



PROBATE & ESTATE PLANNING SECTION

**Supplemental Attachments for**

Friday, September 8, 2023

Meeting of the Council of the Probate and Estate Planning Section

at the University Club of Michigan State University  
3435 Forest Rd, Lansing, MI 48910

Or *via* Zoom

**Probate & Estate Planning Section of the  
State Bar of Michigan**

You are invited to the September meetings of the Committee on Special Projects (CSP),  
the Annual Meeting of the Members of the Section and  
the Council of the Probate & Estate Planning Section:

**Friday, September 8, beginning at 9 AM**  
at the University Club of Michigan State University  
3435 Forest Rd, Lansing, MI 48910

Remote participation by Zoom will be available. So, you are also invited . . .

*to a Zoom meeting.*

*When: Sep 8, 2023, 09:00 AM Eastern Time (US and Canada)*

*Register in advance for this meeting:*

<https://us02web.zoom.us/meeting/register/tZwvdOutpjsrHtVU3CQ2uVmw29Tkli4zthQh>

*After registering, you will receive a confirmation email containing information about joining the meeting.*

*If you are calling in by phone, email your name and phone number to Angela Hentkowski*

[ahentkowski@stewardsheridan.com](mailto:ahentkowski@stewardsheridan.com), *we will put your name in a zoom user list that*

*will identify you by name when you call in.*

**Please note that the Zoom feature of these meetings entails that they will be recorded.**

This will be a regular in person and remote meetings of the Council of the Probate & Estate Planning Section. The Council meeting will be preceded by a meeting of the Council's Committee on Special Projects (CSP), which will begin at 9:00 AM. The CSP meeting will end at about 10:15 AM, and the Council meeting will begin shortly thereafter. The agenda and meeting materials will be posted on the Probate & Estate Planning Section page of the SBM website. Once those things are posted, you should be able to download them from: <http://connect.michbar.org/probate/events/schedule>.

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Section Secretary

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## Tax Nugget

To: Probate and Estate Planning Council

From: J.V. Anderton on behalf of the Tax Committee

RE: September 2023 Tax Nugget

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This month's Tax Nugget is a brief summary of a Tax Court case from this Spring that I found interesting: *Estate of MacElhenny v Comm'r* (T.C. Memo 2023-33). Bernard MacElhenny (the decedent) was in the real estate business during his life. Unfortunately, as his health deteriorated, debt owed to Union Bank and Westamerica Bank from various developments he was involved with went into default. In both instances, an agreed judgment was entered which required payments over time, and in both cases the decedent was unable to make the required payments.

While the decedent was alive but in failing health, his son and daughter proceeded to work out arrangements with both Union Bank and Westamerica Bank where they purchased the bank's position, at a discount from the full-face value, but left the judgments outstanding. Upon the subsequent death of the decedent, the estate took the position on the 706 that the amounts due under the Union Bank and Westamerica Bank judgments (held by decedent's children as of his date of death) were deductible to the estate under IRC 2053.

The Court first stated that because the children acquired the bank's position in each instance prior to the decedent's death, the debt was not owed to a bona fide third party but to a family member. And debts owed to family members are highly scrutinized because of their potential for abuse. Treas. Reg. 20-2053-1(b)(2)(ii) calls out factors indicative of bona fide intrafamily claims:

- (A) The transaction underlying the claim or expense occurs in the ordinary course of business, is negotiated at arm's length, and is free from donative intent.
- (B) The nature of the claim or expense is not related to an expectation or claim of inheritance.
- (C) The claim or expense originates pursuant to an agreement between the decedent and the family member, related [entity](#), or beneficiary, and the agreement is substantiated with contemporaneous evidence.
- (D) Performance by the claimant is pursuant to the terms of an agreement between the decedent and the family member, related [entity](#), or beneficiary and the performance and the agreement can be substantiated.
- (E) All amounts paid in satisfaction or settlement of a claim or expense are reported by each party for Federal income and employment tax purposes, to the extent appropriate, in a manner that is consistent with the reported nature of the claim or expense.

The Court found that as the children had not taken any steps to enforce the judgments, and that the children were acting under the decedent's power of attorney when negotiating the purchase of the judgments from the banks, the judgments did not constitute valid claims against the estate for purposes of IRC 2053.