



# The Financial and Estate Planning Council of Metropolitan Detroit, Inc.

August 2010

30600 Northwestern Hwy., Suite 208, Farmington Hills, MI 48334 • (248) 538-7654 • FAX: (248) 538-7656

## President's Message

Wow, where has the summer gone? So much for those lazy, hazy days of summer! As for the lazy part, I hope you have had a chance to enjoy our great state of Michigan and the wonderful summer activities it offers – golf, boating, camping, or the cottage up north – perhaps all of these! As for the hazy part, that may be more accurate regarding the economic outlook or the estate tax changes on the horizon. To clear up some of the haziness on Michigan's own recent legislation, I hope you will join us for our September 28th meeting when Robert Tiplady from Dykema will give us an overview of the first six months of the new Michigan Trust Code. Special thanks goes to Northern Trust for their sponsorship and hosting us at their Bloomfield Hills office.

Thanks also goes to all of you who attended our May 24th meeting where Allan D. Gilmour, retired Vice Chairman of the Ford Motor Company and Board Chairman of the Community Foundation for Southeast Michigan highlighted the Foundation's many accomplishments over these last 25 years. As a result of your support and participation, our annual Charity Golf Outing raised over \$9,000 for Michigan Special Olympics. We appreciate the hard work of the Golf Committee and chair, Brad Kreiner, in making this year's outing such a success!

As I reported in the last newsletter, your FEPCMD board continues to assess the ways in which we can remain a strong organization and continue to add value to our membership in the future. At our April board meeting, we voted to align our fiscal year with the calendar year, which means moving our annual meeting to the November meeting date each year. As a result, our 2011 dues have been adjusted (and discounted) to reflect the change. We are also proposing a change to

expand our membership categories, modeled after some of our peer councils across the country. These expanded categories recognize the changing landscape of the professional organizations who employ us and the more collaborative, multiple advisor model of modern estate and financial planning. More information is enclosed in this newsletter. We want your feedback so please email us your comments or speak with a board member at the September meeting.

See you at the September meeting! ✎  
*Stephen D. Moore, CTFA, President*

## WELCOME TO OUR NEW MEMBERS

**Anthony J. Belloli, CFP®, CIMA®**

Plante Moran Trust

Sponsors: Gary Johnson and Trevor Royston

**Greg Light, CFA**

The Rehmann Group

Sponsors: Craig Mathiesen and Mark Landau

**Donald W. Price,**

Gordon Advisors, PC

Sponsors: Andrew Malec and Mike Weil

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# UNCHARTED WATERS: ESTATE PLANNING IN 2010<sup>1</sup>

Aaron H. Fox & John F. McCabe

Anyone who looked at the Internal Revenue Code in late 2001 would have noticed several provisions with notes above the statutory text indicating that the provisions apply “after December 31, 2009.” Anecdotal evidence suggests that a fair number of practitioners may not have been passing the time since 2001 maintaining a mastery of such provisions. Now might be the time to revisit them.

Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), the estate and the generation skipping transfer taxes (GST) are repealed for one year beginning on January 1, 2010 and ending on December 31, 2010. Accompanying this repeal are provisions which only apply in 2010. The repeal of the estate tax and the activation of these “2010-Only” provisions raise a number of trust and estate planning and administration issues for clients, fiduciaries and their advisors. Given the state of flux surrounding the current legislative environment we mention here just a few of the many issues and potential opportunities presented by the current law.

## • Issues Raised by the Modified Carryover Basis

**Regime:** EGTRRA does away with the “stepped-up” basis regime that existed prior to January 1, 2010 and instead provides for a modified “carryover” basis regime (i.e., the basis shall be the lesser of the fair market value of the property at the date of the decedent’s death or the adjusted basis of the decedent). To mitigate the impact of this rule, Section 1022 allows an executor to allocate \$1,300,000 to the basis of property in the estate and \$3,000,000 to the basis of property passing to a surviving spouse, if the property is qualified spousal property (outright or a Qualified Terminable Interest Marital Trust (Q-tip)). A number of fiduciary issues could be raised by this provision. For example, how will the step-up be allocated? What factors should go into making this decision?

## • Review of Funding Formulas in Existing Estate Planning Documents:

Many estate planning documents contain formulas for the funding of various trusts based on transfer tax exemptions then in effect. The absence of an estate and GST tax could thwart

the grantor’s intent for the disposition of his or her property. For example, poor planning may lead to children or spouses being completely disinherited. Some states have passed laws referring to December 2009 exemption amounts to apply when determining the amounts to be allocated in a zero estate tax formula.

• **Gifting Opportunities:** In 2010, the gift tax rate is reduced to 35%. Clients may want to consider whether it makes sense to make gifts at the lower gift tax rate and in particular GST gifts (which for 2010 is completely phased out). The \$1,000,000 lifetime gift tax exemption remains in effect.

• **Amending the Trust Instrument:** Some trust instruments contain language giving the trustee or a trust protector the power to amend the trust for certain reasons. Trustees may wish to review such amendment provisions to see whether it’s possible to use such powers to adapt the trust to the current tax environment and whether it makes sense to attempt to do so.

Although the prospect of the retroactive enactment of an estate tax in 2010 complicates the planning and administration process considerably, a reasonable approach in this environment may be to just get a handle on where things stand, evaluate how the issues might apply to particular situations, and follow the events in Washington closely. ♦

Aaron H. Fox and John F. McCabe are Vice Presidents and Senior Trust Officers with The Goldman Sachs Trust Company, N.A. and The Goldman Sachs Trust Company of Delaware and can be reached at aaron.fox@gs.com and john.mccabe@gs.com, respectively. The opinions expressed in this article are those of the authors and do not necessarily reflect the views of Goldman Sachs & Co., The Goldman Sachs Trust Company, N.A., or any of its affiliates.

## Footnote:

1 A prior version of this article appeared in the Winter 2010 issue of Delaware Banker.

**FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT**

Presents

**“Michigan Trust Code: Six Month Perspective”**

**ROBERT P. TIPLADY II, JD**  
**Dykema**

**TUESDAY, SEPTEMBER 28, 2010**

**NORTHERN TRUST**  
**10 West Long Lake Road**  
**Bloomfield Hills, Michigan 48334**

Sponsored By



**Northern Trust**

**DYKEMA**

The Michigan Trust Code became effective April 1, 2010. Join us as one of the council members who participated in its drafting and a panel member of the EPIC Question and Answer Panel discusses the provisions of the Michigan Trust Code that appear to be having the most impact on estate planning at the six month mark and the changes that need to be made to your documents if you have not already made them.

Robert Tiplady is a member at Dykema and practices in the areas of estate planning and probate, including wills, trust agreements, powers of attorney, probate and trust administration, probate litigation, and gift, estate and generation skipping transfer tax planning. He is councilmember of the State Bar of Michigan Probate and Estate Planning Section. He was actively involved in review and drafting the Michigan Trust Code. He is a frequent speaker for ICLE, a panel member of the EPIC Question and Answer Panel and is on the board of directors for the Washtenaw County Estate Planning Council.

**AGENDA:**

5:30 p.m.	Complimentary Cocktails
6:30 p.m.	Presentation
7:30 p.m.	Dinner

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*Log onto our website by September 17 to make your reservation and pay with VISA or Master Card.*

[www.metrodetroitfepc.org](http://www.metrodetroitfepc.org)

OR PLEASE MAIL YOUR RESERVATION AND CHECK BY SEPTEMBER 17 TO:

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TOTAL ENCLOSED: \_\_\_\_\_

# Proposed Membership Changes

## ARTICLE 2 MEMBERSHIP

### 2.1. **Membership.**

There are three classes of membership:

1. **Full Membership:** Any officer of a bank or trust company, attorney, CPA, CLU, CFP, ChFC, PFS, AEP, CFA, CAP, CTFA, CFRE, AFP, CAP or the holder of a masters degree in business, finance, tax or accounting who is directly involved in estate planning may become a Full Member of the council, subject to the recommendation of the membership committee, approval of the board of directors and full payment of dues for the fiscal year during which the person is admitted. The application for membership must bear the recommendation of two Full Members, one from the practice area of the applicant and one from a different practice. Only one recommendation in support of membership may be from a member with the same employer as that of the applicant. A Full Member shall have the privilege to vote, sponsor new members, and hold office.
2. **Associate Membership:** Applicants who are directly involved in estate planning, estate administration or are employed in professions that support estate planning and administration but do not have the required degrees and/or credentials to qualify for Full Membership may be eligible for Associate Membership in the council. Associate Membership is subject to the recommendation of the Membership Committee, approval of the Board of Directors and full payment of dues for the fiscal year during which the person is admitted. The application for membership must bear the recommendation of two Full Members, each from separate practice areas. Only one recommendation in support of membership may be from a member with the same employer as that of the applicant. Associate members cannot vote, sponsor new members or hold office.
3. **Student Membership:** A full time student is eligible for Student Membership upon the recommendation of the Membership Committee, approval of the Board of Directors and full payment of dues for the fiscal year during which the person is admitted. Student Members are eligible for a 50% reduction in dues for a maximum of 2 years. At the end of the second year the Student Member will be required to apply for membership as a Full or Associate Member under those defined guidelines. The application for Student Membership must include a copy of verification of University/College enrollment. Student members do not require letters of recommendation. Student members cannot vote, sponsor new members or hold office.

### 2.2. **Limitations of Members.**

Notwithstanding the provisions of Section 2.1 above, a person shall not become a Member of the Council if such person would cause the number of Members to exceed 1,100. [Amended 10-29-02 to remove limit on number of members per discipline]

### 2.3. **Membership Committee.**

The Board of Directors shall annually select a membership chairman who may be a Director. The membership chairman may select a committee from the membership at large. Applications for membership shall be referred to the chairman for investigation and report to the Board of Directors for its action.

### 2.4. **Termination of Membership.**

Membership in the Council shall be terminated in the event that:

- a. Annual dues are not paid by a Member on or before August 1 of each year.
- b. Except in the case of an Emeritus Member, a Member fails to attend in person at least one meeting of the Council in any two consecutive fiscal years of the Council unless he or she shows good cause therefor in writing to the Board, or
- c. The Board of Directors at a duly held meeting adopts a resolution providing for expulsion of a Member from the Council but only if (i) the Member was given at least 14 days advance written notice of such Board meeting and of the proposed action to be taken, (ii) the Member is given a reasonable opportunity to be heard by the Board, and (iii) at least two-thirds of the Directors vote in favor of such resolution.

Notwithstanding the foregoing, the Board of Directors may in its sole but reasonably exercised discretion restore a person's membership to the Council upon a showing of good cause in a written explanation to the Board of Directors.

# **SAVE THE DATES!**

## **Tuesday, November 9, 2010** **Annual Meeting**

**Stacy Eastland  
Goldman Sachs and Co.**

**Federal Reserve Bank of Chicago-Detroit Branch  
1600 East Warren Avenue, Detroit, MI 48207-1063**

### **Afternoon Program:**

**"Some of the Best Estate Planning Ideas We See Out There  
(That Also Have the Merit of Playing Havoc With Certain "Conventional Wisdom")"**

**3:00 pm  
3:30 pm  
5:30 pm  
6:30 pm  
7:30 pm**

**Registration  
2 Hour CE Presentation  
Cocktails  
Presentation  
Dinner**

## **Tuesday, February 8, 2011** **Spouses' Night**

**Doyle New York, Auctioneers & Appraisers  
"Antiques Road Show"**

**5:30 pm  
6:30 pm  
7:30 pm**

**Cocktails  
Presentation  
Dinner**

## **Monday, May 23, 2011** **Charity Golf Outing**

**Wabeek Country Club**

**WATCH FOR COMPLETE DETAILS!**



November 17 - 19, 2010

San Diego, California

[Hyatt Regency Mission Bay Spa & Marina](#)

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## EDUCATIONAL PRESENTATIONS

### **Thursday, November 18, 2010**

Howard M. Zaritsky, JD, LL.M., AEP® (Distinguished)  
Recent Developments

Richard W. Nenno, TO, JD, AEP® (Distinguished)  
Perpetual Dynasty Trusts: Tax Planning & Jurisdiction  
Selection

Carlyn McCaffrey, LL.B., LL.M., AEP® (Distinguished)  
GRATS

Lawrence Brody, JD, LL.M., AEP® (Distinguished)  
Insurance

Bernard A. Krooks, JD, CPA, LL.M., CELA, AEP®  
Elder Care

Jeffrey N. Pennell, JD  
Recent Wealth Transfer Developments

### **Friday, November 19, 2010**

Richard A. Oshins, JD, LL.M., MBA, AEP®  
(Distinguished)  
Oshins Eleven Best Planning Ideas

Sanford J. Schlesinger, JD, AEP® (Distinguished)  
The Value of Valuations

**Breakout Session** ~ Terri L. Getman, JD, CLU®,  
ChFC®, AEP® (Distinguished)  
How to Value an Insurance Policy

**Breakout Session** ~ Al W. King, III, JD, LL.M., AEP®  
(Distinguished)  
GST Planning

Robert S. Keebler, CPA, MST, AEP® (Distinguished)  
Surtaxes Involved with the New Healthcare Reform Act

Bruce S. Ross, JD  
Business Ethics

Professor Samuel A. Donaldson, JD, LL.M.  
Interesting Aspects in the Use of Grantor Trusts

## DID YOU KNOW?

**We have the capability of adding your photo and company website address to your member profile.**

Please send a jpeg photo and your website address to [fepcmd@sbcglobal.net](mailto:fepcmd@sbcglobal.net) so that we may update your records on the local website.

The NAEPJ Journal of Estate and Tax Planning is available online at <http://www.naepc.org/journal/>

*Editor's Note:* This "dinner menu" summary is designed to help you with the flavor of the article before you read more. If you are interested in the article, click its title to access a copy.

### Regular Columns and Reports

#### [Letter from the President of NAEPJ](#)

*Author: Kathleen J. Belmonte, CTFA, AEP*

#### [Editor's Column](#)

Planning for What Happens Next

*Author: John J. Scroggin, J.D., LL.M., AEP*

### Estate and Tax Planning Articles

#### [Heckerling Musings 2009](#)

Steve Akers provides his annual summary of insights garnered from the University of Miami Institute on Estate Planning.

*Author: Steve R. Akers, J.D.*

#### [Private Split Dollar - What's New about an Old Opportunity](#)

This article provides insights on using private split dollar to fund life insurance.

*Authors: Michael F. Amoia, JD, CFP®, CLU, ChFC, Kristen E. Simmons, JD, and Robert C. Slane, AEP, CLU*

#### [Planning to Minimize or Avoid State Income Tax on Trusts](#)

Dick Nenno provides a detailed article on avoiding state income taxes on trusts.

*Author: Richard W. Nenno, Esq, Wilmington Trust*

### Practice Aids

#### [2009 State Death Tax Chart](#)

A summary of the current state death tax law in the 50 states and the District of Columbia.

*Author: Charles D. Fox, IV*

#### [Family Limited Partnership Checklist](#)

Byrle Abbin has produced this comprehensive Family Limited Partnership checklist using the various rulings on FLPs.

*Author: Byrle M. Abbin*



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