

# Boulder County Bar Association Newsletter

## DEATH AND TAXES IN 2017

AMBER REED AND LAURA MOORE

**"In this world, nothing can be said to be certain except death and taxes."  
Benjamin Franklin**

How do we plan for our tax and estate clients, in times of political change and uncertainty? This question presents itself daily for attorneys practicing in these areas, since the inauguration of President Trump. President Trump campaigned on a promise to overhaul the tax code. With Republicans controlling the Senate and House of Representatives, it's more likely that Trump's tax proposals will be enacted. Although Trump's tax plan has not been submitted to date, his campaign agenda proposed a complete repeal of the federal estate tax and other significant income tax changes. This article addresses known changes to the tax code for 2017 and anticipated changes under the Trump administration.

### **Change of Tax Filing Deadlines**

Starting with tax year 2016 (returns due in 2017), new tax filing deadlines exist. The most impactful changes relate to Partnership and Corporate tax returns. Partnership returns are due on March 15, 2017 with returns for Corporations due on April 18, 2017. Report of Foreign Bank and Financial Accounts (FinCEN 114, "FBAR")

**FOOD WINE  
JAZZ ART  
page 4**

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# DEATH AND TAXES IN 2017

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is due on the same date as the individual Form 1040, which, in 2017, is April 18th because of observation of Emancipation Day in Washington, D.C. U.S. Income Tax Returns for Estates and Trusts (Form 1041) will now have a maximum extension of five and a half months, two weeks longer than in prior tax years.

### Tax Code Overhaul

On February 10, 2017, the White House revealed that, in the next few weeks, President Trump intends to announce his ambitious tax reform plan. White House Press Secretary and Communications Director Sean Spicer indicated the plan would include the most comprehensive tax changes since the tax code overhaul of 1986. According to Trump, his plan is designed to lower the overall tax burden on American businesses. During his campaign, Trump pledged to cut the corporate tax rate to 15% from 35%.<sup>[1]</sup> However, a corporate tax cut alone will not benefit the majority of small businesses, since most are not corporations. <sup>[2]</sup> Trump also mentioned reducing the number of individual tax brackets from seven to three, while dropping the top rate from 39.6% to 33 percent, a move that will mostly benefit the top 1% of taxpayers. <sup>[3]</sup> Discussion includes a border adjustment tax to tax imports while exempting exports. <sup>[4]</sup> However, enactment of such a tax would leave the U.S. vulnerable to legal challenge before the World Trade Organization ("WTO") because U.S. trading partners would have a strong argument that the tax violates WTO rules.<sup>[5]</sup>

### Repeal of the Federal Estate Tax

Presently, estates in excess of \$5,490,000 (\$10,980,000 for a husband and wife) including life insurance proceeds and other non-probate property, will be subject to estate tax. Under the current code, tax rates for assets passed to heirs in excess of the exemption amount start at 40%. A repeal of the federal estate tax benefits the richest of Americans,

the top 1%. In tax year 2015, less than 5,000 estates owed federal estate taxes.<sup>[6]</sup> The question remains whether a repeal of the federal estate tax would also include a repeal of the carryover basis and generation skipping transfer tax. Trump's plan may include a capital gains tax at death. Trump's campaign proposal said that capital gains held until death and valued over \$10 million will be subject to tax to exempt small businesses and family farms.<sup>[7]</sup> For states with state estate taxes (unlike Colorado), a repeal of the federal estate tax would impact whether a federal qualified terminable interest property election exists.

### Limits on Gift Tax Free Transfers

The annual gift tax exclusion remains \$14,000 in 2017. Both Trump's proposed plan and the House of Representatives' blueprint are silent on the fate of the gift tax.<sup>[8]</sup>

### Cap on Charitable Deduction

Competition for donor dollars is a reality in the nonprofit world. According to the National Center for Charitable Statistics, the number of nonprofit organizations in April of 2016 exceeded 1,571,056, including 1,097,689 public charities.<sup>[9]</sup> Tax changes that alter the bracket structure reduce the deduction amount and tax benefit to the charitable donor. Tax changes that discourage donations negatively impact the many individuals and programs that benefit from these charitable organizations. If the Trump tax plan successfully includes a cap on charitable donations, certain charitable donation deductions in future years could be disallowed.

### Estate Planning Strategies

A freeze on estate planning is not an option. Clients continue to need Wills and in some cases, trusts, to memorialize their testamentary wishes. Yet in times of uncertainty, the fear of such changes creates a

# DEATH AND TAXES IN 2017

## CONTINUED

chilling effect. Attorneys drafting trusts should incorporate trustee amendment powers and other provisions that authorize the trustee to take advantage of tax laws at the time of death. Building flexibility into estate planning documents provides protection against uncertainty. For example, to deal with the potential impact of a state estate tax if the federal estate tax ceases to exist, you could include a general power of appointment clause that provides, "if there is no state or federal estate tax in effect at the Grantor's death, then all property held under this Trust at the Grantor's death shall be paid to a trust described in Code Sec. 2056(b)(7) that would qualify for the estate tax marital deduction and the Grantor hereby grants to the Grantor's Spouse the power to appoint the property in any such trust that is so described to the Grantor's Spouse's estate upon the Grantor's Spouse's death, by specific reference to this general power of appointment hereby granted, so that the trust will be described in Code Sec. 2056(b)(5)." [10] Other options include an outright bequest to the surviving spouse with contingent disclaimer trust, a Clayton QTIP approach which allows any part of the marital gift not elected to qualify for the marital deduction to pass to another trust or to other beneficiaries without jeopardizing the entire marital deduction, or a credit shelter/marital trust funding formula as under current law with a specification as to whether the credit shelter trust should be funded if repeal undermines the integrity of the formula allocations.[11]




### What We Know Today

The plan to overhaul the tax code will come down to a compromise between President Trump and Speaker of the House of Representatives, Paul Ryan.[12] We know that the tax changes will benefit the richest of Americans and increase the tax burden

to the middle class. We know that changes to the tax code will disrupt estate and tax planning for years to come. We know these changes are inevitable and likely to benefit President Trump and his cabinet, not the majority of Americans. Sad. Stay healthy, my friends.

**About the Authors: Laura Moore (Warren, Carlson & Moore, LLP) and Amber Reed (Howard O. Bernstein, PC) are Co-Chairs of the Boulder County Bar Association Tax, Estate Planning and Probate Section.**

**End notes can be found on page 14.**



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# FOOD WINE JAZZ ART



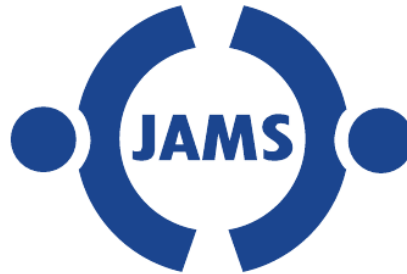
Thank you to all who joined us for Food Wine Jazz Art. We appreciate all the support we have received through the years, and our 16th year was a great success. All of the proceeds will benefit the Legal Aid Foundation of Colorado.



# FOOD WINE JAZZ ART

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# CALENDAR OF EVENTS

**Wednesday, March 1**

## **PARALEGAL**

**Regulatory Structure of Energy**

**Presenter: Mark Detsky**

Noon @ BCBA Conference Room

Free to attend, \$12 Lunch

[Register and pay online here](#)

**Wednesday, March 1**

## **CIVIL**

**The Art of Direct Examination**

**Presenter: Beth Klein**

Noon @ Justice Center Training Room East

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

**Tuesday, March 7**

## **SOLO/SMALL FIRM**

**Office Space - Finding a Good Deal**

**Presenter: Cheryl Stafford**

Noon @ BCBA Conference Room

Free to attend

[Email laura@boulder-bar.org to register](mailto:laura@boulder-bar.org)

**Wednesday, March 8**

## **BUSINESS**

**Cybersecurity and Data Privacy**

**Presenter: Steve Fritz**

Noon @ BCBA Conference Room

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

**Wednesday, March 8**

## **CRIMINAL**

**Sex Offender Treatment**

**Presenters: Leonard Woodson & Christina Marquez**

Noon @ Justice Center Training Room East

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

**Thursday, March 9**

## **WOMEN'S BAR HAPPY HOUR**

5 pm @ License One

First drink and appetizers on the bar!

**Friday, March 10**

## **AVAILABILITY OF LEGAL SERVICES**

**Monthly Roundtable**

Noon @ BCLS

**Wednesday, March 15**

## **FAMILY**

**Domestic Relations Judicial Officer & CJA Panel**

**Presenter: 20th JD Bench & CJA 's**

Noon @ Justice Center Training Room East

\$25 CLE, \$15 New/Young Lawyer

[Register and pay online here](#)

**Thursday, March 16**

## **REAL ESTATE**

**Commercial Insurance Principles**

**Presenter: Matt Honea**

Noon @ Dickens Tavern, Longmont

\$25 CLE, \$15 New/Young Lawyer, \$13 Lunch

[Register and pay online here](#)

**Thursday, March 16**

## **BANKRUPTCY**

**Networking Lunch and Roundtable**

Noon @ Kathmandu (1964 28th Street)

**Wednesday, March 22**

## **TAX, ESTATE PLANNING AND PROBATE**

**Streamline Your Overhead and Free Up Your Life**

**Presenter: Wendi Temkin**

Noon @ BCBA Conference Room

Free to attend

[Email laura@boulder-bar.org to register](mailto:laura@boulder-bar.org)

**Thursday, March 23**

## **INTELLECTUAL PROPERTY**

**Professional Responsibility and Practice before USPTO**

**Presenters: Molly Kocialski and James Silbermann**

Noon @ Holland & Hart

\$25 CLE, \$15 New/Young Lawyer. 1 ethics credit applied for

[Register and pay online here](#)

## BOULDER IDC – THURSDAY, MARCH 16

CFI/PRE Investigation of Child Sexual Abuse

Presenters: Robin Friesen-Holwell, MS-MFT, Katie Ashburner, MSW, and Suzanne Pinto, PhD

11:30 @ Dairy Arts Center, \$27 IDC Members, \$32 Non-Members, \$35 Walk in

2 General CLE and .3 Ethics To RSVP, go to [boulderidc.org](http://boulderidc.org)

# PRESIDENT'S PAGE

## ABIGAIL SMITH

It all started in September with a trip to San Francisco. The journey had been on my calendar for some time; a planned opportunity to attend a conference. I looked forward to it, and it did not disappoint. I had an opportunity to learn from my colleagues, and, even better, a chance to meet an old friend for dinner. Everything went exactly as planned.

Around the same time, one of our cases started to heat up. A multitude of depositions were set for October, and I quickly found myself in Boise, followed by a trip to Minneapolis the next week. Before I knew it, it was November, and time for me to move to a new home. Once the movers left, I looked around my studio apartment and wondered, how, exactly one is supposed to unpack when every available surface is covered with either boxes or furniture. The answer: slowly, with frequent trips to storage because there is no place to store the empty boxes. I worked steadily on my unpacking project with one eye toward the calendar. One week after moving, I boarded a plane to Washington, D.C. for the pre-trial conference.

The week in Washington was a blur: filled to capacity with meetings, mock trial, and, of course the pre-trial conference for which I had come. At night, I would return to my hotel room and continue working. I returned to Colorado for Thanksgiving, and then headed back to Washington for trial. After another week in Washington, I returned to Denver, my participation in the trial largely over. As I flew home late on Friday night, I hoped I was through the worst of it.

I was relieved to be through with all the traveling, but I was also exhausted. My apartment was still a mess, and you can imagine the amount of Christmas shopping I had done. I was behind on every other project at work and I felt completely out of sorts. I



was struggling to establish a new routine, and I felt completely worn out. Predictably, I ended up sick. I spent a few days home from work, and then I went back to the office, too concerned about work to properly rest.

The holidays came and went, complete with the typically busy schedule. "Now," I thought, "I can rest." I had no such luck. By this time, trial had ended, and we were anxiously awaiting a decision. I had trouble sleeping and soon enough, I was sick again. It was incredibly frustrating, but I kept pushing forward, hoping to avoid falling further behind. I was well for all of two weeks before I found myself home sick yet again.

As I sat on my couch, I started thinking about the last few months, and wondered what I could do differently to avoid this kind of situation in the future. After all, I expect I will face periods of high stress repeatedly throughout my career. So, I decided to use my time off productively: I would develop a plan for managing my stress.

I started by marshaling the resources available to me to draft some achievable goals. The first resource on my list was the Colorado Lawyer Assistance Program

# PRESIDENT'S PAGE

## CONTINUED

(Colorado LAP). I realized that I didn't know much about the services that Colorado LAP provides, so I went to their website ([coloradolap.org](http://coloradolap.org)). Once there, I found helpful articles organized by topic area, such as stress, wellness and work/life integration. The articles are generally short and include lots of tips.

I read several articles, thought about my goals generally, and then made a list of the tips that I thought would work for me. For example, I sometimes struggle to fall asleep when I have too much on my mind. I downloaded a meditation app that I can use on nights when my anxiety gets the better of me and I am unable to stop my mind from racing. As I focus on a specific meditation, my anxious thoughts recede, and I am able to drift off to sleep.

Next, I catalogued some strategies from the Colorado LAP article entitled "Quick Tips for De-stressing," an article that I would encourage you to read in its entirety. One tip that has really helped me is the last one on the list: consider your purpose. Briefly, this tip encourages readers to reflect on why you are doing what you are doing. I find this tip particularly helpful when I'm struggling with a difficult situation, and I start to become overwhelmed. A quick check-in with why this task, situation, or person is important to me helps me to refocus. I often take a moment to reflect on my purpose before I walk into a meeting in order to ensure my attention is where I want it to be.

Once I'm reminded of my purpose, I move on to the next step of my preparation, which is best embodied by a quote from Nelson Mandela: "If you want the cooperation of humans around you, you must make them feel they are important – and you do that by being genuine and humble." This reminds me to listen to others, and to appreciate and address their concerns. I will always need the help of the people

around me to accomplish my goals, and so it behooves me to understand differing perspectives. More importantly, I must remain open to the fact that plans may change during this process, and it's no failure to admit that my initial strategy didn't adequately address all concerns or accomplish all important goals.

Finally, I remind myself of something important that was once shared with me: if you can't show yourself grace, you'll never be able to show grace to anyone else. To me, that means I'm kind to myself. I don't berate myself when I make mistakes. I think about what went wrong and why, I talk to people I trust about how I could have done better, and then I move on. I learn what I can, and then I let it go. I also give myself a break. Being a lawyer is hard work. I make countless small decisions every day that could be the difference between success and failure. I worry endlessly about whether I'm working hard enough and whether I'm meeting expectations. So, at least one day a week, I give myself a break. I don't clean the house, do the laundry, run errands, or catch up on work. I watch my niece play basketball. I meet an old friend for breakfast. I walk around my new neighborhood. I read a book. These periods of renewal allow me to come back to work with energy, excitement and, more often than not, fresh perspective and new ideas.

One of the many benefits of being a lawyer is the opportunity to have a long career. Personally, I hope the remainder of my career is as exciting and challenging as it has been thus far. The trade-off for that interesting career will be a lot of hard work, and no small amount of stress. As a consequence, I've committed to taking care of myself so that I can consistently give (and feel) my best and I encourage each of you to do the same.

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## Reduced Fee Referral List - Your Help Needed!

The BCBA receives calls daily from people who do not qualify for Boulder County Legal Services but cannot afford an attorney. We maintain a list of attorneys who are willing to take cases on a reduced fee basis. Please let us know if we can add you to the list. All specialties are needed, and Spanish speakers are in high demand. This is a great vehicle for new attorneys to find clients, as well as any other attorneys who would like to help the community. The need is extremely high.

Contact [laura@boulder-bar.org](mailto:laura@boulder-bar.org) if you can help with this worthy service. Thank you for your consideration!

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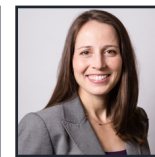
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# PROFESSIONALISM ON CALL

March 6	Tripp DeMuth	303.447.7775
March 13	Peggy Goodbody	303.440.5736
March 20	Anton Dworak	303.776.9900
March 27	Steve Clymer	303.530.2137

The Professionalism Committee assists lawyers, clients, and other members of the community with questions or complaints about behavior by lawyers that fails to meet generally accepted standards of professionalism and courtesy, or that is contrary to the BCBA Principles of Professionalism.

The Professionalism Committee does not address allegations of criminal or ethical violations by lawyers, as regulated by the Colorado Rules of Professional Conduct, and any such violations should be addressed to the Office of Attorney Regulation Counsel.

## BOULDER COUNTY FREE LEGAL CLINIC

The dates have been set for the 2017 Free Legal Clinics at the Sacred Heart of Jesus church (2312 14th Street) and the Longmont Senior Center (910 Longs Peak Ave) from 5:30 - 7:30 pm. Volunteers are always needed. Please contact Christine at [christine@boulder-bar.org](mailto:christine@boulder-bar.org) if you can help in Boulder, or [susan.spaulding@longmontcolorado.gov](mailto:susan.spaulding@longmontcolorado.gov) if you can help in Longmont.

**Boulder:** March 16 and June 15, 2017

**Longmont:** May 23, August 22 and November 28, 2017

## PRO BONO CORNER

Interested in a Pro Bono case? Please call Erika at 303-449-2197. CLE credits available for pro bono service.

## PRO BONO REFERRALS

Ten cases were referred during the month of December. Thank you to the following attorneys:

**Christina Ebner**

**Glen Gordon**

**Judson Hite**

**Ellen Ross**

**Jeff Skovron**

**Bruce Wiener**

Thank you to the following mediators:

**Christine Coates**

**Kathleen Franco**

**Beverly Nelson**

## PRO SE VOLUNTEERS

**Josh Anderson**

**Sheila Carrigan**

**Kathleen Franco**

**Chris Jeffers**

**Tucker Katz**

## BCAP VOLUNTEERS

Thanks to the following attorneys who accepted referrals for the Boulder County AIDS Project in January:

**Kirstin Jahn**



## THE BCBA CONFERENCE ROOM

**AVAILABLE TO BOOK**

Please contact Laura at the bar offices to reserve your space. Rates are \$25 per hour. 303-440-4758

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# 2017 MOCK TRIALS

Thank you to all of our 2017 Mock Trial Volunteers! We had a great competition and all of the high schools performed admirably. The BCBA hosted 11 teams from 8 different high schools - Boulder, Fairview, Justice, Monarch, New Vista, Niwot, Peak to Peak, and Silver Creek.

Congratulations to Fairview and Niwot who will be moving on to the state competition on March 3. Best of luck to both teams!



Vanya Akrahoff	Elizabeth Francis	Ben Kleckner	Martha Ridgway
Judge Bakke	Graham Fuller	Tom Kranz	Caroline Rixey
Melissa Barber	Melody Fuller	Judge LaBuda	George Robertie
Brenna Brackett	Pat Furman	Judge Langer	Judge Sierra
Evan Branigan	Lance Goff	Conrad Lattes	Abigail Smith
Scott Brenner	Lauren Groth	Jennifer Lorenz	Drew Smith
Judge Butler	Magistrate Gunning	Juanita Madole	M. Kevin Snell
Bill Caile	Samantha Gurrentz	Saira Malik	Douglas Stevens
Keith Collins	Magistrate Haenselman	DD Mallard	Helen Stone
Abbi Dayton	Ainagul Holland	Elyse Maranjian	John Sullivan
Starla Doyal	Pamela Howell	Christine Mullen	John Thompson
Jordan Edmondson	Steven Janssen	Rachel O'Toole	Phi Tran
John Estes	Ron Jung	David Pacheco	Susan Vanderborgh
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**BRIDGE TO JUSTICE, A 501(C)(3) NONPROFIT LEGAL SERVICES PROVIDER BASED IN BOULDER SEEKS A PART-TIME PARALEGAL.** Background in family law preferred. Please send cover letter, resume and a list of 2-3 professional references to Executive Director, Bruce Wiener, at [bruce@boulderbridgetojustice.org](mailto:bruce@boulderbridgetojustice.org).

## Boulder County Bar Association Executive Director

The Boulder County Bar Association is seeking an Executive Director to oversee all bar association activities and report directly to the BCBA Board of Directors. This is a full time position based in Boulder that requires availability to attend evening and weekend events on occasion. Preference will be given to candidates with management experience in membership associations or other types of not for profit organizations. The target start date for this position is July 1, 2017. The position offers a competitive base salary commensurate with experience, bonus potential and other employee benefits. A detailed job description can be found below. **Qualified candidates should respond no later than March 24, 2017 with a cover letter, resume and a list of references to: [applications@boulder-bar.org](mailto:applications@boulder-bar.org).** No phone calls please.

[Click here for a detailed job description](#)

## Tax, Estate Planning and Probate News Briefs:

**Boulder County Care Connect (BCCC)** relocated in January of 2017 to Gunbarrel; specifically, 6325 Gunpark Drive, Suite 5, Boulder, Colorado 80301. Their telephone number remains the same: 303-443-1933. BCCC provides services for seniors and adults with disabilities, including transportation, snow shoveling, and grocery shopping. BCCC is a 501(c)(3) nonprofit organization, and an excellent resource for attorneys with an elder law/estate planning practice.

## SAVE THE DATE: Boulder County Senior Law Day is Saturday, September 23, 2017

at the Plaza Conference Center in Longmont. Boulder County Senior Law Day is an annual event for seniors, their loved ones and caregivers. Throughout the day, participants attend workshops on a variety of relevant legal topics, visit sponsor booths, obtain information about local legal resources, and sign up for a brief, one-on-one session with a volunteer attorney. If interested in sponsorship or volunteer opportunities, please contact this year's chairwoman, attorney Sarah Pheral, at [info@bocoseniorlawday.org](mailto:info@bocoseniorlawday.org).

# DEATH AND TAXES IN 2017 ENDNOTES

- [1] Forbes, "Tax Planning for Trump and the Next Four Years," Cameron Keng, January 3, 2017.
- [2] *id.*
- [3] *id.*
- [4] Reuters, "U.S. Republican ties lower business tax rate to border adjustment," David Morgan, January 27, 2017.
- [5] *id.*
- [6] A Trump Estate Tax Repeal? Not So Fast, By [Mark P. Cussen, CFP®, CMFC, AFC](#), December 16, 2016. d
- [7] Six Burning Questions that Remain on Trump's Tax Plan, Bloomberg BNA and Tax Accounting`, December 28, 2016.
- [8] *id.*
- [9] [Nccs.urban.org/data-statistics/quick-facts-about-nonprofits](http://Nccs.urban.org/data-statistics/quick-facts-about-nonprofits)
- [10] [Wealthmanagement.com](#); Impact of Federal Estate Tax Repeal, Planning for 2017, by Shenkman, Wolf, Davidson, January 3, 2017.
- [11] *id.*
- [12] Forbes, "Tax Planning for Trump and the Next Four Years," Cameron Keng, January 3, 2017.

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