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

August 2009

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

President's Message

Greetings!

I hope that you have had an enjoyable and productive summer. Your FEPCMD Board has been busy putting together another great year of meetings, starting with the September 16th meeting at Orchard Lake Country Club. Continuing our focus on local practitioners who are nationally recognized speakers, Julius Giarmarco will present on the topic "Intergenerational (Discount) Split – Dollar." Invite a friend or colleague who is not an FEPCMD member to join you for this highly informative program. Visit our website at http://www.MetroDetroitFEPC.org to register or for more information.

In this, my first President's message, I also have the pleasure of updating you on last May's Annual Meeting and Charity Golf Outing. Based on suggestions from our members, this year's golf outing was organized as a fund-raiser to benefit a local charity. Highlights from the day included an outstanding day of golf at Wabeek Country Club, a silent auction, remarks from Special Olympian Megan Talbot (who received a standing ovation!) and a wonderful presentation from our own Sebastian V. Grassi, Jr. on "Financial and Estate Planning for Families with a Special Needs Child." Let's give a big "thank you" to media sponsor WJR, meeting sponsor Comerica, our generous auction donors and all who volunteered on the program and golf committees. Based on their efforts and your generosity, we were able to raise over $6,000.00 to benefit the Special Olympics of Michigan.

I know many of us volunteer and serve in various capacities to assist local charities. We also engage our clients in conversations about the many benefits of charitable planning. It is important that we continue to do so to help offset the challenges of this economic downturn. As a result, I think it is particularly fitting and commendable that we have added a charitable focus to our annual meeting and look forward to expanding our support of local charities in the future. Look for upcoming details about this year's event.

Thanks go to Past-President Terry Altman and Kris Wolfe for making this an easy transition. Terry will be helping with a strategic planning initiative to insure our organization's viability and sustainability going forward.

Lastly, I challenge you to get involved, join a committee, sponsor a meeting, engage your colleagues and provide your comments and suggestions as we work collaboratively towards staying relevant, well informed and delivering the high degree of value and expertise our clients expect.

Best regards,

Steve Moore

WELCOME TO OUR NEW MEMBERS

Mark A. Bucciere
Citizens Bank Wealth Management, N.A.
Sponsors: Peter Ronan and David Thoms

Donald A. DeLong
Law Offices of Donald A. DeLong, P.C.
Sponsors: Ed Pugh and Jeff Risius

George V. Cassar, Jr.
Maddin, Hauser, Wartell, Roth & Heller, PC
Sponsors: Stephen Moore and Robert Kaplow

Anthony P. Cracchiolo
Bodman LLP
Sponsors: Andrew Curoe and Jason Krick

Henry P. Lee
Howard & Howard, PLLC
Sponsors: Stephen Moore and Austin Kanter

Kari Marcus
Falvay Marcus & Weston, PC
Sponsors: Laurie Marshall and George Smrtka

Section 529 Plans - IRS Notice of Proposed Rulemaking Seeks to Curb Abuses

Madeline T. Janowski, CPA

College savings plans were first introduced in the late 1980's by a handful of states to encourage families and students to save for the ever increasing cost of higher education. The popularity of these programs mushroomed in 1996, when IRS Section 529 was enacted. More than $130 billion has been invested in the more than 10 million 529 plans opened since 1996.

Originally, Section 529 provided for tax deferred growth of amounts contributed, and taxation of the income portion of an account at the presumed lower beneficiary rates when amounts were distributed to fund qualified higher education expenses. The Economic Growth and Tax Recovery Act of 2001 made qualifying distributions exempt from federal income tax and this enhancement to the benefits of Section 529 plans was made permanent as part of the Pension Protection Act of 2006.

Section 529 plan rules also include unique estate and gift tax related benefits, and it is these rules that the IRS believes have led to abuse of the purpose for which Section 529 was created. Donors can establish a plan for a specified individual beneficiary and make a completed gift for gift tax purposes while retaining the right to reacquire the assets in the account for any reason, or to change the ultimate beneficiary of the account. How is this done? In a Section 529 plan arrangement, there are three potential parties to the transaction. The first party is the Account Owner. This individual possesses the right to direct distributions from the account either to or for the benefit of the Designated Beneficiary or for the Account Owner himself. The Account Owner also has the right to change the Designated Beneficiary for the account. When the Designated Beneficiary is changed by the Account Owner, a gift is deemed to occur from the former beneficiary to the new beneficiary, except where the new beneficiary is a member of the former beneficiary's family and is assigned to the same or higher generation as the former beneficiary. The second party to the arrangement is the Designated Beneficiary, the person for whose benefit the account is originally established. The third party is the Donor, the person making contributions to the account. This person is frequently, but not always, the same as the Account Owner.

Transfers into a Section 529 plan are treated as completed gifts for gift tax purposes and qualify for the annual exclusion. When a donor contributes an amount in excess of the annual exclusion, a special election is available to treat the current gift as having been made equally over a five year period beginning with the year of a gift. A donor, therefore, can prefund a Section 529 plan for the benefit of a single individual with up to five times the annual exclusion amount (currently $13,000), without incurring a taxable gift. Married couples, electing to split gifts can double the gift tax free transfer available. If a donor should fail to survive the five year period, a portion of the transfer would be included in the donor's estate. (For example, if death occurred in year four of the five year election period, 20% of the amount spread over the five year period would be includible in the donor's estate.)

How do the above rules lend themselves to abuse by taxpayers? The IRS has identified several such scenarios and the notice of proposed rulemaking issued in January of 2008 seeks to eliminate the opportunity to circumvent the estate and gift tax system through the use of Section 529 plans. A general anti-abuse rule would be established which would deny the benefit of the special transfer tax rules of Section 529 if contributions to the account were neither intended nor used for qualified higher education expenses of the original designated beneficiary. While most of the rules suggested under the notice will have prospective application, the anti-abuse rule may be applied on a retroactive basis.

Following are some of the identified potential abusive situations:

Situation 1 - Taxpayer contributes a large sum to a Section 529 plan naming himself as beneficiary. Since an individual cannot make a gift to himself, no gift tax occurs at this point. Subsequently, taxpayer changes the designated beneficiary to a family member in the same or higher generation. Under existing rules, technically no gift would occur.

Situation 2 – Donor contributes to multiple 529 plans for designated beneficiaries in the same family. The same individual is the account owner for each of the accounts. Subsequently, the account owner changes the designated beneficiaries to one individual. A taxable gift would be avoided through use of multiple annual exclusions on creation of the accounts and if the ultimate designated beneficiary is a family member in the same or higher generation as the original beneficiaries, no gift would occur on the change.

Situation 3 - Donor contributes to multiple 529 plans for different designated beneficiaries and establishes the same account owner for each account. Subsequent to the transaction, the account owner withdraws the funds from the various accounts for his own benefit. Under a technical reading of existing rules, the account owner would be subject to income tax and the 10% penalty tax for disqualified use of the distribution on only the amounts distributed in excess of the donor's contributions.

In each of the above situations, the general anti-abuse rule which will be part of the proposed rulemaking would negate the favorable tax treatment sought by taxpayers employing these strategies. By focusing on the source of contributions and the ultimate recipient of the funds, the IRS will employ the "step-transaction" or "sham transaction" theory to recast the outcome. In Situation 1, taxpayer would be deemed to have made a gift to the new designated beneficiary. In Situation 2, donor would be deemed to have made a single larger gift to the ultimate beneficiary, rather than multiple annual exclusion protected gifts. In Situation 3, donor would be deemed to have made a single large gift to the account owner, rather than multiple gifts to the various designated beneficiaries.

Other Proposed Changes

In addition to the general anti-abuse rule that is contemplated, specific rule changes are also proposed.

Change to Designated Beneficiary

Under the current rules which are contained in proposed regulations issued in 1998, if a gift occurs as a result of the change in designated beneficiary for a Section 529 account (because the new beneficiary is not a member of the family of the original designated beneficiary, or because the new designated beneficiary is not in the same or higher generation) the original designated beneficiary is treated as the new donor. The forthcoming notice of proposed rulemaking would charge the gift to the account owner, rather than the former designated beneficiary.

Distributions to Account Owner

Currently, distributions from a Section 529 account which are not used for the qualified higher education expenses of the designated beneficiary are subject to income tax and a 10% penalty on the income portion of the distributions. The portion of the distribution attributable to contributions that have been made to the account (regardless of the source) are not subject to tax. Under the proposed rulemaking, amounts distributed for the account owner's benefit would be subject to income tax and the 10% penalty tax except to the extent of the account owner's share of contributions to the account.

Matching of Qualified Higher Education Expenses (QHEE) with Section 529 withdrawals

Section 529 is silent regarding when distributions must be made from a plan to qualify as reimbursement for QHEE. The proposed rules would clarify that distributions from Section 529 plans will be qualified to offset QHEE incurred during the year of withdrawal or by March 31 of the subsequent year.

Estate Tax Changes

When the designated beneficiary of a Section 529 plan dies, present rules subject distributions on the account of a designated beneficiary to estate tax. The proposed rulemaking would change this treatment.

Amounts distributed to the estate of the deceased designated beneficiary within 6 months of death would be included in the designated beneficiary's estate. If a successor beneficiary is either named in the account or designated by the account owner and the new beneficiary is a family member of the designated beneficiary in the same or higher generation, no amount will be included in the designated beneficiary's estate. If the account owner either withdraws the funds or fails to name a new designated beneficiary by the due date of the designated beneficiary's estate tax return, the account owner will be liable for income tax on the distribution and no amount will be included in the designated beneficiary's estate.

The American College of Trust and Estate Counsel (ACTEC) has submitted comments as a result of the IRS notice of proposed rulemaking. ACTEC's comments are comprehensive and include a recommendation that the IRS not attempt to promulgate rules that would add unnecessary complexity in de minimis situations, or where the general anti-abuse rule is sufficient to combat abusive situations.

ACTEC recommends that the designated beneficiary continue to be considered the donor on taxable changes of beneficiary where the designated beneficiary consents to be so treated. Where the designated beneficiary does not consent to this treatment, ACTEC recommends that the Account Owner be treated as donor, but be treated as belonging to the same generation as the designated beneficiary.

ACTEC does not believe the provision that would tax account owners on distributions except to the extent that the account owner can substantiate contribution to the account is warranted as there are many non-abusive situations where this could occur. The general anti-abuse rule would be available for abusive situations and the income tax and 10% penalty tax on the income portion of the account is otherwise sufficient deterrent for misuse of Section 529 plans in this regard. ACTEC also notes that the consequence of the proposal could be avoided by judicious use of the ability to change the designated beneficiary.

Section 529 plans have significantly changed the way families save for college costs. Individuals and planners who have attempted to circumvent the gift tax system will find the new rules effectively block the use of Section 529 plans for this purpose. However, the changes that the IRS seeks to make will not have a significant impact on the use of Section 529 plans by most taxpayers. The segregation of savings for college into earmarked accounts and the income tax savings on the earnings that these plans offer, continue to make Section 529 plans the first choice for many families facing the high cost of college tuition.

Madeline T. Janowski is a CPA with Asher & Co., Ltd. in Philadelphia.

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FINANCIAL AND ESTATE PLANNING COUNCIL OF METROPOLITAN DETROIT

Presents

"Intergenerational (Discount) Split-Dollar"

Intergenerational Split-Dollar, sometimes referred to as "Discount", or "Three Generation Split-Dollar", is a form of private non-equity split-dollar where the premium payer is the parent or grandparent of the insured. The policy is typically owned by an irrevocable life insurance trust, and the parent/grandparent borrows the premiums from a third-party lender. The split-dollar contract subjects the premium payer's rights to severe restrictions intended to reduce the value of the premium payer's ownership interest for gift, estate and generation-skipping transfer tax purposes.

JULIUS H. GIARMARCO, ESQ.

Giarmarco, Mullins & Horton, P.C.

WEDNESDAY, SEPTEMBER 16, 2009

ORCHARD LAKE COUNTRY CLUB

5000 W. Shore Drive
Orchard Lake, MI 48324

Sponsored By

Julius H. Giarmarco, Esq. is a partner and heads up the firm's Trusts and Estates Practice Group. Julius received his law degree (J.D.) from Wayne State University, and his master of laws (LL.M.) from New York University. His primary practice areas include estate planning, business succession planning, wealth transfer planning, and life insurance applications. Julius is a former instructor in both the Chartered Life Underwriter (CLU) and Certified Financial Planner (CFP) programs. He also lectures frequently on a national basis, including speeches before the American Law Institute - American Bar Association (ALI-ABA), the International Forum, the Association for Advanced Life Underwriting (AALU), Million Dollar Round Table (MDRT), the Financial Planning Association, and numerous life insurance companies, brokerage firms and trade associations. Julius has published a number of articles on estate planning appearing in professional journals such as the Estates, Gifts and Trusts Journal (BNA), The Practical Tax Lawyer (ALI-ABA), the Journal of Practical Estate Planning (CCH), the Michigan Bar Journal, and Advisor Today magazine. Julius is also the author of the nationally acclaimed brochure, The Five Levels of Estate Planning, and is a featured columnist on estate planning topics for producersweb.com. He is the author of the chapters on succession planning in Advising Closely Held Businesses in Michigan and The Michigan Business Formbook published by the Institute of Continuing Legal Education (ICLE). Julius has also been selected by his peers as a Michigan "Super Lawyer" in estate planning.

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

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NEW FEATURE: Log onto our website by September 8 to make your reservation and pay with VISA or Master Card.
www.metrodetroitfepc.org

OR PLEASE MAIL YOUR RESERVATION AND CHECK BY SEPTEMBER 8 TO: **COST: $50.00 PER PERSON**

FEPCMD ● 30600 Northwestern Hwy-#208 ● Farmington Hills, MI 48334
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MEMBER NAME: ______________________ **GUEST NAME:** ______________________

TOTAL ENCLOSED: ______________________
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The NAEPC Foundation *and* National Association of Estate Planners & Councils

46th Annual Conference November 11 – 13, 2009

Amelia Island, Florida ~ Amelia Island Plantation

November 11, 2009
7:30 am – 7:00 pm

Council Leadership Day

This day of activities is designed as a leadership sharing session for volunteers at the affiliated local council level. The morning session contains the NAEPC's annual business meeting and committee updates and the afternoon sessions are devoted to private, volunteer-led discussion groups. Over 40% of NAEPC-affiliated local councils attend this event each year!
The day concludes with a welcome reception for all registered conference attendees and companions.

Companion Program

Tour of Kings Bay Naval Base

November 12, 2009
7:00 am – 8:30 pm

Technical Education

Jonathan G. Blattmachr, JD, AEP (Distinguished)
Where Estate Planning and Asset Protection Intersect

Robert S. Keebler, CPA, MST, AEP (Distinguished)
Current Developments Regarding Distributions from Tax Qualified Plans and IRAs

Michael J. Mullarney, CLU, ChFC, AEP
Life Insurance Premium Finance Sources and Exit Strategies

November 12, 2009, continued

Breakout session ~ John H. Brown, JD
Business Succession Planning and Exit Strategies

Breakout session ~ Constance J. Fontaine, JD, LL.M., CLU, ChFC, AEP (Distinguished)
Selection of a Trustee, Trust Advisor or Trust Protector

Breakout session ~ Richard M. Weber, MBA, CLU, AEP (Distinguished)
Life Insurance as a Stabilizing Asset in a Volatile Economy

Lawrence Brody, JD, LL.M., AEP (Distinguished) & Stephan R. Leimberg, JD, AEP (Distinguished)
Current Developments & Case Studies in Life Insurance, *Part 1*

Conference Social Event ~ beach party with food stations and outdoor games

Companion Program

Kayak Amelia Island with a Naturalist

November 13, 2009
7:00 am – 5:00 pm

Technical Education

Steve R. Akers, JD, AEP (Distinguished)
Hot Topics and Current Developments in Estate Planning

Richard A. Oshins, JD, LL.M, MBA, AEP (Distinguished)
The Beneficiary Defective Inheritor's Trust: Finessing the Pipe Dream

November 13, 2009, continued

Edward F. Koren, Jr., JD, AEP (Distinguished)
You Got Me Into This, Now How Do I Get Out? Exit Strategies from Leveraged Gifting Transactions (with Particular Emphasis on GRATs)

David E. Altig, PhD
An Economic Outlook

Breakout session ~ Richard A.Oshins, JD, LL.M, MBA, AEP (Distinguished)
Estate Planning with Disregarded Entities

Breakout session ~ Susan R. Schoenfeld, MBA, JD, LL.M. (taxation), CPA
Everything You *Never* Wanted to Learn About the Generation Skipping Transfer Tax – But Need to Know!

Breakout session ~ Dina Kapur Sanna, JD, LL.M. (taxation)
Basics of U.S. Tax Planning for Non-U.S. Persons

Sanford J. Schlesinger, JD, AEP (Distinguished)
Charitable Planning in an Unstable Economic Climate

Lawrence Brody, JD, LL.M., AEP (Distinguished) & Stephan R. Leimberg, JD, AEP (Distinguished)
Current Developments & Case Studies in Life Insurance, *Part 2*

Companion Program

Fernandina Beach Artists & Authors

November 14, 2009

Volunteer Experience

Continuing education credit will be available for all disciplines in all states to those that attend the Thursday & Friday technical education sessions (*pending approval by governing bodies*). Life insurance professionals must attend the entire conference to receive credit as partial credit is not available.

For more information, visit our website at www.MetroDetroitFEPC.org and click on documents.