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DECEMBER 2022 NEWSLETTER

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Firm News: WE'VE MOVED!

After 32 years at the same address, MMPPH has moved its office across the street, effective November 1, 2022, into the Emerald Plaza Building. **Our new address is 402 W. Broadway, Suite 950, San Diego, California 92101**. Please bear with us as we rearrange our offices and files during the transition period. We look forward to providing the same quality service to all our clients as we have for the past 63 years.

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STUDENT LOAN FORGIVENESS: TAX CONSEQUENCES

By Katie A. (Lepore) Balatbat, CPA, J.D., LL.M., Taxation

President Biden's *Student Loan Debt Relief Plan* has received lots of press coverage lately, with plenty in favor of the policy and plenty against. As the Plan makes its way through the court system and will be heard by the U.S. Supreme Court in the spring, this article provides a brief analysis as to the tax consequences to any possible debt relief for any who may have student loan debt forgiven under the Plan.

The Plan

According to the White House, the Department of Education will provide up to $20,000 in debt relief for loans currently held by the Department of Education. The largest relief amount of $20,000 is specifically limited to Pell Grant Recipients. Any other borrowers, who were not recipients of Pell Grants, are eligible for up to $10,000 of debt cancellation for loans held by the Department of Education. To be eligible, the borrower must have income under $125,000 for single filers and $250,000 for married couples.

Federal Taxation

Although forgiveness of debt is generally reportable taxable income, the *American Rescue Plan Act* excludes such forgiveness from taxable income if discharged between 2021 and 2025. Thus, it appears initially that the forgiven student debt will be excluded from federal income tax.

California Taxation

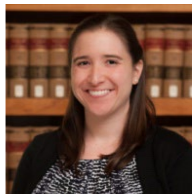
California often follows federal law, and often adopts tax consequences of federal law for special situations, such as avoidance of reporting forgiven *Paycheck Protection Program* loans in

income for California tax purposes. However, as it currently stands, forgiveness of debt is generally considered taxable income in California. Unless legislation is passed in California to exclude the student loan debt relief in income, California taxpayers who have debt forgiven likely should be reporting that amount as taxable income on their California income tax return.

California Revenue and Taxation Code Sections 17132.11, 17134, and 17144.6 do provide limited exclusions for loan cancellation if cancelled under Section 1098e of the Internal Revenue Code ("IRC"). However, none of these sections currently seem to encompass the Biden debt relief plan, which is not pursuant to Section 1098e of the IRC. Thus, it does not appear that current California law allows exclusion of the debt relief from taxable income.

Conclusion

It remains to be seen whether the California legislature will convene to pass legislation to exclude the debt relief from California taxable income, as we await the fate of the program as it moves through the court system.



BE PREPARED TO RECEIVE FORM 1099 THIS YEAR

By Katie A. (Lepore) Balatbat, CPA, J.D., LLM., Taxation

You may have heard about the recent change which requires third party payment processors like PayPal, Venmo, Mercari, Airbnb, eBay, Uber, Lyft, and other vendors to provide a Form 1099 to taxpayers if transactions exceed $600 for the year. This change is effective for tax year 2022, which means many people will start receiving Forms 1099-K, which they may not have received before, or with which they may not ordinarily be familiar.

Although the goal of this change is to capture cash payments for ordinarily taxable income, such as a gig economy job, part-time work, or selling goods as a business, those who simply use Venmo as a convenient way to split a group dinner bill could find themselves with an unknown and unexpected tax form.

Before 2022, the Form 1099-K was used for those who had 200 or more transactions in a year, or gross receipts of over $20,000. Congress reduced the threshold in the *American Rescue Plan Act of 2021,* signed into law March 11, 2021. According to the Joint Committee on Taxation, this change is expected to raise an additional $8.4 billion in tax revenue over 10 years.[1]

As a copy of the Form 1099 is furnished to both the taxpayer and the IRS, it should not be ignored. If you believe the income reported on the Form 1099 is not taxable income to you, you should consult with your tax preparer as to how best report the income but not pay the tax. This could arise in instances such as if the goods are sold at a loss, or if the reported amount simply represents reimbursements to you and not income. You also may wish to contact the issuer to request a corrected form, if you can manage to do so prior to filing your return. The name and contact information for the issuer should appear on the top left of the form. Please remember that personal losses are not deductible, but personal gains are taxable. Thus, if you sell several items at a loss and one for a gain, be careful not to net the amounts against each other.[2]

Some services like PayPal and Venmo may allow you to flag the transaction as personal in nature, such as personal gifts, or splitting rent or other items, which should not contribute to the reporting requirements. For example, think of someone who sells a refrigerator that they purchased for $1,500 and used for a few years and then sells for $600, which may actually represent a loss to the taxpayer. The personal

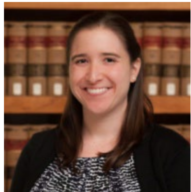
[1] https://www.journalofaccountancy.com/issues/2022/jun/changes-form-1099-k.html

[2] https://www.irs.gov/payments/form-1099-k-frequently-asked-questions-individuals

loss would not be deductible by the taxpayer, but it also does not represent a taxable gain.

As the IRS generally employs a matching system whereby anything reported by third parties in your Social Security Number is usually checked against what is reported on your return, failure to report any amount from a form issued in your Social Security Number could result in a letter, notice, or audit. If reporting anything on your return other than the amount on the Form as taxable income, you may wish to attach an explanation to your return.

The payment reporters are required to provide the information forms to taxpayers by January 31. Please note that no changes were made to the rules surrounding what is considered taxable income, just the reporting thresholds have been changed. Please consult your tax preparer if you unexpectedly receive a tax form.



2022 PROBATE CHANGES OF NOTE

By Katie A. (Lepore) Balatbat, CPA, J.D., LLM., Taxation, and Linda A. Nelte, J.D.

The year 2022 was a busy one for California legislators in the probate realm. This article briefly mentions some of these changes which may be of use to fellow practitioners in the estate planning, probate, trusts, and related areas of law.

AB 1745: Trusts: Notifications

Current law generally restricts the time period for a person to bring an action to contest a trust to the later of 120 days from the date the Trustee provides notification to the person, or 60 days from the date a copy of the trust is delivered to the person. Under *AB 1745*, signed into law June 21, 2022, a clarification is provided that the 120-day period only applies when a revocable trust becomes irrevocable upon the death of the settlor, or because of a contingency related to the death of the settlor of the trust.

AB 1866: Irrevocable Trusts: Creditor Protection

AB 1866, signed into law June 21, 2022, provides that a creditor should not be able to reach assets of an irrevocable trust solely because a trust allows the trustee to directly pay or reimburse the settlor for tax on the income or principal payable by the settlor. Although current law does allow a creditor to reach assets of a trust wherein the settlor is a beneficiary, if the only beneficial interest of the settlor is reimbursement for taxes, those assets now should not otherwise be available to creditors.

AB 1663: Protective Proceedings

Under *AB 1663*, signed into law September 30, 2022, the Health and Safety Code as well as Probate Code and Welfare and Institutions Code are amended regarding Guardianship-Conservator rules. *AB 1663* now gives preference to the conservatee's preferred conservator or the prior conservator's preference as to a conservator, when equally qualified as other potential conservators. Additionally, a conservator may not be appointed unless the court makes an express finding that there are no less restrictive alternatives to conservatorship. One such less restrictive alternative referenced by *AB 1663* is "supported decisionmaking agreements" as defined in Section 21001 of the Welfare and Institutions Code.

AB 1194: "#FreeBritney Bill"

AB 1194 was signed by Governor Newsom on September 30, 2021. Under *AB 1194*, if a conservatee expresses a preference for a certain attorney, the court shall allow representation by such attorney if he or she can provide zealous advocacy and there is no conflict of interest, even if such attorney is not on the court's list of court-appointed attorneys. Probate Code 1850 is amended to provide that six months after the appointment of a conservator, a court investigator shall visit the conservatee and

determine whether the conservator is acting in the best interest of the conservatee. One year after appointment and annually thereafter, the court investigator shall visit the conservatee and conduct his or her investigation of the conservatorship. Further, a court may, at any time, on its on motion or upon request by an interested party, order a hearing to review the conservatorship.

AB 1716: Estate Disposition
Current law requires a surviving spouse to be personally liable for the debts of the deceased spouse (with certain exceptions), with those debts charged against property that passes to the surviving spouse from an intestate spouse without administration." Under *AB 1716*, signed into law June 21, 2022, the term "without administration" is specified as those assets that pass to the surviving spouse without administration under the provisions relating to intestate succession. Additionally, community property with a right of survivorship is specifically included as eligible property.

AB 2288: Advance Health Care Directives: Mental Health
Under *AB 2288*, signed into law on June 20, 2022, the powers of an agent under a Health Care Directive for "health care decisions" or "health care" will include mental health.

SB 1024: Replacement of Professional Fiduciary
Beginning January 1, 2024, *SB 1024* allows for specified parties to petition the court to appoint a replacement professional fiduciary when a professional fiduciary either becomes incapacitated, dies, or another vacancy exists. Notice would be required to be given to all parties entitled to notice. Prior law only directly provided for appointment in the event of disability or death.

SB 1279: Guardian Ad Litem Appointment: Incapacity
Current law allows a court to appoint a guardian ad litem for any minor or incapacitated person to represent his or her interests. Under *SB 1279*, signed into law on September 29, 2022, a person who lacks capacity to make a decision may now also have a guardian ad litem appointed on his or her behalf.

CHANGES TO CALIFORNIA'S END OF LIFE OPTION ACT

By Linda A. Nelte, J.D.

On January 1, 2022, *SB 380* went into effect and significantly changed California's *End of Life Option Act* ("EOLA"), established under *AB 15* during the 2015-2016 legislature. Among the changes to California's EOLA is a shorter waiting period for terminally ill patients to obtain an "aid-in-dying drug."

Background
Suicide and assisted suicide are historically condemned in the United States. Almost every state has a ban on assisted suicide in support of the states' longstanding commitment to the protection and preservation of all human life.[3] Additionally, the *Federal Assisted Suicide Funding Restriction Act of 1997* (42 USCS 14401 et seq.) prohibits the use of federal financial assistance in support of physician-assisted suicide, euthanasia, and mercy killings.

Notwithstanding the majority in *Washington v. Glucksberg*, Justice Stevens, in a concurring opinion, stated that an "'unqualified interest in the preservation of human life' is not itself sufficient to outweigh the interest in liberty that may justify the only possible means of preserving a dying patient's dignity and alleviating her intolerable suffering."[4] Eleven states (including California) seem to agree with Justice Stevens and have since legalized physician-assisted suicide for patients with terminal illnesses. California's EOLA was signed by Governor Brown in October 2015, and went into effect on June 9, 2016. It allows patients to request an aid-in-dying drug

[3] *See* Washington v. Glucksberg, 521 U.S. 702, 710 (1997)

[4] *See id.*

from their physician if they meet certain qualifications.

EOLA Generally and New Changes

To qualify for an aid-in-dying drug in California, patients must be 18 years of age or older, a California resident, diagnosed as terminally ill, and be physically able to self-administer the aid-in-dying drug. Further, patients must make two oral requests directly to their physician, a minimum of 48 hours apart (previously EOLA required oral requests a minimum of 15 days apart), and one written request. The written request must be signed and dated by the patient in the presence of two witnesses. Once the request has been received, the physician (if he or she wishes to participate under EOLA) must determine whether the patient has capacity, is terminally ill, and whether the patient's request is voluntary (*i.e.*, by discussing with the patient in private). The physician must also discuss with patients their diagnosis, potential risks of ingesting the aid-in-dying drug, the fact that there is always the option of not taking the aid-in-dying drug, and feasible alternatives, including pain medication. The physician must discuss with patients the importance of the following: having another person present when they ingest the aid-in-dying drug; notifying their next of kin of their request for aid-in-dying drug; participating in a hospice program; and maintaining the aid-in-dying drug in a secure place.

Although participation under EOLA is voluntary for health care providers, *SB 380* requires physicians who are unwilling to participate under EOLA to inform the patient that they do not participate, document the date of the patient's request, and transfer the patient's relevant information upon request. Prior law did not require physicians to inform patients whether they participate under EOLA. Additionally, the new law requires a health care entity to post its current policy regarding EOLA on its website and prohibits a health care provider from engaging in false, misleading, or deceptive practices relating to their willingness to provide an aid-in-dying drug to a patient. Finally, the new law extends the sunset date of EOLA from January 1, 2026, to January 1, 2031.

Conclusion

SB 380 provides more protections to terminally ill patients requesting an aid-in-dying medication from their physician. Physicians are now required by law in California to notify patients requesting an aid-in-dying medication if they do not participate under EOLA and must post their policy in relation to EOLA on their website.

FEDERAL TAX NEWS

By Katie A. (Lepore) Balatbat, CPA, J.D., LLM., Taxation

Increased Gift and Estate Tax Exclusions. The IRS announced an increase to the gift tax annual exclusion to $17,000 for 2023, increased from $16,000 in 2022. The annual amount that one can gift to a non-citizen spouse is set at $175,000. The estate and gift tax exemption will increase to $12,920,000 for 2023, increased from $12,060,000 in 2022. The estate and gift tax exemption is scheduled to increase with inflation through 2025, and then decrease beginning in 2026.

Income Tax Updates for 2023. In 2023, the standard deduction for a single filer is $13,850 and for married couples filing jointly is $27,700. The top federal marginal tax rate remains at 37% and is effective for single filers beginning at $578,126, for married couples at $693,751, and for trusts at $14,450.

Cost of Living Adjustments for Retirement and Health Plans. The IRS announced cost-of-living adjustments to retirement plans. For tax year 2023, annual salary deferrals for 401(k) or 403(b) plans will increase from $20,500 to $22,500. The catch-up for those over age 50 has increased from $6,500 to $7,500. Contributions to IRAs has increased to $6,500, up from $6,000. The income phase-out for contributions to Roth IRAs is between $138,000 to $153,000 for single filers,

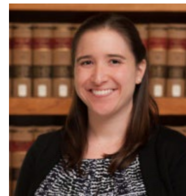
and between $218,000 and $228,000 for married couples. For Health Flexible Spending Accounts, the salary reduction limit is $3,050. The limit for Health Savings Accounts is $3,850 for individuals and $7,750 for families. The taxable wage base for Social Security taxes has increased to $160,200.

IRS Priority Guidance Plan. The IRS Released its 2022-2023 Priority Guidance Plan on November 4, 2022. After receiving input from the public, it announced 205 projects to prioritize guidance in the coming year. Of note in the estate tax context is Section 1014 regarding basis step-up for intentionally defective grantors trusts (IDGTs) at death. Also included are several sections of the newly enacted *CHIPS Act* and *Inflation Reduction Act*.

Retirement Bill. The Senate Finance Committee introduced a bipartisan bill aimed at changing some rules surrounding retirement plans, partially to match the already passed SECURE 2.0 Act in the House. The *Enhancing American Retirement Now (EARN) Act (S. 4808)* would allow greater ability to make catch-up contributions, and encourages all small businesses to adopt retirement plans. It also expands the ability to make penalty-free withdrawals during emergencies and hardships.

RMD Relief. The IRS issued Notice 2022-53 to clarify rules surrounding Required Minimum Distributions ("RMD"s) after the 2019 *SECURE Act*. Original proposed regulations issued on February 24, 2022 created confusion about the 10-year payout to designated beneficiaries of participants who died after their required beginning date. In response, the Notice states that the proposed regulations will not apply earlier than 2023 and any failure to distribute an RMD in 2021 and 2022 will not cause a plan qualification failure or cause a 50% excise tax, giving a grace period until the regulations are finalized.

GOP Attempt to Curtail IRS Spending. Included in the newly enacted *Inflation Reduction Act* is an $80 billion appropriation to the IRS, a portion of which funds are likely to be used to hire new enforcement employees. GOP Representatives, including House Minority Leader Kevin McCarthy (R-CA), have indicated desires to restrict such funding from hiring new employees, or even stopping the allocation altogether. Although it is being heralded in the news as an "army" of auditors, IRS Commissioner Rettig released a statement that the increased funding would be used to apply scrutiny to "large corporate and high-net-worth taxpayers, as well as pass-through entities and multinational taxpayers with international tax issues." The *IRS Reduction Act (H.R. 8769)* as well as the *Family and Small Business Taxpayer Protection Act (H.R. 9092)* have been introduced in Congress and are backed by several Republican co-sponsors, with requirements of the IRS to submit a plan to improve efficiency.



CALIFORNIA TAX UPDATE
By Katie A. (Lepore) Balatbat, CPA, J.D., LLM., Taxation

Pass-Through Tax and Tax Credit. On September 28, 2022, Governor Newsom signed into law *SB 851*, regarding the California pass-through entity tax credit, which affected the other state tax credit. *SB 851* corrects the pass-through entity tax credit so that it does not also reduce the other state tax credit. The new law is effective for tax years 2022 through 2025.

California Approves Organic Usage of Remains. *AB 351*, signed into law on September 18, 2022, provides an option for Californians to turn human remains into organic material. Natural organic reduction (aka human composting) tends to be more eco-friendly than traditional methods which are available. Beginning in 2027, Californians can opt for their body to be placed in a vessel that becomes compost in about 30 days.

Increases in L.A. Real Property Transfer Taxes. Measure ULA on the November 2022 ballot passed, paving the way for an increase in real

property transfer taxes in Los Angeles for expensive real properties. The current transfer tax rate is $4.50 for every $1,000 of value. Measure ULA provides an additional 4.0% tax on the transfer of real properties in the City of Los Angeles valued between $5 million to $10 million, and an additional 5.5% on properties valued above $10 million. The new rates will apply to properties sold after April 1, 2023. The language appears to possibly allow such taxes upon a change of ownership of a legal entity that holds real property. There is also an additional documentary transfer tax combined between the City and County at a rate of 0.56%.

Removal of Cap on SDI. On September 30, 2022, Governor Newsom signed *SB 951*, which removes the current cap on paying State Disability Insurance payments. By removing the cap, low-income workers will now be eligible for payment of up to 90% of their wages while on paid family leave, beginning in 2025. All other workers will be eligible for payments of up to 70% of their salary while on leave. There currently is a cap on the 1.1% SDI payments, paid on wages up to $145,600 per year.

Short Term Rental Lottery Partially Abandoned. Under recently passed regulations, as previously reported in this newsletter, the City of San Diego planned to hold a lottery for any landlords wishing to rent property as a short-term rental. The regulations limited short-term rentals to a total of 5,400 in the city, with about 1,100 in Mission Beach. While the applications for Mission Beach exceeded 1,100 and will be entered into a lottery for the right to rent, total applications were less than 5,400 and a lottery is not needed.[5] The lottery for Tier 3 and Tier 4 applications takes place on December 16, 2022.

Housing Bills Enacted. On September 28, Governor Newsom signed *AB 2011* and *SB 6* into law. Both bills could increase the ability of developers to build residential property in commercial zones. Under *AB 2011*, certain affordable housing projects can apply for a more streamlined ministerial review, so long as the units offered are 100% "affordable units," unless mixed-income projects. Similarly, *SB 6* allows for streamlined approvals if the project site is 20 acres or less, provides at least 30 units per acre of land, and provides a specified percentage as affordable units. Additionally, *AB 2097* reduces requirements for building available parking if the project is within a half-mile of a major public transit stop.

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INSURANCE TRUSTS
FAMILY LIMITED PARTNERSHIPS
GENERATION SKIPPING/DYNASTY TRUSTS
ESTATE/GIFT TAX DISCOUNT PLANNING
CHARITABLE GIFT PLANNING
PROBATE & TRUST ADMINISTRATION
ESTATE & GIFT TAX RETURNS
PRE-MARITAL AGREEMENTS

VALUATION SERVICES

BUSINESS APPRAISAL SERVICES/DISCOUNT OPINIONS
VALUATIONS FOR ESTATE AND GIFT TAX PURPOSES

TAXATION

IRS RULING REQUESTS
TAX REPRESENTATION

[5] https://fox5sandiego.com/news/local-news/san-diego-scraps-lottery-plans-for-short-term-rentals-after-applications-fall-short/?utm_source=facebook&utm_medium=news_tab

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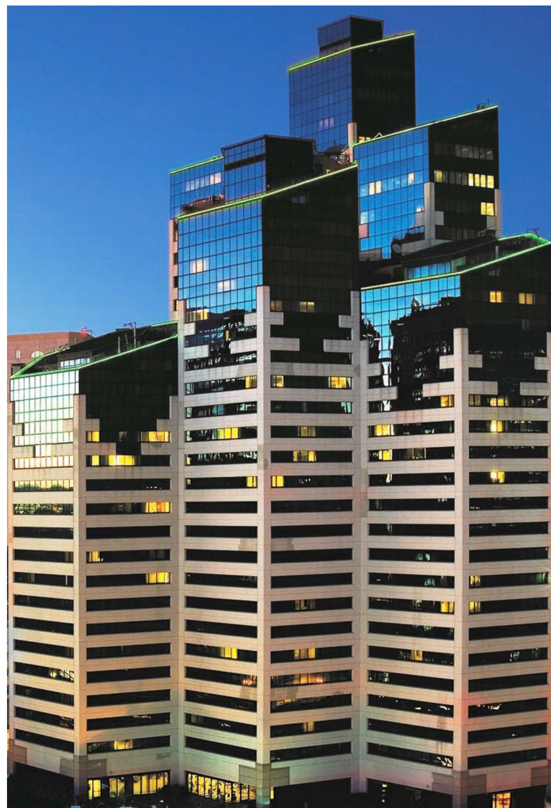

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