TAX & WEALTH ADVISOR ALERT: THE IMPORTANCE OF BENEFICIARY DESIGNATIONS

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Some of your most significant assets, like your life insurance and retirement accounts, ask you to make beneficiary designations. If you make valid beneficiary designations on these assets, then upon your death they will pass directly to your named beneficiaries without being subject to the probate process. Click here to view our article on probate and why you might want to avoid it.

Many people overlook the importance of beneficiary designations and neglect to name beneficiaries because they think their other estate planning documents will cover those assets. However, beneficiary designations operate independently from other estate planning documents, like a will or trust agreement. Therefore, you should make beneficiary designations because your other estate planning documents will not control how these assets are to be distributed and to whom they should be distributed. If you neglect to name beneficiaries, then these accounts or policies could become part of your estate and be subject to the probate process.

Just as it is important to make beneficiary designations, it is equally as important to review and, if necessary, update those designations. Major life events, changes in circumstances, or even a change of heart can all warrant an update to beneficiary designations. It is good practice to review your estate plan every three to five years, and each time you do so you should be reviewing your beneficiary designations.

Finally, it is important to consider any unintended consequences to naming someone as a beneficiary. For example, if a special needs person receives assets through a beneficiary designation, then he or she may no longer be eligible for government benefits. In these circumstances and in others, you should consult with an estate planning attorney to discuss your options.

Beneficiary designations are an important part of your estate plan and require special attention. If you would like more information on beneficiary designations and estate planning in general, please contact attorneys Carl D. Holborn, or Kelly M. Spott.

TAX & WEALTH ADVISOR ALERT: WHAT IS PROBATE AND WHY SHOULD I AVOID IT?

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Probate is the legal process during which a court oversees the collection and transfer of a person's assets upon his or her death. In general, the probate process includes filing a will, appointing a personal representative, inventorying the decedent's assets, paying the decedent's debts, filing taxes, and distributing the balance of the estate according to the decedent's will. If the decedent did not leave a will, then the decedent's property is distributed according to Wisconsin's intestacy laws.

Many people seek to avoid probate because probate documents are public record, so avoiding probate means maintaining a sense of privacy. Additionally, the probate process can be very time consuming, ranging anywhere from six months to two years, and expensive. Expenses such as court costs, probate bonds, fees paid to the personal representative, and attorneys' fees can all add up to a significant amount by the end of the probate process. Because the estate generally pays for these costs, the probate process can significantly drain an estate and take away what you left behind for your beneficiaries.

With a good estate plan in place, it is possible for your estate to avoid the probate process, or at least lessen the process's impact on your estate. If you would like more information on estate planning options to avoid probate, please feel free to contact attorneys Carl D. Holborn, or Kelly M. Spott.

TAX & WEALTH ADVISOR ALERT: PLANNING FOR SUCCESSION WITH A BUSINESS SUCCESSION PLAN (PART II)

(Part II) Objectives of the Succession Plan

In our last article we discussed why a well-constructed succession plan is necessary. In this article, we review the essential objectives the plan needs to address.

The objectives of succession planning and the methods used to accomplish these objectives are varied, but include the following:

1. **MAXIMIZE THE VALUE OF THE BUSINESS.** During the owner's tenure at the company, the owner must develop a strong management team involving those family members who are active in the business as well as key employees. This will maximize value and help ensure that upon his or her retirement or demise, the passage of the business to the next generation will be smooth and successful.
2. **MINIMIZE TAXATION AND EXPENSES.** The succession plan should attempt to minimize the amount of income and estate taxes in connection with the transfer of the company ownership to the next generation during the owner's life or upon death. A few items in 2020 to consider in connection with accomplishing this objective are: (a) the use of annualized gifts of up to $15,000 per person, or using lifetime gift exclusion of $11,580,000 per person, (b) the full utilization by both the owner and spouse of each of their Unified Credit of $11,580,000 upon their death, (c) planning for the step up in basis of the business interest upon the death of the owner or his or her spouse, (d) establishing estate planning documents that allow for the transfer of ownership of assets without the costs and delays inherent in probate proceedings, and (e) the use of life insurance to act as a funding vehicle to fulfill some or all of the estate tax liquidity needs of the owner so that the business will not be faced with the dilemma of a transfer at death to the next generation accompanied by an estate tax bill that could cause serious financial problems to the business or the next generation of owners.
3. **TREAT THE CHILDREN EQUITABLY AND PRESERVE FAMILY HARMONY.** Most family business owners want their children who are active in the business to end up with full or at least controlling ownership of the business. This objective can be accomplished while still treating those children who are not active in the business in an equitable fashion by arranging for them to receive non-business assets, life insurance, or minority or non-voting interests in the business coupled with some buy-out arrangement in a fair and equitable Buy-Sell Agreement.

It is important to involve children and other affected parties in the planning process so that they understand the owner's overall objectives, including how equitable treatment is being achieved. Often, the owner and the owner's spouse will be involved in the initial process and planning, and after a summary of the initial plan reflecting the desires of the owner is agreed upon, the children, both active and inactive, and possibly key employees, are brought into the planning process.

As a result of this process, the owner will clearly establish his or her plan as to who will succeed to ownership and control of the business, when ownership and control will transfer, and how it will be accomplished. By early planning, the owner will have many more options available so that the owner's desires for both the welfare of the business as well as of his or her family can best be achieved.

TAX & WEALTH ADVISOR ALERT: REMINDER – IRS ESTIMATED TAX PAYMENTS DEADLINE POSTPONED TO JULY 15 – HOW THIS AFFECTS YOU

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The Internal Revenue Service reminds taxpayers that estimated tax payments for tax year 2020, originally due April 15 and June 15, are now due July 15 due to the COVID-19 outbreak. Therefore, any individual or corporation that has a quarterly estimated tax payment due has until July 15 to make that payment without penalty. This relief applies to federal income tax returns and tax payments (including tax on self-employment income) otherwise due April 15, 2020. This relief does not apply to state tax payments, deposits, or payments of any other type of federal tax.

Who needs to make estimated tax payments?

Individuals, including sole proprietors, partners, and S corporation shareholders, generally have to make estimated tax payments if they expect to owe tax of $1,000 or more when their return is filed. Similarly, investors, retirees, and others often need to make these payments. That is because a substantial portion of their income is not subject to withholding. Other income generally not subject to withholding includes interest, dividends, capital gains, alimony, and rental income.

Corporations generally have to make estimated tax payments if they expect to owe tax of $500 or more when their return is filed. Special rules apply to some groups of taxpayers, such as farmers, fishermen, casualty and disaster victims, those who recently became disabled, recent retirees, and those who receive income unevenly during the year.

Who does not need to make estimated tax payments?

Taxpayers that receive salaries and wages can avoid having to pay estimated tax by asking their employer to withhold more tax from their earnings. To do this, taxpayers can file a new Form W-4 with their employer. There is a special line on Form W-4 for you to enter the additional amount you want your employer to withhold. If you receive a paycheck, the IRS's Tax Withholding Estimator will help you make sure you have the right amount of tax withheld from your paycheck.

Additionally, you do not have to pay estimated tax for the current year if you **meet all three** of the following conditions:

- You had no tax liability for the prior year
- You were a U.S. citizen or resident for the whole year
- Your prior tax year covered a 12-month period

You had no tax liability for the prior year if your total tax was zero or you did not have to file an income tax return.

How do I figure out my estimated tax payments?

Individuals, including sole proprietors, partners, and S corporation shareholders, can compute their estimated taxes by following the instructions on Form 1040-ES, Estimated Tax for Individuals. To compute your estimated tax, you must figure out your expected adjusted gross income, taxable income, taxes, deductions, and credits for the year. Corporations generally use Form 1120-W to compute estimated tax.

When and how should I pay Federal estimated taxes?

For estimated tax purposes, the year is divided into four payment periods. Estimated tax payments are typically due as follows:

- January 1 to March 31 – April 15
- April 1 to May 31 – June 15
- June 1 to August 31 – September 15
- September 1 to December 31 – January 15 of the following year

Note: As mentioned, due to the COVID-19 outbreak, 2020 estimated tax payments that otherwise would have been due April 15 and June 15, 2020, are postponed to July 15, 2020.

You may send estimated tax payments with Form 1040-ES by mail, or you can pay online, by phone or from your mobile device using the IRS2Go app. Visit IRS.gov/payments to view all the options. Using the Electronic Federal Tax Payment System (EFTPS) is the easiest way for individuals as well as businesses (who must use EFTP) to pay federal taxes. Using EFTPS, allows you to set up direct payments in advance and access a history of your payments, so you know how much and when you made your estimated tax payments.

Are there penalties for underpayment of estimated tax?

If you did not pay enough tax throughout the year, either through withholding or by making estimated tax payments, you may have to pay a penalty for underpayment of estimated tax. Generally, most taxpayers will avoid this penalty if they owe less than $1,000 in tax after subtracting their withholdings and credits, or if they paid at least 90% of the tax for the current year, or 100% of the tax shown on the return for the prior year, whichever is smaller.

Use Form 2210, Underpayment of Estimated Tax by Individuals, Estates, and Trusts (or Form 2220, Underpayment of Estimated Tax by Corporations), to see if you owe a penalty for underpaying your estimated tax or qualify for a penalty waiver. Please refer to the Form 1040 and 1040-SR Instructions or Form 1120 Instructions, for where to report the estimated tax penalty on your return.

What about Wisconsin estimated tax payments?

Federal extensions provided by the IRS may be used for Wisconsin income and franchise tax and pass-through withholding tax purposes. Estimated payments due on or after April 1, 2020 and before July 15, 2020 are extended to July 15, 2020. For information on the new Wisconsin filing and payment due dates, see the article Wisconsin Tax Return Due Dates and Payments.

O'Neil, Cannon, Hollman, DeJong & Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to estimated tax payments, please contact Attorney Britany E. Morrison.

TAX & WEALTH ADVISOR ALERT: THE IMPORTANCE OF A DURABLE FINANCIAL POWER OF ATTORNEY

A proper estate plan covers not only what should happen upon your death, but also what should happen if you lose your decision-making skills. While planning for incapacity may be as unpleasant as planning for death, it is an important step in the estate planning process. Planning for incapacity ensures that someone you specifically choose and trust can act on your behalf while you are unable to do so for yourself. One key document to help you plan for incapacity is the Durable Financial Power of Attorney.

A Durable Financial Power of Attorney allows you to appoint someone, your “agent” or “attorney-in-fact,” to manage your financial affairs in the event you are unable to so for yourself. The word “durable” simply means that the power of attorney remains in effect after you become incapacitated or incompetent. These documents are fairly flexible, allowing you to give your agent broad or limited power. Further, you can choose to either give your agent immediate power or to make your agent’s power effective only once you’ve been determined to be incapacitated.

Some examples of tasks your agent can perform include paying your bills, managing your assets, filing an insurance claim, and even hiring a lawyer. It is easy to believe that a Durable Financial Power of Attorney is unnecessary if you don’t own many assets or if you own assets jointly with someone else. However, some of these actions require your agent to have specific legal authority to act on your behalf, and the Durable Financial Power of Attorney would provide your agent with that authority.

If you do not get a power of attorney and you were to become incapacitated or incompetent, then your family would need to ask the court to appoint someone to act on your behalf. Not only could the court appoint a stranger to manage your financial affairs, but also this process can be expensive, public, and time consuming. Having a proper estate plan that covers what should happen if you become incapacitated or incompetent will save you and your loved ones time and money.

Keep in mind, though, that a Durable Financial Power of Attorney would not allow your agent to continue managing your financial affairs after your death. For this reason, these documents are often drafted as part of a larger estate plan.

The attorneys at O’Neil, Cannon, Hollman, DeJong & Laing S.C. have experience in drafting various estate plans, both simple and complex, and would be happy to discuss the estate planning process with you. If you are interested in learning more about estate planning, please contact attorneys Carl D. Holborn, or Kelly M. Spott.

TAX & WEALTH ADVISOR ALERT: PLANNING FOR SUCCESS WITH A BUSINESS SUCCESSION PLAN (PART I)

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Many closely held businesses involve family members. The owner of such a business may wish to sell the business to some third party on or prior to death, or, more likely, may desire to transfer the business to the owner's children. Although some business owners may believe little or no planning is required for this type of transaction to take place, the opposite is true. To successfully transfer a family business to the next generation, the owner should commence planning for succession as soon as the owner has a good indication of which family members may be interested in succeeding to the ownership of the business, and more importantly, which of them will best be able to lead the business into the future.

In order for a transition to proceed as the owner desires, an effective business succession plan must be in place. When commencing the planning, the business owner should remember four key factors:

1. Succession planning is a process, not an event. Accordingly, the plan should be reviewed as time passes to see if changes to the plan are necessary.
2. Communicating with family members and key employees regarding the plan and involving them in the succession plan may help foster the future good and unity of both the family and the business.
3. While estate tax planning issues must be kept in mind when considering a succession plan, the plan must first fulfill the needs of the owner and the family, as well as those of the business.
4. The retirement income needs of the owner must also be reviewed and considered in determining the proper structure for the succession plan.

In developing a succession plan for the owner and the business, the owner should work with an experienced planner. Together, they will have much "homework" to do, including reviewing a wide variety of information, starting with the historical and proforma financial statements of the business and the personal financial statements of the owner. In addition, a number of legal documents, including existing wills, trust agreements, buy/sell agreements, employment contracts, leases, corporate documents, partnership or limited liability company agreements, and any pre-nuptial agreements, must be reviewed. Further, they should consider information regarding the business's capital structure, debt and cash flow, the owner's present retirement income needs, the owner's desires as to when and to whom the business should be transferred, and what other assets are available for family members not active in the business.

All of this information is important in determining the "right" succession plan for the owner and the business. Once these and other pertinent facts are analyzed by the owner and the planner, they must then take all of these pieces and combine them to create a customized succession plan or "picture" of what the owner would like to see occur in the future upon the transition of the family business to future generations.

TAX & WEALTH ADVISOR ALERT: HOW A TRUST CAN PROVIDE ASSET PROTECTION FOR YOUR CHILDREN

O'NEILCANNON
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Do you want to leave your children with an inheritance, but are worried about creditors taking part of that inheritance? If so, you are not alone. Fortunately, a properly established protective trust can help safeguard the money you leave behind for your children from their creditors, including in a divorce.

Creditors can more easily reach your children's inheritances if it is given to them directly, outside of a trust. However, creditors would have more hurdles to jump through to reach your children's inheritance if it is held in a protective trust. Therefore, many parents add extra protections for their children by directing their children's inheritances to be held in a protective trust.

The trust, acting as its own separate entity, would own the assets on behalf of your children, the beneficiaries of the trust. This way, your children would not technically own the assets which makes it much more difficult for creditors to reach their inheritances. Importantly, your children would still have access to the trust assets and benefit from them. A protective trust would allow your children to be the beneficiaries and receive distributions for their health, support, and maintenance. Also, in some circumstances your children could be the Trustee of their own trust, meaning they could manage the trust assets on their own.

Not only would a protective trust safeguard your children's inheritances from obvious creditors, it would also safeguard their inheritances if they were to get a divorce. If you were to give your children their inheritances directly, they would need to take extra steps and precautions to ensure their inheritance is not comingled with marital property to prevent the inheritance from transmuting into a marital property asset. However, if the inheritance is protected in a trust, then the trust assets would remain classified as individual property under Wisconsin marital property law.

With a proper estate plan in place, you can have peace of mind knowing the money you leave behind for your children will be protected from the many threats your children may come across. If you would like to learn more about asset protection and discuss your estate planning options, please contact attorneys Carl D. Holborn, or Kelly M. Spott.

TAX & WEALTH ADVISOR ALERT: IRS SAYS EXPENSES PAID WITH FORGIVEN PPP LOANS NOT DEDUCTIBLE

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Yesterday, the IRS released guidance in Notice 2020-32 stating that expenses related to forgivable loans through the Paycheck Protection Program (PPP) will not be tax-deductible.

Under the PPP, a program created by the CARES Act to provide coronavirus relief, small businesses can receive forgivable loans of up to $10 million as long as the loan goes to essential expenses, such as maintaining payroll, rent, utilities, and mortgage interest.

While it was clear from the CARES Act that PPP loan forgiveness is not taxable income, the CARES Act said nothing about deducting the expenses paid with such loan proceeds. However, the IRS stated in its guidance yesterday that expenses that result in forgiveness of a PPP loan are not tax-deductible—thereby preventing a double tax benefit. This means that small businesses cannot claim tax deductions for expenses that are normally *fully* deductible, such as wages, rent, utilities, etc., if they are paid with PPP funds that are forgiven.

The IRS cited Section 256 of the tax code in its guidance, which states that deductions cannot be taken if they are tied to a certain class of tax-exempt income. If desired, Congress could override the IRS's stance by passing a law that explicitly allows the deductions. Additionally, it is possible a taxpayer may decide to challenge this position in court.

Nevertheless, given the current IRS guidance, small businesses that manage to get their PPP loans forgiven may find themselves losing valuable tax breaks and should plan accordingly.

O'Neil, Cannon, Hollman, DeJong & Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to taxation under the CARES Act, please contact attorney Britany E. Morrison.

UPDATE: On May 5th, 2020, Senator John Cornyn (R-Tex.) recently introduced the bipartisan Small Business Expense Protection Act (S. 3612), which moves to essentially nullify Notice 2020-32. Senate Bill 3612 provides that business expenses otherwise deductible under Code Section 162 would still be deductible even if they were funded by forgiven PPP loan proceeds. Currently, the bill has picked up 23 sponsors. Neither Senator Ron Johnson nor Senator Tammy Baldwin have yet to express support. Nevertheless, this bill is strongly supported by the American Institute of Certified Public Accountants (AICPA). It was read twice in the Senate and referred to the Senate Committee on Finance but has been sitting there since. On May 12th, 2020, the House introduced an identical bill (HB6821) and referred it to the House Committee on Ways and Means. It has been sitting with the House Committee on Ways and Means since referral. The attorneys at O'Neil, Cannon, Hollman, DeJong & Laing will continue to monitor the status of both bills and provide information on any federal and state law changes.

TAX & WEALTH ADVISOR ALERT: WISCONSIN WILL NOT TAX FORGIVEN PAYCHECK PROTECTION PROGRAM LOANS

O'NEILCANNON
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Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the federal government is providing much needed relief to small businesses in the form of loans that can be forgiven under the Paycheck Protection Program (PPP). A PPP loan can be forgiven if the loan is used for specific costs such as payroll costs, interest payments on loans secured by a mortgage, rent, and utilities, as discussed in more detail here. The federal government will not tax the amount of the loan that is forgiven, and the forgiven amount will not count as taxable income to small businesses; however, this might not be the case in some states. Luckily, Wisconsin small businesses will not have the unexpected tax burden of owing state tax on forgiven PPP loans thanks to A.B. 1038, signed by Governor Tony Evers on April 15, 2020.

Under federal law (see Internal Revenue Code Section 108), if a debt is forgiven, taxpayers must include the forgiven amount in their taxable income and pay taxes on that income unless a certain exception applies. Most states conform with this federal tax code provision and incorporate this code section into their own state tax codes. The CARES Act, however, changes federal tax law and specifically excludes the amount of loan forgiveness under the PPP from this code section, and therefore, the amount of loan forgiveness does not count as taxable income. Since most states follow the federal tax treatment of loan forgiveness, one would expect all states to incorporate this exception as well. However, state conformity to the federal tax code is not automatic in some states, including Wisconsin.

States conform to the federal tax code in one of two ways—either fixed date or static conformity or moving date conformity. In a moving date conformity state, or what is sometimes referred to as a “rolling” conformity state, changes in federal tax law automatically apply to the state tax code as they occur. If the state does not want to conform to a new federal tax law, the state must pass specific legislation doing so. Illinois, Michigan, Iowa, and Missouri are just a few examples of moving date conformity states. In these states and other moving date conformity states, there will be no issue with the state taxation of loan forgiveness under the PPP—the state will automatically conform to the CARES Act exception and they will not tax the forgiveness of federal loans under the PPP unless the state otherwise adopts a law to do so.

With fixed date or static conformity states, like Wisconsin, Minnesota, Indiana, Massachusetts, and California, a state conforms to the federal tax code as it existed on a certain date. The state does not automatically incorporate changes to federal tax law that occur after that date. For instance, if a state’s conformity date is January 1, 2017, the state’s tax code conforms to the federal tax code (usually by including large references to the Internal Revenue Code) as of January 1, 2017, and any federal code changes after January 1, 2017 are not included in the state tax code unless and until the state changes it’s conformity date or makes express provisions conforming to certain federal tax law changes. This means that unless a static state conforms to the most recent version of the Internal Revenue Code, which includes the CARES Act exception, or makes an express provision for the exclusion, small businesses in those states will owe state taxes on forgiven PPP loans.

Typically, each year, lawmakers in static states vote to update their conformity date, but often times this simply doesn't occur. Many static states are usually a year behind—for example, a state will be using the current 2020 legislative session to conform to the Internal Revenue Code as it existed at the end of the 2019 tax year. Unfortunately, there are a few states that are infamous for not updating their conformity dates and Wisconsin is one of them. Wisconsin uses a 2017 conformity date which is not great, but still ahead of California whose conformity date is 2015 and Massachusetts where the individual (but not corporate) conformity date is 2005! While it is not unusual for a state to be behind on its conformity date, this year it is important for PPP loan forgiveness and many other provisions related to the CARES Act.

Although the Wisconsin legislature adopted omnibus legislation on April 15, 2020 to address the coronavirus pandemic, the bill does not update Wisconsin's conformity date. Rather, the bill includes express language that brings the state's tax code into conformity with several federal tax law changes under the CARES Act. The good news for Wisconsin small businesses seeking PPP loans is that the bill expressly conforms to the CARES Act exception that permits loan forgiveness on a tax-free basis under the PPP from February 15, 2020 through June 30, 2020.

Other static state legislators must update their conformity date or provide express provisions before calendar year 2020 tax returns are due (March 15, 2021) so businesses will not owe state taxes on forgiven PPP loans. If these states do not conform by then, small businesses might face the burden of state taxes on this much-needed relief. Business owners in static conformity states seeking PPP loans should be aware of the potential tax burden associated with PPP loan forgiveness and plan accordingly.

O'Neil, Cannon, Hollman, DeJong & Laing remains open and will continue to monitor federal and state law tax changes. For questions or further information relating to taxation under the CARES Act, please contact attorney Britany E. Morrison.

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TAX & WEALTH ADVISOR ALERT: WISCONSIN FOLLOWS FEDERAL EXTENDED TAX DUE DATES

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Wisconsin has updated its proposed guidance document discussing how various tax deadlines are affected by IRS Notices 2020-18 and 2020-23, which were issued as a result of the COVID-19 pandemic. As we previously wrote, the IRS notices provide extensions for a variety of tax form filings and payment obligations that are due between April 1, 2020 and July 15, 2020, including estimated tax payments due June 15.

The proposed guidance document from Wisconsin states that federal extensions provided in the IRS notices may be used for Wisconsin income and franchise tax and for pass-through withholding tax purposes. For returns due on or after April 1, 2020 and before July 15, 2020, regardless of whether it is the original or extended due date, the due date is extended to July 15, 2020. See the helpful chart in the document for tax return due dates for 2019 Wisconsin tax returns.

In addition, any estimated income, franchise, or pass-through withholding tax payment that is due on or after April 1, 2020 and before July 15, 2020, is extended to July 15, 2020.

The document also notes that payments from the federal CARES Act (i.e. the federal economic impact payment or stimulus payment) are not taxable for federal or Wisconsin income tax purposes.

Lastly, like the IRS, Wisconsin will be postponing interest and penalties as a result of the extended due dates. Unpaid income and franchise taxes and pass-through withholding taxes due on or after April 1, 2020 and before July 15, 2020 will not accrue interest or penalties until July 16, 2020.

If you are interested in learning more about the new tax filing guidance, please contact attorney Britany E. Morrison at O’Neil, Cannon, Hollman, DeJong & Laing S.C.