition of the term "trust," several definitions are given in an attempt to acquaint the reader with the legal concept. Bogert defines a trust as a fiduciary relationship in which one person holds property, subject to an equitable obligation to keep or use such property for the benefit of another person. Bogert, The Law of Trusts and Trustees (Second edition; St. Paul, Minn.: West Publishing Co., 1965), sec. 1.

The American Law Institute in its Restatement of the Law defines a trust as a fiduciary relationship with respect to property, subjecting the person holding title to the property to equitable duties in dealing with the property for the benefit of another person. This relationship arises as a result of a manifestation of an intention to create it. The American Law Institute, Restatement of the Law, Second Trusts 2d, Volume I (St. Paul, Minn.: American Law Institute Publishers, 1959), sec. 2.

of the beneficiary because of the latter's equitable interest.¹⁰ At least one court has defined a trust as a property right held by one party for the use of another.¹¹

**Trust Property**

The trust property may be defined as the interest in a thing, real or personal, tangible or intangible, which the trustee holds, subject to the rights of another.¹²

**Trust Settlor**

The settlor of the trust is the person who creates it or intentionally causes it to come into existence. Some other terms used to designate the settlor are trustor, grantor, and donor.¹³

**Trust Beneficiary**

The beneficiary is the person entitled to the benefits of the trust property.¹⁴

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¹² Bogert and Bogert, *op. cit.*, sec. 1.

¹³ Ibid.

¹⁴ Ibid.
Trustee

The third party to the trust is the trustee. He is the one who holds legal title to the trust property for the benefit of the beneficiary.\(^\text{15}\)

Clifford Trust

A Clifford Trust is a special type of revocable trust. In such a trust, the grantor gives up the power to revoke the trust for at least ten years; he also gives up all reversionary interest in both the corpus and interest therefrom for that period of time. The advantage of such a trust is that for tax purposes the grantor is not treated as the owner of any portion of a Clifford Trust.\(^\text{16}\)

Section 303 Stock Redemption

If the stock of a corporation constitutes more than fifty per cent of the taxable estate or thirty-five per cent of the gross estate, a redemption not in excess of estate and inheritance taxes and funeral and administrative expenses will be treated as a distribution in full payment of the stock. Ordinarily there will be little or no capital gains tax since the basis of the stock will be the date-of-death value, or the value one year later, and the

\(^{15}\text{Ibid.}\)

\(^{16}\text{Internal Revenue Code of 1954, Section 671-674.}\)
value at date of redemption will usually be equal to such basis.17

**Private Annuity**

A private annuity is an agreement under which an individual (the annuitant) transfers property to another individual (the obligor) for a consideration. The consideration is the obligor's unsecured promise to make periodic payments of a specific amount for a specific period of time to the annuitant. Normally, the specific period of time is for the life of the annuitant.

**Usufruct**

"Usufruct is the right of enjoying a thing, the property of which is vested in another and to draw from the same all the profit, utility, and advantages which it may produce, provided it be without altering the substance of the thing."18 Basically, there are two kinds of usufruct, and the obligation not to alter the substance of the thing applies only in the case of the perfect usufruct.19

In a perfect usufruct the usufructuary can enjoy the thing without changing its substance even though its

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17 Internal Revenue Code of 1954, Section 303.


19 Ibid.
substance may be diminished or deteriorated naturally by time or use. Some examples of things which would be the substance of a perfect usufruct are a house, real estate, and common stocks. In an imperfect usufruct the usufructuary has the right to conserve or expend the thing. Some examples of things which could be the substance of an imperfect usufruct are money, grain, and liquors.

Usufructuary

The usufructuary is the person who has the right to the usufruct. He may maintain all action against the owner and third persons necessary to insure him the possession, enjoyment, and preservation of his right.

Joint Tenancy

A joint tenancy exists when two or more owners have identical interests in a given object. In other words, there must be unity of interest, title, time, and possession. The parties to such ownership are called "joint tenants." The joint tenancy is terminated whenever any one of the unities is destroyed. An important characteristic of joint tenancy is the right of survivorship. Upon the death of any of the tenants, the remaining tenants take the share of the deceased until only one tenant survives.

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20 Ibid., art. 534.
21 Ibid., art. 556.
The last survivor becomes the sole owner of the property.22

**Tenancy in Common**

A tenancy in common exists when two or more persons own undivided interests in a given object. Each tenant owns a separate estate, and the only unity in such ownership is possession. Tenants in common may have different interests, receive title from different parties, and at different times. There is no element of survivorship in a tenancy in common, and the interests of a tenant in common may be transferred or inherited, in which case the taker becomes a tenant in common with the others.23

**Tenancy by Entirety**

A tenancy by entirety exists when property is transferred to husband and wife in such a manner that it would create a joint tenancy if transferred to other persons, not husband and wife. This form of ownership differs from a joint tenancy in that the right of survivorship can not be extinguished by one tenant alone conveying his interest to a third party.24.

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23Ibid., p. 744.

24Ibid., pp. 744-745.
Community Property

Community property is property in which the husband and wife have a community of interest because the property was acquired during their marriage by their joint efforts or from the income and profits of such property. All property acquired after marriage is presumed to be community property unless it can be shown that it is the separate property of either spouse. Property acquired before marriage and any property acquired during marriage by gift, will, or intestacy is considered to be separate property. Upon the death of either spouse, the surviving spouse acquires at least half of the community property and the other half passes by will or according to the separate state statutes.25

Gifts in Contemplation of Death

Section 2035 of the Internal Revenue Code provides that the value of any property transferred within a period of three years ending with the date of death (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth) is deemed to have been made in contemplation of death and is included in the decedent's gross estate. The estate has the opportunity to prove that such transfers were not made in

25Ibid., p. 745.
contemplation of death.\textsuperscript{26}

\textbf{In-House Clients}

In-house clients are the clients that accounting firms are serving as regular periodic or continuing clients.

\textbf{Walk-In Clients}

Walk-In clients are people who come to the firm on their own initiative and request that the firm perform specific services.

\textsuperscript{26}Internal Revenue Code of 1954, Section 2035.
CHAPTER II

THE SCOPE OF ESTATE PLANNING

Legally an estate is created upon the death of an individual. The laws of every state in the Union dictate that upon a person's death his property must be held intact for a period of time. It is necessary that this property be administered for the benefit of his heirs and creditors. Thus an estate is a creation of law. The estate is a new and distinct entity and should not be confused with the decedent, the executor of the estate, or the beneficiaries. This estate is composed of the sum of the values of all property to the extent of the decedent's interest in such property at the time of his death.27

In addition to being subjected to administration, the estate is faced with the burdens of Federal and state taxation. To minimize these taxes and to control the administration of property, individuals should seek methods or plans to more effectively provide for their beneficiaries and accomplish their objectives. The

drafting and implementation of these plans is known as estate planning.

HISTORY OF ESTATE PLANNING

Even though estate planning has become popular only in recent years, it is not new. The Code of Hammurabi gave early Egyptians the right to dispose of their property at time of death. This Code provided for both testate and intestate succession. The early common law of England placed burdens on the holdings of legal title to land. Death taxes, trusts, and wills existed under the old English feudal system. As early as the fifteenth century there were estate planners who devised ingenious techniques to aid their clients. The estate planner of that time was primarily interested in determining ways his client could transfer legal title of his land to his beneficiaries and avoid the burdens incident to the descent of land.28

For all practical purposes estate planning in the United States has evolved only in this country. The tax statutes of the nineteenth and twentieth centuries have

given impetus to the tremendous interest in estate planning in this country. In 1913, the income tax law was passed, and the United States estate tax statutes were enacted in 1915. These were followed by the enactment of the gift tax laws in 1932. Toward the end of the nineteenth century, the individual states began passing state inheritance laws and taxes. The simultaneous development of estate planning in this country and the enactment of tax laws has indoctrinated many people with the misconception that estate planning and tax planning are synonymous terms.29

NECESSITY OF ESTATE PLANNING AS PART OF PERSONAL FINANCE

Since estate planning is a relatively new development in this country, many people do not understand its purposes. Thus, an individual may not know who needs it. Estate planning applies to anyone with income or property.30 Estate planning may be even more important to the small estate owner than to the large estate owner because the waste of a single asset in his estate could prevent the

29 Ackerman, op. cit., p. 494.

accomplishment of his objectives and bring hardship to his family. In other words, everyone who owns assets needs an estate plan. The estate plan might be reflected by a simple will or by a complex arrangement consisting of several of the estate planning devices or tools defined in the first chapter.

ESTATE PLANNING PROCESS

Because there are differences in peoples' objectives, attitudes, temperaments, and net assets, the estate plan of an individual should be designed to meet his specific needs. The estate plan must satisfy the specific objectives of the individual. Each plan must reflect the responsibilities and objectives of the person for which it is drawn. Since estate planning is different for every client there are many uncertainties facing anyone who attempts to develop such a plan. However, the estate planning process is basically the same for each individual case.

For purposes of analysis the estate planning process can be broken into five steps:

(1) Gathering the facts;

(2) Evaluating the obstacles of estate impairment;
(3) Designing the plan;
(4) Implementing the plan;
(5) Reviewing the plan. 32

Each of these steps is briefly discussed in the following paragraphs.

Gathering the Facts

The first step in the estate planning process is getting the facts. These facts will serve as the basis for all other procedures. Gathering the facts may seem to be a simple task. In many cases, however, the most challenging part of the estate planning process is the attempt to extract all of the necessary information from the estate owner. The facts needed can be classified into four categories: (1) domicile, (2) property, (3) beneficiaries, and (4) the individual's objectives. 33

Domicile is an important factor since it determines the law which will govern the validity of the will and its provisions. Domicile determines how title to property is held: community property versus separate


33 Manning, op. cit., p. 9; Bowes, op. cit., pp. 15-18; and Ackerman, op. cit., p. 496.
property, and joint tenancy versus a tenancy in common. Due to the significant differences that exist between the laws of differing states, one must determine the domicile of the estate owner before formulating plans.34

A complete inventory of all the client's assets and liabilities must be secured. Detailed information should be obtained regarding all business and personal assets and liabilities. Such data would include detailed information about insurance policies, powers of appointment, property owned separately and jointly, business interests, retirement and death benefits, claims under wills and trusts, and rights in future interest. In addition to the above, full information about the estate owner's obligations must be secured. These details would include information about personal debts, business debts, accrued taxes, mortgages, leases, installment contracts, and all other debts including contingent liabilities.35

Special problems concerning the client's business interests often arise in the analysis of his property, especially when the business interests amount to a large portion of the client's estate. These business interests may be held in the form of sole proprietorships,

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35 Ibid., p. 3.
partnerships, stock in a closely-held corporation or any combination of these. If this is the case there is a problem of valuation. These interests must be properly valued for estate tax purposes in accordance with the Internal Revenue Code and Regulation. Another problem is determination of the ability of the business to produce income for the benefit of the client's heirs after his death or retirement. Even though the business is the chief source of the client's income and wealth and will continue to be so as long as he actively manages its affairs, it may not continue to be profitable in the absence of the client. Upon the client's death, this business interest becomes an investment of an estate, and it is valuable only if it continues to be profitable. Thus, care must be used in an evaluation of the client's business interests.36

Facts concerning the beneficiaries of the estate owner must be gathered and analyzed. These facts include the names and birthdates of the estate owner and all of his beneficiaries. At this time the client's responsibility to his family must be evaluated. Such personal information as the character of the estate

36 Ackerman, op. cit., p. 497; Bowe, op. cit., p. 17.
owner's spouse and other heirs and their business abilities should be considered. The client's state of health, the wealth now available to his heirs, their financial needs, and the attitudes of individual beneficiaries toward each other is important. In summary the members of the estate planning team must obtain data about the health, wealth, education, character, and living needs of all the client's beneficiaries.37

The last classification of facts is the determination of the objectives of the estate owner. Such a determination is often the most difficult phase of gathering the facts. The estate owner's attitude about the financial maintenance and security of his family must be ascertained. Many people feel that their heirs should have complete and unrestricted freedom to use the assets left to them while others have a fear of entrusting substantial amounts of money in lump sum to their beneficiaries. If the client is vague about these matters, the estate planners should suggest several possible alternatives, and then let the client make his own decision. Under no circumstances should an estate planning team member attempt to make the decision for his clients.38

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37 Bowe, op. cit., p. 15; Hoffman, op. cit., p. 3.
38 Hoffman, op. cit., p. 3.
In addition to gathering the facts the team members must determine and evaluate the currently existing estate plan of their client. Whether the estate owner is aware of it or not, he has an estate plan, which may have been developed consciously or accidentally. Therefore, the members of the estate planning team must probe for information concerning all gifts, trusts, wills, and reversionary interest created or possessed by their client.\(^{39}\)

This task of gathering the facts may appear to be tedious and dull but to the experienced estate planner, it is often the most challenging part of the estate planning process. Many times estate owners have not made such a thorough analysis of their estates and are often surprised at the results. Such an analysis is necessary to lay a firm foundation for the remainder of the estate planning process.\(^{40}\)

**Evaluating the Obstacles of Estate Impairment**

The second phase of the estate planning process is an evaluation of the obstacles which could impair the value of the estate. The members of the estate planning team must be aware of the many forces that can shrink the value

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\(^{39}\) Ackerman, *op. cit.*, p. 498.

\(^{40}\) Ackerman, *op. cit.*, p. 496.
of an estate and deny the estate owner the attainment of his objectives. Some of the more obvious of these impairments are the cost of the last illness, funeral expenses, estate administration expenses, and federal estate tax. Consideration must be given to all debts of the estate owner including the current unpaid bills as well as the more important long range debts such as mortgages, installment contracts, and business obligations. Attention must also be directed toward unpaid income and property taxes as well as state inheritance taxes. These are just a few of the more obvious obstacles of impairment.

According to Pfeffer there are four classes of risk encountered in estate conservation problems. These risks are business, investment, legal and tax risks.41

The management of any business is subject to a wide spectrum of risks, and competent managerial personnel must have the ability to successfully operate the firm. Some relevant questions for estate planning are (1) whether or not the management has the technical ability and training to continue profitable operation of the firm, (2) whether or not there are any heirs or key employees who have the aptitude, temperament, and capacity to be potential successors to the management, and (3) whether

or not additional capital contributions will be necessary to maintain the current level of earnings.\textsuperscript{42} Moreover, any evaluation of business risks must include an analysis of the current and future economic climate and its influences upon the business. In addition there are some important insurable business hazards that must be considered. These include legal liability, property damage, theft, surety bonds, and life, accident, and health risks.\textsuperscript{43}

If the client's business interests are closely held, special problems arise. These include problems of valuation and liquidity. To effectively analyze the business risks of a closely held firm, some member of the estate planning team should be knowledgeable of the client's particular business as well as the economy in general. In valuing the business interests for estate planning purposes several factors must be considered. These include the nature and history of the business, conditions in the specific industry and the general economic outlook, the financial condition of the organization as well as the book value of the client's interests, past earnings, current earnings as well as potential earning ability, dividend

\textsuperscript{42}Ackerman, \textit{op. cit.}, pp. 497-498.

\textsuperscript{43}Irving Pfeffer, \textit{op. cit.}, p. 26.
policy, and the value of goodwill and other intangibles. To determine if the business can serve as a source of liquidity for the estate, an analysis of the firm's cash flow must be conducted.44

Portfolio management is concerned with investment risks. These risks are usually classified as purchasing-power risks, interest-rate risks, business risks, and market risks.45 Where the client has significant investments, some member of the estate planning team must analyze these holdings with respect to the investment risks and take steps to prevent impairment of the estate by these risks. Such steps would include diversification of various kinds and the selection of securities on the basis of their relative invulnerability to these risks.46

Another type of risk in estate planning pointed out by Pfeffer is legal risk. Legal risk arises from the failure of the estate owner and the members of the estate planning team to properly execute the appropriate documents essential to carry out the objectives of the estate owner. All wills, trusts, contracts, and titles to property must be valid and properly executed. These instruments should be


prepared by a competent lawyer and then reviewed periodically to assure that they are still in accordance with the desires of the individual. Estate plans which are developed in an atmosphere of ill-defined objectives, procrastination, poorly drawn legal documents, and uncoordinated planning result in designs which are unstable and open to attack. Much of the ultimate frustration in the legal aspects of estate planning can be avoided by consulting an attorney who is well versed in preventive law.47

Another risk encountered in estate conservation is the tax risk. The tax risk often causes the greatest stress and is often the risk responsible for the estate owner seeking estate planning assistance. Poor or no tax planning can seriously deplete the value of the estate. Many factors having significant tax consequences must be evaluated. These include the differential tax treatment of ordinary versus capital gains income, of the devolution of community versus separate property, of estates held in joint tenancy rather than in common, and of gifts in contemplation of death versus valid gifts. Another factor having significant tax consequences is the successive taxation of estates when surviving heirs pass on shortly

47Ibid., p. 27.
after the death of the estate owner. An evaluation of the tax risks calls for a high degree of skill in the estate planning process. In order for the estate planning team to be effective, at least one member must be knowledgeable of the basic provisions of the Federal estate and gift tax laws and have an understanding of those sections of the Internal Revenue Code that govern the taxing of income of fiduciaries. Such knowledge is necessary so that effective tax planning can be carried out during the taxpayer's lifetime and can be continued throughout the administration of his estate.

Some member of the estate planning team should be familiar with the interrelationships between the Federal estate and fiduciary income tax laws. When properly executed, many of these interrelationships concerning tax elections by the administrator can result in significant overall tax savings to the beneficiaries of the estate. For instance, the value of the assets as shown on the estate tax return determines the basis of these assets to the beneficiaries for income tax purposes. There are many other interrelationships between the two taxes that must be considered by the administrator and the tax adviser.

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48 Ibid., p. 27.


50 Ibid.
The inclusion in the decedent's gross estate of such a comprehensive range of property and property interests along with the high estate tax rates magnifies the need for estate planning. Tax planning is not only very important in estate planning but is also necessary in post-mortem planning. During this time many decisions are made that have significant effects upon the conservation of the estate. A proper analysis of the alternatives could result in significant tax savings and help preserve the client's estate.51

There are several other factors that cause impairment of the estate that should be considered by the members of the estate planning team. One of the most important of these is the liquidity of the estate. Many estates are burdened with debts and obligations; the estate must pay the cost of the last illness, funeral expenses, estate administration expenses, Federal and state taxes, and honor the cash bequests of the decedent. Since there must be a sufficient amount of liquid assets to meet these needs, a determination of the liquidity needs of the client's estate should be made. Using the information obtained during the fact gathering process, as a guide, the members of the estate planning team should be able to make

rough estimates of these costs. These estimates will help determine the estate cash requirements and serve as additional background information for the preparation of the estate plan. If the estate is burdened with a shortage of liquid assets, income-producing assets might have to be sold, possibly for less than their real value, to meet these needs. The dilution of the income-producing assets may have significant adverse effects upon the survivors of the decedent.\textsuperscript{52}

Another force of impairment that demands consideration is the instability of the values of the property of the estate. Changes in consumer preference, obsolesence, or improper management of the estate's assets could cause a severe shrinkage in the value of the estate. Consideration should be given to the possibility of prolonged and expensive illness or disability, loss of income, and legal liability of the estate owner. Insurance should be acquired to help reduce the burden in case of occurrence of any of these possibilities.\textsuperscript{53}

Certainly the members of the estate planning team must analyze all of the factors that could shrink or deplete the value of their client's estate. However, this

\begin{itemize}
  \item \textsuperscript{52}Ackerman, \textit{op. cit.}, pp. 495-498.
  \item \textsuperscript{53}Ibid., pp. 494-495.
\end{itemize}
evaluation of risks is only one step in the estate planning process. There are several other steps, which are just as important and which must be performed during the estate planning process.

Designing the Plan

Designing the plan is the next step in the estate planning process. No meaningful plan can be drawn until all the facts have been gathered and the objectives of the estate owner determined. This plan must be based upon the facts and at the same time give life to the objectives of the estate owner. To be worthwhile the plan must accomplish the objectives of the estate owner; this fact increases the importance of the estate planning team. Until this step in the estate planning process, the members of the estate planning team have played the role of investigators; now they must use their creative skills and abilities to create an effective plan. The plan should be as simple and flexible as possible and still accomplish its objectives.\(^5^4\)

A variety of vehicles exist which will help accomplish the objectives of the estate owner. Through analyzing various combinations of these methods of transfer, the ultimate plan is developed.\(^5^5\) The plan should be

\(^{5^4}\) Ackerman, op. cit., p. 498.

\(^{5^5}\) Ibid., p. 499.
tested and the consequences evaluated. No attempt is made here to mention all the available vehicles of transfer, but a few are discussed for illustrative purposes.

The will is a key vehicle of transfer and its preparation is often the first step taken by estate owners in planning the disposition of their estates. Some useful devices attached to this vehicle are the marital deduction and the marital deduction trusts. The basic consideration in using the marital deduction is the favorable tax consequence. The costs of this tax savings, however, may be the compromise of one's objectives, the possible deferred increase in transfer costs, or the loss of control of an asset. If the marital deduction is used, the estate planner must observe the appropriate sections and provisions of the Internal Revenue Code and the Regulations.

Under certain conditions and limitations, the estates of citizens and residents of the United States are allowed a marital deduction up to fifty per cent of the adjusted gross estate. The marital deduction originated with the Revenue Act of 1948 which also allowed the income splitting advantages of filing joint returns. The purpose of the marital deduction is to eliminate the tax

56 Ibid., p. 499.
advantages held by those persons domiciled in community property states. These statutes provided all taxpayers the same tax treatment which was theoretically and actually possible in community property states. For tax purposes, Congress made the community property system applicable to all the states.57

Trusts provide another means of transfer. Inter vivos and testamentary, revocable and irrevocable, and funded and unfunded trusts may be used by the estate planner. Some of the important advantages of trusts are derived from the fact that trusts are based on the concepts of property arrangement and property settlement. The chief concern of the trust device is to serve as a means of preserving property, as well as a means of efficiently administering from year to year the family and business property and investments for the benefit of the beneficiaries.58

The trust is one of the most valuable tools in estate planning, primarily because it permits considerable flexibility in the disposition of property. The trust device provides the flexibility needed to achieve the nontax objectives; prudent management and investment, and

57Hoffman, op. cit., p. 56.

discretion in income and principal distributions. Also, of perhaps equal significance in many instances, are the income and estate tax economies obtainable through the use of trusts. 59

There are many purposes for which trusts are formed. In fact, a trust may be created to achieve any desired objective as long as the objective is not illegal or contrary to any policy or rule of law. Some of the more common types of trusts, classified as to purpose, include insurance trusts, educational trusts, support trusts, charitable trusts, and marital deduction trusts. 60

When a trust is established, it is natural and proper that the settlor and his advisers want to plan it in such a way as to obtain the most favorable tax consequences. However, the purpose of its establishment is ordinarily not just to save taxes. The saving of taxes is merely one element in the process of carrying out the purposes of providing an orderly and sensible devolution of property to the end of its preservation rather than its waste.


60 Hoffman, op. cit., p. 123.
Another means of transfer is life insurance. Often life insurance is the only practical way of guaranteeing that sufficient cash will be available to meet the financial costs of death. The use of life insurance has many advantages. In many states its use provides savings in estate taxes. Also, insurance proceeds can be removed from the probate estate thus reducing probate and administration costs. In many instances the most important use of life insurance in estate planning is its use to meet the obligations of the estate, thus preventing the forced sale of income-producing assets. In essence the use of insurance in the estate plan will be determined by the needs for liquidity, flexibility, tax minimization, investment, and the requirements of family income.61

As with other devices of transfer, the members of the estate planning team should carefully consider the tax consequences of the use of life insurance. There are many tax advantages to be gained through the appropriate use of life insurance.

Private annuities represent another important vehicle of transfer. However, careful consideration must be given to the risks involved. In such a contract, the

61 Ackerman, op. cit., pp. 499-500.
annuitant transfers property other than cash to the obligor in return for the obligor's unsecured promise to make periodic payments of money to the annuitant for a specific period of time. The period of time is usually for the life of the annuitant. Thus the major risk to the annuitant is the obligor's failure to make the required payments.62

Fortunately, the private annuity offers several tax advantages. First, since this is a valid sales contract the property is removed from the estate of the obligor. Second, Section 72 of the Internal Revenue Code governs the income taxability of the annuity payments. Thus each payment is broken into three portions--an excluded portion, an ordinary income portion, and a capital gain or loss portion. This gives the annuitant the additional advantage of spreading any gain from the sale of such property over a period of several years for income tax purposes. In essence it gives the annuitant a deferment for payment of the income taxes associated with the transfer.63

Another effective vehicle of transfer in estate planning is the use of lifetime gifts. These gifts


63 Ibid.
eliminate all probate and administration expenses on the property transferred. Gifts reduce estate taxes because the gift property and the amount of income he would have accumulated from the property are both removed from the transferor's gross estate. Often the use of a gift provides savings in income taxes because the income is shifted from the high income tax bracket of the transferor into the lower income bracket of the transferee. Of course the use of gifts produces many advantages other than taxes. They may be used to continue control of a business within the family or to serve specific desires the estate owner has for his children. Gifts like all other devices have their costs; the most significant cost of making a gift is the complete loss of control of the asset.64

Before making lifetime gifts, it must be remembered that, under certain circumstances, the gift property may later be included in the donor's gross estate even though they were made during his lifetime. Unless shown to the contrary, any transfers of property by the decedent without adequate and full consideration and made within three years of death are in contemplation of death, and thus such property is included in the gross

64 Hoffman, op. cit., pp. 105-121.
estate of the decedent. Likewise, the relinquishment of a power over property transferred during lifetime or the exercise or release of a power of appointment within three years before death is deemed to have been made in contemplation of death unless otherwise shown.\textsuperscript{65}

The vehicles of transfer discussed in the preceding paragraphs are only some of those available to the estate planner. During the designing and before the implementation of an estate plan, the members of the estate planning team must evaluate the advantages and disadvantages of these methods of transfers. The vehicles which aid in the accomplishment of the estate owner's objectives should be incorporated into the estate plan.

To quote Manning:

"The perfect plan is not always attainable. Substantial security can be achieved, however, if certain fundamentals are recognized, and I suggest the following as cardinal principles:

1. A plan should not only remedy the present; it should also be gauged to the future. Above all it should be flexible.

2. There should be no overemphasis on tax savings.

3. No gift should be made without first considering the consequences of the donor divesting himself of control of the subject of the gift.

4. A plan should be simple.

5. There should be no overemphasis on the use of any device or instrumentality.

6. Finally, too much emphasis cannot be placed on the need for the plan to be reviewed periodically.

\textsuperscript{65}Internal Revenue Code of 1954, Section 2035.
to adjust for changes that take place in the individual's family circumstances."66

Implementation of the Plan

Before the estate plan becomes effective, the appropriate legal documents must be executed. The necessity for careful planning and execution of the documents cannot be overemphasized. The faulty execution of the legal documents is a sure way of invalidating the entire efforts of the estate planner. Thus, it is evident that it is necessary for these legal documents to be drafted by a competent attorney who is well versed in estate planning techniques.67

These documents must be reviewed periodically to ascertain that they continue to express the objectives of the estate owner. A periodic review of the financial status and other family relationships should be conducted to determine if there have been any changes that necessitate the revision of the estate plan. Also, the plan should be reviewed in the light of any changes or potential changes in the legal or tax aspects of the environment. Such a review could bring about a modification in the plan that would produce significant


67Pfeffer, op. cit., p. 27.
benefits to the estate owner while the neglect of such a review could be very costly to him.\textsuperscript{68}

As can be seen from the above discussion of the estate planning process, many professional skills are required to effectively perform such a service. Usually, a team effort is utilized during the process. The attorney, accountant, trust officer, and insurance underwriter are the professionals most often associated with the estate planning team.\textsuperscript{69}

\textbf{THE ESTATE PLANNING TEAM}

Since estate planning is such a complex and subtle process, a team effort is usually necessary to effectively accomplish the objectives of the estate owner. By virtue of his very temperament and his orientation to sales, the life insurance underwriter can be the prime motivator of prospects who may, ultimately, require the services of all the professionals included in such a team. Unlike the lawyer and the accountant, the insurance man has a license to sell. His special skill is to seek out and solicit new insurance business which in many cases results in this need of services. He is expert at uncovering new

\textsuperscript{68}Abraham J. Briloff, "The Accountant's Role In Estate Planning," \textit{The Ohio CPA}, XXII (Spring, 1963), p. 66.

\textsuperscript{69}Manning, \textit{op. cit.}, p. 13.
situations where an estate planning team can be used to save a man's estate from erosion. Also, the insurance underwriter has a specialized knowledge of the many forms of life insurance, and he knows what various policies can and cannot do.70

The attorney's participation is most essential in determining the legal and tax consequences of every phase in the progress of developing an estate plan. The lawyer must determine whether certain recommendations and phases in the formulation of an estate plan have legal substance and merit. He must draft the legal documents which will furnish the motive power for the execution of the estate plan.71

Estate planning, to the trust officer, is not only a device for developing new business, but it very nearly describes the entire trust department's stock in trade. The trust officer, who is essentially an instrument of estate conservation and management, can lend advice on the practicalities of the estate plan and play a major role in the administration of the estate. Under a specific agreement, he accepts custody of the property, discharges the ministerial functions of its management, invests it,

70Ibid.

71Ibid.
manages it under controlled arrangements, and eventually distributes it to the beneficial owners. 72

Normally, the accountant is considered to be the member of the estate planning team who is intimately acquainted with the financial affairs of his client, knowledgeable of income and estate tax laws, and the one to advise on valuation problems and to determine the existing and potential earning power of a business. 73 Otherwise the accountant's role as a member of the estate planning team is not as easily ascertained or clearly defined as the other members' roles. Therefore, the remainder of this study is devoted to determining the accountant's role (his responsibility and opportunity) in the estate planning process.

72 Ibid.
73 Ibid.
CHAPTER III

SELECTED ACCOUNTANTS DISCUSS THEIR ROLES IN ESTATE PLANNING

The purposes of this chapter are two-fold. First, it describes the services that selected accounting firms have been performing in the field of estate planning. Second, it presents a discussion of the accountant's role and his responsibility in estate planning--as seen by members of the selected accounting firms. Data for this chapter were obtained through structured personal interviews conducted with personnel of accounting firms.74

Six national firms were chosen for inclusion. These were chosen because they are six of the largest accounting firms in the country and the world. Of these six firms, two have offices in Baton Rouge. Personnel in the New Orleans offices of the other four national firms were interviewed. In addition, six local firms were included in the study. The six specific local firms included were selected because it was known that they

have been actively performing estate planning functions in the Baton Rouge area. The assumption is made that the information obtained from these firms would be more meaningful than data obtained from accounting firms who were not active in the area of estate planning.

Members of the accounting firms interviewed were asked to discuss five basic groups of questions. These included: (1) questions concerning their estate planning clients; (2) the services performed for estates; (3) the devices used by the firm in estate planning engagements; (4) the background and training of accountants in estate planning; and (5) accountants' responsibilities and role in estate planning.

ESTATE PLANNING CLIENTS

The representatives of the twelve accounting firms under study were asked three groups of questions concerning the clients for whom they provide estate planning services. In their responses these representatives discussed the origin of their estate planning clients, the nature of these clients, and how the firms motivated their clients into estate planning engagements.

Origin of Clients

The first question concerning the estate planning clients of the selected firms, that the members were asked
to discuss dealt with the origin of their clients. They
were queried as to whether their estate planning clients
were in-house, referrals, or walk-ins. The results of
this question are displayed in the following table.

**TABLE I**

<table>
<thead>
<tr>
<th>Origin</th>
<th>National Firms</th>
<th>Local Firms</th>
<th>All Firms</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-house</td>
<td>6</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Referrals</td>
<td>6</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>Walk-ins</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
</tbody>
</table>

All of the national firms indicated that a large
majority of the estate planning services they perform are
for their in-house clients. However, four of these firms
emphasized that they have a significant number of referrals,
and that most of these referrals come from attorneys and
chartered life underwriters. The representatives of these
firms indicated that they felt that small accounting firms
not having members proficient in the estate planning area
should refer their clients to someone who is qualified to
perform these services. The three firms indicating that
they have walk-in clients admitted that the number of such clients is quite small and such occasions are very infrequent.

All six of the local firms provide estate planning services for their in-house clients while only four of this group indicated that they receive referrals for such services. There was one significant exception to this group, Firm M. Firm M was the only local firm to have walk-in clients, and this firm indicated that it had quite a few of them. Firm M's estate planning clients were about equally divided between in-house clients and the combination of referrals and walk-in clients. The other five local firms' estate planning clients followed the same pattern as that of the national firms with the majority of their estate planning services being performed for in-house clients.

Nature of Clients

The accounting firm representatives were also asked about the nature of their estate planning clients. Three classifications of clients were utilized. They are: (1) officers of public corporations; (2) officers and/or stockholders of closely-held corporations; and, (3) individuals.
Individuals representing three of the national firms interviewed (Firm A, Firm D, and Firm E) replied that while they performed estate planning services for some officers of publicly-held corporations, most of their estate planning services were equally divided between individuals and officers and/or major stockholders of closely-held corporations. Representatives of the other three national firms stated that the majority of their estate planning clients were the officers and major stockholders of closely-held corporations, but that they also perform estate planning services for clients in the other two classifications.

The replies of the representatives of the local firms to this question were very similar to those of the representatives of the national firms. However, the members of four of the local firms stated the majority of their estate planning clients were equally divided between individuals and officers and/or major stockholders of closely-held corporations. The other two local firms stated that the majority of their estate planning services were performed for officers and major stockholders of closely-held corporations. All six of the national firms had officers of public corporations as estate planning clients while only two local firms had such clients.
The respondents were questioned as to why they had so few officers of public corporations as estate planning clients. The most common answer to this question was that there are very few public corporations which have their home offices in this area. Thus, the major officers, who would be candidates for estate planning, do not reside in south Louisiana. Members of two of the national firms stated that in some of their other offices the majority of the estate planning clients would be officers of public corporations. Their New York offices were cited as examples. Another reason given for the small number of estate planning clients being officers of public corporations was that these officers deal with the audit staff of the accounting firms, and in most instances the audit staff is not estate planning oriented. Therefore, they fail to motivate the client into estate planning procedures.

Many people refuse to think of death and its consequences; they refuse to give any consideration to estate planning. Frequently, the most difficult problems encountered in estate planning are human problems rather than technical problems.75 According to the interviewees

75 Becker, op. cit., p. 68-69.
accountants often have a difficult time convincing clients of the need to prepare a sound estate plan. Motivating clients into a fruitful estate planning engagement is one of the most important facets of estate planning.

Motivating the Client

The respondents were questioned as to whether they initiate estate planning or attempt to motivate their clients into an estate planning program during the time of the annual filing of the income tax return. All six of the national firm representatives replied that they used this time to make their clients aware of the need for estate planning. They reported using this time to lay the groundwork for future procedures by emphasizing the advantages of an estate plan. Two stated that they originated the idea at this time only and made notes to serve as reference for a future estate planning conference. The other four national respondents use this time to try to motivate their clients into an immediate estate planning program. Two primary reasons were given for putting such a strong emphasis on estate planning at this time. First, it was pointed out that the client is more aware of taxes at this time of the year. Since he is more aware of taxes, he is more willing to make a strong effort to minimize future taxes. Firm F's representative
emphasized that income tax filing time is an extremely advantageous time to initiate estate planning procedures. This is particularly true if the client is supporting a parent or other relative, or if an immediate savings in income taxes could be realized by the client. Several respondents pointed out that family tax planning must be a unified system of estate planning and income tax planning. Second, at this particular time the accountant is exposed to the most, if not all, of the financial affairs of the client.

Although all six of the local firm members used the annual filing of income tax as a time to initiate estate planning procedures, their emphasis was different. Only two used this time to attempt to motivate clients into estate planning procedures—as compared to four of the national firm members. The remaining four members of the local firms implied that they use this time to initiate the idea of the need for estate planning. The one constant reply from these local firm representatives was that they must be aware of estate planning problems during the filing of the annual income tax returns and make notes for future reference. A possible cause of the difference between the approach to the estate planning program by national and local firms is that during income tax season the local firms normally use most of their
manpower to handle the heavy income tax work load. Other work, such as estate planning, would be by necessity postponed until a later date.

The annual audit provides another opportunity for the firms to motivate the client into estate planning procedures. Four of the national firm respondents reported that they attempt to motivate their clients during the annual audit. They pointed out that, theoretically, this is probably the most appropriate time to begin estate planning procedures because the auditor is exposed to a much greater mass of data than the tax specialist. Furthermore, the auditor should have a much better concept of the value and income-producing ability of the firm he audits. These two factors gain importance as the business proportionately becomes a larger part of the estate. Five of the local respondents revealed that frequently estate planning procedures originate during the annual audit. Without exception, they emphasized that these were primarily audits of closely-held corporations whose chief officers and/or major stockholders were also clients of the firms. Only one of the local respondents indicated that he did not attempt to motivate clients into an estate planning program during the annual audit while two of the national respondents gave similar responses. Although four of the members of national firms expounded
on the soundness of using this time to initiate estate planning procedures, it appears that they are not as successful in this area as their local counterparts.

Another device which is used to highlight estate planning is the firm's newsletter. Some firms devote entire newsletters to estate planning, and others include articles relating to specific estate planning devices. Such a letter stimulates client response, and even more frequently, prompts the client to call to determine how the devices discussed in the articles would apply to his specific circumstances. 76

Five of the six national firms included in this study publish either newsletters or periodic tax releases. A representative of one of the five firms stated that to date his firm has not included articles on estate planning in their newsletter, but that he felt that they would begin to do so in the very near future. Another revealed that, in addition to its newsletter, his firm distributes periodic tax releases reprints of tax articles, and a technical publication to the executives of its client firms. Each of these publications periodically includes information that directs the client's attention to the

advantages of estate planning. One national firm which does not have a newsletter does distribute U.S. Tax Briefs to its clients, although this is not done on any regularly scheduled basis. These briefs contain articles of current interest and recent developments. As a group the national firm respondents indicated that the newsletter is a very useful device for motivating clients into an estate planning program.

None of the six local firms have a regular newsletter. However, three of these firms send out special-purpose bulletins to their clients. These bulletins normally include income tax articles and other related information. Only one of the three firms has included estate planning articles in these bulletins. All three of these local firms were a little apprehensive about these news bulletins. Each of their representatives stated the fear of creating ill-feelings among other firms is one of the reasons that they do not make better use of the newsletter.

Quite often, upon the death of a relative, friend, or business associate, a client becomes more aware of the many problems with which his family and estate will be burdened upon his death. This is especially true if the estate of his acquaintance was unplanned and faced severe shrinkage due to taxes and other obligations. Frequently,
the reality of such hard, cold facts motivates the client into an estate planning program. All twelve accounting firms included in this study used this particular time to influence their clients to begin estate planning procedures. There was no apparent difference in the use of this device between the national and local firms. All the respondents indicated that the CPA must have a very close, personal relationship with his client before he attempts to use such a tragic occurrence as a means to initiate estate planning. However, they were unanimous in replying that such an occurrence normally brings the clients to the CPA for advice in the field of estate planning.

Another opportune time for initiating a discussion on estate planning is during the purchase or sale of a client's business or at the time the client is changing the form of his business. The phrase, "changing the form of business," refers to the client changing his business from a single proprietorship to a partnership, from a partnership to a corporation, or from a closely-held corporation to a public corporation. All of the twelve accounting firm representatives interviewed were aware that this is a very appropriate time for motivating the client into estate planning procedures. There were

77 Ibid.
78 Ibid.
several different ideas among the firms about the use of this device. Three of the six national members stated that they frequently use this opportunity to attempt to motivate their clients. Each of these three representatives (Firms C, E, and F) indicated that, normally, the changing of the form of the business results from some sound business reason other than estate planning procedures. Two significant exceptions were given by the Firm C representative to the above statement. He remarked that, quite, often, estate planning procedures resulted in a closely-held corporation going public. He went on to point out that estate planning procedures often influence an individual to get out of a particular business or to retire. The other national firm members revealed that, frequently, during the process of an estate planning engagement, the form of the client's business changes to produce a sound estate plan, rather than estate planning resulting from a change in the form of the business.

Five of the local firm members answered that changing the form of a client's business often initiates an estate planning program, but that very seldom does estate planning initiate a change in the form of a client's business. These five respondents emphasized that if the client was preparing a partnership agreement or incorporating a business, estate planning procedures
were often involved. One local member (Firm M) stated that during an estate planning program the client's business often changed form as part of the estate plan. The national firm respondents were evenly split--three of them said that changing the form of the business often leads to estate planning; the other three replied that estate planning often initiates changing the form. Only one of the local firm respondents indicated that changing the form of the business often provides the impetus for estate planning.

Another device often used by estate planners to motivate their clients into estate planning engagements is to shock the client with an estimate of the debts and obligations that his estate would have to pay upon his death. These obligations include administration expenses, probate costs, and state and federal estate taxes. Because many estate owners are unaware of the tax value of their estate and the magnitude of the obligations listed above, they are actually shocked into reality by such an estimate of the cost of death. Such a rude awakening often motivates them into an estate planning program.

Ten of the twelve accounting firms under study use the shock treatment technique on their clients. The main reason given for not using this device was that it
involves a significant amount of work on the part of some member of the firm, and quite often the firm is not compensated for such work. Another reason given was that such an estimate is very difficult to make without access to all the facts needed to prepare an estate plan, and these facts can be obtained only through the client.

The ten firms that use this technique to motivate their clients into estate planning engagements are almost equally divided as to how they apply this device. One method, which four of these firms use, is to ask the client, "How much are you worth?" In many cases the client's estimate of the value of his estate is much less than the actual taxable estate. The client will often only include business and investment assets in his estimate and exclude personal assets such as his residence and other personal items. The client also tends to value his business interest at cost or book value, or at inventory value. Thus, in many cases the client's estimate of the value of his estate is much less than its actual value.

Members of the other six firms reported that they show the client an estimate of how much estate tax his estate would have to pay if he died today. They then emphasize how the use of effective estate planning tools
and techniques could significantly reduce this tax burden and at the same time provide for more efficient management and distribution of assets.

The above discussion has indicated many of the devices and techniques used by the accounting firms in this study to motivate their clients into estate planning programs. According to eight of the interviewees, the client must discuss his personal objectives, needs, and wants with the estate planner. He must be honest and sincere with the estate planner in discussing his family situation and other problems. Only with such information can the estate planner use the tools and devices available to him and provide services which can be incorporated into a sound estate plan for his client.

SERVICES PROVIDED FOR ESTATES

The accounting firm members interviewed were asked four questions concerning the services they perform for estates. They are:

(1) Does your firm ever serve as an executor or administrator of an estate?

(2) Does your firm serve as tax adviser to an executor or administrator?

(3) Does your firm attempt to get your clients to name the firm as tax adviser to their executor in their wills?
(4) Does your firm ever prepare estate and/or fiduciary tax returns?

The results of these questions are summarized in Tables II through V. The results are tabulated in such a way as to show the difference in how the national firms replied and how the local firms replied.

**TABLE II**

**NUMBER OF FIRMS ANSWERING WHETHER OR NOT IT SERVES AS EXECUTOR**

(Question No. 1)

<table>
<thead>
<tr>
<th>Answer</th>
<th>National Firms (6)</th>
<th>Local Firms (6)</th>
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</thead>
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<tr>
<td>No</td>
<td>5</td>
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<tr>
<td>Totals</td>
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</tbody>
</table>

Table II indicates that the representatives of five of the six national firms interviewed answered "No" to the first question. The other representative answered "Possibly" which means that the firm has not been providing such services, but it is quite possible that the firm would do so under the appropriate circumstances. Even that representative indicated that his firm would not serve
as an executor or administrator in a business sense, but that it is possible that some of its members might act as an executor if requested. The local firms answered the question somewhat differently. Only three of this group said "No"; two, "possibly"; and one, "yes."
However, the representative that replied affirmatively modified his position by stating that he discouraged his clients from naming the firm in such a capacity.

<table>
<thead>
<tr>
<th>Answers</th>
<th>National Firms (2)</th>
<th>Local Firms (6)</th>
</tr>
</thead>
<tbody>
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<td>0</td>
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</tr>
<tr>
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<td>0</td>
</tr>
<tr>
<td>Totals</td>
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</tr>
</tbody>
</table>

All twelve firms stated that they serve and will continue to serve as tax advisor to an executor or administrator. After the estate owner's death, it is too late to perform estate planning procedures in the normal sense of the word because the estate owner is
deceased and can make no more changes in his plan. However, as pointed out by most of the representatives interviewed, there is a great opportunity for post-mortem planning.

Since death does not completely determine the final tax consequences, the actions of parties other than the deceased estate owner have a significant effect upon the final tax burden. Most of these actions have to be taken by the executor, and since these actions determine the tax consequences, the executor must receive sound tax advice. Thus, post-mortem planning is essentially tax planning. It has a direct bearing on the following:

1. The computation of income tax on the last return of the decedent.
2. The amount of income tax liability of the surviving spouse for the year in which the deceased spouse dies.
3. The income tax status of the heirs during the period of estate administration.
4. The income tax basis of the estate property distributed to the heirs.
5. The amount of income tax the estate must pay.
6. The amount of estate tax the estate must pay.79

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From the above discussion, it should be apparent that a proper analysis must be made of all tax related post-mortem decisions. There are many interrelationships between the federal estate and fiduciary income tax laws that have to be considered. Chapter Two indicates that the tax risk is one of the greatest risks of estate conservation, and since these post-mortem decisions have such a significant influence upon the final tax consequences of the estate, the importance of making the most advantageous decision is magnified. The accounting firms feel that this is an area where they can provide a meaningful and much needed service. Since each of these firms has at least one member who is a tax expert, they feel that they are capable of providing the executor with sound tax advice. This sound advice could produce large sums in tax savings and thus be very instrumental in estate conservation which is one of the primary responsibilities of the executor.
TABLE IV

NUMBER OF FIRMS ANSWERING WHETHER OR NOT IT
ATTEMPTS TO INFLUENCE CLIENTS TO NAME
IT AS TAX ADVISER TO EXECUTOR

(Question No. 3)

<table>
<thead>
<tr>
<th>Answers</th>
<th>National Firms (6)</th>
<th>Local Firms (6)</th>
</tr>
</thead>
<tbody>
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<tr>
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<td>1</td>
</tr>
<tr>
<td>Totals</td>
<td>6</td>
<td>6</td>
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</table>

Although the accounting firms responding were very emphatic about the services they could provide as tax adviser to an estate's executor, only one of the national firms and three of the locals stated that they would attempt to influence their client to name the firm in his will as tax adviser to the executor of his estate. In discussing this question it was quite evident that the firms would like to be named to such a capacity in their clients' wills. Several of the firms' representatives said that they saw no problem in being named as tax adviser in their clients' wills. However, they did not feel that they should make such a suggestion to their clients. Further investigation revealed some of the underlying reasons for this feeling.
Two of the eight firms who said that they would not make such a suggestion to their clients felt that such an act might be interpreted as a violation of the Institute's Code of Ethics. Two articles of the Code of Ethics were cited; the first, Article 3.02 and the second, Article 4.04 follow:

(1) A member or associate shall not endeavor, directly or indirectly, to obtain clients by solicitation.

(2) A member or associate shall not engage in any business or occupation conjointly with that of public accounting, which is incompatible or inconsistent therewith.80

Certainly, these rules of ethics should not be violated, but it appears that these rules are not the primary reason for avoiding such action. Six of the representatives of the dissenting eight firms stated that they do not attempt to influence their clients to name them as tax adviser in the client's will because of the fear of antagonizing the legal profession. These members indicated that they do not want to be accused by the American Bar Association or the legal profession of practicing law or encroaching upon the duties and responsibilities of an attorney in any way. In other words, they want to keep a good working relationship with the legal profession.

TABLE V  

NUMBER OF FIRMS ANSWERING WHETHER OR NOT IT PREPARES ESTATE AND/OR FIDUCIARY TAX RETURNS  
(Question No. 4)

<table>
<thead>
<tr>
<th>Answers</th>
<th>National Firms (6)</th>
<th>Local Firms (6)</th>
</tr>
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<tbody>
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<td>Yes</td>
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<tr>
<td>Totals</td>
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All twelve of the representatives interviewed stated that their firms currently prepare and will continue to prepare estate and fiduciary tax returns. It is evident that these members think that this is a service which should be performed by the accounting profession. They indicated that while many attorneys and other professional people are highly skilled and knowledgeable in the field of taxation, the majority of these people are not tax oriented. Even though the accountant is quite proficient at preparing tax returns, the most significant contributions he can make to the estate during the post-mortem planning process is his ability to provide sound tax advice to aid the executor in his decision making process.
Another contribution that accountants can make to the executor or administrator to an estate was pointed out by several of the firms. Since the estate is composed of all the property and debts of the decedent at the time of his death, the executor must keep adequate records of all transactions involving the estate. This process of record keeping is known as estate accounting. Often the executor is not well versed in accounting; therefore, it is necessary for him to seek assistance in this endeavor. The accountant can be especially helpful in designing an accounting system for the estate. Once a proper accounting system is implemented, the executor should have no difficulty in maintaining adequate records of the estate's affairs.

The above discussion illustrates some of the services that accountants perform for estates. This type of work is necessarily discharged after the death of the estate owner. However, there are also many services the accountant provides for the living estate owner. Several estate planning devices exist which the accountant should analyze in light of each client's particular circumstances and, where appropriate, incorporate these devices into the estate plan.
USE OF ESTATE PLANNING DEVICES

An estate planner has available to him several devices and tools which are commonly used in estate planning. Included in this list of devices and tools are trusts, gifts, annuities, life insurance, buy and sell agreements, stock redemption plans and others. The following discussion discloses the use of these different devices by the accounting firms whose representatives were interviewed.

Trusts

The uses of trusts and their concomitant advantages were discussed in an earlier chapter. The role that accounting firms play in the analysis of the advantages and disadvantages of trusts, the acceptance or rejection of trusts in the estate plan, and the creation of trusts when they are to be adopted are explored in this section.

According to the representative of one of the national firms,

"Trusts are not as common in the South as they are in the North and East; that is, people in this section of the country do not use trusts as much as they could and should use them. However, trusts are becoming more popular in the South, and people are beginning to use them more now. Our clients must be educated as to what can be accomplished through the use of a trust."
Representatives of nine of the firms pointed out that trusts, particularly in Louisiana, have been used very little. Three reasons were given for the low rate of utilization of trusts in Louisiana. First, in most cases the usufruct comes into use by operation of law, thereby reducing the need for trusts. Second, the Louisiana Trust Code came into existence in 1964. Finally, trusts have only been included in law school curriculums since the mid 1960's. The representative of Firm M added, "Since the trust concept in Louisiana is relatively new, most trust lawyers are relatively young. These young attorneys normally do not have many older, wealthy clients. Therefore, it will be some time before trusts become significantly used in Louisiana." It was also noted by members of these nine firms that many attorneys in Louisiana know very little about trusts and do not encourage their use. In essence, the client is forced to look to the accountant or the trust officer for advice in the field of trusts.

All twelve of the accounting firms under study consider the use of trusts in estate planning. Members of each of these firms stated that if a trust would solve some specific problem, or aid in accomplishing the objectives of the estate owner, they would not hesitate to encourage a client to establish one.
To determine the firm's involvement in trusts, the representatives were asked to discuss different types of trusts that their clients had created, as a result of advice from the accounting firms. Indications are that the primary reason for establishing trusts is the savings of both income and estate taxes. Responses from both national and local firm representatives were equally divided when asked if the majority of the trusts established by their clients were irrevocable or the Clifford type trust. Two of the national firm members stated that the majority of the trusts created by their clients were the irrevocable type; two stated that the Clifford type was most prominent. The remaining two national firm members stated that there was an equal division between the two types of trusts among their clients. Local firm representatives replied in the same way as the nationals. Therefore, there appears to be no difference in this treatment of trusts between national and local firms.

Representatives of all firms interviewed indicated that they had clients who had support or spendthrift trusts. Most of these trusts are established to provide funds for the support of minor children. However, such trusts are often established for the benefit of the estate
owner's spouse or to provide support for the children until they reach a designated age at which time they receive the corpus of the trust. Moreover, members of all twelve firms indicated that they had helped clients establish educational trusts. All but one local firm revealed that some of their clients had charitable trusts. The latter two types of trusts were not nearly as popular as the support trusts. One reason given for the lack of educational trusts by the representative of local Firm P was, "Clients are reluctant to give up the use of property today for tax and/or other benefits of tomorrow."

Trusts are often set up to provide professional management of the assets which form the trust corpus. This type of trust is normally created for one of two reasons. One reason such a trust may be created is to manage the assets of the estate for the benefit of the surviving spouse and/or children because these individuals do not possess the ability to manage the assets themselves. Another reason such a trust may be created is to relieve the estate owner of the burden of management of the trust assets. Members of all twelve of the firms interviewed have clients with trusts created for management purposes. Two of the firms, one national and one local, have clients who created such trusts for the purpose of relieving themselves of the managerial responsibilities. All the firms
have clients who established such trusts for the benefit of their spouse and/or children.

Another purpose for which trusts are often created is for the continuance of the business of the client after his retirement or death. Eight firms, four national and four local, had clients who had created this type of trust. However all eight were involved in only a very few such trusts. Four firms, two national and two local, had no clients with such trusts. Further investigation revealed that the corpus of such trusts was primarily investment property rather than active assets. Thus, the trustees of such trusts were more involved with the management of investment property rather than the active management of a business. However, one local firm, Firm P, had one client that had a trust in which a bank trustee served as a partner in a partnership. For all practical purposes the trustee partner was the active manager of the business.

Accounting firm members were asked to discuss which areas within the analysis of trust, they gave their clients advice and aid. These questions covered the areas of determining the objectives and consequences of trusts, selection of trust property, evaluation of trustees, and selection of trust beneficiaries.
All twelve of the accounting firm representatives indicated that if the creation of a trust would help accomplish the objectives of the estate owner, they would aid their clients in determining the objectives and consequences of such a trust. As was pointed out earlier, the objectives of most trusts created in estate planning by clients of these firms was the minimization of taxes. According to the interviewees, many trusts were created for purposes other than tax minimization--such as those designed to prevent the corpus of the trust from passing to the beneficiary until he reaches a predetermined age. These accounting firms assisted their clients in determining what type of trust would be most beneficial in their specific circumstances. Probably the most important role these accountants were playing in the analysis of trusts is that they instructed their client in the tax consequences of each type of trust.

Only one of the accounting firms, a local firm, did not help its clients in the selection of property to become the trust corpus. The other eleven firms emphasized the importance in making the proper selection of property to place in trust. The representatives of these eleven firms indicated that next to the evaluation of tax consequences, the most important contribution the accounting firm can make in the area of trusts is to aid the client in determining what property to place in trust.
It was often pointed out that the accountant is the professional in the best position to be able to determine just what property the client can afford to give up without any drastic consequences. Consideration must be given to the placing of depreciable versus non-depreciable property, income-producing versus non-income producing property, stable versus appreciable property, as trust corpus. All of these were evaluated by the accountants interviewed in light of the existing circumstances of their clients.

All twelve of the representatives indicated that they discussed the advantages and disadvantages of the corporate or bank trustee versus the individual trustee. All favored the bank trustee because such a trustee provides professional management of the trust assets and because there is no continuity problem with the bank as there is in the case of an individual trustee. However, all of the firm representatives were quick to point out that they never recommended any one trust department over another; they discussed with their clients what trust departments were available and helped the client evaluate the managerial ability of each one. The decision as to which trust department was chosen was left to the discretion of the client. The representative of Firm Q
pointed out the necessity of developing a good relationship between the trust officer and the accountant. He stated, "If the trust officer knows the accountant was instrumental in the creation of the trust, the trust officer often feels responsible not only to the client, but also to the accountant; thus, he may bend over backward to provide a good service so that the CPA firm would not hesitate to recommend him in the future."

Another area in which all twelve of these firms aided their clients is in the selection of the trust beneficiaries. The accountants educated their clients as to the tax consequences of naming different generations as to income and/or remainderman beneficiaries. They especially aided the client in generation skipping so that the estate tax upon the death of one of the beneficiaries could be avoided.

It is evident that the accounting firms are quite involved in the field of trusts. The extent of their involvement and the amount of advice they provide in any particular situation depends upon many factors. One of these factors is the ability of the client's attorney in this area. In the opinion of several of the interviewees many attorneys prefer that the accountant work with the client in making all the relevant decisions concerning the creation of the trusts, leaving only the drafting
of the legal documents to the attorney; on the other hand, some attorneys want to be included in all discussions concerning trusts and become instrumental in the acceptance of any such device in the final estate plan. Since the accountant is not licensed to practice law, he must recognize this limitation. In no case should the accountant perform services which would indicate or imply that he was practicing law.

Although the trust is probably the most flexible tool used in estate planning, there are many other devices available to the estate planner. One such device used quite often by the accountants interviewed is the outright gift. When used appropriately the gift can accomplish many of the objectives of the estate owner.

Gifts

As was true in the use of trusts, all twelve of the accounting firms felt that the gift is a useful device in estate planning. Each representative indicated that in any situation where a gift would help achieve the objectives of their clients, they would recommend and encourage its use. There seems to be a central theme among the accounting firms concerning the use of gifts. All of the firm members expressed the opinion that gifts should be made only by clients who have sufficient capital
and income to protect them from future financial difficulty. In many cases middle aged clients want to give away too much because often their main objective is to avoid taxes at all costs. On the other hand, older clients do not want to give enough or will make no gifts at all. The representative of one of the local firms interpreted the reason for this action on the part of the older clients thusly, "These people remember the depression, fear a long costly illness, and under no circumstances want to become a burden upon their children."

Before a gift is finalized there are many factors to be considered. The accountant aids his client in many of these decisions. One of the areas in which the accountant is most helpful is in advising the client as to the timing of the gift. All twelve of the accounting firm members noted that they advised their clients on when to make gifts to maximize tax advantages. It was pointed out by these firm representatives that if a client had a plan of systematic giving which he had followed over the years, then he would have substantial support to refute the charges of gifts made in contemplation of death. The accounting firm members interviewed emphasized that they thought that it was very important to aid their clients in the timing of gifts.
Another decision in which all twelve firms aid their clients is in the selection of the property which is to be the principal of the gift. Financial consequences to both the donor and recipient must be considered and analyzed. This is particularly true with respect to the giving of depreciable versus non-depreciable property, income producing versus non-income producing property, and high basis versus low basis property. All the firms revealed that they felt that the accountant was in a better position than any of the other members of the estate planning team to determine what property the client was financially able to part with, and that the accountant is able to determine the needs of the family for living expenses and was able to program their cash flow needs and requirements.

While the client must decide who is to be the recipient of the gift, all of the accountants interviewed said that they aided their clients in this decision. However, they did not attempt to influence their client in naming one person in preference to another as the donee of the gift. They said that they explained the different tax consequences in naming different people as the recipient. They especially discussed the advantages of naming of persons in one generation over those in
another generation as the receiver of the gift. These advantages include both income and estate tax advantages.

There are many other devices used in connection with gifts in estate planning. One of the most common devices used in conjunction with gifts is the Subchapter S corporation. According to one representative the use of such a device allows the client to give away up to forty-nine per cent of the stock of a Subchapter S corporation without losing any control of the business. Such a gift would provide both income and estate tax advantages. The firm members often suggest the giving away of life insurance policies on the life of the estate owner. Another device used quite frequently by the firms under study in conjunction with gifts is the usufruct. One interviewee pointed out that a widow may make a gift of property but maintain the usufruct on such property. Such a gift has the advantage of removing the property from her estate while at the same time entitling her to one half the income from such property.

Private Annuities

The use of the private annuity as a tool in estate planning was discussed in an earlier chapter. This section is intended to show how this tool is used by the accounting firms interviewed. All of the representatives
interviewed stated that in their analysis of estate planning problems they considered the use of private annuities. Four of the firms, three locals and one national, revealed that they had never used this tool in their estate planning engagements. Seven more of the firms indicated that they rarely used this tool. Only one national firm (Firm B) made frequent use of this tool, and the representative of that firm stated, "The private annuity is a magnificent tool; in fact, it is my pet device."

Eight of the accounting firm members explained that private annuities were advantageous only in the right situations. The right situation was described by these representatives as that situation in which the client has income-producing property which he can afford to give up and responsible heirs who have the business ability to profitably manage the property. The property should be able to generate enough net cash flow to meet the annuity payments so as not to place a heavy burden upon the obligor of the annuity.

The members of the accounting firms contacted were unanimous in stating that the primary advantage of the private annuity is the favorable tax consequences. Another advantage often noted is that the private annuity
guarantees the annuitant an annual income for life. The principle disadvantage pointed out by the various representatives is finding the right situation to use the annuity. The following comments were made by representatives of different firms:

**Firm M:**

If the heir or obligor has to make payments for a longer period of time than he expected, he often forgets how good a tax deal it is and becomes very unhappy with the plan and with me for recommending the plan.

**Firm E:**

Why should I recommend to a client a potential problem. That problem could be any one of the following: the failure of the obligor to make the annual payments, the inability of the property to generate enough cash to meet the annuity payments, or the annuitant living much longer than his life expectancy.

Another disadvantage of private annuities pointed out by these firms is that an annuity contract is a long-term arrangement, and most people do not wish to plan that far in advance because it necessitates predicting the future.

Apparently these accounting firms make very little use of private annuities. However, each of the firm representatives indicated that in any decision concerning the use of a private annuity the accountant should be consulted. The income and estate tax consequences of both
the annuitant and the obligor must be analyzed; the financial needs and income of the annuitant must be considered; the selection of the property which is to become the principal of the contract must be carefully determined with respect to both the obligor and the annuitant. The accountants interviewed emphasized that the accountant should play a dominant role in these decisions because all of these analyses are within his domain of services.

Another vehicle of transfer often used in estate planning is life insurance. Life insurance is frequently used in conjunction with other tools and techniques to provide a sound estate plan. A discussion of the use of life insurance by accounting firms in estate planning engagements follows.

Life Insurance

Each representative of the accounting firms interviewed had his own ideas as to how life insurance should be used in estate planning. Some of the representatives believed that obtaining adequate life insurance should be the first step in a sound estate plan while other representatives did not like life insurance and seldom recommended it as part of the estate plan. All twelve representatives stated that they always analyzed their
clients' need for life insurance and recommended its use where it was deemed necessary. Each explained that the primary purpose of life insurance in estate planning is to provide a source of liquidity. For the less wealthy clients life insurance provides the surviving members of the family with funds which will enable them to maintain their standard of living, especially during the settlement of the estate. The accounting firms interviewed all evaluated the tax consequences of life insurance because the proceeds of the life insurance can be kept out of the taxable estate simply by making someone other than the client the owner of the policy.

All of the accounting firm members stated that they aided their clients in establishing and reviewing buy and sell agreements and capital stock purchase plans. Each considered the use of life insurance to fund such plans and often suggested that life insurance be acquired for such purposes. Frequently they advised the individual partners to personally take out life insurance on the life of the other partner. During an estate planning engagement it becomes evident that there is a need for a deferred benefit or retirement plan. The use of life insurance to finance such plans was evaluated by each of the accounting firms interviewed according to their statements. Each indicated that he
frequently worked with insurance people in creating this type of plan. Of course, there are many financial matters and tax consequences which must be analyzed by the accountant in his analysis of such plans.

Apparently the accounting firms under study were quite instrumental in any decision regarding the adoption of life insurance in the estate plans of their clients. Not only did they evaluate the need for insurance, but they aided in the determination of the size of the policy. There were many other services which these accounting firms performed for their estate clients. Some of these other services will be discussed in the following section.

Other Services

During the course of an estate planning engagement, accountants perform many services for their clients. No attempt will be made to discuss or even to list all these various services. The representatives of each of the accounting firms interviewed stressed that one of the most important functions the accountant can perform is to help his client determine his estate planning objectives. These objectives must be identified before any worthwhile plan can be formulated. The estate plan must help achieve the objectives of the estate owner.
One of the estate owner's objectives should be to provide for the needs of his family before and after his death. Thus, a determination of the needs for the maintenance of the family must be made. In this process the individual members of the family have to be evaluated with emphasis upon each one's business ability and financial stability. All of the interviewees stated that this was a task that they performed, and that they believed this task should be performed by the accountant--because he already has a great deal of vital information in his working papers.

Another common objective of the estate owner is his desire to have his business to continue to exist after his retirement or death. In such a case each accounting firm representative revealed that they assisted their clients in the evaluation of potential successors. These potential successors were analyzed in respect to their business ability, attitude, and interest. Several accountants pointed out that frequently the only workable solution is for the estate owner to incorporate his business.

All twelve of the accounting firm representatives indicated that they were very instrumental in evaluating the business interests belonging to the client. The accountant is especially beneficial in valuing a going
concern. Each representative emphasized that the accountant is much better qualified to properly value a going concern enterprise than any of the other members of the estate planning team and that he should be the one to perform this task in every estate planning engagement. Five of the firm members responded that they were often requested to perform such services for people other than their own clients and that valuing a going concern is one of the services regularly performed by accountants.

Each of the firms reviewed the federal and state tax consequences under the existing circumstances and analyzed the estate and income tax aspects of alternative plans. The representative of every firm pointed out that the evaluation of the tax consequences of alternative plans and the suggestions of the use of devices to minimize both the estate and income taxes were both very important functions performed in estate planning engagements. However, it was emphasized by every representative that the accountant must always keep in mind the whole spectrum of the client's affairs and objectives, and not just the tax angle. The purpose of any estate plan should be to accomplish the estate owner's objectives, not just to minimize taxes.
Several services which the accountant performs during estate planning engagements have been discussed. There are several characteristics, which the general public normally assumes the accountant to possess and these traits should be beneficial to the client in any estate planning endeavor. The representatives of accounting firms interviewed were asked to discuss several of these with reference to estate planning.

BACKGROUND AND TRAINING

The accountants interviewed were asked if they thought the CPA-client relationship is important in estate planning. This relationship is a confidential one, and one in which the CPA has comprehensive knowledge of the client's financial affairs. All the respondents replied with an emphatic "yes" and gave several reasons for their belief. A common reply was that the more a professional works with his client, the more dependent the client becomes upon the professional. Since the CPA knows his client's financial situation better than any other professional, and in many instances knows more about the client's financial affairs than the client himself, the client is more willing to be open and frank in discussing his objectives with the accountant. The
accountant already has a large volume of financial data in his working papers. Thus, the client is more likely to present him the remaining facts. Any other member of the estate planning team would have to obtain complete access to all the financial affairs of the client to obtain the facts that the accountant already has on file. The representative of Firm D stated, "The better the client relationship the better off you are in estate planning because the more faith and trust the client has in you, the more cooperative he is in any engagement. Normally, the CPA-client relationship is better than the client's relationship with any of the other team members."

The representative of Firm L replied, "The CPA-client relationship is particularly advantageous when dealing with the less affluent client because such a client never thinks estate planning and is usually apprehensive about discussing it with the other team members."

The accounting firm members were asked if the accountant's knowledge of tax law was beneficial to the estate planning engagement. Again, there was a unanimous "yes" among the firms. Four of the firms indicated that the accountant is no better in this field than the attorney who has specialized in tax law. However, it was quickly pointed out that there are very few attorneys who are proficient in tax law. Each of
the firm members interviewed revealed that both the estate and income tax consequences of each alternative plan must be analyzed and that this task is normally performed by the accountant.

According to the representatives of the twelve accounting firms, the accountant's periodic association with his clients is very beneficial in estate planning. These representatives emphasized that estate planning is a continuing, dynamic process. Frequently, there are changes in the laws or the client's family or financial affairs that dictate revising the estate plan. Thus the estate plan must be reviewed periodically to assure that it reflects the current objectives of the estate owner. The consensus of the accountants can be summarized by the following two statements.

**Firm C:**

More frequent association with the client is a definite advantage, but many people do not see their attorney at all except to do something specific. Many people do not have a continuing relationship with their attorney while they do with their CPA.

**Firm F:**

The accountant, during his annual or more frequent review of the client's records, should recognize any change in the financial or family affairs of the client that would have any estate planning consequences. Also, any changes in the law which would effect the client should come to the attention of the accountant during his periodic work for the client. Without actually
reviewing the records of the client, the other team members may not be aware that a new law can be applied to this particular client. Only the accountant reviews the client's records on a regular recurring basis, and he should review the estate plan at this time.

Eight of the accounting firm members polled felt that the accountant's independence, in reference to compensation for estate planning engagements, was a significant advantage. The central theme was that the accountant has no special interest to serve, and thus recommends the use of specific devices according to the needs and objectives of the client. The other four firm members, composed of two nationals and two locals, indicated that they did not think this was important because the client for which estate planning services are performed are not concerned with the fees.

All the representatives agreed that the accountant's understanding of the business environment, with specific reference to the accountant's knowledge of the client's particular business, should be beneficial to the estate planning team. Estate planning depends upon cash flow and the income producing ability of the client's assets. Estate planning cannot readily be divorced from the context of the business environment. The accountant is the member of the estate planning team
that determines the ability of the client's business and assets to generate cash and income. The accountant evaluates the needs of the business and determines which assets the client can afford to give up without present or future repercussions. Each firm member indicated that this particular domain belongs solely to the accountant because the other team members are not qualified to perform these tasks. As the representative of firm N stated, "The CPA's knowledge of the business environment allows him to put together the viewpoints of the banker, lawyer, and investment adviser."

The interviewees were asked if the accountant needed any special training in order to be proficient in estate planning. The consensus of the firms was that the broader the background of the accountant, the better. All indicated that legal training would be beneficial but not necessary. A knowledge of psychology was viewed as helpful because many of the problems encountered are problems of human nature rather than of a technical nature. The accountants emphasized that anyone practicing in the field of estate planning must continually learn through reading and self-study. All agreed that professional seminars and the American Institute's professional development courses in estate
planning are beneficial, especially to someone just moving into the estate planning field. Membership in estate planning councils was advocated because it affords the accountant the opportunity to meet other members of the estate planning team and exchange ideas. Through such an exchange the members can become more aware of the contribution the other members make to any estate planning engagement.

The national accounting firm representatives indicated that they thought they had an advantage over local accounting firms, and other members of the estate planning team, because they have members in their firms who have specialized in this field. Usually, there is one member in each office that has specialized in estate planning. One of the national firms had sixteen firm-wide specialists in different areas of family tax planning. To exemplify the importance this firm has placed on estate planning, the following comprised six of these sixteen firm-wide specialist areas: income taxation of estates and trusts, estate taxation, life insurance and annuities, divorces, charitable giving, and community property.

Apparently the accounting firms under study were actively engaged in estate planning. They used many methods to motivate their clients into estate planning
programs. Once an engagement was in progress, these accounting firms employed many of the tools available to the estate planner. Since these accountants were thoroughly involved in estate planning, the respondents were asked to discuss their responsibility, if any, to their clients in the area of estate planning.

ACCOUNTANTS VIEW THEIR RESPONSIBILITY IN ESTATE PLANNING

All the accountants indicated that they worked on the total service concept. This means that they believed that the firm should provide the client with the full scope of accounting services and perform any service needed which was within its perview. If they did not perform all accounting related services needed then they were actually rendering a disservice. Representatives of eleven of the twelve firms stated that they felt that the accountant had the responsibility to initiate estate planning for all their clients who needed such service. The representative of one national firm hedged somewhat. He felt that the accountant should make his client aware of any services the client needed, including estate planning. However, he did not think that the accounting firm had any responsibility--either legally or ethically--to initiate estate planning. Perhaps he
was looking into the future and wondering if the accountant would become legally liable for his failure to provide such services. This representative did admit that the accountant should initiate an estate planning program for his clients that needed such services, but he did not like the use of the words "responsibility" and "obligation."

The accounting firm members emphasized that the accountant is the financial adviser of the client. The accountant has comprehensive knowledge of the client's financial affairs and is the only professional in the position to know when a client needs an estate plan. Since estate planning is financial planning, the accountant has the responsibility to initiate such a program for his clients. The representative of Firm B stated: "When the client needs an estate plan, the accountant has the responsibility to motivate his client into an estate planning engagement. The accountant must attempt to motivate the client into such a program at all costs, even if he runs the risk of losing the client." The feelings of the other firm members were not quite this strong, but they all indicated that the accountant must attempt to motivate his clients into a needed estate planning program. The representative of Firm N replied: "If the accountant does not provide his
client with the full scope of services including estate planning, one day the client will wake up and want to know why the accountant failed him. For an accounting firm to be successful, it must grow professionally along with its clients."

The accountants were asked if they thought that most accounting firms were fulfilling their obligation in the estate planning area. All answered, emphatically, "no". The common answer was that most accounting firms were mired in compliance work. The volume of income tax and audit work keeps them busy, meets the payroll, and provides a good profit. The representative of Firm P characterized the situation thusly, "Firms are set up to handle the work they are called upon to perform. They do not quit pencil pushing long enough to analyze the clients needs, such as estate planning." The representative of Firm L replied to the same question, "There are not enough of the new breed of accountants at the tops of the local firms to point those firms toward estate planning. The older members are satisfied and feel more comfortable in the areas of audit and income tax work--they do not want to meet the challenge." All the firm members felt that any accounting firm which was mired in compliance work and did not take the time to analyze the needs of the client was doing its clients a
grave injustice. They viewed compliance work as the least important service the accountant performs; his training is such that he should be planning and advising. In the opinion of the accountants interviewed their primary responsibility is in planning and serving as a guide in decision making.

Nine of the respondents, four local and five national representatives, gave another reason for the failure of accounting firms to assume their responsibility in estate planning. They stated that many accountants, especially the older ones, feel that if they initiate an estate planning engagement, they are violating the profession's code of ethics. Many accountants think the initiation on his part of an estate planning engagement is a form of solicitation and solicitation is forbidden by the American Institute's Code of Ethics. However, those interviewed were unanimous in stating that they saw no violation of the code of ethics in initiating an estate planning program for a regular client. In fact, they indicated that to serve the client professionally, the accountant must provide his client with all the financial assistance he needs.

The accounting firms contacted in this study were actively engaged in estate planning. The firm representatives indicated that the accountant was
responsible to his clients for initiating estate planning, and that he must motivate them into an estate planning program. Once the actual engagement had begun, these accountants were very active members of the estate planning team. They helped to design, test, and evaluate various alternative plans. The respondents felt that once an estate plan is implemented they should periodically review that plan.

The firms under study were selected because they were some of the more active firms in the field of estate planning in this geographic area. However, there are many accounting firms which provide none of the services discussed above.
CHAPTER IV

OTHER SELECTED PROFESSIONALS (ATTORNEYS, TRUST OFFICERS, AND CHARTERED LIFE UNDERWRITERS)

DISCUSS THE ACCOUNTANT'S ROLE IN ESTATE PLANNING

As part of the research for this study, structured interviews were conducted with estate planning team members other than accountants. The purpose of these interviews was to determine the attitudes of the other team members concerning the accountant's role in estate planning.

The data for this chapter were obtained through structured personal interviews with fourteen professional members of the estate planning team. The individual professionals were selected because they are members of groups which are actively performing estate planning.

Five attorneys (referred to as Firm H, Firm I, Firm J, Firm K, and Firm L), three trust officers (referred to as Firm X, Firm Y, and Firm Z), and six chartered life underwriters (referred to as Firm A, Firm B, Firm C, Firm D, Firm E, and Firm F) were interviewed. All these individuals are practicing in Baton Rouge. See Appendix B for the questionnaire used in these interviews.
functions. The assumption is made that the information obtained from individuals actively engaged in estate planning would be more meaningful than information obtained from individuals not active in estate planning.

The professionals interviewed were asked to discuss three basic groups of questions. These included questions concerning: (1) the accountant's present contributions in estate planning; (2) the accountant's proper role in estate planning, and, (3) services accountants should perform in estate planning.

THE ACCOUNTANT'S PRESENT CONTRIBUTIONS IN ESTATE PLANNING

The respondents were asked if accounting firms were performing services in the area of estate planning. The representative of every firm responded affirmatively. They stated that many of the necessary tasks in estate planning can be performed efficiently only by the accountant. These representatives emphasized the importance of the accountant's involvement in an estate planning program for his clients.

These representatives were then asked to discuss the role that the accountant is currently playing in estate planning. Again there was a unanimous reply, but of a negative variety. Every representative interviewed
stated that accountants are "usually very passive in the field of estate planning." These professionals indicated that most accounting firms perform only those services which are specifically requested of them by the client or another member of the estate planning team. In most cases they limit their work to the performance of only that specific task. However, five of the representatives noted that there are four to six accounting firms in the Baton Rouge area which are very active and quite proficient in the field of estate planning. The involvement of these accounting firms in estate planning was viewed as quite significant. All the representatives emphasized the need for the accountant to become an active member of the estate planning team and pointed out that many accounting firms are becoming more active in this field.

Several reasons were given by these representatives for accountants' passiveness in the field of estate planning. The most frequent was that accountants are too involved with income taxes, auditing, and write-up work to take the time to evaluate the other needs of their clients. Another reason given was that estate planning requires expertise in a very specific field, and many accounting firms have no one in their employ with such expertise. Quite often the legal problems involved
discourage accountants from becoming active participants. However, the second most frequent reason given for accountants' passiveness was that the profession's code of ethics often discouraged many accountants from becoming involved in estate planning.

**Member of the Estate Planning Team**

When asked if accountants in estate planning were working closely enough with the other team members, the representatives of the firms interviewed gave differing views. Five of the six chartered life underwriters said that accountants do not work closely enough with the other team members. However, they went on to point out that accountants are not the only members of the team guilty of this charge. The following comments illustrate their views:

**Firm E:** "There is a problem of cooperation and coordination among all the team members. It is very difficult to get the members of the team together because it is such a time consuming and specialized endeavor."

**Firm F:** "Many times there is a conflict of interest among the team members, and each one wants the glory. Thus each member acts more on his own even in many areas where they are not qualified."

**Firm A:** "Very seldom is there a team meeting. Frequently the other members do not call in the life insurance man. They design and draft the plan, and then call the CLU and tell him the dollar amount of insurance needed."
The sixth chartered life underwriter, Firm B, felt that accountants worked closely enough with the other team members. In fact he stated, "The accountant has a greater appreciation of team play than the attorney."

All three of the trust officers implied that although there is a considerable amount of team effort, most of the team members including the accountant operate more as individuals than as team members. The representative of Firm Y pointed out that this lack of team play is not peculiar to this geographic area; it is a nation-wide problem. All three of these representatives agreed that the accountant did not work closely enough with the other team members. They all emphasized the need for more team interplay by the members of the estate planning team.

Three of the five attorneys interviewed stated that they thought accountants worked closely enough with the other team members. The other two attorneys (Firm H and Firm L), stated that accountants generally worked more as individuals than as team members. The representative of Firm L stated, "Frequently the accountant will bring the attorney a completed estate plan and leave only the drafting of the legal documents to the attorney. However, many attorneys like this arrangement because they are not
well versed in the field of estate planning, and they accept the accountant's work at face value."

Since ten of the fourteen representatives interviewed indicated that accountants do not work closely enough with the other team members, it can be inferred that this is the opinion of the group interviewed. Three of the four representatives who stated that accountants did work closely enough with the other team members were attorneys. The one representative among the trust officers and chartered life underwriters who said that accountants worked as a team member also stated that accountants had more appreciation of team play than attorneys. If accountants are in fact better team members than attorneys it could be a partial explanation of why three of the five attorneys felt that accountants work closely enough with the other team members. From the representatives' discussions on team cooperation one may surmise that there seldom is complete interaction between all the team members on any one estate planning engagement. Quite frequently two members of the team work together on an engagement, but rarely do all four of the members meet to discuss the problems of a specific client. According to the interviewees this is one facet of estate planning that needs major improvement. Three of the representatives indicated that
if accountants became more active in the field of estate planning, they could be the ones to bring the other team members together.

Services the Accountant is Currently Performing in Estate Planning

According to the representatives of the firms that were interviewed, the accountant normally performed only those services specifically requested of him. He provided the other team members with the financial facts. He prepared financial statements, cash flow analyses, and valued any closely-held businesses belonging to the client. Frequently he was requested to analyze the tax consequences of specific alternative plans. Thus, the accountant provided the financial information and served as tax adviser; he was not part of the planning team.

The representatives interviewed were asked to discuss the services which were then performed by that relatively small number of accounting firms which are active in the field of estate planning. All indicated that even though these accountants usually did not initiate the estate planning program, they were involved in the entire estate planning process. The accountants who were active in estate planning gathered the facts, helped to evaluate the risks, such as other factors that
would impair the value of the estate, and aided in the design and implementation of the plan.

There are many specific tools used in estate planning. The representatives were questioned to determine if they thought that accountants were discussing with their clients the advantages and disadvantages of these tools. Every representative concluded that the accountants who were active in estate planning were counseling their estate planning clients in the use of gifts, trusts, and life insurance. One trust officer (Firm X) went on to state, "The accountants who are active in estate planning are more aware of the appropriate use of these tools than the attorneys."

Only one attorney (Firm II) thought accountants were giving their clients aid and advice in the use of private annuities in estate planning, but he modified his opinion by saying that accountants were doing very little in this area. All the other representatives indicated that accountants were not counseling their clients in the use of private annuities. Several of the representatives stated that the private annuity is a very good tool but that it is seldom used in estate planning. They suggested that the estate planner should consider this device and, where appropriate, use it.
All the representatives except one trust officer (Firm Y) revealed that the accounting firms who were active in estate planning discussed the advantages of changing the client's form of business. For example, the business may be changed from a single proprietorship or partnership to a closely-held corporation. All but two chartered life underwriters (Firm A and Firm D) stated that these accountants worked with their clients in the area of deferred benefit and/or retirement plans. Finally, all the representatives interviewed indicated that these accountants aided their clients in valuing their businesses to serve as a basis for buy and sell agreements or stock redemption plans.

The representatives of the other estate planning team members were asked if they felt that accountants should be involved in estate planning and, if so, why. They were also asked to discuss accountants' responsibilities and opportunities in estate planning. The answers to those questions are dealt with in the following section.

THE ACCOUNTANT'S PROPER ROLE IN ESTATE PLANNING

All fourteen of the representatives stated that accountants should be involved in any estate planning program for his client from the initiation of the
engagement through the design and implementation of the plan. They also felt that accountants should periodically review the plan, and the client's affairs, to insure that the plan continues to accomplish the objectives of the client.

Firm K: "Either you use the client's accountant with his knowledge of you go out and acquire the same knowledge that the accountant already possesses."

Firm Z: "It is essential that the accountant be involved throughout the entire program because the client has greater confidence in the CPA than any of the other team members especially in the tax area."

Firm F: "Estate planning attempts to do three things: (1) to preserve the assets of the estate, (2) to increase the residual value of the assets, and (3) to save taxes. The accountant should be involved in all three of these facets."

Background and Training

There are several characteristics or traits which the general public normally assumes accountants to possess. The representatives interviewed were asked to discuss several of these with reference as to whether they would be advantageous to accountants or the client in an estate planning engagement.

All fourteen of the representatives agreed that the accountant-client relationship is very advantageous for two reasons. First, this relationship provides accountants with a comprehensive knowledge of the client's
financial affairs. Since the accountant is the only member of the estate planning team to have such information, he is the only member of the team who can recognize the client's need of an estate planning program. Second, if the accountant is not part of the estate planning team, then another team member will have to spend a great deal of time gathering the information that the accountant already has. All the representatives emphasized that this confidential relationship is quite advantageous in any estate planning engagement and that normally the accountant is the only team member who has such a relationship with the client.

Another characteristic associated with the accountant is his knowledge of the business environment with particular reference to his knowledge of his client's business, its income producing ability, and its cash flow. Thirteen of the fourteen representatives replied that this knowledge was very advantageous to the accountant because such information is essential in estate planning. Eight of these thirteen went on to say that the accountant is the only member qualified to perform these tasks. A comment by one of the attorneys (Firm L) was typical: "The accountant is the one to value any closely-held business, to analyze the cash flow, and
liquidity problem, and to evaluate the potential earning power of the business after the death or retirement of the client. The accountant sees the growth or decline of the business and is often in a position to anticipate many future problems, even sooner than the client himself." This characteristic is another factor that necessitates the accountant becoming an active member of the estate planning team.

Another characteristic discussed was the accountant's independence. In this case the independence had reference to his fee basis and the estate plan adopted. The accountant, like the attorney, is compensated on an hourly fee basis, and thus his fee is not affected by the selection of any alternative tools to be incorporated into the estate plan. Of course, the chartered life underwriter is paid a commission on the insurance he sells, and the trust department receives a percentage of the trust corpus for its services. All five of the attorneys indicated that this characteristic was very advantageous to the accountant. Three of the attorneys emphasized this point. They indicated that the accountant has a significant advantage over the attorney because the accountant's fee basis is already established with the client and the client knows what to expect. Also, much of the detailed pencil pushing work
that must be done in estate planning can be delegated to a junior accountant, and thus the cost to the client is much less. The attorney normally can not delegate such work because nearly all associates charge the same hourly fee. One attorney (Firm H) stated: "Many clients expect to pay the attorney only if the plan is accepted and legal documents are drafted. They do not want to pay the attorney if they do not accept his proposals; thus many attorneys do not actively seek estate planning business."

Two of the trust officers said that they thought the accountant's independence was a definite advantage. They both pointed out that the client has more faith and confidence in the CPA than any of the other members of the estate planning team, and they are more willing to accept the CPA's suggestions because they know that the CPA has no self interest to serve and because they do not feel that they are "being taken." The third trust officer interviewed stated that he did not think this characteristic was either an advantage or disadvantage. He indicated that it was probably not even considered by the client.

Two of the chartered life underwriters said that the characteristic of independence was not relevant; they indicated that the client probably does not consider
this factor. Another CLU thought it was a disadvantage because the client can go to a trust officer or a CLU and discuss estate planning without being charged for any service unless he establishes a trust or buys insurance. The other three chartered life underwriters agreed with the attorneys in that this characteristic of independence gives the accountant a decided advantage. Thus, of all the representatives interviewed ten thought that this characteristic was advantageous to accountants, three felt that it was irrelevant, while one thought it was a disadvantage.

All fourteen of the representatives indicated that accountants' knowledge of tax law is very beneficial in estate planning. They all agreed that in most cases accountants are superior in the field of taxation over the other team members. All the attorneys interviewed admitted that most members of the bar are not tax oriented. They do not stay abreast of tax law, and they depend upon accountants for the analysis of the tax consequences of any plan. One trust officer, (Firm Z) stated, "The CPA is usually more knowledgeable of the legal aspects of tax law than the attorney because tax law includes accounting information and procedures that the attorney does not understand or take the time to investigate." These representatives agreed that the
tax aspects of estate planning are normally left to accountants, and that this is another reason why an accountant must be an active member of the estate planning team.

Accountants' periodic association with their clients was seen as a decided advantage in their favor in estate planning by all fourteen of the representatives. These representatives indicated that accountants should use this association to motivate clients into an estate planning engagement, and to continually review and update any estate plan already adopted by their clients. All the representatives emphasized that the accountant is the only team member who has a regular periodic association with the client. This association is very important in reviewing and revising an estate plan after it has been implemented by the client. During this periodic engagement the accountant should become aware of any changes in the client's financial or family affairs that would necessitate revising the estate plan. Frequently there are legal changes, new rulings, or court decisions that effect the client's plan. Unless some member of the team is exposed to the records of the client, no one may realize that these new changes apply to any specific client. Since the accountant is the only
team member who periodically examines the client's records, he must be conscious of these new rulings and their application. If such rulings do apply to the client, he must make sure that the client revises his estate plan.

One of the chartered life underwriters (Firm B) revealed that accountants also have some characteristics which hinder them in estate planning. He states: "Accountants by nature are not motivators and unless they become motivators they are going to lose some of their practice to other professionals." This representative also indicated that accountants are the least knowledgeable of all the estate planning team members of the personal psyche of individuals. He felt that accountants must become more involved in the lives of their individual clients and determine their psychological roles in business environment.

Accountants' Responsibilities in Estate Planning

All the representatives emphasized that the accountant is the client's financial adviser; the client depends upon the accountant for advice concerning all his financial affairs. Since estate planning is part of the client's financial affairs, an accountant should advise the client in this matter. According to the
representative interviewed the accountant must determine if the client needs estate planning, and when such a determination is positive, the accountant should make his client aware of the need to prepare an estate plan. Accountants have a professional responsibility to initiate an estate planning engagement for all of their clients who need such programs in the opinion of all fourteen of the representatives. They pointed out that accountants do not have to perform the estate planning, but that they have the responsibility to make their clients aware of such a need if it exists.

TABLE VI

NUMBER OF FIRMS ANSWERING THE QUESTION AS TO ACCOUNTANTS' RESPONSIBILITIES IN ESTATE PLANNING

(Question No. 8)

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Do accountants have a responsibility in estate planning?

Do accountants accept their responsibility in estate planning?
The representatives were asked if they thought that most accounting firms were assuming this responsibility. They answered unanimously and emphatically, "no." They stated that very few accounting firms evaluate their clients' needs for estate planning and even less often initiate an estate planning program. However, several of the representatives indicated that the more progressive accounting firms are meeting this obligation. They included only four to six firms in the Baton Rouge area in this more progressive group of firms.

Two primary reasons were given by the representatives for accountants' failure to assume this responsibility. First, the accounting firms are too busy with auditing, income tax, and write-up work to expand into such a new field. Second, many of the representatives think that the accountants code of ethics, which prohibits solicitation, discourages many accountants from initiating an estate planning program for their clients. All the representatives emphasized that they did not feel that the initiation of estate planning for a continuing client of the accountant constituted solicitation, and that the failure to do so indicates that accountants are not meeting their professional obligations.
Three of the representatives indicated that they think that in the next ten to twenty years accountants will be held professionally and legally responsible for providing their clients with information and recommendations in the field of estate planning. They indicated that they did not think accountants would be held legally responsible for performing estate planning, but that they would be held legally responsible for making their clients aware of the need to have such services performed. These opinions were based upon the idea that the CPA is the client's financial adviser and that estate planning is within the framework of financial planning. The representative of Firm B stated:

"The accountant must provide his clients with all types of financial information and advice that the client needs including estate planning. I feel that the client looks to the accountant for this type of help, depends upon the accountant for this service, and expects to receive such services from the accountant. If a client needs estate planning, the accountant must advise the client of this need and make written recommendations to the client in this field."

The preceding comment is representative of the opinions of all fourteen representatives although only three indicated that they thought accountants would be held legally liable for their failure to provide such advice. All the representatives emphasized that accountants should initiate an estate planning program for all of their
clients who needs such a service. They pointed out that
the accountant is the only professional adviser in a
position to determine when the client needs to plan his
estate.

Accountants' Opportunities in
Estate Planning

All fourteen of the representatives agreed that
there is a very definite shortage of qualified
accountants in the field of estate planning in the Baton
Rouge area. Most of the representatives indicated that
they thought that this would hold true throughout the
country and was not just a local problem. Each of the
representatives indicated that an accountant with the
proper background and experience in estate planning would
have an unlimited opportunity. One chartered life
underwriter (Firm C) reported that if there was an
accountant who specialized and was competent in estate
planning, they certainly would refer clients to him.
Another chartered life underwriter (Firm A) stated: "If
an accountant could designate himself as an estate
planning specialist, he could make a fortune. I feel
that the accounting profession is wrong by not letting
its members designate themselves as specialists."

In answering this question one attorney (Firm H)
and one chartered life underwriter (Firm F) emphasized
that the accounting firms are going to have to provide their clients with the whole spectrum of services in order to survive in our society. They indicated that this package of services must include estate planning as well as other management services. These two representatives stated that accountants are going to have to start providing more planning assistance to their clients. Firms that provide the entire package of services have vast opportunities; but those firms which fail to provide such a package of services have limited opportunities.

Another attorney (Firm K) made another interesting point which could enhance accountants' opportunities in estate planning. He stated that with the passage of each year the professional standings of accountants become more favorable. He added, "There are not as many crooks in the CPA profession as there are in the legal profession." This attorney also stated, "In the near future, I feel that the Bar Association will realize that the CPA is a special breed of lawyer and that the Bar will license the CPA in this special practice." Such action would provide a solution to the attorney-accountant conflict.

The members of these other professional groups feel that accountants must be involved in estate planning,
that they have responsibilities in estate planning, and
that the opportunities for accountants in estate planning
are vast. These representatives were also asked to
discuss what estate planning services the accountant
should perform for his clients. The results of these
questions are presented in the following discussion.

SERVICES ACCOUNTANTS SHOULD PERFORM
IN ESTATE PLANNING

The service an accountant performs for any
particular client depends upon many factors. These
factors include the accountant's training, experience,
and ability as well as his relationship with the client.
The representatives discussed services involving several
of the estate planning tools that accountants should be
able to perform for his clients.

Estate Planning Process

All fourteen of the representatives interviewed
stated that accountants must be a part of the entire
estate planning process. They all emphasized that
accountants should help gather, summarize, and analyze the
facts and essential information pertinent to the client's
affairs. "In many cases the financial information can be
better supplied by the accountant than by the client
himself," stated representatives of Firm L. The
representatives were unanimous in indicating that accountants should aid in the evaluation of the risks and other impairment factors which might adversely affect the residual value of the estate. They state that an accountant should be involved in this process because of his knowledge of the client's financial affairs, his ability to work with and analyze facts, figures, and computations, and his knowledge of tax law.

According to each representative interviewed accountants should be involved in designing the estate plan. Many of the representatives emphasized that accountants' opinions and recommendations should carry just as much weight as those of any other team member. They all indicated that accountants should become more active in this phase of the process. The accountant must be instrumental in analyzing the cash flow problems, tax consequences, and valuation problems of different alternative plans. He should make suggestions which would help resolve those types of problems. One attorney (Firm H) stated:

"If the accountant does not help design the plan, he may not approve it; and if he does not approve the plan, the client's confidence in that plan might be destroyed. Thus, the accountant must be involved in designing the plan."

After a plan is designed it must be tested to see if it really accomplishes the objectives of the estate
owner. All fourteen representatives stated that not only should an accountant aid in testing the plan, but he should also periodically review the plan to insure that it continues to reflect the wishes of the estate owner. Nine of the representatives indicated that the accountant is the team member in the best position to review the plan. They emphasized that if the accountant is estate planning conscious, he should recognize any changes in the client's financial affairs or family situation that would necessitate revising the plan. A comment by one attorney (Firm L) was quite common:

"This is an area where the accountant must perform a real service. He must make the client aware of the need to have his estate plan reviewed periodically and revised upon any change in his family or financial situation."

The representatives interviewed felt that an accountant must help obtain the facts, evaluate the risks, design the plan, test the plan, and help review the plan after it has been adopted. They also discussed some of the estate planning tools that accountants should help their clients evaluate.

**Trusts**

All the representatives interviewed indicated that accountants should counsel and advise their clients in the area of trusts. They emphasized that the accountant is in many cases the team member who first recognizes the need
for a trust. All but three of the representatives stated that an accountant should help his client determine the objectives of his trusts. The objectives might be to provide support for a beneficiary, to secure professional management of the assets, or to obtain estate and/or income tax advantages. The three dissenting members included one attorney (Firm I) and two trust officers (Firms X and Y). They indicated that such actions should be left to the attorney and trust officer and indicated that when the CPA sees a need for a trust, he should direct his client to those members of the team.

An accountant should help his client evaluate both the tax and non-tax consequences of creating a trust, in the opinion of all fourteen of the representatives. All of them felt that the accountant should discuss with his client the tax and non-tax objectives that could be accomplished by naming different individuals, specifically individuals of different generations, as the income and remainderman beneficiaries of the trust.

Another area which all the representatives emphatically designated as one in which an accountant must advise his client is in the selection of the property to be placed in trust. Consideration must be given as to income-producing versus non-income producing property, depreciable versus non-depreciable property, and stable
versus speculative property. They pointed out that the accountant is in the best position of all the team members to determine what property the client can afford to give up without adverse consequences. In order to make such a determination, an analysis of the income producing ability of that property and the other assets of the client has to be made. Consideration must be given to the cash flow resulting from that property as well as the other assets. These representatives emphasized that the above two tasks should be performed by an accountant because those services are definitely within his domain.

All the representatives, except one chartered life underwriter, indicated that the accountant should discuss with his client the advantages and disadvantages of using a corporate or bank trustee versus an individual trustee. These advantages and disadvantages would include costs, professional management of assets, and the problem of continuity. One trust officer (Firm Y) stated:

"If the CPA envisions himself as independent, then he has the obligation to give his client ideas upon which the client can judge the ability of the other team members. Thus the CPA must help his client evaluate the managerial ability and performance of potential trustees. The CPA must guide his client in the selection of a trustee."
Several areas within the field of trusts in which these representatives felt the accountant should advise his clients have been emphasized. The representatives also discussed several other estate planning tools which the accountant should discuss with his client.

**Gifts**

All fourteen representatives interviewed indicated that there are three areas within the field of gifts in which an accountant should counsel with his clients. These areas include: (1) the timing of gifts; (2) selection of the gift property, and (3) the tax consequences of making gifts. A planned system of giving is a very good defense against the charge that gifts were made in contemplation of death. The same analyses have to be made for any property which is to be the subject of a gift as well as for any property to be placed in trust.

**Private Annuities**

The private annuity is a very useful estate planning tool, especially when the appropriate circumstances exist. All the representatives stated that accountants should become knowledgeable in the area of private annuities. They must be able to advise their clients of the tax consequences to both the annuitant and the obligor. They also added that the
accountants must counsel their clients as to the timing of a private annuity contract as well as the property which is to be the subject of the contract. The same problems concerning timing and selection of property exist with private annuities as with gifts.

Others

All the representatives indicated that accountants should help their clients determine their need for liquidity. The representatives unanimously agreed that accountants should help their clients evaluate the need for life insurance to serve as a source of liquidity. They also pointed out that the accountant is in a position to determine the family's needs so that their current standard of living might be maintained after the client's death.

Another area in which the representatives emphasized that accountants must provide services is that of post-mortem planning. They pointed out that an accountant must provide the executor with tax and accounting advice. According to these representatives, the accountant must at this time aid the executor in the many tax related decisions he must take. The accountant's understanding of the interrelationship of income and fiduciary tax problems can be quite helpful in estate planning.
The results of the interviews with the other professional members of the estate planning team reflect their attitudes toward accountants' roles in estate planning. The individuals interviewed felt that accountants must be active and full-time members of the estate planning team. They pointed out that accountants have been quite passive in estate planning and that their contributions are grossly inadequate. According to these representatives, accountants have the responsibility to initiate estate planning programs for all of their clients who are in need of such a service.
CHAPTER V
SUMMARY AND CONCLUSIONS

Estate planning is not limited to the distribution of property at the death of the estate owner, but could also have as objectives the creation and preservation of an estate during the lifetime of the individual. In addition, estate planning can be defined as the process of planning for human needs. An estate plan should attempt to achieve a balance between the attainment of the estate owner's personal goals and his economic potential. One of the most difficult problems estate planners encounter stems from the fact that they are planning for people. Because most people have a sincere distaste for the planning of their own estates and do not understand the technical tools used in this endeavor, they often act adversely to any suggestion of preparing an estate plan. The estate planners must be aware of these circumstances and take the appropriate steps. They must be sure that they understand the

83Ibid.
objectives of the estate owner and that these objectives are responsive to the needs of the people who will be his survivors. The estate planners must also ascertain that the plan they recommend is practical and carries out the objectives of the estate owner.

The sole purpose of estate planning is to aid in the attainment of the client's objectives. The estate planners should have no other purposes; their recommendations must reflect the objectives of the estate owner. Estate planners should possess those qualifications which would enable them to more efficiently and effectively draft a plan which would encompass the objectives of their client.

THE ACCOUNTANT'S QUALIFICATIONS FOR ESTATE PLANNING

Business concerns have begun looking to their accountant for services other than just auditing the books and preparing the tax returns. These new services include programs which improve operating procedures, reduce waste, and improve efficiency. Such requests from business enterprises have moved accountants into a broad new field known as management services. Just as management services evolved from the accountant's auditing and tax practice, estate planning evolves naturally from the accountant's work for individual clients.
If the accountant prepares the income tax returns and generally serves the smaller business concerns or individual clients on a day-to-day basis, he must play an important part in the estate planning process. The very nature of his work provides him with an intimate knowledge of his client's affairs. In his work for the smaller businessman, the partnership, or the closely-held corporation, the accountant is called on periodically to furnish information for the decision making process and to provide many other management services. Through these periodic assignments he perhaps becomes closer to the heart of the business unit than any other person outside of the organization.84

Of course, any accountant's contribution in estate planning will depend upon his specific qualifications. Many accountants specialize in one field or another. The particular specialty of the accountant governs his contribution to the estate planning team. However, there are several characteristics which the general public normally assumes the accountant to possess. The possession of these characteristics greatly enhances the accountant's qualifications as an estate planner. The accountant's active participation as a member of the estate planning team should significantly benefit the client.

Of all the characteristics possessed by the accountant, the one that provides the greatest advantage for the client in an estate planning program is the accountant-client confidential relationship. This relationship enables the accountant to obtain comprehensive knowledge of the client's financial affairs. Manning, a legal officer for an insurance company, states, "Of all the members of the team the accountant is probably closer than any of the others to the client's day-to-day affairs."85 Briloff, a certified public accountant is more specific:

The accountant is called upon to develop a special insight into his client's economic activities, and who through this review obtains an understanding of his client's obligations and the way in which, and the extent to which he succeeds in discharging them.86

Schley discusses the accountant's knowledge of the client's financial affairs, "Because of the confidential nature of his work, the CPA has accumulated a most complete and detailed set of working papers," on the affairs of the client.87 Bachrach, a Pittsburgh CPA, adds:


87Schley, op. cit., p. 61.
By the very nature of the service they render, accountants acquire an intimate knowledge of their client's affairs. The longer they serve them, the more helpful they are to their clients . . .

Barnett, an associate editor of The Journal of Accountancy's Department of Estate Planning, states that because the confidential relationship enables the accountant to become intimately acquainted with his client's finances as well as his estate planning objectives and problems, "The CPA practicing in this area is in many instances the most qualified professional advisor."^89

The estate planning process was discussed in Chapter II. The first step in the estate planning process is to gather the facts. These facts must include information concerning the client's domicile, property, beneficiaries, and individual objectives. The accountant's knowledge of his client's affairs is very beneficial in this step of the process. Much of the needed information is already on file in the accountant's working papers and because of the confidential relationship the remainder of the needed information should be easily obtainable in a few short

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conferences with the client. If the accountant is not a member of the estate planning team, then some other member will have to spend a great deal of time and effort at the client's expense obtaining the information that the accountant already possesses. In addition, the accountant has records on his client over a period of years, and often these records provide data that can not be obtained elsewhere.

Another advantage to the client of the confidential relationship is that the accountant is in a position to recognize the client's need for estate planning. There are too many cases of estates whose values were significantly depleted because either no one saw the need for estate planning or if they did, they were unable to convince the estate owner of that need. Through his association with his accountant, the client learns to trust and depend upon the accountant. The client realizes that the accountant is interested in his business and personal financial affairs. Therefore, the client is more likely to act upon the recommendations of his accountant than those of any other individual. Because of the accountant's vast knowledge of his client's affairs, the client benefits from the accountant's participation on the estate planning team.
The representatives of the firms included in the study expressed similar opinions. Every member of each group of professionals interviewed stated that the accountant-client confidential relationship was very advantageous in any estate planning engagement. These professionals listed several reasons—primarily those discussed in the preceding paragraphs—as to why this characteristic is advantageous.

Estate planning can not be separated from the business environment. A sound estate plan must be based upon the present and future cash flows and income producing ability of the client's assets. Closely-held corporations and partnerships must be valued for estate tax purposes and to establish buy and sell agreements and stock redemption plans. These tasks are performed by the accountant, Park states:

The CPA, by reason of his technical knowledge of the principles of income determination, his general familiarity with business and economic conditions and his intimate personal knowledge of the company to be valued, is probably best equipped to undertake such a study.90

Manning says, "The accountant is in the best position to advise on valuation problems and to determine existing

and potential earning power."\(^91\) In discussing the valuing of closely-held business, Gorenberg points out:

Here, the role of the CPA is an important one. As part of his regular audit program, he should make sure that an annual determination of value is, in fact, made and, by virtue of his special knowledge, he is indispensable in helping to make that determination.\(^92\)

Since the proper performance of these tasks is so vital in estate planning, the accountant's understanding of the business environment with specific reference to the accountant's knowledge of the client's particular business is extremely beneficial to the client in any estate planning engagement.

Thirteen of the fourteen representatives of the other professional groups interviewed indicated that this attribute of the accountant was especially advantageous in estate planning. These professionals pointed out that the accountant is the only member of the estate planning team qualified to value closely-held businesses, to analyze the cash flow and liquidity problems, and to evaluate the current and potential earning power of the client's assets. All twelve accounting firms interviewed emphasized the importance of the accountant's ability to perform these tasks. These firms did not hesitate to add that the accountant

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\(^91\) Manning, op. cit., p. 9.

is the only member of the estate planning team qualified to perform these tasks.

Since estate planning is concerned with the creation and preservation of an estate as well as with the distribution of the estate, consideration must be given to the tax consequences of each alternative proposal. In order to minimize the shrinkage of the estate due to taxation, the estate plan must be analyzed by a tax expert. The tax expert must consider the effects of the income tax laws as well as those of the estate and gift tax laws. An understanding of the interrelationship of the fiduciary income tax laws and the estate tax laws is very beneficial. Usually the accountant is the member of the estate planning team who analyzes the tax consequences of each proposal. Manning states, "Well-versed in income and estate tax matters, the accountant is in the best position to foresee the tax consequences of a suggested transaction or estate plan."93

In discussing the accountant's role as a member of the estate planning team, Bachrach adds:

If the CPA is well versed in taxes, and it sometimes happens that he is the only one in the group who is, he can render a valuable service by pointing out the tax effects of the various proposals under consideration.94

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93 Manning, op. cit., p. 9.
94 Bachrach, op. cit., p. 100.
Thus, the accountant's knowledge of the tax laws is very beneficial to the client in an estate planning program and adds another reason to the list as to why the accountant must be an active member of the estate planning team.

Every representative of each group of professionals interviewed emphasized the accountant's knowledge of taxes is beneficial to the client in estate planning. All of these groups indicated that both the estate and income tax consequences of each alternative plan must be evaluated and that this task is usually performed by the accountant. They all agreed that in most cases the accountant is superior to the other team members in the field of taxation.

Unlike some of the other members of the estate planning team, the accountant is paid for his services according to the number of hours he works. Regretably, the compensation of some of the other members of the estate planning team is necessarily contingent on the nature and extent of the programs adopted. The life underwriter receives a commission on the insurance he sells and the trust officer is paid according to the number of trusts administered and the value of the property held in trusts. Even though the attorney is compensated on an hourly fee basis, the accountant has a
significant advantage over the attorney because the accountant's fee basis is already established with the client and the client knows what to expect. Also, the accountant can delegate much of the detailed work to a junior accountant at less costs to the client. The client is well aware of this situation, and thus is more likely to go to the accountant for estate planning advice. He knows that the accountant has nothing to gain by promoting the use of any particular device in the estate plan. Thus, the accountant's highly reputed independence is particularly vital in this area.

Eighteen of the representatives interviewed indicated that the accountant's independence with special reference to his fee basis and the estate plan adopted is especially advantageous to the client in estate planning. This group of eighteen included eight accountants, five lawyers, two trust officers, and three chartered life underwriters. These professionals pointed out that the client has more faith and trust in the accountant than any of the other team members and is more willing to accept the accountant's recommendations because they know the accountant has no self interest to serve. Seven of the other eight representatives implied that this characteristic was irrelevant, and one chartered life underwriter thought that it could possibly be a
disadvantage. However, the consensus of the professionals interviewed is that the accountant's characteristics of independence is advantageous in estate planning.

Estate planning is a continuous, dynamic process not a "one-shot" affair. Family situations and financial affairs change, the tax structure goes through periodic revolutions, laws change, and economic forces run in cycles. These risks and uncertainties produce a need for constant attention and occasional revision of the plan. The estate plan must be periodically reviewed and analyzed to assure that it continues to reflect the objectives of the estate owner. Of all the members of the estate planning team the accountant is the only one who has a continuing, periodic association with the client. Thus, the continuous attention given the client by the accountant is important. Estate planning involves planning for the living as well as consideration of the dispositional scheme. Through this periodic association the estate planning conscious accountant should become aware of any changes in the client's family or financial affairs and in the legal and tax structures that necessitate the revision of the estate plan. The advantage to the client of such procedures is that his estate plan continues to reflect his objectives.
In discussing the qualifications needed by the CPA in estate planning, Becker states:

The job is not finished with the execution of the documents, at least not for the independent CPA. Estate plans must be reviewed at regular intervals. Family situations change, children get older, estate values fluctuate, and objectives change. Again, who is better qualified than the independent CPA to call the client's attention to the necessity of replanning his estate.⁹⁵

Schley feels that the accountant's periodic association is important in estate planning. He adds, "Perhaps one of the most significant contributions that a CPA can make to any estate program is the procedure of periodic review."⁹⁶ Briloff indicates that the accountant's periodic association with the client increases the accountant's responsibilities:

Further, the accountant, unlike the other members of the so-called estate planning team in the usual context, sees his client in a regular recurring basis, and not merely to meet a particular crisis. This regular, recurring, non-crisis association with the client puts another burden on him in this connection. He should not look upon estate planning as a one-time procedure—to be accomplished and put away for posterity. Instead, estate planning should be considered to be a continuous, dynamic process, and a plan, once developed, should be reconsidered in the light of changes within the client, his family, the tax or economic structure of our society or any other of the multiplicity of factors which may have entered into the initial plan.


⁹⁶Schley, op. cit., p. 60.
So it is that the accountant must have a highly sensitive "radar screen" capable of discerning changes in these forces or factors and recognizing their applicability in particular circumstances, and on this recognition moving forward in response thereto.97

Gorenberg, a CPA, lawyer, and member of the accounting faculty at City University of New York, discusses the advantages of the accountant's periodic association with his clients.

A CPA's close and continuing relationship with his client is such that he again is in a strategic position to 'police' the plan. Successful and effective post-estate planning services require systematic and regular investigations and examinations geared to the particular estate plan. In the case of a closely-held corporation, a CPA's regular financial auditing work is usually predetermined and pre-arranged by use of an audit program which delineates the areas, methods, and frequency of examination. Accordingly it would be natural to incorporate into such a program a section dealing with the estate plan of the principal shareholders. This would serve as a constant reminder to the CPA to be mindful of this important area of service.98

All of the professional representatives interviewed unanimously agreed that the accountant's periodic association with his client provides definite benefits in estate planning. These representatives emphasized that often the applicability of new legal or tax rulings to a specific estate owner goes unnoticed unless the estate planner comes into contact with the client's records.


98Gorenberg, op. cit., p. 567.
Since the accountant is the team member who periodically examines the client's records, he must be conscious of these new rulings and when appropriate see that the client's estate plan is revised. The accountant's periodic association with the client should assure that the client's estate plan continues to reflect his objectives.

Of all the characteristics that the accountant possesses which qualify him to be a member of the estate planning team, the two most important are his confidential relationship with the client and his periodic association with the client. The accountant-client relationship provides the accountant with comprehensive knowledge of the client's financial affairs and gives him some insight into the client's objectives. This relationship enables the accountant to have in his records much of the information needed to serve as the background for the estate plan. The accountant's periodic association with the client allows him to continually review and update the plan. If the accountant is estate planning conscious, the services these characteristics enable the accountant to perform are invaluable to the client.
THE ACCOUNTANT'S RESPONSIBILITIES
IN ESTATE PLANNING

The possession of the characteristics which qualify the accountant for membership on the estate planning team inherently burden the accountant with responsibilities in the field of estate planning. The accountant is often called the money man, the client's chief financial adviser. The client looks to and depends upon the accountant for advice in all financial matters. Since estate planning is financial planning and the accountant is the client's financial adviser, the accountant must evaluate the client's needs for estate planning. If the client needs an estate planning program, the accountant has the responsibility to initiate such an engagement. This is not to say that the accountant has the responsibility to perform estate planning services or to even serve as a member of the estate planning team, but the accountant does have the duty to make his client aware of his need for this type of financial planning.

Many other writers in the field of estate planning have reached the same conclusion. Bachrach, a CPA, states:

Let every CPA realize that he has a bounden duty to his clients, which the unique relationship confers upon him. The CPA who knows more about his
client's business and personal affairs than any other member of the estate planning team, should be the first to initiate action.\textsuperscript{99}

Manning, a legal officer for a life insurance company, discusses the accountant's responsibility in estate planning.

Placed in a position where he is intimately acquainted with the facts concerning the well-being of his client, he is also forced to observe trends of the economy and taxation: he is duty bound to suggest to his client the creation of sound plans for future preservation and management.\textsuperscript{100}

Park also discusses the accountant's responsibility in estate planning.

Estate planning necessarily concerns itself with individuals, and in the final analysis it is they whom the accountant serves as clients. It is the CPA's duty to them and to himself to make them aware of the benefits and peace of mind that proper estate planning can bestow. Estate planning constitutes a broad horizon truly worthy of the abilities of the certified public accountant; however, it is more than a mere challenge to the CPA's skill and ability. It is, I believe, his responsibility.\textsuperscript{101}

According to the accountants and other professional groups interviewed, the accountant, through his relationship with his client, has comprehensive knowledge of the client's financial affairs. These professionals also indicated that the accountant is the client's financial adviser, and the client depends upon him for such advice.


\textsuperscript{100}Manning, \textit{op. cit.}, p. 9.

\textsuperscript{101}Park, \textit{op. cit.}, p. 828.
For these reasons it is the opinion of the members of the accounting firms and other professional groups interviewed that the accountant has the responsibility to initiate an estate planning engagement for any of his clients who need such a program. Eleven of the twelve accounting firms interviewed voiced that the accountant has such a responsibility to his clients. The other accounting firm's representative stated that the accountant should make his clients aware of their need for estate planning. All fourteen representatives of the other professional groups interviewed emphasized that the accountant has the responsibility to initiate estate planning for his clients.

Many practicing members of the accounting profession have not assumed or accepted this responsibility. Many accountants feel that when estate planning is not within the scope of their engagement, the initiation of such a program is in violation of the profession's code of ethics. Many accountants feel that initiation is solicitation. However, making the client aware of his needs is not unethical. The failure to initiate an estate planning engagement for any client who needs such a program is actually a disservice to the client and is a neglect of the accountant's professional duty and
responsibility. This opinion is also shared by all the accountants and other professionals interviewed.

Estate planning involves more than just technical problems. There are many human factors that must be considered. Many people refuse to think of death and its consequences. These people believe that estate planning is death planning, and they simply refuse to plan for their death. The accountant has the responsibility to motivate his client into an estate planning program. The procedures to be used and the proper amount of pressure to be applied in motivating any particular client into such a program depends upon that specific accountant-client relationship. There are many procedures and methods which can be used to motivate the client. One way to motivate a client into an estate planning program is to shock him with a rough estimate of what his death cost will be and what will be left of his estate to provide for his family. Another opportunity is upon the death of an associate or friend of the client because at such a time the client is more aware of mortality. Still another appropriate opportunity for initiating estate planning is on the purchase or sale of a client's business. However, the most opportune time is during either the annual filing of the individual income tax return or the
annual audit of a closely-held business. At these times the accountant is exposed to the majority, if not all, of the financial affairs of the client.

At this writing the accountant is not held ethically or legally responsible for his failure to provide services in the area of estate planning. However, the accountant has a moral and professional responsibility to make his clients aware of any need they have. Thus, the accountant has the responsibility to initiate an estate planning program for any of his clients who need such a service. His responsibility does not end with the initiation; he must also motivate his clients into such a program.

ESTATE PLANNING SERVICES THE ACCOUNTANT SHOULD PERFORM

Once an estate planning engagement is undertaken, there are many services the accountant should perform. The accountant should become involved in the entire estate planning process and perform services in each of the five steps of the planning process. The accountant should aid in collecting and analyzing the facts pertaining to the client, he should help evaluate the obstacles of estate impairment, he should assist in the designing of the plan and see that the appropriate legal
documents are drafted, and he should periodically review the plan after it is implemented.

There are many specific areas within the context of estate planning procedures where the accountant can make a significant contribution to the estate planning team thus benefiting the client. Probably the most significant contribution the accountant can make is to help his client identify his objectives and to suggest possible means of obtaining those objectives. A determination of the needs, financial and otherwise, for the maintenance of the client's family must be made. Such a determination should include an evaluation of the needs before and after the client's death. Here, the individual members of the family will have to be examined with emphasis upon each one's age, sex, maturity, and business ability. If there are minor children, some provision must be made for their education and well-being. Also, in the case of minor children (and for that matter other members of the family) a decision must be made as to whether to distribute the principal outright to them or to have it restricted for a period of time. Because of the accountant's relationship with the client, he is in a much better position than any of the other members of the estate planning team to aid the client in this area.
Another problem arises when title to property is held jointly. To a tax practitioner (both the accountants and other professionals interviewed agreed that usually the accountant is the one called upon to analyze the tax consequences of any plan) the differences among property held as a joint tenancy, a tenancy in common or as community property are very significant. Even if he has to use copies or duplicates in his work, the accountant should examine the original source documents because many of the facts are technical in nature and, as a result, the client may not interpret them properly. The form in which the property is held may deny the client many of the advantages of the marital deduction and residual trusts.

Before such devices as trusts, gifts, and private annuities are incorporated into the plan, the accountant should be consulted. Because of his knowledge of the client's affairs, the accountant is often the first to recognize how a trust could benefit the client. The accountant should aid the client in determining the objectives of the trust. These objectives might be to provide professional management of the assets, to furnish support for some member or members of his family, or to minimize taxes. If a trust is to be
created, the accountant should assist the client in
evaluating prospective trustees. A trustee's duties
include the management of the trust assets for the
benefit of the trust beneficiaries. The accountant
frequently prepares reports used to evaluate management's
performance. He should be able to prepare similar reports
on the performances of trustees and trust departments.
Certainly the accountant must evaluate the tax
consequences of trusts, gifts, and private annuities
for his client. In many cases these consequences are the
sole purpose for using the device. The accountant must
aid the client in the selection of the property to be
included in the trust, gift, or private annuity. The
accountant is in the best position to determine what
property the client can give up without present or
future adverse consequences. For tax purposes, the
timing of gifts, trusts, and private annuities is very
important. Thus, the accountant must advise his client
on this matter. The accountants and other professionals
interviewed said that these are services that the
accountant should perform for his clients.

The accountant should be instrumental in post-
mortem estate planning. After-death estate planning
involves planning for estate and income tax savings.
The accountant must aid the executor in many of his
decisions in order to minimize these taxes. Two of the more significant elections that the accountant should aid in making are those relating to the alternative valuation of the estate and the decision to deduct all estate administration expenses on the estate tax return or on the fiduciary income tax return, or to split these deductions between these returns. The accountant should be consulted in the selection of the tax year of the estate, the timing of distributions to estate beneficiaries, and the period of time for which the estate should be kept open as a separate tax paying entity. Consideration should be given to the election to claim medical expenses as an estate tax deduction or as an income tax deduction of the decedent's last return. An analysis should be made to determine whether the decedent's last return should be filed as a separate return or as a joint return. This includes an analysis of the income and estate tax consequences for the decedent, his spouse, and other heirs. The accountant should definitely be included in the determination of the amount of income and estate tax that the estate must pay. In general, the accountant should serve as tax adviser to the executor. The executor should consult the accountant before making any decisions concerning the above factors because the accountant's
recommendations could benefit the estate and the heirs of
the estate. All the professionals interviewed agreed
that the accountant must be instrumental in post-mortem
estate planning.

Another area in which the accountant should play
a vital role is estate accounting. Estate accounting is
necessary because the executor is required by law to
maintain proper records of the estate's transactions.
Many articles written on estate accounting seem to
indicate that there is a significant difference in this
kind of accounting and ordinary commercial accounting.
This simply is not true. Estate accounting is basically
the same as any other accounting with only a few points
of difference.

The major difference between estate accounting
and ordinary accounting is the necessity to make a clear
distinction between estate principal and estate income.
The tax laws require this distinction. For both Federal
and State tax purposes, the inheritance and estate taxes
are based upon the corpus of the estate while the income
of the estate is subject to the income tax laws. Another
reason for making the distinction between principal and
income is that often the estate owner designates the
income to one person and the principal to another.
There is really no problem in accounting for the distinction between estate principal and estate income. One simply uses a typical chart of accounts, except that there should be two proprietorship sections—one for estate principal and one for estate income. It is often more convenient to keep two cash ledger accounts—one for principal cash and one for income cash. However, an actual separation of cash and other assets between those belonging to principal and to income is not necessary or recommended. If the accountant designs an appropriate system and chart of accounts, the executor should have no trouble recording the transactions of the estate.

Of course, these are not all the services that the accountant could or should perform. Chapter Two indicated many of the tasks which have to be properly performed for an effective estate planning program. The accountant's qualifications make him the most logical professional to perform many of those services. Chapter Three discusses many of the services which accountants who are active in estate planning have been performing, and Chapter Four includes a discussion of the services the other professional groups indicated that the accountant should perform.
SUMMARY

The realm of knowledge for estate planning is immense. An understanding of economics, income taxation, estate and gift taxation, insurance, law, skills in communication, and psychology must enter into the process. It is very doubtful that any one individual could acquire all the knowledge and skills during one lifetime to perform effective estate planning. Thus, the process must be undertaken as a team effort. The accountant possesses some characteristics which qualify him to be a very effective member of the estate planning team. The accountant adds skills and knowledge to the team that no other member possesses. His contributions should significantly benefit the estate owner. The possession of these characteristics places additional burdens on the accountant. The accountant must evaluate his client's need for estate planning. If such a need exists, he has the responsibility to initiate an estate planning program for that client. The accountant's responsibility does not end with simply making the client aware of this need. The accountant must attempt to motivate his client into an estate planning engagement. Once the accountant becomes involved in an estate planning
program, there are many services which he should perform. In many cases the accountant is the only member of the estate planning team qualified to perform these services. When the accountant pools his skills and abilities with the other members of the estate planning team and these professionals work as a team, they provide a unique service for the client.
APPENDIX A

ESTATE PLANNING QUESTIONNAIRE FOR ACCOUNTANTS

1. Does your firm ever serve as an executor or administrator of an estate? Discuss.

2. Does your firm serve as tax adviser to an executor or administrator? Discuss.

3. Does your firm attempt to get your clients to name the firm as tax adviser to their executors in their wills? Discuss.

4. Does your firm prepare estate and/or fiduciary tax returns? Discuss.

5. Do you feel that the accountant has a responsibility to his client in the area of estate planning? Discuss.

6. If you answered "yes" in Question Number 5, what role do you think the accountant should assume in estate planning?

7. (a) What role does your firm play in the area of estate planning? Discuss.

   (b) Do you feel that most accounting firms are fulfilling their obligations in this area? Discuss.

8. To what extent does your firm use the team approach in its estate planning endeavors? Discuss.

9. Are these people that you do estate planning for (a) walk-in clients? (b) referrals? (c) in-house clients? (d) Discuss each of these briefly.
10. Nature of your estate planning clients--Are they
   (a) major stockholders and/or officers of closely-held businesses?
   (b) officers of public corporations?
   (c) individual tax and/or audit clients such as professional people?
   (d) others?--list
   (e) Which of the above group or groups constitute the largest percentage of your estate planning clients? If more than one group, indicate the percentage of each.

11. Discuss each of the following ways of motivating the client to plan for his estate. In reference to these items indicate which ones your firm uses and how it uses them. List and discuss any other procedure that your firm uses in this way.
   (a) annual filing of income tax returns
   (b) annual audit
   (c) firm's newsletter
   (d) upon the death of a business associate of the client
   (e) during the changing of the form of organization of the client's business (such as from partnership to closely-held corporation)
   (f) shocking the client with a reasonable estimate of the amount of estate taxes his estate would have to pay upon his death
   (g) others

12. (a) What type of training and/or background is needed by the accountant to enable him to be proficient in estate planning?
    (b) Discuss each of the following:
        (1) formal education
        (2) AICPA professional development courses
        (3) professional seminars
        (4) self-study and current reading

13. The following are characteristics which are generally associated with the CPA. Discuss each of these in reference of that trait providing the accountant with an advantage over the other team members of the estate planning group.
   (a) superb knowledge of tax law
   (b) CPA-client relationship (CPA's comprehensive knowledge of the client's financial affairs)
(c) CPA's periodic association with client
(d) CPA's independence (CPA is compensated on an hourly basis and thus is not biased as to what estate planning devices to incorporate into the client's plan)
(e) CPA's ability to gather the facts
(f) CPA's knowledge of the business environment with special reference to the business of the client
(g) others

14. (a) Does your firm consider the use of trusts in estate planning?
(b) If the answer to 14(a) is "yes", does your firm aid the client in setting up the trust? Discuss.
   (1) Do you help the client determine the objectives of the trust?
   (2) Do you aid in the selection of the property to be placed in trust? Discuss.
   (3) Do you aid in the selection and evaluation of the trustee? Discuss.
   (4) Do you aid in the selection of the beneficiaries? Discuss.

15. If the answer to 14(a) is "yes", discuss your use of the following types of trusts.
   (a) support trusts
   (b) education trusts
   (c) charitable trusts
   (d) trusts to provide for the management of assets
   (e) trusts to continue the business of the client after his death or retirement
   (f) others

16. Does your firm consider the use of gifts in estate planning? Discuss.

17. If the answer to 16 is "yes", discuss each of the following:
   (a) timing of gift
   (b) selection of property to be made the gift
   (c) selection of the beneficiaries
   (d) other devices used in connection with gifts such as Subchapter S corporation
18. Does your firm consider the use of private annuities in estate planning? Discuss.
   (a) What are the advantages of private annuities?
   (b) What problems have you encountered in the use of private annuities?

19. (a) Does your firm consider the use of insurance in estate planning? Discuss.
   (b) For what purposes would you recommend the use of insurance in estate planning?

20. Does your firm consider changing the form of organization of a client's business for estate planning purposes? Discuss.

21. Does your firm consider the use of buy and sell agreements, or stock purchase plans, or stock redemption plans in estate planning? Discuss.

22. (a) What percentage of your time (personally) is devoted to estate planning?
   (b) Do any other members of your firm work in this area? What percentage of their time is devoted to estate planning?
APPENDIX B

ESTATE PLANNING QUESTIONNAIRE FOR OTHER PROFESSIONAL GROUPS

1. Are accounting firms performing services within the field of estate planning? Discuss.

2. (a) What role do you think these accounting firms are currently playing as a member of the estate planning team? Discuss.
(b) Do you think the accountants are active or passive members of the estate planning team? Discuss. Which should they be?

3. Do you think the accounting firms are working close enough with the other team members? Are they cooperative? Discuss.

4. Do the accounting firms which are active in estate planning perform services in the following areas? Discuss each of the following:
   (a) The estate planning process
   (b) Trusts
   (c) Life insurance
   (d) Gifts
   (e) Private annuities
   (f) Form of business organization
       (1) deferred benefit plans
       (2) buy and sell agreement or stock redemption plans

5. Do you think the accountant should be involved in estate planning for their clients? Discuss.
   (a) If so, to what extent?
   (b) If not, why not?

6. What services should the accountant perform as a member of the estate planning team? Discuss each of the following:
   (a) Should he help gather the facts?
   (b) Should he help evaluate the risks and impairment factors?
(c) Should he assist in designing the plan?
(d) Should he assist in testing the plan?
(e) Should he assist in reviewing and revising the plan?

7. Should the accountant advise his client in the following areas? Discuss each of these:
   (a) Trusts
      (1) Help determine the objectives of the trusts
      (2) Help determine the tax and non-tax consequences of creating such a trust
      (3) Evaluate the tax and non-tax consequences in selecting the income and remainder beneficiaries.
      (4) Aid in the selection of the trust property.
      (5) Help evaluate the bank trustee versus the individual trustee.
   (b) Gifts
      (1) tax consequences
      (2) timing
      (3) selection of property
   (c) Private annuities
      (1) determination of tax consequences to both the annuitant and the obligor
      (2) timing
      (3) selection of property
   (d) Life insurance
      (1) help evaluate the need of insurance as a source of liquidity
      (2) to help family maintain their standard of living
   (e) Post-mortem planning

8. (a) Does the accountant have any responsibility to his clients in the area of estate planning? Discuss.
     (b) If so, do you think most accounting firms are accepting this responsibility? Why?

9. What opportunities are available to the progressive accountant in the field of estate planning? Discuss.

10. Are the following characteristics of the accountant advantageous to him in estate planning? Discuss each of the following:
    (a) Accountant-client relationship--(the accountant's comprehensive knowledge of the client's financial affairs.)
(b) Accountant's periodic association with the client.
(c) Accountant's knowledge of the business environment (especially his knowledge of the client's business).
(d) Accountant's independence with reference to compensation for estate planning work.
(e) Accountant's knowledge of tax law.
(f) Others.
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VITA

Edward Earl Milam, the son of Mr. and Mrs. E. E. Milam, was born July 21, 1943, in Hernando, Mississippi. He graduated from Hernando High School with honors in May, 1961. The following September he entered Delta State College from which he received his Bachelor of Science degree in accounting in May, 1965.

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Candidate: Edward Earl Milam

Major Field: Accounting

Title of Thesis: A STUDY OF THE ACCOUNTANT'S ROLE IN ESTATE PLANNING

Approved:

[Signatures]

Major Professor and Chairman

Dean of the Graduate School

EXAMINING COMMITTEE:

[Signatures]

Date of Examination: July 7, 1971