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

October 2011

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

President's Message

The FEPCMD September meeting was well attended as a sell-out crowd of 120+ plus made the eastward trip to the Grosse Pointe Club (The Little Club) for a much anticipated Michigan economic outlook presentation by David Littman, former chief economist for Comerica Bank, and currently a fellow with the Mackinac Center. Our speaker did not disappoint as he delivered a message well in keeping with our cautious concerns about the five year economic outlook for Southeastern Michigan. David deviated from much of his planned presentation (perhaps he did not want to totally depress us) and instead delivered comments on recent international and national economic and political developments. His comments were not those we would have liked to hear; rather they were direct and reflective of our slowly improving economy. The question and answer period could have continued for many more minutes as David's insight raised many issues with the audience. We will all be working harder and/or longer than might have been the situation 4 years ago. We will plan ahead and have David address us again in 3-4 years. The slides from Mr. Littman's presentation can be found on the FEPCMD website.

Our next program is November 1 and follows the format of last year's program. We begin with a two hour continuing education program starting at 3:00 p.m. at the Colony Club, downtown Detroit. Our seminar speaker is Michael W. Halloran, Past President of the NAEPC, and Wealth Management Advisor, Jacksonville, Florida. Mike is a frequent speaker at NAEPC and member council events. His seminar comments will address current estate planning strategies, with emphasis on life insurance developments. I encourage you to make this a "must attend" seminar and urge you to invite other members and your colleagues to join us for an informative continuing education program.

The evening meeting is the FEPCMD Annual Meeting, during which the 2012 officers and board members will be nominated and elected by those in attendance. Noteworthy in this year's election process is the addition of two board positions, bringing the total number of directors to 10 effective January 1, 2012. Mike Halloran's evening presentation will follow the election process.

The Colony Club facilities are most accommodating for a large group, and you will find the venue evoking memories of downtown Detroit in the 1920-30s. So, plan on joining us for an afternoon and evening of professional stimulation and networking.

The week of October 16-23 is National Estate Planning Week. Look and listen for Detroit area announcements regarding NEPW from local radio and TV media, as well as Public Service Announcements.

Your officers and board and committee members are committed to providing the membership with meetings not only to provide networking opportunities (the cocktail hour continues to be a highlight of any meeting), but relevant technical/economic presentations from regional and national experts. If you are interested in participating in a committee and/or board position, please contact Kris Wolfe in the FEPCMD office. As always, we encourage all members to assist in maintaining/expanding our membership by bringing colleagues and guests to our functions.

This is the last of my President's Letters. 2011 has seen changes in estate planning opportunities (temporary and possibly retroactive) and thus presents challenges to all of us as estate and financial planning professionals. Add to this the economic malaise that continues to overshadow every day economic decisions. Throughout the year your committee members, board members and officers have provided me with continued support in dealing

with the many duties and decisions that come with any leadership role. My sincere "thank you" to each for their commitment to the FEPCMD. And a special "thank you" to Kris Wolfe, our FEPCMD administrator, for her "beyond" attention to committee/board/officer meeting schedules, program schedules, and all the administrative details attendant to FEPCMD daily operations.
Andrew A. Dincolo, CPA, President

Having Your Cake and Eating It, Too – Twice!

Robert S. Balter

When medical expenses are paid by a donor on behalf of the donee, who is entitled to take the income tax deduction? I have been asked this question any number of times,[1] and, until recently there has been no answer. This article sets forth the applicable law and provides the Tax Court's recent answer, as well as analysis of the implications.

Section 213 of the Internal Revenue Code[2] provides a deduction for the unreimbursed medical expenses of the taxpayer or a dependent.[3] Medical expenses are defined in Section 213(d) as …. expenses incurred by the taxpayer for medical care treatment.

When a person pays an expense for another, an indirect gift takes place.[4] IRC Section 2503(e) excludes from taxable gifts those gifts made directly to providers of medical care or for tuition, and the Treasury goes on to exclude such transfers from even reportable gifts.[5]

By definitional cross reference,[6] gifts that qualify as medical care for purposes of the gift tax exclusion also qualify for the income tax deduction. There is no express provision in the Internal Revenue Code or Regulations allocating the income tax deduction between the donor and the donee.

A taxpayer is only allowed an income tax deduction to the extent that the aggregate of expenses for medical care exceeds 7.5% of the taxpayer's adjusted gross income.[7] As a general matter, it seems likely that a donor will have greater adjusted gross income than will a donee, and also likely that a deduction by the donor for a dependent's medical expense will be lost by reason of the 7.5% hurdle.

On the other hand, the donee never had the money with which the payment was made and the Internal Revenue Service has challenged income tax deductions taken by a donee as not paid by the taxpayer. It was such a deduction that was challenged by the Service in Judith F. Lang.[8]

Judge Goeke succinctly summed up the pertinent facts as follows:

"Petitioner's mother, Frances Field (Mrs. Field), paid $24,559 directly to medical providers on account of petitioner's medical expenses and paid $5,508 directly to the city government on account of petitioner's real estate tax. Petitioner was not a minor, and Mrs. Field was not legally obligated to pay petitioner's expenses."[9]

The petitioner timely filed her return and claimed deductions consisting in part of the amounts paid by her mother. Treasury argued "that because the money was paid directly from Mrs. Field to petitioner's creditors, petitioner may not claim the deductions."[10]

Judge Goeke's holding is set forth in two brief sentences:

"Applying substance over form, we treat petitioner as having received from her mother a gift of $24,559 with which petitioner paid her own medical expenses. Petitioner should be credited with having made the payments for purposes of the income tax deduction in question." [11]

This seems to be the correct analysis. §2503(e) seems to give the taxpayers a choice regarding who may take the deduction in many cases. If the donee is a dependent of the donor, the donor can take the deduction under the authority of IRC §213(a) taken together with IRC §152. In those same cases, the donee also seems able to take the deduction (so long as the donor does not) if the donor is not obligated to make the payment as part of a support obligation.[12] If the donee is not a dependent of the donor, only the donee seems authorized to take the deduction under the authority of the Lang case and by reverse implication from IRC §213(a)'s dependency requirement.

Thus, whether to take the donee as a dependent becomes the pivot point on which deductibility of the §2503(e) medical expenses depends. In many cases, wealthy families will find this an especially small price

THE FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

presents

MICHAEL W. HALLORAN

TUESDAY, NOVEMBER 1, 2011

FEPCMD ANNUAL MEETING – ELECTION OF OFFICERS

The Colony Club

2310 Park Avenue, Detroit, MI 48201 map

sponsored by:

FIFTH THIRD BANK

Approved CE credit for afternoon session: State of Michigan Life (#57798) and CFP (#11111)

AFTERNOON PROGRAM:

Registration: 3:00 p.m.
Presentation: 3:30 p.m. – 5:30 p.m.
Break: 4:30 p.m. – 4:45 p.m. (cookies and beverages)

"Beneficiary Defective Inheritor's Trust"

COST: $75.00

EVENING PROGRAM:

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

"Charitable Remainder Trust"

COST: $60.00

FULL DAY DISCOUNT: $110.00

Michael W. Halloran, CLU, ChFC, CFP®, AEP®, LUTCF, RHU, REBC, is a Wealth Management Advisor with the Northwestern Mutual Financial Network. In addition, Mike is an Estate Strategies Group Advisor (ESG) and also part of the Estate Business Planning Specialist Study Group (EBPS). Mr. Halloran has published many articles and columns during his career. His most recent article appeared in the New York University Review of Employee Benefits and Executive Compensation, October 2009 entitled "The Cash Value Beneficiary Defective Inheritor's Trust (The 'Cash Value BDIT'): Creating a More Flexible and Comprehensive Wealth Accumulation and Retirement Plan". In addition, Mr. Halloran wrote an article in the December 10, 2007 issue of National Underwriters titled "For Large Estates, Consider Grantor Retained Annuity Trusts". This article explained the use of GRATs as an aid in paying off a financed insurance loan for Estate Planning purposes. Other articles include the February 2007 issue of Money Magazine which gave specific detail on protection needs for a high profile television character. Mr. Halloran has a passion for public speaking and has been on several speaking tours. Mike has spoken to the graduating Medical School students at Louisiana State University. He has spoken to Residents and Fellows at Mayo Clinic and the University of Florida as well as many other universities.

AFTERNOON PRESENTATION: Michael Halloran will discuss primary high end wealth shifting strategies, the BDIT concept, modern wealth designs that enhance the value of gifts and bequests, enhanced IDITs for estate depletion planning, the funded ILIT, life insurance correlation with the BDIT, providing funds for retirement, life insurance as an asset class, planning for pass-through entities, buy-sell strategies, advanced asset protection strategies, income tax strategies, estate planning for professional athletes and entertainers, and other planning opportunities.

EVENING PRESENTATION: Michael Halloran will discuss mechanics of a CRT, advantages, tax consequences, taxation on income distributions, gift tax, estate tax, common features, payouts, remainder interest rules, and wealth replacement ideas.

Log onto our website by October 24 to make your reservation and pay with VISA or Master Card.

www.metrodetroitfepc.org

OR PLEASE MAIL YOUR RESERVATION AND CHECK BY OCTOBER 24 TO:

FEPCMD ● 30600 Northwestern Hwy-#208 ● Farmington Hills, MI 48334

Phone: (248) 538-7654 ● Fax: (248) 538-7656

Member Name:________________________________ Phone Number:____________________

Guest Name:_________________________________ Phone Number: ____________________

Full Day______________ Afternoon Program Only______________ Evening Program Only________________

Amount Enclosed:____

STATE OF MICHIGAN

CERTIFICATE OF PROCLAMATION

ON BEHALF OF THE PEOPLE OF MICHIGAN
I, Rick Snyder, Governor of Michigan, do hereby proclaim
October 16 through October 22, 2011 as

ESTATE PLANNING AWARENESS WEEK

WHEREAS, it is estimated that 120 million citizens throughout the United States do not have updated estate plans for preserving their lifetime assets in the event of illness, accidents or untimely death; and,

WHEREAS, estate planning is the process of anticipating and arranging for the disposition and management of an estate, and involves many considerations including documentation of assets, charitable giving and preparation of various legal records including wills, trusts and durable powers of attorney for health care; and,

WHEREAS, a lack of financial and estate planning may cause assets to be taxed at maximum rates or, by default through the complex process of probate, to be distributed to unintended parties; and,

WHEREAS, during this week, we join with estate planning professionals in Michigan and throughout the United States to raise awareness of the important role estate planning plays in individual and family preparedness; we encourage citizens to learn more about estate planning and the resources available for estate planning assistance;

NOW, THEREFORE, I, Rick Snyder, Governor of Michigan, do hereby proclaim Sunday, October 16 through Saturday, October 22, 2011 as Estate Planning Awareness Week in Michigan.

Rick Snyder
Governor

to pay given the phase-out of those deductions under IRC §151.[13] The result will be less tax paid by the unit consisting of donor and donee.

Nor does this seem to be an abusive result. There is no public policy favoring the non-deductibility due to percentage thresholds. That "deductions are a matter of legislative grace" does not evince a policy in favor of expanding percentage thresholds. Rather, the legislative judgment seems to be that medical expenses generally (as defined) are the sort of expense that should be taken into account in determining adjusted gross income.[14]

And that brings us to the question whether Lang might apply beyond its own facts: Who is entitled to the credits for tuition payments[15] made by IRC §2503(e) gifts? Here, however, there is no real doubt, since United States Treasury Department Regulations §1.25A-5(b)(1) provides that the donee is entitled to the credit.

Robert S. Balter is an estate planning attorney in Rydal, Pennsylvania.

1
Principally by Jane Amodei, Guggenheim Private Family Office in King of Prussia, PA.

2 Referred to herein as "IRC" or "Code."

3
The term "dependent" is defined in Internal Revenue Code ("IRC") Section 152, but for these purposes is "determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof," that is without regard to whether a dependent is another's dependent, whether a dependent is married or whether a dependent has more income than the amount of the personal exemption.

4
See generally United States Treasury Department Regulations ("Regs") §25.2511-1(c)(1) and §25.2511-1(h)(2) and -1(h)(3).

5 See Regs. §25.2503-6(a); and see Form 709 Instructions at page 2.

6 See IRC Section 2503(e)(2)(B) cross referencing IRC Section 213(d).

7 IRC §213(a).

8
Judith F. Lang, T. C. Memo 2010-286 (12-30-2010, Tax Court Docket No. 27276-08) (concerning Tax Year 2006).

9 Id, slip opinion at page 2.

10 -Id, slip opinion at page 3.

11 Id, slip opinion at pages 4-5.

12
Compare Lang slip opinion at page 2 ("Petitioner was not a minor, and Mrs. Field was not legally obligated to pay petitioner's expenses," indicating that a different result might obtain).

13
Note that this phase-out does not apply in 2011 or 2012 due to Section 101 of the TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION AND JOB CREATION ACT OF 2010, effective December 17, 2010.

14 IRC §213(a).

15
Referred to as the Hope and Lifetime Learning credits, these are provided respectively by IRC §§ 25A(a)(1), 25A(i)(1), 25A(a)(2) & 25A(c)(1).

The Financial and Estate Planning Council of Metropolitan Detroit, Inc.
30600 Northwestern Hwy., Suite 208, Farmington Hills, MI 48334
Phone (248) 538-7654 Fax (248) 538-7656
email: admin@metrodetroitfepc.org
website: metrodetroitfepc.org

The Financial and Estate Planning Council of Metropolitan Detroit, Inc.
30600 Northwestern Hwy., Suite 208
Farmington Hills, MI 48334