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Commentator

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Did you know Benjamin Franklin is usually the one who is credited for saying nothing is certain except death and taxes? Of course, there are other things we can say with certainty. For example, I am certain that April 8th (Tigers' Opening Day) comes before April 18th (this year's Tax Day). We get Mr. Franklin's point, though, and so does the IRS.

Unless you file for an extension, the IRS expects you to file your federal income tax return by April 18th this year, 3 days later than the usual due date. Before you submit your tax return, please take a look at the article by **Gloria Chon**, which provides a quick outline of items you may want to consider while preparing your return.

Oddly enough, the combination of death and taxes – estate taxes – has proven not to be so certain: in 2010 there was the option of paying no federal estate tax. However, that exemption was short-lived and estate tax rules are here again for the foreseeable future. In fact, the IRS just issued a new tax form that an estate may need to file. In his article, **Brian Jenney** explains this new requirement in detail.

Aside from leaving us with a beloved quote about death and taxes, Benjamin Franklin is known for having accomplished a lot starting at an early age. There are still young people, right here in our community, that exemplify the curiosity and ambition of Benjamin Franklin. Please join us in saluting this year's class of the Oakland County Elite 40 Under 40. We are proud and supportive of our very own **Chris Martella**, who is a member of this class, as well as all of the young and talented people who continue to keep Michigan strong.

Best Wishes,

New Estate Tax Filing Requirements – Form 8971

BRIAN R. JENNEY



The IRS has issued a new Form 8971 "Information Regarding Beneficiaries Acquiring Property From a Decedent"

and instructions. This increases the duties of a personal representative or executor of a decedent's estate.

Form 8971 is required to be filed if an estate has to file an estate tax return

under Form 706 after July 31, 2015. Form 8971 should be filed separately from the 706 and not attached to the Form 706.

Code Sec. 6035(a)(1) provides that the executor of any estate required to file an estate tax return under Code Sec. 6018(a) must furnish, both to IRS and the person acquiring any interest in property included in the decedent's gross estate for federal estate tax purposes, a statement identifying the

value of each interest in such property as reported on such return and such other information with respect to that interest as IRS may prescribe.

Form 8971 and only Schedule A of Form 8971 to a beneficiary must be filed no later than 30 days after the date on which Form 706 is required to be filed with the IRS or the date that is 30 days after the date the Form 706 is actually filed with the IRS. A beneficiary can be served Schedule A

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by email. The executor of the estate must certify on Form 8971 the date Schedule A was provided to each beneficiary and should keep the proof of delivery for his or her records.

The filing requirement for Form 8971 does not apply to an executor of an estate that is not required to file an estate tax return because the gross estate plus adjusted taxable gifts is less than the basic exclusion amount, but who does file a Form 706 for the sole purpose of making an allocation or election respecting the generation-skipping transfer tax.

Notice 2016-19, 2016-9 IRB provides that the IRS has delayed the due date to March 31, 2016 for statements required under Code Sec. 6035(a)(1) and Code Sec. 6035(a)(2) that an executor must provide to the IRS and to beneficiaries. Those failing to follow the new Code Sec. 6035 information reporting requirements are subject to

the failure-to-file penalty rules of Code Sec. 6724. (Code Sec. 6721(a); Code Sec. 6724(d)(1)(D) ; Code Sec. 6724(d)(2)(II)).

A separate Schedule A must be prepared for each beneficiary. Schedule A lists each item of property that a given beneficiary receives from the estate, its estate tax value, and other information about that item of property.

The Form 8971 instructions do not give notice as to whether Form 8971 must be filed for estates that file Form 706 solely to make the Code Sec. 2010(c)(5) portability election. Code Sec. 6035 only applies to persons required by Code Sec. 6018(a) or Code Sec. 6018(b) to file returns. Reg. § 20.2010-2(a)(1), which was circulated before the Act, provides that, “An estate that elects portability will be considered, for purposes of subtitle B and subtitle F of the Internal Revenue

Code (Code), to be required to file a return under Code Sec. 6018(a).” Code Sec. 1014(f)(2) provides that the basis consistency rule only applies to a property whose inclusion in the decedent’s estate increases the estate’s federal estate tax liability (reduced by credits allowable against such tax).

The IRS has indicated that filers of a Form 706 for portability only will not be required to file Form 8971. The IRS has also stated that the proposed regulations on Code Sec. 6035 will be released soon and that executors should wait for the regulations before they prepare the required statements. Stay tuned! In the meantime, if you have any questions, please contact Brian R. Jenney.

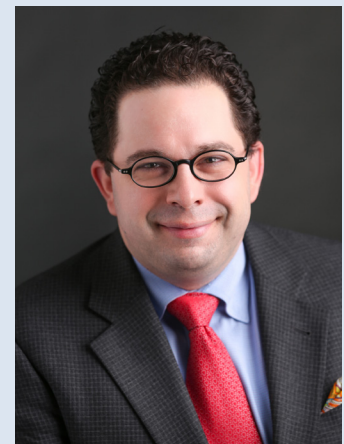
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Chris Martella Chosen for Oakland County’s “Elite 40 Under 40”

Christopher R. Martella was recently recognized as one of Oakland County’s “Elite 40 Under 40.” Chris received this recognition for his numerous achievements in and out of the office. He joins a class of equally energetic and accomplished young CEOs, foundation chairs, teachers, innovators and community leaders, each from different walks of life and experiences. Just one of Chris’s many accomplishments include being the first attorney to obtain a master’s degree in cybersecurity. Chris obtained his master’s degree in an effort to provide local expertise once only found in California and Washington D.C. to clients who are victims of data breaches, want to better secure their information technology, or understand the legal aspects of their cybersecurity obligations to third parties. This is a practice area that Chris continues to serve, in addition to his real property practice. Outside of the office, Chris has also served as president of an auxiliary group at the Detroit Institute of Arts through the tumultuous City of Detroit bankruptcy and is a member of University of Detroit Mercy’s steering committee for the advancement of technology and cybersecurity education. Chris also volunteers with a local car club to raise money for charity.

Chris finds himself energized by any challenge and opportunity to make a difference, even during Michigan’s decline in economy, and continually strives to bring his energy to advocate for his clients and community. Please join us in congratulating Chris and all of the class members of this year’s Oakland County Elite 40 Under 40!



Recent Federal Tax Updates

GLORIA M. CHON



With tax season fast approaching (sorry), we would like to highlight a few recent tax updates that you may want to consider while you prepare and review your tax returns.

1. Deduction of state and local sales taxes. For those taxpayers who choose to deduct state and local sales taxes instead of state and local income taxes, the sales tax deduction option expired at the end of 2014, but is now available again.

2. Energy efficiency credit. Homeowners who install energy-efficient windows, doors, furnaces, or insulation may still be eligible for a nonbusiness energy property credit, which would be claimed on Internal Revenue Service ("IRS") Form 5695. This credit, too, had expired at the end of 2014, but has now been made available again.

3. Deductions for certain education expenses. Educators may continue to deduct certain classroom expenses. In addition, eligible parents and college students may continue to take advantage of a deduction for tuition and fees.

4. Tax-free distributions of individual retirement account ("IRA") proceeds. Qualified charitable distributions may be transferred tax-free up to \$100,000 by IRA owners who are 70½ years old or older.

5. Achieving a Better Life Experience ("ABLE") accounts. States may offer ABLE accounts to people with disabilities who became disabled before age 26. Contributions up to the amount of annual gift tax exclusion (i.e., \$14,000 for 2015 and 2016) may be made to an ABLE account. These contributions are not deductible, but the distributions are tax-free when used to pay for qualified disability expenses. Michigan has not established ABLE accounts yet. (Brian Jenney explained how an ABLE account works in detail in a prior edition of the *Commentator*. Please contact Lisa Passalacqua if you would like that, or any prior edition of the *Commentator* at lisa.passalacqua@kkue.com.)

6. Health insurance premium credits. For taxpayers who do not exceed 400% of the poverty line, a tax credit may be available relating to premiums paid for health insurance by eligible taxpayers.

7. Same-sex marriage. Same-sex couples who are married legally under state law are treated as married by the IRS for federal tax purposes.

8. Mileage rates. The standard mileage rate for the use of a vehicle for business is 57.5 cents/mile for the year 2015. (In 2016, the rate goes down to 54 cents/mile.) For medical or moving purposes, the rate is 23 cents/mile.



In closing, we point out that **taxes are due on Monday April 18th this year**, NOT April 15th.

If you have any questions, please contact Gloria Chon.

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RETURN SERVICE REQUESTED

Firm News

Buttiglieri article in The Michigan Bar Journal January 2016 Issue

Joseph P. Buttiglieri's article, *Guardianship and Conservatorship: Contested Proceedings*, is published in the January 2016 issue of the Michigan Bar Journal. The article covers some of the important issues that need to be dealt with to properly represent clients in guardianship and conservatorship matters. Visit <http://www.michbar.org/file/barjournal/article/documents/pdf4article2793.pdf> to read the complete article.

Upcoming Seminar

Joseph P. Buttiglieri to speak for ICLE 56th Annual Probate & Estate Planning Institute

Joseph P. Buttiglieri will speak on Contested Guardianships and Conservatorships for ICLE's 56th Annual Probate & Estate Planning Institute Litigation Track on Saturday, May 14th at 11:45am in Acme, Michigan. Mr. Buttiglieri will discuss litigation strategies, depositions and medical records, powers of attorney, ADR and preserving family relations and run scenarios with audience participation. To register, go online to www.icle.org/probate.