

**MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN**

**November 16, 2013
Lansing, Michigan**

Minutes

I. Call to Order

The Chair of the Section, Thomas F. Sweeney, called the meeting to order at 10:15 a.m.

II. Attendance

A. The following officers and members of the Council were in attendance:

Sweeney, Thomas F.

Morrissey, Amy N.

Imami, Shaheen I.

Steward, James B.

Teahan, Marlaine C.

Allen, Susan M.

Ard, W. Josh

Bearup, George F.

Brigman, Constance L

Clark-Kreuer, Rhonda M.

Kerr, J. David

Lentz, Marguerite M.

Lucas, David P.

Marquardt, Michele C.

New, Lorraine F.

Ouellette, Patricia M.

Skidmore, David L.J.M.

Taylor, Robert M.

Vernon, Geoffrey R.

Welber, Nancy H.

A total of 20 council members and officers were present representing a quorum.

B. The following officers and members of the Council were absent with excuse:

Ballard, Christopher A.

Murkowski, Hon. David M.

Spica, James P.

C. The following officers and members were absent without excuse:

None.

D. The following ex-officio members of the Council were in attendance:

Gregory, George W.

E. Others in attendance:

Rick Mills
Nazneen H. Syed
Brenda Polk
W. Jerry Byrd
Michael Lichterman
Chris Caldwell

Stephen Elkins
Kathleen Goetsch
Amy Peterman
Katie Lynwood
Jeanne Murphy
John Lindley

Carol M. Hogan
J. V. Anderton
Robert M. O'Reilly
Richard J. Siriani
Kurt A. Olson
Neal Nusholtz

III. Introduction of Guests

IV. Minutes of October 12, 2013, Meeting of the Council

Revised minutes were circulated at the meeting. Several corrections were noted, including some revised wording for clarification of the wording for first public policy position relating to proposed amendments to MCL 600.308 and the repeal of MCL 600.861 and MCL 600.863 as part of the court of appeals jurisdiction and procedural changes that would direct all appeals from the Probate Courts to the Court of Appeals. A correction was also noted with regard to the correct reference to the Uniform Adult Guardianship and Protective Proceedings Act (UAGPPA). Marlaine C. Teahan moved for approval of the minutes as corrected with support from Michele C. Marquardt. The motion was approved on a voice-vote with no nays or abstentions.

V. Treasurer Report – Marlaine C. Teahan

Marlaine C. Teahan presented the Treasurer's report as attached to the materials and noted that expense reimbursement requests should be sent to her. Ms. Teahan also requested contributions by council members to the Hearts and Flowers Fund of \$35.00; those checks should be made payable to her to make it easier to deposit, but a notation should be included that it is for the hearts and flowers fund.

VI. Chairperson's Report – Thomas F. Sweeney

Mr. Sweeney noted the years of service to the Council by out-going Council members Rebecca A. Schnelz and her continuing work as a member of the Court Rules, Procedures and Forms Committee and the Citizens Outreach Committee.

VII. Report of the Committee on Special Projects – Marguerite C. Lentz

Marguerite C. Lentz presented the following report for CSP:

- The Committee on Special Projects discussed the suggested policy included with the Electronics Communications Committee report (see Attachment 1). CSP recommends that Council adopt the suggested Probate Web Page Policy as included with the Committee Report to Council. Motion by Marguerite M. Lentz as part of her committee report to approve adoption of the policy. The motion was approved on a Council vote of 20-0, with no nays and no abstentions.

The Committee on Special Projects also discussed a suggestion from the Electronics Communications Committee report to eliminate the Michigan Trust Code “tab” which is on our section web page on the Bar site because it is no longer new legislation and such a link appears on the ICLE site. Another option would be to change the tab to link to EPIC as a whole. At Chairperson Sweeney’s suggestion, additional comments will be solicited, including from Mark Harder, the Michigan Trust Code Commentator. Therefore, Council will again review that concept at our next meeting.

- CSP discussed several proposed revisions to our current Bylaws as presented by the Bylaws Committee and made several suggestions. (See materials included with Meeting Agenda). That Committee will prepare revised proposed Bylaws and bring those back to CSP for further discussion.
- CSP also discussed the report presented by the Real Estate Committee (see attachment to meeting materials) and several alternate “technical corrections” possibilities which were presented. CSP sentiment is that clarification is needed, and the fact that the “transfer” is coming from a decedent’s estate or through a trust should not determine whether or not there is an “uncapping” of the real estate taxes under the new provision. However, at this point there is virtually no chance of getting a new bill passed before the end of the year. So, the committee will work on further alternative proposals and will also endeavor to communicate with the bill’s original sponsor as to the sort of technical correction structure that would be acceptable to him and report back to CSP at a later date.
- CSP also again briefly discussed Senate Bill 466 which would have Michigan adopt the Uniform Adult Guardianship and Protective Proceedings Act (UAGPPA), (except the portion covered by replacement legislation we proposed last year and which was adopted), together with companion SB 465 which will amend EPIC to make the UAGPPA the basis for determining Michigan probate court jurisdiction for guardianship and conservatorship proceedings. CSP remains opposed to these bills but does not feel that Council needs to adopt a formal position at this time. As decided last month, the Guardianship, Conservatorship, and End of Life Committee, or a representative of that Committee, will communicate Council’s concerns to the Bill’s sponsor and the various

organizations who have expressed an interest in that Bill. We expect a meeting between the various interested parties to occur in December.

VIII. **Standing Committee Reports**

A. **Internal Governance**

1. Budget – James B. Steward

- James B. Steward discussed the Budget Committee’s suggestions outlined in the draft proposed budget for FY 2013-2014 (see Attachment 2), including several suggested line-item changes. Mr. Steward noted that the total expenditures exceed the expected revenue by a little over \$5,000. However, for the past several years, our expenditures have come in under budget, which was the case again this year by a little over \$5,000. Also, we have sufficient fund balance to absorb a short-fall in revenue vs expenditures for the time being. Josh Ard noted that our revenue could be somewhat less this coming year than usual due to a change in requiring new State Bar members having to “opt in” to our Section (although at no charge initially), because it appears that some of these new Bar admittees simply continue our Section membership, even though they don’t practice in this area. Motion by Mr. Steward, as part of his committee report, to approve adoption of the Budget as proposed by the Committee for the 2013-2014 fiscal year. The motion was approved on a Council vote of 20-0, with no nays and no abstentions.

2. Bylaws – Nancy H. Welber

- Nancy H. Welber reported, as outlined under the CSP report, that the Committee is continuing work on draft suggestions for Bylaws revisions, and will report back at a later date with further suggestions.

3. Awards – Douglas A. Mielock

No report.

4. Planning – Amy N. Morrissey

No Report.

5. Nominating – Douglas G. Chalgian

No Report.

6. Annual Meeting – Amy N. Morrissey

No Report.

B. Education and Advocacy Services for Section Members

1. *Amicus Curiae* – David L. Skidmore

No Report.

2. Probate Institute – Shaheen I. Imami

- Shaheen I. Imami reported that he is continuing to work on content and is firming up speakers. Sam Donaldson is confirmed; should have a draft schedule for the next meeting;

3. State Bar and Section Journals – Amy N. Morrissey

No Report.

4. Citizens Outreach – Constance L. Brigman

No Report.

5. Electronic Communications – William J. Ard

Nothing additional to what was reported under CSP.

C. Legislation and Lobbying

1. Legislation – Christopher A. Ballard

In the absence of Mr. Ballard, Nancy Welber reported:

John Lindley from PAA, brought to council's attention that HB 5162 – to designate funeral representative, has been introduced by Rep Kate Seagal. The Bill does not seem likely to pass this year. Next year, we will want to review and perhaps take a position.

2. Updating Michigan Law – Marguerite Munson Lentz

- Marguerite Munson Lentz reported that the Committee will be meeting with the general counsel bankers' representative(s) to discuss their concerns about the proposed domestic asset protection trust ("DAPT") legislation.
- A proposed bill to deal with Digital assets is being worked on, but not yet introduced. The Uniform Law Commission is working on one, but that may be more than a year away. In the meantime, Michigan doesn't have any laws to really deal with these issues,

so the general feeling at present is to push ahead with our own bill. Our Committee's belief is that a "stand alone" bill will be better than trying to fit these concepts into EPIC.

3. Insurance Committee – Geoffrey R. Vernon

- Geoffrey R. Vernon reported that hearings have been held for SB 31-32 regarding insurable interests. The Bills are not yet reported out of committee, but that should occur soon. The Chair is in favor, and there does not appear to be opposition, so the chances of passage this year are good.

4. Artificial Reproductive Technology – Nancy H. Welber

- Nancy H. Welber reported that the Committee is continuing to meet to develop suggestions, particularly with regard to intestate succession and other changes to EPIC. All members are asked to contact Nancy if you have suggestions for changes that would address those issues.

D. Ethics and Professional Standards

1. Ethics – J. David Kerr -

- Mr. Kerr reported that several questions appearing on the listserv recently which have prompted the Committee to consider formulating example hypotheticals with example possible outcomes under the rules. If you have any example ethics hypotheticals, please send them to the Committee for their consideration.
- In the next bar journal there will be an article which will discuss potential implications of recent ethics opinions re fees; -- these don't specifically deal with probate fee disputes, but there may be some application.

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

No Report.

3. Specialization and Certification – James B. Steward

No Report.

E. Administration of Justice

1. Court Rules, Procedures and Forms – Michele C. Marquardt

The Committee met on November 6, 2013, and discussed issues relating to inventory fees vs filing fees, and comparisons with other states discussion. This topic was mentioned previously, because the probate courts are considering inventory and/or filing fee increases to deal with higher costs. The Committee has some uncertainty about whether this is an issue which is appropriate for them to address at present.

Marlaine C. Teahan reported that she has communicated with various groups that have an interest in the proposed court of appeals jurisdiction and procedural changes to obtain support for our proposed legislation and court rule amendments that would result in all probate appeals going to the court of appeals and for automatic stays in probate court to be similar to those in circuit court. The letters provided both explanation of the changes and redlines of our proposed legislative proposals and court rule changes. These contacts include the Michigan Probate Judges Association, the Michigan Judges Association, Appellate Practice Section, the Court of Appeals Rules Committee, and the Michigan Court of Appeals. To date we have the following responses:

- The Hon. Lisa Sullivan, the President of the Michigan Probate Judges Association, has written that after reviewing our proposals, the Executive Board of the MPJA and their Association support our proposals as written. We have permission to convey this support to Rep. Kesto. Judge Sullivan thanked us for our work on these matters and looks forward to working together in the future on other areas of mutual interest;
- The Hon. Lita Popke, President of the Michigan Judge's Association included our proposals on the agenda for MJA's Nov. 14, 2013 meeting. We are awaiting her further response;
- Attorney Jill Wheaton, Chair of the Appellate Practice section, has added our proposals to the agenda for the next APS meeting on November 22, 2013;
- While the Hon. Elizabeth Gleicher, Chair of the Court of Appeals Rules Committee has not yet responded on behalf of the Court of Appeals, Marlaine has communicated by email with the Clerk of the Court of Appeals regarding how our proposals will impact the number of appeals before the Court of Appeals.

The goal is to get the support of these groups before the bill is actually introduced. The hope is we can get the bill(s) introduced with little opposition and proceed to passage before summer 2014.

David L. Skidmore reported that the Model Jury Instruction Committee has proposed changes to the current model jury instructions re fiduciary relationship presumption of undue influence. These proposed changes appear to be an attempt to overturn current common law. Comment period ends April 1, 2014. We will need to look at these in depth.

2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No Report.

F. Areas of Practice

1. Real Estate – George F. Bearup

See CSP discussion re technical correction proposals;

Nancy Welber raised a question as to the need for certificates of trust existence for real estate title purposes to list all successor trustees. There really doesn't seem to be a need for this, particularly after the real estate has been transferred out of the Trust. She has asked if the Real Estate Committee could look at this issue and perhaps suggest a proposed amendment to the statute. Mr. Bearup has stated that his Committee will look in to this.

2. Transfer Tax Committee – Lorraine F. New

As set forth in the "Tax Nuggets" for this month (see Attachment 3), a revised Form 706 was in the works and has now been issued – see Gov website; protective claim for refund can be made; also have line 7 – gift tax worksheet for gift tax paid previously.

Use or lose rule for flex spending accounts up to \$500 carryover to next year allowed; exclusion amount for next year increased; annual gift exclusion remains the same.

3. Charitable and Exempt Organization – Christopher A. Ballard

No Report.

4. Guardianship, Conservatorship, and End of Life Committee – Rhonda M. Clark-Kreuer

No report in addition to matters discussed at CSP.

G. Liaisons

1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips

No Report at present.

2. Business Law Section Liaison – John R. Dresser

No Report.

3. Elder Law Section Liaison – Amy R. Tripp

No Report.

4. Family Law Section Liaison – Patricia M. Ouellette

No Report.

5. ICLE Liaison – Jeanne Murphy

No Report.

6. Law Schools Liaison – William J. Ard

No Report.

7. Michigan Bankers Association Liaison – Susan Allan

No Report.

8. Michigan Probate Judges Association Liaison – Hon. Judge David M. Murkowski

No Report.

9. Probate Registers Liaison – Rebecca A. Schnelz

No Report.

10. SCAO Liaisons – Marlaine C. Teahan, Constance L. Brigman, Rebecca A. Schnelz

Constance L. Brigman reported to Council that SCAO has or is about to adopt revised and new forms for probate courts, and she outlined in her report to Council the various changes which SCAO expects to issue in December.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz

No Report.

12. State Bar Liaison – Richard Siriani

No Report.

13. Taxation Section Liaison – George W. Gregory

George W. Gregory reported that the Taxation Section is working on:

1. A Michigan "offer in compromise" program.
2. Tax Tribunal Reform (Judges should be lawyers with tax backgrounds)
3. Apportioning multistate income for Michigan income tax purposes.

If you are a member of the Taxation Section you can for no additional charge join the states and TrustCommittee and get e-mails about its activities.

See Attachment 4 for the complete report.

IX. Other Business

None.

X. Hot Topics

None.

XI. Adjournment

Meeting adjourned by Thomas F. Sweeney at 11:40 a.m.

ATTACHMENT 1

Suggested Web Page Policy

On the next page is the proposal made in October. On the third page, there is a revision designed to address comments made at the last council and CSP meetings. That is the version we would like to be considered.

We have also looked over the section web page on the Bar site. One of the tabs is for the Michigan Trust Code. The latest entry is over forty months ago—a link to the May 2010 Bar Journal. In the last four years much more has been said about the Michigan Trust Code, e.g., on the mailing list and in various ICLE presentations. Thus, the tab is hardly up to date. There seem to be two reasonable options

- Eliminate the tab
- Provide more timely information.

To implement the latter, somebody needs to be in charge of providing new information in the future. Unless there is a volunteer or appointment by the Chair, the simplest solution would be to eliminate the tab.

Probate Web Page Policy

The Electronic Communications Committee and the Secretary are charged with reviewing and maintaining the section web pages on the www.michbar.org/probate site. Obviously obsolete material should be regularly removed. Information intended to remain current, such as material listed under the Publications tab, should be reviewed regularly, generally at least once per year. Archival material, such as minutes of previous meetings and the Michigan Probate and Estate Planning Journal do not need such reviews.

All material on the web page should contain a date of last review, except for (1) archival material internally dated such as minutes, (2) the Michigan Probate and Estate Planning Journal, and (3) announcements of meetings and seminars.

All material that expresses opinions should contain a disclaimer that the opinions are not necessarily those of the Probate and Estate Planning Section or the State Bar of Michigan. Such a statement is already included in the Michigan Probate and Estate Planning Journal. There is no need for a disclaimer in the minutes because the minutes reflect which policies have been adopted by the section council.

The section seeks to maintain comity with other State Bar sections. To further this goal, if a publication on the web page is relevant for another section, the contents of the publication should be presented to the other section before initial publication and before each regular review.

Probate Web Page Policy

The Electronic Communications Committee and the Secretary are charged with reviewing and maintaining the section web pages on the www.michbar.org/probate site. Material should only be posted on the authority of the Secretary, Chair, or their delegates. Obsolete material should be regularly removed. Information intended to remain current, such as material listed under the Publications tab, should be reviewed regularly, generally at least once per year. Archival material, such as minutes of previous meetings and the Michigan Probate and Estate Planning Journal do not need such reviews.

All material on the web page should contain a date of last review, except for (1) archival material internally dated such as minutes, (2) the Michigan Probate and Estate Planning Journal, and (3) announcements of meetings and seminars.

All material accessed by the Publications tab on the section page should contain information about whether the content has been endorsed by the Probate and Estate Planning Section Council, by the State Bar of Michigan, or both.

The section seeks to maintain comity with other State Bar sections. To further this goal, if a publication on the web page is relevant for another section, the contents of the publication ideally should be presented to the other section before initial publication and before each regular review, but the section reserves the right to disseminate information without the consent or approval of other sections.

ATTACHMENT 2

Probate and Estate Planning Council
Budget Committee Report
Proposed Budget for 2013-2014

Attached is the proposed budget for the Section for 2013-2014. Most of the line items remain the same but a few are changed slightly. Below is the explanation of the proposed budget items, updated from last month.

Revenue:

The revenue from membership dues at the end of September 2013 is about the same as last year, and our total revenue is just slightly more than \$2,000 over the total revenue **budgeted** for this year. Our entire total revenue for last year was higher due to additional items included under the “other” income category which we did not receive this year (some additional contributions to our Annual Institute expenses). Although our actual dues income has been more than \$116,500 for each of the last three years, **we do not propose any change in our estimated budgeted dues income, because we feel this is a safer prediction.**

The “Publishing Agreements” income line item has been changed to \$650 to reflect the change in the royalty agreement with ICLE pertaining to the on-going work by John Martin and Mark Harder for the EPIC and Michigan Trust Code commentary and updates to a fixed amount, with our part being \$650.

Disbursements:

Our total expense payments for the year are about \$10,000 more than last year, although our actual expenditures were **under** budget this year by nearly slightly more than \$8,000; (last year our actual expenditures were under budget by \$15,723).

Journal:

As we continue to reduce our printing costs, the Probate Journal publication expense should continue to decline. Also, as I mentioned last month, the cost to create the searchable on-line archive data base (\$2,500) was also charged to the journal budget. We expect that cost to be much less or non-existent for future years. Therefore, **we propose a \$2,500 reduction in the total budget line-item for the Probate Journal to a total of \$25,000 for this next year.**

Travel:

With respect to the “Travel Expense” line item, we ended up about \$1,000 under budget. However, **We believe that it would be prudent to increase the budget for “Travel” line-item by \$500 to a total of \$18,500 for the next year.** In general, transportation expenses continue to increase.

Meetings:

We are about \$100 under budget for our meetings expense line item. This includes estimated expenses for meetings at the University Club for December 2012, January 2013 and June 2013 – we

have not paid for those meetings cost, even though those expense were incurred. As it turns out, we were not billed for those meetings because they were paid by Doug Chalgian by mistake, (he is the University Club member whose account is used for our meetings charges). Therefore, he still needs to be reimbursed for those payments, but since they were incurred for the last fiscal year, an “accrual” estimate is included on the 2012-2013 fiscal year report.

Our “meetings” line item also includes our Section annual meeting, which occurs in September, as well as the regular meetings that occur throughout the year. As noted on the attached sheet, it also includes the cost for the Chair- Elect and Vice Chair to attend the annual Leadership conference (registration fees, travel, meals and lodging), as well as the meeting cost for the meeting held in October in the Chair’s home town area, which is usually a higher cost than at the University Club. This past year, the Vice Chair did not attend that Leadership conference – if she had, we would be over budget by about \$1,300. Therefore, **we propose an increase in the “Meetings” line item for this coming year in the amount of \$2,000 to \$14,000 total for the year to reflect increased costs.**

Support for the Annual Institute:

Also as noted in last month’s report, the total “Support for the Annual Institute” came to \$11,557 for fiscal year 2011-2012; whereas, this past year our total was \$13,688, which is slightly more than \$2,000 over 2011-2012, and \$688 **over** budget (this includes the cost of the speakers’ dinner). **For this year, we should revise the Annual Institute line item by at least \$1,000 additional for a total of \$14,000** to reflect actual likely costs, unless we make some changes. I believe that one primary reason for the higher expense this year was a reduction in sponsor participation. As also can be seen, the Institute has become a significant expense, so we need to find ways to make it more self sustaining.

Other:

On 3-16-2013 Council approved an increase in the "Other" line item by \$750 to a total of \$1,000, with up to \$750 allocated to support for the Young Lawyer's conference. That change is included in the proposed budget.

Summary:

Overall, if all line items exactly follow this budget, our projected expense will **exceed** projected revenue by \$5,570. With our current fund balance and recent history of revenue exceeding actual expenses, we can manage this possible revenue shortfall for the coming year. However, we will need to keep in mind that our expenses continue to increase each year, but our projected, as well as actual, dues revenue really does not change.

Jim Steward
Chair

PROBATE ESTATE PLANNING SECTION BUDGET 2013-2014 PROPOSED

	Budget 2010-11	Actual 2010-11	Budget 2011-12	Actual 2011-12	Budget 2012-13	Actual 2012-13	Budget 2013-14
Revenue							
Membership Dues	\$115,000	\$116,650	\$115,000	\$116,060	\$115,000	\$116,655	\$115,000
Publishing Agreements	\$500	\$374	\$350	\$500	\$350	\$500	\$650
Other	\$450	\$350	\$350	\$3,460	\$350	\$620	\$350
Total Receipts	\$115,950	\$117,374	\$115,700	\$120,020	\$115,700	\$117,775	\$116,000
Disbursements							
Journal	\$35,000	\$24,171	\$27,500	\$27,378	\$27,500	\$25,445	\$25,000
Chairperson's Dinner	\$6,000	\$4,768	\$6,000	\$4,842	\$6,500	\$4,406	\$6,500
Travel	\$16,000	\$14,629	\$16,500	\$17,142	\$18,000	\$16,967	\$18,500
Lobbying	\$26,600	\$24,000	\$30,000	\$29,500	\$30,000	\$30,000	\$30,000
Meetings	\$12,000	\$9,770	\$12,000	\$10,899	\$12,000	\$10,601	\$14,000
Long-range Planning	\$2,500	\$0	\$2,500	\$0	\$1,000	\$0	\$1,000
Publishing Agreements	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Support for Annual Institute	\$11,000	\$9,853	\$12,000	\$11,557	\$13,000	\$13,688	\$14,000
Amicus Briefs	\$10,000	\$0	\$10,000	\$0	\$10,000	\$9,215	\$10,000
Electronic Communications*	\$850	\$840	\$850	\$880	\$1,400	\$1,275	\$1,400
Postage	\$100	\$0	\$100	\$0	\$100	\$1	\$100
Telephone	\$500	\$437	\$500	\$93	\$250	\$206	\$250
Other	\$500	\$137	\$300	\$236	\$1,000	\$680	\$1,000
Total Disbursements	\$121,050	\$88,605	\$118,250	\$102,527	\$120,750	\$112,484	\$121,750
Net Funds Remaining	-\$5,100	\$28,769	-\$2,550	\$17,493	-\$5,050	\$5,291	-\$5,750

\$5,750 will be allocated to budget from fund balance, which is approx \$206,296 at end of FY 2012-13

*New category which includes the listserv, e-blast, & other electronic communications to members.

As with last year, It is recommended that \$25,000 be allocated from the fund balance to a separate "Amicus Fund" with any unused portion of the Amicus Brief line-item swept into the Amicus Fund at the conclusion of each fiscal year. The ultimate goal being to establish a buffer for anticipated appeals involving the Michigan Trust Code and other newly enacted legislation that may need judicial interpretation. The effect for 2013-2014 would be to use book entries to create the following funds:

General Fund:	\$180,511.00
Amicus Fund:	<u>\$25,000.00</u>
amicus carryover	785
Total Fund:	<u>\$206,296.00</u>

On 4/14/12, the Council approved an increase of the line-item for "Meetings" by \$2,600.00 for registration fees, travel, meals and lodging for the Chair- Elect and Vice Chair to attend the annual Leadership Conference on Mackinac Island. This amount is included in the Meetings budget total of \$12,000.

On 3-16-2013 Council approved an increase in the "Other" line item to a total of \$1,000, with up to \$750 allocated to support for the Young Lawyer's conference.

ATTACHMENT 3

TAX NUGGETS

November, 2013

1

IRS has issued Draft form 706 and Instructions, for decedent dying after 12/31/2012, dated October 23, 2013. While they cannot be used for filing, these drafts should closely indicate how the final form will appear.

The form can be found at www.irs.gov/pub/irs-dft/f706--dft.pdf. To find the instructions, substitute i for the f in front of the 706.

Form 706 is used to figure the estate tax imposed on estates where the gross estate, plus adjusted taxable gifts and specific exemption has exceeded \$5,250,000 or where the executor wants to transfer the Deceased Spousal Unused Exclusions (DSUE) amount to the surviving spouse, without regard to the size of the estate. It is also used to figure out the generation skipping transfer tax imposed on direct skips out of the estate.

Changes identified in the form include Schedule PC, a Protective Claim for Refund, where taxpayers can protect their right to a refund of tax paid due to an unresolved controversy which later results in a deduction under section 2053.

The Line 7 Worksheet has been expanded to include the calculation for cumulative lifetime gifts on which tax was paid or payable. This can be part of the DSUE calculation. Completed worksheets should be submitted with the return.

Inflation indexing has increased the basic exclusion amount to \$5,250,000; the ceiling on special use valuation is \$1,070,000, and the amount used in figuring the 2% portion of estate tax payable in installments is \$1,430,000.

2

On October 31, the Treasury Department announced that the "Use or Lose" rule for flexible spending accounts may be relaxed. Employers will be able to allow participants to carry over up to \$500 in unused funds into the next year. Employers may offer this option as early as the 2013 plan year, but if they currently offer a grace period of up to 2 1/2 months, they cannot offer both.

3

Estates of Decedent who die after 12/31/13 will have a basic exclusion amount of \$5.34 million, up from \$5.25 million, and the annual exclusion amount for gifts remains at \$14,000 per person.

Lorraine F. New
for the Transfer Tax Committee

ATTACHMENT 4

Taxation Section Liaison
Report to the Probate & Estate Planning Section
November 2013

The Taxation Section has had mixed reactions to the Michigan Department of Treasury proposals, and expects that the ones that they do not favor will not remain now that there is a new Treasurer, Kevin Clinton (an actuary with an insurance industry and regulatory (Financial and Insurance Agency) background).

The Taxation Section does not have a lobbyist, but is working on:

1. A Michigan "offer in compromise" program.
2. Tax Tribunal Reform (Judges should be lawyers with tax backgrounds)/
3. Apportioning multistate income for Michigan income tax purposes.

The Taxation Section has standing committees which are in part educational meetings. The committees are:

Business Entities
Employee Benefits
Estates and Trusts
International Taxation
Practice and Procedure
State and Local Taxation
Young Tax Lawyers

Any of these might interest members of the Probate & Estate Planning Section. If you are a member of the Taxation Section you can for no additional charge join the Estates and Trust Committee and get e-mails about its activities. (There are 615 persons who are members of both sections).

Upcoming events which might interest Probate & Estate Planning Section Members:

"Purchase Price Allocations and Related Issues," Dickenson
500 Woodward Ave., Detroit, MI 48226, December 5, 2013, 8:30- 10:30 am

Annual Tax Conference, May 22, 2014, 9:00 am - 5:00 pm, Plymouth

The Taxation Section expends time and money on:

1. Law School and other tax programs to assist the indigent.
2. Outreach to law students