

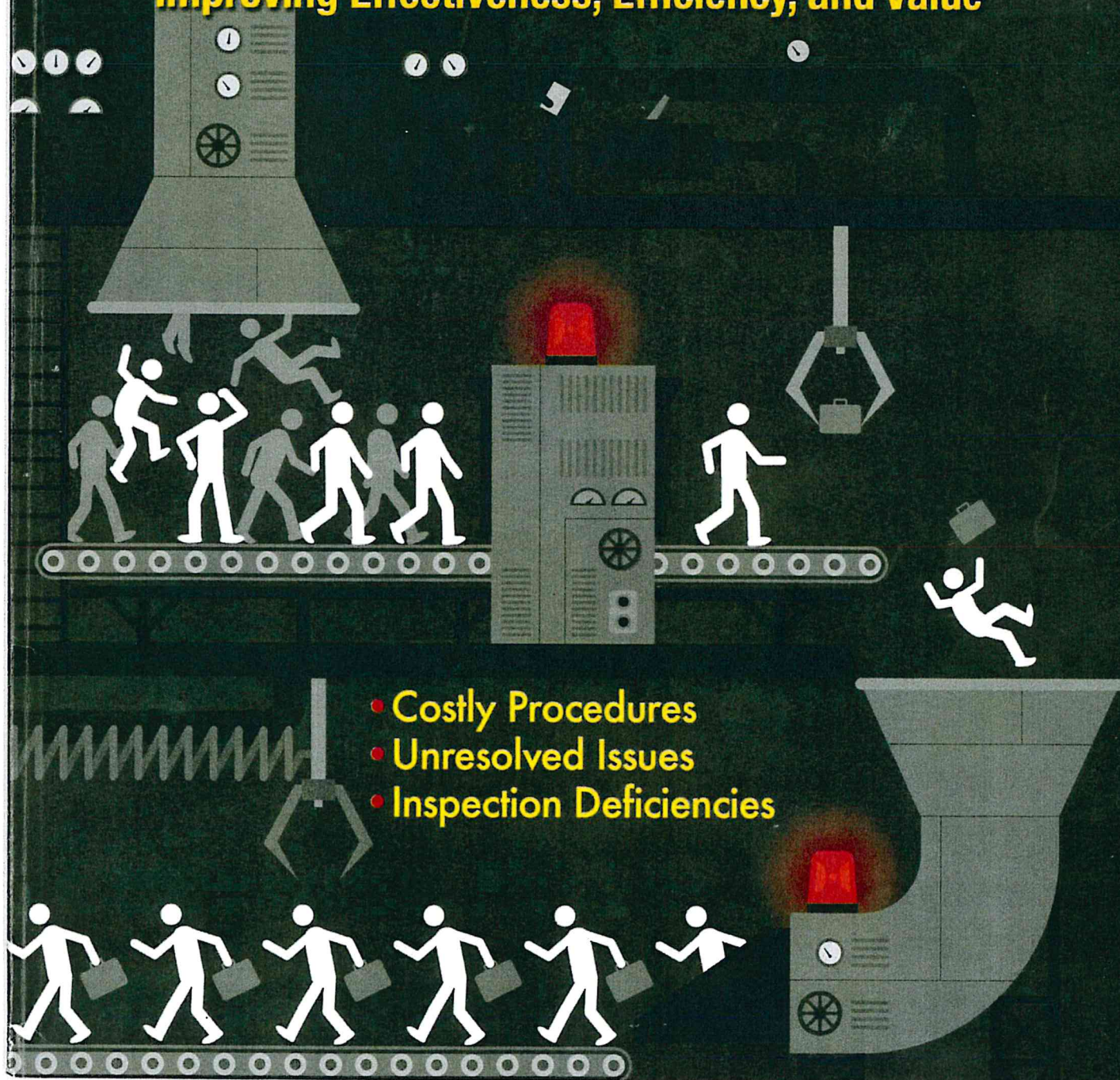
The CPA Journal

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The Audit Process

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Tax & Accounting Update

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Tax News

Federal court rules employment-discrimination settlement doesn't trigger capital gains tax. The Court of Appeals for the Federal Circuit, affirming the Court of Federal Claims, concluded that the settlement payments received by an individual from an employment discrimination suit were not capital gains income. The court ruled that payments received by the individual, James Duffy, did not represent gains from the sale or exchange of goodwill associated with a capital asset, but rather were for the exclusive purpose of avoiding the expense and inconvenience of further litigation.

SEC News

Update planned for banking industry guide. The SEC is revising its industry guide for banking companies, which was last updated in 1986. The planned revisions are part of a broader effort to revise the disclosure rules for U.S. companies and make them simpler to follow. The SEC plans to issue a draft for public comment by fall 2016.

Senior enforcement lawyer to step down. On January 11, the SEC announced that Julie Riewe, co-director of the Enforcement Division's asset management unit, will step down in February. Riewe oversaw a number of initiatives during her tenure, including a targeted program to investigate hedge funds suspected of falsely inflating their investment performance. She also pursued enforcement actions through collaborative efforts with other SEC offices.

FASB News

Community bankers campaign for changes to planned credit loss standard. Community bankers are pressuring FASB to make its forthcoming accounting standard on writing down bad loans and securities easier to understand. The accounting board announced a public roundtable meeting with community bankers, auditors, and regulators in February not long after the Independent Community Bankers of America (ICBA) publicly urged all seven FASB members to participate in an open exchange with executives from small banks. "We've had tons of outreach with the FASB and various board members and staff, but never anything in front of the full board so they can all hear about all the various concerns we have," said James Kendrick, vice president of accounting and capital policy at the ICBA.

Clarifications to revenue standard's guidance on licenses. On January 6, FASB instructed its research staff to clarify two aspects of tallying revenues related to licenses of intellectual property. Questions about how to account for licenses have dogged FASB and the IASB both before and after their joint standard was published in May 2014. FASB intends to publish an update before the second quarter of 2016.

PCAOB News

Chinese auditors may face disciplinary actions. The PCAOB is preparing to punish some Chinese auditors that have resisted its efforts to inspect the audit firms and review their workpapers. After the latest round of negotiations with Chinese regulators stalled, the PCAOB requested that the Chinese affiliates of the Big Four firms hand over certain data by early December 2015. Chinese government officials generally do not permit companies to provide certain data to foreign regulators because of national security concerns. The disciplinary proceedings could be stayed if U.S. and Chinese officials can agree to inspections and PCAOB inspectors are given access to the documents.

IASB News

Chairman defends financial instruments standard. On January 11, IASB Chairman Hans Hoogervorst defended the board's high-profile accounting standard requiring banks and other financial businesses to acknowledge losses on loans earlier in the credit cycle. Speaking before the European Parliament's committee on economic and monetary affairs in Brussels, Hoogervorst conceded that the changes outlined in IFRS 9, *Financial Instruments*, will require more judgment than companies currently make, but he said that the final accounting outcome will better reflect the economics of most lending and trading activities. "The whole purpose of why it was written so strictly ... was to limit judgment and to limit leeway for management to create hidden reserves or whatever. It was to limit earnings management," Hoogervorst said. □

In Defense of CPAs in Pension Planning

I found it puzzling *The CPA Journal* would publish a guest editorial like the one in the November 2015 issue ("It's Amazing What CPAs Can Do: Pension Consulting Is an Old Practice but a New Specialty," Matthew Gaglio, p. 72). Here we have a registered representative and financial advisor talking down to CPAs about the benefits that can be derived for their business clients by advising on plans that enable them to salt away pension contributions under the tax law and thereby minimize their tax liability.

I know of few CPAs servicing small business clients who were unaware of the sections of the tax code that pertain to qualified retirement planning. Many CPAs I know have recommended such plans to clients and have done so working with actuaries and pension consultants.

Yet Gaglio makes the following statement: "In 1992, CPAs did not view a qualified retirement plan as a resource for tax planning because they were not taught to."

That's a put-down if I ever read one. Leaving aside the glaring generality, the author doesn't cite any authoritative source for such a statement. Were there some CPAs not as knowledgeable as they should have been about the tax provisions dealing with qualified retirement plans? Of course there were. However, to make that broad knock on CPAs is unwarranted, and out of place in our professional journal.

Elsewhere, the author implies that the tax act known as the "Economic Growth and Tax Relief Reconciliation Act of 2001" is gibberish to many of today's CPAs. On what basis does he make such a comment? A CPA serving business clients would not survive for long being ignorant of the act cited.

To call the article a guest editorial is to dignify what amounted to an advertisement for pension consultants and a broadside at CPAs. The best that can be said of it is that it added nothing of value to the discussion.

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The Author Responds

My article was not meant as a "put-down," but rather the exact opposite. For the past 60 years, Integrity Advisors Pension Consultants has been working within the CPA community. My sister and I were groomed by my father in this pension firm, and now so are my sons. We have spent our careers servicing the advisor community. I have offered seminars, lunch-and-learns, and one-on-ones with CPAs and their clients, trying to raise the level of awareness.

So while I respect and commend Joseph Bencivenga for his level of knowledge and am assured that he advocated these qualified plan attributes to his clients, I must respectfully disagree that today's CPA/advisor community as a whole is advocating these valuable tax strategies as common practice. I say that not as criticism, but as a challenge for CPAs to educate themselves on what they can offer to their clients by recognizing the enhancements in the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) and the Pension Protection Act (PPA) of 2006, which I alluded to in my article.

Of course I am not referring to all CPAs, and the tone of the article does not imply that. It is very challenging as an advisor when speaking to business owners who are in need of real tax shelter but have been told by their CPA that they need to purchase more unneeded equipment/inventory, that they should open up a Simple or

SEP IRA, or worse yet that they should just "pay the tax." Clearly they needed a more sophisticated qualified retirement plan, such as a defined benefit plan or a combination/bifurcated defined benefit/401(k) profit-sharing plan based on the IRC section 404(a)(7) combined deduction limits under the PPA, but their CPA was unaware of this nuance. We are often asked to show a design to the client, he brings his advisor, and time and time again, the client sees a total contribution of not \$50,000-\$60,000, but several times higher than the defined contribution limits per plan owner. He turns to his CPA and says, "Why didn't we do this sooner?" It's frustrating to see.

My comment that, beginning in 1992, CPAs were not taught to view qualified retirement plans as resources for tax planning, refers to a shift in focus from actuarial design based on employee demographic understanding, job classification, compensation limits, non-highly compensated status, new comparability, and cross testing to the new, commoditized style of financial industry-sponsored, payroll-sponsored, product- and market-driven retirement planning, a one-size-fits-all approach. When EGTRRA was passed in 2001, the new breed of CPA/advisor was so embedded in that style of retirement plan that they did not realize the annual changes that had been phased in with the new law. EGTRRA changed the face of retirement, but most were so focused on the usual way of doing things that they missed the opportunities we were given. These provisions, made permanent by the PPA, allow us to create sophisticated designs for our clients and business owners, thus allowing them larger contributions and bigger deductions and a way to catch up on retirement. That's what I was talking about.

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