Council Materials
I. Call to Order

II. Introduction of Guests

III. Excused Absences

IV. Lobbyist Report—Public Affairs Associates

V. Monthly Reports:
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   B. Treasurer’s Report (James Spica)—Attachment 2
   C. Chair’s Report
   D. Committee on Special Projects (Katie Lynwood)
   E. Legislative Analysis & Monitoring Committee (Dan Hilker)
   F. Legislative Development and Drafting Committee (Nathan Piwowarski)—Attachment 3

VI. Other Committees Presenting Oral Reports
   A. Nominating Committee (Marlaine Teahan)

VII. Other Committees Presenting Written Reports Only
   A. Tax Nugget (Richard Mills)—Attachment 4
   B. Approval for Section Zoom Account Costs (Michael Lichterman)—Attachment 5

VIII. Other Business

IX. Adjournment

Note: there are no meetings in July or August

Next Probate Council Meeting: Friday, September 11, 2020 (membership meeting at 9:00 am followed by council meeting)
Meeting of the Council of the Probate and Estate Planning Section of the State Bar of Michigan

Friday, April 17, 2020 @ 9:00 a.m.
REMOTE MEETING ONLY

Minutes

I. Call to Order

The Chair of the Council, Christopher A. Ballard, called the meeting to order at 9 a.m.

II. Introduction of Guests

A. Meeting attendees introduced themselves.

B. The following officers and members of the Council were present via remote attendance:

Christopher A. Ballard, Chair
David P. Lucas, Chairperson Elect
David L.J.M. Skidmore, Vice Chairperson
Mark E. Kellogg, Secretary
James P. Spica, Treasurer
James F. Anderton
Michael G. Lichterman
Raj A. Malviya
Kurt A. Olson
Christine M. Savage
Christopher J. Caldwell
Kathleen M. Goetsch
Angela M. Hentkowski
Hon. Michael Jaconette
Katie Lynwood
Melisa M.W. Mysliewiec
Neal Nusholtz
Robert C. Labe
Andrew W. Mayoras
Nathan R. Piwowarski
Ken Silver
Nazneen Hasan

C. The Chair noted that a quorum was present, via remote attendance.

D. The following liaisons to the Council were present: Neal Nusholtz (Tax Section).

E. Others present via remote attendance:
Katharyn Barron
Robert Brower
Susan Chalgian
Howard Collens
Kevin Cummings
Georgette David
Trish Davis
Randall Denha
Steve Dunn
Steve Elkins
Deborah Fordee
Sandra Glazier
Kristen Gross
Jim Henke
Daniel S. Hilker
William Hougaboom
Diane Huff
Tyler Knurek
Warren Krueger
Buzz Leach
John Mabley
Debbie Mitin
Phillip Moilanen
Jeanne Murphy (ICLE)
Gwendolyn Powell
Theresa Rich
Charlotte Shoup
Laura Skriba
David Sprague
James Steward
Marlaine Teahan
Nancy Welber
Michael Witzke

III. Excused Absences

The following officers and members of the Council were absent with excuse: Richard Mills

IV. Lobbyist Report—Public Affairs Associates

No representative from Public Affairs Associates attended the meeting.

V. Monthly Reports:

A. Minutes of Prior Council Meeting (Mark Kellogg)
Minutes of Prior Council Meeting (submitted by Mark E. Kellogg): it was moved and seconded to approve the Minutes of the March 13, 2020, meeting of the Council, as included in the meeting agenda materials and presented at the meeting.

The minutes were approved by a vote of the Council.

B. Treasurer’s Report (James Spica)

There was no written report available.

C. Chair’s Report (Christopher Ballard)

1. Chris thanked Nathan Piwowarski for his extraordinary effort on Executive Order 2020-41; which permits remote notarizations and witnesses.
2. Chris discussed that legislation is being prepared which clarifies and simplifies remote notarization and witnessing.
3. The State Bar of Michigan has been aggressive in wanting to do something in the current COVID-19 environment. Most of the initiatives are seemingly focused on giving away work product. Dan Hilker and Chris Ballard have been assisting the State Bar with regard to the various proposed initiatives.
4. Chris thanked Jeanne Murphy and ICLE for creating and sharing training material and templates in response to Executive Order 2020-41.

D. Committee on Special Projects (Katie Lynwood)

1. Kurt Olson discussed the issue of Electronic Wills and the work of the Electronic Wills Committee. It was determined that the Electronic Wills Committee will maintain a holding pattern with Electronic Wills legislation but will currently address the dispensing power issue.
2. The Legislative Development and Drafting Committee were charged with working on legislation regarding distant ink notarization and remote witnessing and notarization. It was discussed that the legislation should also include ratification of any documents executed under the authority of Executive Order 2020-41.
3. It was determined that an ad-hoc committee was going to be formed to discuss the issue of undue influence related to electronic signatures and remote witnessing and notarizations. Ken Silver volunteered to be the Chair of this ad-hoc committee.

E. Legislative Analysis & Monitoring Committee (Dan Hilker)

1. Dan thanked Christopher Ballard for his efforts during the COVID-19 environment.
2. Dan also discussed the State Bar of Michigan “Rapid Response” Hotline. Dan discussed that this is not a fixed fee program.
F. Legislative Development and Drafting Committee (Nathan Piwowarski)

   1. See attached written report of the Committee.

VI. Other Committees Presenting Oral Reports

   A. Tax Committee (Raj Malviya)

      1. Also see attached written report regarding tax provisions of the CARES Act.

   B. Tax Liaison Report (Neal Nusholtz)

VII. Other Committees Presenting Written Reports Only

VIII. Other Business

No other business came before the Council.

IX. Adjournment

Seeing no other matters or business to be brought before the meeting of the Council, the Chair declared the meeting adjourned at 11:15 a.m.

Respectfully submitted,

Mark E. Kellogg, Secretary

Next Probate Council Meeting: Friday, June 5, 2020, at 9 a.m.
To: Probate and Estate Planning Council

From: Legislation Development and Drafting Committee

Re: April 2020 Committee Report

Committee members offered valuable advice related to the Section’s request for an emergency executive order. The following are included for your reference:

• The final executive order loosening electronic signature, remote witnessing, remote notarization, and in-person visitation requirements.

• The Section’s public policy position.

• An example How-To for certifying document witnessing and notarization under the EO.

• Form witness and notary certifications to comply with the EO.

Beyond that, our committee’s work was greatly slowed by the pandemic. Our status report is as follows:

• Omnibus. Waiting for new draft blueback.

• TODs for vehicles. The Department of State offered helpful feedback, which will prompt us to broaden the proposal for vehicles that have only vehicle registrations.

• Delaware Tax Trap/MCL 554.92-.93. We are coordinating with Sen. Lucido’s office in coordinating a substitute to SB 721.

• Entireties trusts. Discussions with the MBA have largely been on hold.

• Uniform Power of Attorney Act. On hold.

• Qualified Dispositions in Trust/Voidable Transfers technical fix. We have not seen a blueback, yet.

• Conservators as PRs/MCL 700.5426 and 700.3203. On hold.
Probate and Estate Planning Section
Tax Committee: Tax Nugget
Friday, April 17, 2020

By: Raj A. Malviya

Coronavirus Aid, Relief, and Economic Security Act (CARES Act\(^1\), H.R. 748)


And

Tax Filing and Payment Summary Chart

CARES Act Is Now Law

- Introduced in House. Unanimous passage
- Unanimous passage in Senate
- Signed into law by President March 27, 2020

Big Picture

- Right now, economy is in unprecedented state. It has essentially stopped, for the most part, in light of government authority and social distancing to help mitigate spread of the COVID-19 pandemic
- \$ 2 Trillion Dollar Stimulus bill (CARES Act) addresses this economic by providing economic relief to individuals, small business, health care, and education

Relief in CARES Act\(^2\)

- One-time stimulus checks for adults and children, up to certain income limits, to be distributed as soon as possible.
- Estimated \$560 billion on individuals
- Estimated \$500 billion on corporations,
- Estimated \$340 billion on state and local governments
- Estimated \$377 billion in small business relief, largely in the form of “forgivable loans”
- Estimated \$154 billion on public health
- Estimated \$44 billion on education
- Estimated \$26 billion safety net funds

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\(^1\) All statutory references to the CARE Act in this outline shall refer to the “Act”. All references to the Internal Revenue Code shall refer to “Code Sec.”

Scope of Tax Nugget

- Does Not Cover PPP or SBA Loans

1. Retirement Funds – Distribution and Penalty Rules Relief

a. RMD Waiver for 2020

i. Background

1. In general, Code Sec. 401(a)(9) requires a retirement plan or IRA owner to take required minimum distributions (RMDs) annually once the owner reaches age 72.

ii. New law

1. RMD requirements do not apply for calendar year 2020 to defined contributions plans (e.g. 401k or 403b) or IRAs:

2. The RMD requirements also do not apply to any distribution which is required to be made in calendar year 2020 by reason of a required beginning date commencing in 2020

3. Effective date is for calendar years beginning after December 31, 2019.

4. Some nuanced rules apply regarding RMDs, eligible rollover distributions, and effective date rules that apply to amendments of a pension plan or contract plan that are beyond scope of this webinar.

iii. Key Takeaways

1. This is good news for individuals who do not rely on their required minimum distributions for daily living expenses and who otherwise may be required to liquidate retirement account assets in a down market to fund required minimum distributions.

2. Funds will remain in the retirement account for an additional year earning income and potentially growing/recovering tax-free.

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5 (I) a defined contribution plan described in Code Sec. 403(a) or Code Sec. 403(b); (II) a defined contribution plan which is an eligible deferred compensation plan described in Code Sec. 457(b) but only if such plan is maintained by an employer described in Code Sec. 457(e)(1)(A); or (III) an individual retirement plan. (Code Sec. 401(a)(9)(I)(i), as amended by Act Sec. 2203(a)).

6 (I) a required beginning date occurring in calendar year 2020, and (II) such distribution not having been made before January 1, 2020. (Code Sec. 401(a)(9)(I)(i)), as amended by Act Sec. 2203(a)).

7 The amendments made by Act Sec. 2203 apply for calendar years beginning after December 31, 2019. (Act Sec. 2203(c)(1)).
b. Penalty Relief for Early Retirement Account Withdrawals

i. Background

1. A distribution from a qualified retirement plan is subject to a 10% additional tax unless the distribution meets a laundry list of exceptions.  

ii. New law

1. No 10% additional tax for coronavirus-related retirement plan distributions, up to $100,000.  

2. What is a "coronavirus-related distribution"? It's any distribution, made on or after January 1, 2020, and before December 31, 2020, from an eligible retirement plan made to a qualified individual. 

a. Qualified individual is an individual:

i. who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC);  

ii. whose spouse or dependent (as defined in Code Sec. 152) is diagnosed with such virus or disease by such a test, or;  

iii. who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury.  

iii. Key Takeaways

1. The qualified individual definitions are broad. Also, potential for abuse. A certification to the retirement plan administrator is required.
2. The administrator of an eligible retirement plan may rely on an employee's certification that the employee satisfies the conditions above in determining whether any distribution is a coronavirus-related distribution.\textsuperscript{11}

3. There is a limit on the distribution. The aggregate amount of distributions received by an individual which may be treated as coronavirus-related distributions for any tax year cannot not exceed $100,000.\textsuperscript{12}

4. Generally, a qualifying distribution, while not subject to an early withdrawal penalty, will be included in gross income. Can be included ratably in income over a period of 3 years (unclear whether this is default or voluntary).\textsuperscript{13}

5. Nuanced rules for plan administrators in carrying out these provisions to qualify them and not violating plan eligibility rules. Also, complex rules that apply to plans maintained by employers in controlled groups.\textsuperscript{14}

6. Instead of early distribution, there are also loan options from qualified plans. The CARES Act provides flexibility for loans from certain retirement plans for coronavirus-related relief and has increased the permitted loan amount from $50,000 to $100,000 and added additional time (one-year delay) to repay loans due before the end of 2020.\textsuperscript{15}

7. Effective date. Act Sec. 2202 applies to distributions made on or after January 1, 2020, and before December 31, 2020.\textsuperscript{16}

8. This is helpful to provide cash when needed, but consider other resources first. This is because every dollar withdrawn will lose the benefit of tax-free income and growth, which will reduce the funds available for retirement when the time comes.

9. Exercise caution in making early withdrawals and consider what other sources of funds are available before making a decision.

\textsuperscript{11} See Act Sec. 2202(a)(4)(B)).
\textsuperscript{12} See Act Sec. 2202(a)(2)(A)).
\textsuperscript{13} See Act Sec. 2202(a)(5)(A)). For this purpose, rules similar to the rules of Code Sec. 408A(d)(3)(E) apply. (Act Sec. 2202(a)(5)(B)).
\textsuperscript{14} See Act Sec. 2202(a)(2) (A – C).
\textsuperscript{15} See Act Sec. 2202(h)).
\textsuperscript{16} See Act Sec. 2202(a)(4)(A)).
2. **Exclusion for Certain Employer Payments of Student Loans**

   a. Background
   
   i. Generally, an employee's gross income **doesn't include** up to $5,250 per year of employer payments, in cash or in kind, made under an educational assistance program for the employee's education.
   
   ii. But the exclusion doesn't include payments made for education of spouses or dependents.  

   b. New law
   
   i. CURES Act adds eligible student loan repayments to the types of educational payments that are excluded from employee gross income. The payments must be made before January 1, 2021.
   
   ii. The payments are subject to the overall $5,250 per employee limit for all educational payments.

   c. Key Takeaways
   
   i. This provides relief to employees who have outstanding student loans.
   
   ii. Eligible student loan repayments are payments by the employer, whether paid to the employee or a lender, of principle or interest on any qualified higher education loan.
   
   iii. To prevent a double benefit, student loan repayments for which the exclusion is allowable can't be deducted by the individual taxpayer under the rules allowing deductions of student loan interest.
   
   iv. There is a limited time to take advantage of this relief. The effective date applies to student loan repayments made after the effective date of the CURES Act.

3. **Charitable Contribution Limits Lifted**

   a. **Above the Line Charitable Contribution Deduction**
   
   i. Background

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17 Code Sec. 127.
18 As defined in Code Sec 221(d)(1) for the education of the employee (but not of a spouse or dependent). (Code Sec 127(c)(1)(B), as amended by Act Sec. 2206(a)).
19 See Code Sec 221 (which allows the deduction of student loan interest subject to a dollar limit and a phase-out above specified taxpayer income levels.) (Code Sec. 221(g)(1), as amended by Act Sec. 2206(b)).
20 The amendments made by Act Sec. 2206 apply to payments made after the date of enactment of the Act. (Act Sec. 2206(c))
1. Generally, adjusted gross income (AGI) is gross income, less certain deductions (above the line deductions). 21

2. Charitable deductions are itemized deductions that further reduce AGI. They are known as below the line deductions.

3. Under TCJA, many itemized deductions have been suspended. Additionally, under TCJA, all miscellaneous itemized deductions have been suspended. 22

ii. New law

1. The CARES Act adds a new deduction to the calculation of gross income (e.g. an above the line deduction), in the case of tax years beginning in 2020.

2. Deduction is for eligible individuals, who are those who do not itemize deductions.

3. The limitation on the deduction is an amount not to exceed $300. It is unclear whether this amount is doubled for married filing jointly.

iii. Key Takeaways

1. The changes under TCJA and increasing standard deduction have resulted in dips in charitable giving. This is welcome provision for charitable organizations that depend on modest gifts from a large number of donors by attracting a broader scope of taxpayers. This is because the deduction may be used even by taxpayers who do not elect to itemize their deductions.

2. The amounts must be “qualified charitable contributions” 23 made by an “eligible individual” 24 during the tax year. 25

3. There will be limitations and not all charitable organizations will qualify. For example, the interpretation of the new law is that donor advised funds and non-operating private foundations do not qualify whereas they typically would be included for purposes of itemized deductions.

21 Code Sec. 62(a).
22 Code Sec. 67(g).
23 The term “qualified charitable contribution” means a charitable contribution (as defined in Code Sec. 170(c)): (A) which is made in cash; (B) for which a deduction is allowable under Code Sec. 170 (determined without regard to Code Sec. 170(b)); (C) which is made to an organization described in Code Sec. 170(b)(1)(A), and not to an organization described in Code Sec. 170(b)(1)(B); and (D) which is not for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in Code Sec. 4966(d)(2)). In addition, a qualified charitable contribution does not include any amount which is treated as a charitable contribution made in such tax year by reason of Code Sec 170(b)(1)(G)(ii) or Code Sec. 170(d)(1) (Code Sec. 62(f)(2), as amended by Act Sec. 2204(b)).
24 Code Sec. 62(f)(1), as amended by Act Sec. 2204(b).
25 Code Sec. 62(a)(22), as amended by Act Sec. 2204(a).
4. This new provision is for tax years beginning in 2020 and is not scheduled to sunset.  

b. Modifications on Limits for Charitable Cash Contributions

i. Background

1. Generally, individuals are allowed a deduction for cash contributions to certain charitable organizations (such as churches, educational organizations, hospitals, and medical research organizations).

2. This limitation used to be up to 50% of AGI, but it was increased under the TCJA to up to 60% of their contribution base (generally, adjusted gross income (AGI)). Any excess is carried forward for five years.

ii. New law

1. Importantly, for 2020 only, the CARES Act provides that “qualified contributions” are disregarded in applying the 60% AGI limitation on cash contributions to qualifying charitable organizations.

2. As with the additional $300 above the line charitable deduction, there are limitations on what types of charitable contributions will qualify for the removed cap and threshold limitations on deductibility based on the individual donor's contribution base.

iii. Key Takeaways

1. While charitable income tax deductions for individuals are subject to a host of limitations, for 2020 only, cash contributions to qualified charities will generally not have a ceiling for purposes of the AGI limitation (normally 60% of AGI).

2. The goal behind removing the AGI limitation is to incentive taxpayers to donate to qualifying charitable organizations. But not all charitable organizations are included as eligible recipients for purposes of the deduction. For example, the interpretation of the

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26 Act Sec. 2204(c)).
27 Code Sec. 170(b)(1)(G)(i)).
28 Code Sec. 170(b)(1)(G)(i)).
29 Qualified contributions are charitable contributions if: (i) They are paid in cash during calendar year 2020 to an organization described in Code Sec. 170(b)(1)(A) (i.e., 501(c)(3) and certain other charitable organizations); and (ii) The taxpayer has elected to apply this provision with respect to the contribution. (Act Sec. 2205(a)(3)(A)).
30 Qualified contributions are allowed as a deduction only to the extent that the aggregate of those contributions does not exceed the excess of the individual's contribution base over the amount of all other charitable contributions allowed as deductions for the contribution year. (Act Sec. 2205(a)(2)(A)(i)).
new law says that donor advised fund and non-operating private foundations do not qualify for this special treatment.\footnote{However, contributions to a Code Sec. 509(a)(3) supporting organization or a donor advised fund are not qualified contributions. (Act Sec. 2205(a)(3)(B)).}

3. This AGI limitation relief also applies to corporations. For corporations, the 10% limitation is increased to 25%.

4. \textbf{New 2020 Individual Recovery Rebate and Credit}

a. New law:

i. An eligible individual is allowed an income tax credit for 2020 equal to the sum of: (1) $1,200 ($2,400 for eligible individuals filing a joint return) plus (2) $500 for each qualifying child of the taxpayer\footnote{As defined under Code Sec. 24(c).} for purposes of the child tax credit.\footnote{Code Sec. \S 6428(a), as added by Act Sec. 2201(a).}

ii. The credit is refundable.\footnote{Code Sec. \S 6428(d), as added by Act Sec. 2201(a).}

b. Key Takeaways on Income Tax Credit:

i. For purposes of the child tax credit, the term "qualifying child" means a qualifying child of the taxpayer\footnote{As defined for purposes of the dependency exemption by Code Sec. 152(c).}, who hasn't attained age 17.

ii. Individuals who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs such as SSI benefits, are eligible for the credit and the advance rebate.\footnote{CARES Section-by-Section Summary, p. 10.}

iii. For purposes of the credit, an "eligible individual" is any individual \textbf{other than} a nonresident alien or an individual for whom a Code Sec. 151 dependency deduction is allowable to another taxpayer for the tax year. Estates and trusts aren't eligible for the credit.\footnote{As defined under Code Sec. 24(c).} Thus, children who are (or can be) claimed as dependents by their parents \textbf{are not} eligible individuals, even if they have enough income to have to file a return. It makes no difference if the parent chooses not to claim the child as a dependent, because the dependency deduction is still "allowable" to the parent.

iv. An individual who wasn't an eligible individual for 2019 may become one for 2020, e.g., where the individual was a dependent for 2019 but not for 2020. The IRS won't send an advance rebate to such an individual, because advance rebates are generally based on information on the 2019 return. However, the individual will be able to claim the credit when filing the 2020 return.
v. There is a phase-out of the credit. The amount of the credit is reduced (but not below zero) by 5% of the taxpayer's adjusted gross income (AGI) in excess of: (1) $150,000 for a joint return, (2) $112,500 for a head of household, and (3) $75,000 for all other taxpayers. (Code Sec. 6428(c), as added by Act Sec. 2201(a)). The credit is completely phased-out for a single filer with AGI exceeding $99,000 and for joint filers with no children with AGI exceeding $198,000.

vi. For a head of household with one child, the credit is completely phased out when AGI exceeds $146,500.

c. Key Takeaways on Rebate of Credit

i. The advance rebate of the credit during 2020 may often be a missed benefit, as it has some nuanced rules on eligibility and processing. The law looks to the status of an eligible individual for 2019 and essentially treats the 2020 credit as an overpayment for 2020 that the IRS will rebate.

ii. Each individual who was an eligible individual for 2019 is treated as having made an income tax payment for 2019 equal to the advance refund amount for 2019. The "advance refund amount" is the amount that would have been allowed as a credit for 2019 had the credit provision been in effect for 2019.

iii. The IRS will refund or credit any resulting overpayment. But no interest will be paid on the overpayment.

iv. If an individual hasn't yet filed a 2019 income tax return, IRS will determine the amount of the rebate using information from the taxpayer's 2018 return. If no 2018 return has been filed, IRS will use information from the individual's 2019 Social Security benefit statements.

v. There is limited time to act under the new law. No advance rebate will be made or allowed after Dec. 31, 2020.

vi. There is an offset on the 2020 credits based on advance rebates. This is because the advance rebate reduces credit allowed for 2020. The amount of credit that is allowable for 2020 must be reduced (but not below zero) by the aggregate advance rebates made or allowed to the taxpayer during 2020. The IRS will be monitoring this procedure to prevent taxpayers from receiving multiple or "double" benefits.

5. Tax filing date and payment extensions (Not a part of CARES ACT)
<table>
<thead>
<tr>
<th>Notice or Executive Order</th>
<th>Type of Tax</th>
<th>Relief Provided</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michigan Executive Order 2020-04</td>
<td>Michigan Sales and Use Tax Returns</td>
<td>Waived penalties and interest through April 20, 2020 for late sales and use tax payments due on March 20, 2020</td>
<td>Immediately</td>
</tr>
<tr>
<td>IRS Notice 2020-18</td>
<td>Federal Income Tax</td>
<td>Tax Payment Deadline Extended to July 15, 2020 for all taxpayers with April 15, 2020 income tax return deadline (Q1)³²</td>
<td>Immediately</td>
</tr>
<tr>
<td>IRS Notice 2020-18</td>
<td>Federal Income Tax</td>
<td>Tax Filing Deadline Extended to July 15, 2020 for all taxpayers with April 15, 2020 income tax return deadline</td>
<td>Immediately</td>
</tr>
<tr>
<td>IRS Notice 2020-18</td>
<td>Federal Estimated Income Tax</td>
<td>Tax filing and payment date extended to July 15, 2020 for all taxpayers with April 15, 2020 income tax return deadline</td>
<td>Immediately</td>
</tr>
<tr>
<td>IRS Notice 2020-20</td>
<td>Gift and GST Tax</td>
<td>Tax filing Extended from April 15, 2020 to July 15, 2020</td>
<td>Immediately</td>
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<tr>
<td>IRS Notice 2020-21</td>
<td>Payroll Tax</td>
<td>Defines to which wages the FFCRA payroll tax credits apply</td>
<td>April 1, 2020 through December 31, 2020</td>
</tr>
<tr>
<td>Michigan Executive Order 2020-26</td>
<td>State Income Taxes</td>
<td>Following Federal filing extensions, Michigan state income tax returns and payments normally due on April 15, now due July 15; returns normally due on April 30, now due on July 30</td>
<td>Immediately</td>
</tr>
<tr>
<td>Michigan Treasury FAQs in response to Executive Order 2020-26</td>
<td>State Income Taxes</td>
<td>Addresses common questions dealing with relief provided under Executive Order 2020-26</td>
<td>Immediately</td>
</tr>
<tr>
<td>IRS Notice 2020-23</td>
<td>Federal Estimated Income Tax</td>
<td>Tax filing and payment date extended to July 15, 2020 for all taxpayers with June 15, 2020 deadline (Q2)³⁴</td>
<td>Immediately</td>
</tr>
<tr>
<td>IRS Notice 2020-23</td>
<td>Federal Income Tax (individual, corporate,)</td>
<td>Tax filing and payment date extended to July 15, 2020</td>
<td>Immediately</td>
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<tr>
<td>IRS Notice 2020-23</td>
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<tr>
<td>partnership, estate and trust)</td>
<td>Gift, GST, and Estate Tax</td>
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<tr>
<td>Estate Tax payments of principal and interest under a 6166 payment</td>
<td>Tax filing and payment date extended from April 15, 2020 to July 15, 2020. For returns not due on April 15, 2020, but before July 15, 2020, tax filing and payment date is extended to July 15, 2020.</td>
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<tr>
<td>Informational Reporting (no tax liability) for basis reporting on property acquired from decedent</td>
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<tr>
<td>Informational Reporting for US beneficiaries of foreign estates and trusts</td>
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<tr>
<td>Select Informational reporting for US owners of foreign entities</td>
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<tr>
<td>Select Exempt Organization Business Income Tax and Excise Tax</td>
<td>Immediately</td>
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</tbody>
</table>

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42 This notice applies to all tax returns for individuals, corporations, partnerships, associations, trusts, and estates.
43 This notice expands upon the relief provided under Notice 2020-18 and Notice 2020-20.
## Carry-Over Fund Balance from 2018-2019

<table>
<thead>
<tr>
<th>Fund Bal-Probate/Estate Plan</th>
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<table>
<thead>
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<td>1-7-99-775-1470 Publishing Agreement Account</td>
<td>-</td>
<td>-</td>
<td>$200.00</td>
</tr>
<tr>
<td>1-7-99-775-1755 Pamphlet Sales Revenue</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1-7-99-775-1935 Miscellaneous Revenue</td>
<td>-</td>
<td>-</td>
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<tr>
<td><strong>Total Revenue</strong></td>
<td><strong>$210.00</strong></td>
<td><strong>$112,035.00</strong></td>
<td><strong>$111,000.00</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses</th>
<th>March 2020</th>
<th>Cumulative Expenses</th>
<th>Budget (2019-2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-9-99-775-1127 Multi-Section Lobbying Group</td>
<td>$2,500.00</td>
<td>$15,000.00</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>1-9-99-775-1145 ListServ</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>1-9-99-775-1276 Meetings</td>
<td>-</td>
<td>$10,949.20</td>
<td>$18,000.00</td>
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<tr>
<td>1-9-99-775-1283 Seminars</td>
<td>-</td>
<td>-</td>
<td>$20,000.00</td>
</tr>
<tr>
<td>1-9-99-775-1297 Annual Meeting Expenses</td>
<td>-</td>
<td>-</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>1-9-99-775-1493 Travel</td>
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<td>$12,000.00</td>
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<td>1-9-99-775-1528 Telephone</td>
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<td>1-9-99-775-1549 Books &amp; Subscriptions</td>
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<td>1-9-99-775-1822 Litigation Amicus Curiae Brief</td>
<td>$163.35</td>
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<td>1-9-99-775-1833 Newsletter</td>
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<td>$4,200.00</td>
<td>$12,300.00</td>
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<td>1-9-99-775-1861 Printing</td>
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<tr>
<td>1-9-99-775-1868 Postage</td>
<td>-</td>
<td>$1.00</td>
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<tr>
<td>1-9-99-775-1987 Miscellaneous</td>
<td>$1,350.30</td>
<td>$1,350.30</td>
<td>$2,500.00</td>
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<tr>
<td>1-9-99-775-XXXX Clerical Expenses</td>
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<td>$10,000.00</td>
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<tr>
<td><strong>Total Expenses</strong></td>
<td><strong>$8,283.45</strong></td>
<td><strong>$64,997.15</strong></td>
<td><strong>$126,650.00</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Net Income</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$8,073.45</td>
<td>$47,037.85</td>
<td>($15,650.00)</td>
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<table>
<thead>
<tr>
<th>General Fund plus Net Income (Running Total)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>$256,736.32</td>
<td>$231,908.16</td>
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</tbody>
</table>

### Hearts and Flowers Fund

<table>
<thead>
<tr>
<th>Fund</th>
<th>March 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beginning Deposit Fund Balance</strong></td>
<td><strong>$772.81</strong></td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Withdrawals</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total Fund</strong></td>
<td><strong>$772.81</strong></td>
</tr>
</tbody>
</table>

### Amicus Reserve

<table>
<thead>
<tr>
<th>Fund</th>
<th>March 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beginning Fund Balance</strong></td>
<td><strong>$19,167.25</strong></td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Withdrawals</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Ending Fund Balance</strong></td>
<td><strong>$19,167.25</strong></td>
</tr>
</tbody>
</table>
### Carry-Over Fund Balance from 2018-2019

<table>
<thead>
<tr>
<th>Fund Bal-Probate/Estate Plan</th>
<th>1-5-00-775-0001</th>
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</thead>
</table>

### Revenue

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1-7-99-775-1050 Probate/Estate Planning Dues</td>
<td>$105.00</td>
<td>$111,475.00</td>
<td>$110,000.00</td>
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<tr>
<td>1-7-99-775-1055 Probate/Estate Stud/Affil Dues</td>
<td>$35.00</td>
<td>$700.00</td>
<td>$800.00</td>
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<tr>
<td>1-7-99-775-1330 Subscription to newsletter</td>
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<td>-</td>
</tr>
<tr>
<td>1-7-99-775-1470 Publishing Agreement Account</td>
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<td>-</td>
</tr>
<tr>
<td>1-7-99-775-1755 Pamphlet Sales Revenue</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td>1-7-99-775-1935 Miscellaneous Revenue</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td><strong>$140.00</strong></td>
<td><strong>$112,175.00</strong></td>
<td><strong>$111,000.00</strong></td>
</tr>
</tbody>
</table>

### Expenses

<table>
<thead>
<tr>
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<th>April 2020</th>
<th>Cumulative Expenses</th>
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<td>1-9-99-775-XXXX Clerical Expenses</td>
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<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td><strong>$2,600.00</strong></td>
<td><strong>$67,597.15</strong></td>
<td><strong>$126,650.00</strong></td>
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</tbody>
</table>

### Net Income

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Running Total</th>
<th>Budget (2019-2020)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net Income</strong></td>
<td>$(2,460.00)</td>
<td>$(44,577.85)</td>
<td>$(5,650.00)</td>
</tr>
<tr>
<td><strong>General Fund plus Net Income</strong></td>
<td>$262,349.77</td>
<td>$229,448.16</td>
<td>$169,220.31</td>
</tr>
</tbody>
</table>

### Hearts and Flowers Fund

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<td><strong>Total Fund</strong></td>
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### Amicus Reserve

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<tr>
<td><strong>Ending Fund Balance</strong></td>
<td>$19,167.25</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
To: Probate and Estate Planning Council

From: Legislation Development and Drafting Committee

Re: June 2020 Committee Report

The Committee has exclusively focused on the remote notarization and witnessing legislation that has been shared with the Committee on Special Projects this month.

In keeping with this project’s urgency, our committee meetings have been increased to two hours length.

Beyond that, Howard Collens, Marlaine Teahan, Christine Savage, Kurt Olson, and Nathan Piwowarski have volunteered many additional hours as members of the joint ELDRS-PEPS workgroup.

Beyond that, there is little to report:

- **Omnibus.** Still waiting for new draft blueback.
- **TODs for vehicles.** No additional work completed to date.
- **Delaware Tax Trap/MCL 554.92-.93.** We have not heard back from Sen. Lucido’s office regarding the necessary substitute to SB 721.
- **Entireties trusts.** Discussions with the MBA are on hold.
- **Uniform Power of Attorney Act.** On hold.
- **Qualified Dispositions in Trust/VOIDable Transfers technical fix.** We have not seen a blueback, yet.
- **Conservators as PRs/MCL 700.5426 and 700.3203.** On hold.
MEMORANDUM

TO: Probate and Estate Planning Council, State Bar of Michigan
FROM: Richard C. Mills
DATE: June 1, 2020
RE: Tax Nugget - Proposed Regulations Clarify Questions Regarding the Deductibility of Trust and Estate Administration Expenses Raised by the Tax Cuts and Jobs Act of 2017

On May 7, 2020 the Department of Treasury issued proposed regulations (Effect of Section 67(g) on Trusts and Estates, 85 Fed. Reg. 91 (May 11, 2020)) clarifying the deductibility of certain estate and nongrantor trust administrative expenses in response to questions raised by the Tax Cuts and Jobs Act of 2017 (TCJA). The proposed regulations amend Treasury Regulation Section 1.67-4. The proposed regulations were issued in response to commentators’ requests for guidance from Treasury regarding the impact of IRC 67(g), which was introduced by Congress as part of the TCJA, disallowing estates and nongrantor trusts from taking “miscellaneous itemized deductions” after December 31, 2017, as well as questions surrounding the ability of estate and trust beneficiaries to take excess deductions remaining after the termination of an estate or trust under IRC 642(h).

The proposed regulations address two major concerns raised by commentators, (1) whether estate and nongrantor trust administrative expenses (“Section 67(e) expenses”) are considered to be “miscellaneous itemized deductions” under IRC 67(g), and, therefore, not deductible, and (2) whether estate and trust beneficiaries can take excess deductions, as had been the case before December 31, 2017, after the termination of an estate or trust, under IRC 642(h). Treasury ruled in the taxpayers’ favor in both circumstances. The proposed regulations are consistent with prior guidance issued in 2018 (Proposed Regulation Notice 2018-61), which clarified that “Section 67(e)” administrative expenses are “above-the-line” expenses used to calculate adjusted gross income and not “itemized deductions.”

The Deductibility of Administrative Expenses by Estates and Nongrantor Trusts. The proposed regulations clarify that estate and nongrantor trust administrative expenses (“Section 76(e) expenses”) are not itemized deductions under IRC 67(e), and not, therefore, “miscellaneous itemized deductions,” as that term is used in IRC 67(g).
The Use of Excess Deductions by Estate and Trust Beneficiaries after Estate and Trust Termination. The proposed regulations permit estate and trust beneficiaries to take excess deductions that remain at the termination of an estate or trust. Treasury adopted the suggestion of commentators that Section 642(h)(2) excess deductions should be segregated to determine the character, amount and manner for allocating excess deductions to beneficiaries, instead of grouping all expenses together and that items of deduction should be allocated among the classes of income in the year of termination, as is the case under Treas. Regs. Section 1.652(b)-3. The proposed regulations avoid the need for fiduciaries to hold estate and trusts open longer than otherwise necessary to take advantage of available deductions that would not, otherwise, be available to beneficiaries.

Commentators also raised questions about the deductibility of administrative expenses when calculating the Alternative Minimum Tax, but those questions remain for another day.
MEMORANDUM

TO: PROBATE AND ESTATE PLANNING COUNCIL
FROM: MICHAEL LICHTERMAN – CHAIR, ELECTRONIC COMMUNICATIONS COMMITTEE
SUBJECT: APPROVAL FOR SECTION ZOOM ACCOUNT COSTS
DATE: JUNE 5, 2020

As the Council is aware, we have been using Zoom as a means of “remote” attendance for those unable to attend Council meetings in person. Although I do not think any of us could have foreseen the need to have a completely remote Council meeting, yet such was the case in April due to the Governor’s executive orders. That experience went very well and was an example of the amazing members in our Section.

Until now, the Section has been utilizing our Firm’s Zoom account. We already had it and my Partner and I were glad to let the Council use it. We still are, but my time as a Council member will be coming to a close later this year. To that end, I recommend the Section have its own “Pro” account with Zoom. This is the account type that our Firm uses. The “Pro” account costs $15 per month (when paid monthly). Given that it has served the Council well thus far, I see no reason to purchase a higher-level account. The free account has restrictions on length of meeting and number of attendees that make it insufficient for our Section.

I set up a Gmail account for the Section and a trial Pro Zoom account. In fact, we are using the trial Pro Zoom account for this June Council meeting. Once approved, I anticipate the Chair of the Electronic Communications Committee (ECC) having the monthly Zoom account charge billed to his/her personal or firm credit card and submit the charges to the Section for reimbursement. This is what I will be doing until my term as ECC Chair ends. I will pass along the Gmail and Zoom account information to the next ECC Chair. I also feel it would be good practice to have the Section Chair or Section Secretary (or both) have the account and login information.

I am therefore requesting that the Council approve the Zoom expenditure and general plan for administering it outlined above. I welcome questions and discussion on any of these items.

Respectfully,

Michael Lichterman
Electronic Communications Committee Chair