



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

May 2010

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

## President's Message

Spring has sprung and with the greening landscape and anticipation of warmer weather, it may just be my perception, but I seem to sense a renewed optimism amongst my peers, colleagues and even clients. Financial markets are showing surprising strength, earnings reports are much stronger than expected and Metro Detroiters are demonstrating the resiliency and ingenuity upon which our region was built. Before I sound overly optimistic, I know we still have some challenges ahead, but twice in the last two months, colleagues have visited from other markets. I am not sure what they expected, but in both cases, they left with real enthusiasm about the people, the region and the opportunities we sometimes fail to accurately portray. I always enjoy changing people's perception of Southeast Michigan for the better and sending them back home to "spread the good word"!

To that end, I can think of few organizations that have done more to impact and support our community over the last twenty five years than the Community Foundation for Southeast Michigan. Be sure to invite a guest and join us at our May 24th meeting to hear Allan D. Gilmour, retired Vice Chairman of the Ford Motor Company and Board Chairman of the Community Foundation for Southeast Michigan speak on the foundation's many accomplishments over these last 25 years and their plans for the future. The meeting follows our annual Charity Golf Outing supporting the Michigan Special Olympics. Get your foursome together, sponsor a hole and come out to join us for a fabulous day. More details are enclosed and are available at [www.MetroDetroitFEPC.org](http://www.MetroDetroitFEPC.org).

I am pleased to report that 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. This will help with scheduling meetings, speakers and a variety of other items. 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 May meeting.

Hope to see you at the May golf outing and meeting. 🏌️

*Stephen D. Moore, CTFA, President*

## WELCOME TO OUR NEW MEMBERS

**Kenneth Robert Biebel, CPA**

Fenner Melstrom & Dooling CPAs

Sponsors: Stephen Moore and Andrew Dincolo

**Michael B. Komara, ChFC**

Mackey Komara & Dankovich, LLC

Sponsors: Mark Miller and Terry Altman

**Judy Fertel Layne, JD**

Dickinson Wright, PLLC

Sponsors: Henry Grix and Stephen Moore

**Mark E. Mueller, JD**

Driggers, Schultz & Herbst

Sponsors: Joseph Thomas and Andrew Malec

**Marc L. Scheuer**

Comerica Bank

Sponsors: David M. Thoms and Robert A. Sajdak

**Mary T. Stangeland, JD**

Fifth Third Private Bank

Sponsors: Stephen Moore and Eric Carver

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## IRS Answers Questions On Employer-Owned Life Insurance Contracts - But Tax Traps Remain

Arthur A. Zatz

The IRS recently issued guidance in connection with employer-owned life insurance contracts ("EOLI"). Notice 2009-48 clarifies a number of administrative questions. It does not eliminate the potential loss of tax benefits applicable to EOLI or the need to satisfy notice and consent formality in order to qualify for exception from these rules. An inadvertent failure to satisfy the notice and consent requirements could result in the loss of a significant tax exclusion.

**BASIC RULES.** Generally, death proceeds of a life insurance contract are received tax free under the exclusion rule in IRC §101(a). In 2006, Congress limited this income tax benefit for EOLI. Unless an exception applies, the death proceeds of EOLI are tax free only up to the amounts paid to acquire the policy (premiums and other acquisition payments). The rest is taxed as ordinary income.

A policy is EOLI if all of the following factors apply:

1. The owner is a trade or business.
2. The owner (or a related person<sup>1</sup>) is directly or indirectly a beneficiary under the policy.
3. At the time the policy is issued, the insured is an employee<sup>2</sup> of the "applicable policyholder" (the owner or a related person).
4. The policy is issued after 8/17/2006. An older policy will be treated as newly issued if there is a material increase in the death benefit or other material change.
5. The insured is a U. S. citizen or resident.

Thus, EOLI includes key-man life insurance where the business receives the insurance proceeds to compensate for the loss of a valued employee. It also includes other applications for life insurance, such as creditor life insurance, split-dollar life insurance, insurance to fund employer-paid deferred compensation or other compensation arrangements, including Rabbi trusts, and life insurance which is acquired to fund redemptions through buy-sell arrangements.

**EXCEPTION TO THE BASIC RULES.** The IRC provides an exception to the general rule (thereby allowing for the tax free receipt of the full death benefits) where certain written notice and consent requirements are satisfied and the insured falls within one of the following categories:

1. The insured is an employee at any time during the 12-month period before his death.
2. At the time the policy is issued, the insured was a director, a highly compensated employee or a highly compensated individual.<sup>3</sup>
3. The death proceeds are used to purchase an equity interest (capital or profits) in the applicable policyholder from a family member of the insured, the designated beneficiary of the insured under the policy, a trust established for the benefit of a family member or designated beneficiary, or the estate of the insured.

**Notice and Consent Requirements.** The exceptions will not apply unless certain formal notice and consent requirements are met. These were adopted to prevent abuses where businesses invested in policies on the lives of rank and file employees. However, the rules extend well beyond those circumstances. To qualify for the exceptions, before the issuance of the policy, the employee must:

1. Be notified in writing that the applicable policyholder intends to insure the employee's life and be advised of the maximum face amount for which the employee could be insured at the time the policy is issued;
2. Be informed in writing that the applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee; and
3. Provide written consent to being insured under the policy and allow such coverage to continue after the employee terminates employment.
4. In many cases, insurers and insurance agents will provide the necessary forms. Care should

FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

# 4th ANNUAL CHARITY GOLF OUTING

NET PROCEEDS AND ADDITIONAL CONTRIBUTIONS TO BENEFIT THE SPECIAL OLYMPICS MICHIGAN



## MAY 24, 2010

### WABEEK COUNTRY CLUB

4000 Clubgate Drive, Bloomfield Hills, MI 48302

<http://www.wabeekcc.org/>

**11:15 AM REGISTRATION /11:45 AM: BOX LUNCH/  
SHOTGUN START 12:00 PM**

**\$150 PER GOLFER OR  
(SINGLE GOLFERS ARE WELCOME)**

**18 HOLES OF GOLF WITH A CART/DRIVING RANGE  
WARM-UP/UNLIMITED COURSE BEVERAGES**

**\$550 PER FOURSOME**

**4-PERSON SCRAMBLE**

**\$650 FOR A FOURSOME AND A HOLE SPONSOR**

**5:30 PM COCKTAILS**

**\$150 HOLE SPONSOR ONLY**

**6:30 PM ANNUAL MEETING & GUEST SPEAKER**

**SPECIAL OLYMPICS ADDITIONAL DONATIONS:**

**7:30 PM DINNER**

**(\$60.00 COCKTAILS & DINNER ONLY)**

**BRONZE: \$25.00**

**SILVER: \$50.00**

**GOLD: \$100.00**



**NEW FEATURE:** Log onto our website by May 14 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 MAY 14 TO:**  
FEPCCMD • 30600 Northwestern Hwy-#208 • Farmington Hills, MI 48334  
Phone: (248) 538-7654 • Fax: (248) 538-7656

GROUP NAME: \_\_\_\_\_

PLAYER #1 \_\_\_\_\_ HCP# \_\_\_\_\_ PHONE \_\_\_\_\_

PLAYER #2 \_\_\_\_\_ HCP# \_\_\_\_\_ PHONE \_\_\_\_\_

PLAYER #3 \_\_\_\_\_ HCP# \_\_\_\_\_ PHONE \_\_\_\_\_

PLAYER #4 \_\_\_\_\_ HCP# \_\_\_\_\_ PHONE \_\_\_\_\_

YES I WANT TO SPONSOR A HOLE: \_\_\_\_\_

CHECK ENCLOSED: \_\_\_\_\_



still be taken to be sure that such forms meet the current requirements and are completed in a timely manner. Moreover, certain transactions, such as policy transfers or adjustments, may not trigger the attention of the insurer.

**Annual Reporting.** The applicable policyholder of an EOLI must file a return each year on Form 8925, setting forth specific information with respect to the contracts, the number of insured employees, the amount of insurance in force at the end of the year, and a representation that the policyholder has a valid consent for each insured employee (or if not, the number of insured employees for whom consent was not obtained).

**NEW GUIDANCE.** Notice 2009-48 addresses a number of questions in connection with EOLI and in many cases offers practical answers and some leeway. However, failure to satisfy certain deadlines and bright-line rules will result in the loss of the exclusion benefit.

1. EOLI restrictions do not apply where the policy is owned by a related party, such as a shareholder, rather than the trade or business entity itself. Thus, policies used for cross-purchase under buy-sell arrangements are not subject while redemption by the business entity is. In addition, policies owned by qualified plans or VEBAs are also excluded.

2. A policy owned by a partnership or a sole proprietorship may qualify as EOLI. The definition of "employee" includes a partner or LLC member. However, this result does not apply to a sole proprietor with respect to a life insurance policy on his own life.

3. In order to qualify for the exception on the purchase of an equity interest in the applicable policyholder, the death proceeds must be used for this purpose within a limited time--by the due date, including extensions, of the tax return of the applicable policyholder for the taxable year in which the death benefits are received.

4. A policy that is subject to a split-dollar life insurance arrangement is an EOLI if it is owned by the trade or business. This would include endorsement split-dollar arrangements and certain collateral assignment split-dollar under which

the trade or business entity is deemed to be the owner.

5. The "issue" date on which the notice and consent requirements are satisfied is the later of (1) the date of application, (2) the effective date of coverage, or (3) the formal issuance date of the policy.

6. The employee consent form will be operative for one year after being signed unless the insured's employment terminates before then. A single notice and consent document may be used for multiple policies.

7. The requirement for written notice and consent will apply even in the context of a wholly-owned business entity in which the sole owner is the covered employee.

8. The maximum amount of life insurance required in the disclosure must be expressed either in terms of dollars or as a multiple of salary. Additional notice and consent is necessary if the aggregate face amount of the contract exceeds the amount included in the notice. If an employee irrevocably transfers a policy to his employer, the transfer is sufficient to satisfy the notice and consent requirements. However, notice and consent would be needed if the employer later allows for any increase in the face amount of the contract.

9. An inadvertent failure to comply with the notice and consent requirements may be fixed only within a limited window. It must be discovered and corrected no later than the due date of the tax return of the business entity for the taxable year in which the policy was issued. Also, correction is not possible after the insured employee has died.

10. EOLI applies to policies issued after 8/17/2006. However, older policies may lose their grandfathered status if there is a material increase in the death benefit (other than under the original terms of the insurance contract) or any other material change. A Section 1035 exchange does not protect the grandfathered status if there is a material increase in the death benefit or other material change in terms.

11. Material changes do not include administrative changes or changes resulting from the exercise

**MEMBER MEETING PRECEDED BY THE 4th ANNUAL GOLF OUTING**  
(Please refer to the additional Golf Outing Notice)

**GUEST SPEAKER: ALLAN D. GILMOUR**  
Foundation Chair

**“Building Michigan’s Future – The Role of Philanthropy”**

**MONDAY, MAY 24, 2010**

Wabeek Country Club  
4000 Clubgate Drive, Bloomfield Hills, MI 48302  
Office: 248.855-0700

Sponsored By



As the Community Foundation for Southeast Michigan marks 25 years of working to enhance the quality of life in southeast Michigan, Foundation Chair, Allan D. Gilmour, will discuss the economic impact of philanthropy in Michigan and the role of philanthropy in building a stronger economy and a better future for southeast Michigan.

**AGENDA:**

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

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**NEW FEATURE:** Log onto our website by May 12, 2010 to make your reservation and pay with VISA or Master Card.

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

**RESERVATIONS RECEIVED AFTER MAY 12 WILL COST \$85.00 PER PERSON.**

OR PLEASE MAIL YOUR RESERVATION AND CHECK BY MAY 12, 2010 TO:  
FEPCCMD • 30600 Northwestern Hwy-#208 • Farmington Hills, MI 48334  
Phone: (248) 538-7654 • Fax: (248) 538-7656

**COST: \$60.00 PER PERSON**

MEMBER NAME: \_\_\_\_\_ GUEST NAME: \_\_\_\_\_

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

## 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 NAEPC offers an Accredited Estate Planner® Designation**

Professional estate planners can now achieve an accreditation that acknowledges their experience and specialization in estate planning.

The Accredited Estate Planner® designation is available to attorneys, Chartered Life Underwriters, Certified Public Accountants, Certified Trust and Financial Advisors, Chartered Financial Consultants, and Certified Financial Planners® .

The AEP® designation is awarded by the National Association of Estate Planners & Councils to recognized estate planning professionals who meet special requirements of education, experience, knowledge, professional reputation, and character.

The National Association of Estate Planners & Councils (NAEPC) is a national organization of professional estate planners and affiliated Estate Planning Councils focused on establishing and monitoring the highest professional and educational standards. NAEPC fosters public awareness of the quality services rendered by professionals who meet these standards. NAEPC builds a team approach involving cross-professional disciplines to better serve the public's need in estate planning.

Visit [http://www.naepc.org/estate\\_planners.web](http://www.naepc.org/estate_planners.web) for more information.

### **The NAEPC presents top notch speakers at their annual meeting. Save the date!**

47th Annual Conference

November 17 - 19, 2010

San Diego, California

Hyatt Regency Mission Bay Spa & Marina

Visit <http://www.naepc.org/convention.web> for more information!

### **The NAEPC Journal of Estate and Tax Planning is available online.**

Visit <http://www.naepc.org/journal/> for more information!

The "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.

of options or rights which are part of the policy as originally issued. An increase in death benefits is not material if it results from policy dividends being used to purchase paid-up additions or from market performance or policy design in a variable policy.<sup>4</sup>

*Arthur A. Zatz joined the Philadelphia firm Cozen O'Conner in April 2009 as Of Counsel in the Business Law Department. Prior to joining the firm, he was a partner with Wolf Block LLP in Philadelphia.*

*Mr. Zatz practices in the Tax Group, and also handles matters involving government assisted and affordable housing, and employment services. He has in-depth experience in municipal bonds, tax-exempt organizations, charitable giving and ERISA.*

*Admitted to practice in Pennsylvania, Mr. Zatz is a member of the Philadelphia and Pennsylvania Bar Associations, the Committee on Tax Exempt Financing of the American Bar Association's Tax Section, and the National Association of Bond Lawyers. He also serves as assistant counsel for the Federation*

*Foundation of the Jewish Federation of Greater Philadelphia.*

*Mr. Zatz earned his law degree from the University of Pennsylvania Law School and his undergraduate degree from the Wharton School of the University of Pennsylvania.*

### **Footnotes**

*1 A "related person" is defined by reference to other provisions of the IRC. The term includes persons who are related within the meaning of IRC §267(b) or §707(b)(1) or parties engaged in trades or businesses that are under common control within the meaning of IRC §52(a) or (b).*

*2 An "employee" includes an officer, director and a highly compensated employee within the meaning of IRC §414(q).*

*3 A "highly compensated employee" is defined by reference to IRC §414(q) and a "highly compensated individual" is defined by reference to IRC §105(h)(5). This can include former employees.*

*4 In Notice 2008-42, the IRS indicated that a modification of split-dollar life insurance arrangement that does not entail changing the life insurance contract which is part of the arrangement will not be treated as a material change for purposes of EOLI.*

# 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.

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

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**2009 – 2010 OFFICERS**

**President** ..... Stephen D. Moore, CTFA

**Vice President** ..... Andrew A. Dincolo, CPA

**Secretary/Treasurer** ..... Brad M. Kreiner, CFP®

**Immediate Past President** .... Terry R. Altman, CLU, ChFC, CFP®

**BOARD OF DIRECTORS**

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CPA/ABV

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**Directory** ..... Kris Wolfe

**Nominations** ..... Terry Altman, Stephen Moore

**Programs and Sponsors** ..... Andy Dincolo, Stephen Moore,  
Jeff Risius, Tess Sullivan, Brad Kreiner,  
Lisa Walters, Wendy Linehan

**Membership** ..... Peter Ronan, Eric Carver,  
Dan Boyce, Brad Kreiner

**Newsletter** ..... Benson Barr, Eric Carver, Lisa Walters

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