

64TH ANNUAL  
**MONTANA**  
TAX INSTITUTE

OCTOBER 14 -15, 2016 • DOUBLETREE HOTEL • MISSOULA, MT



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**7:15 - 8:00 a.m.**

## **Registration and Continental Breakfast**

**8:00 - 8:05 a.m.**

**Welcome and Introduction** - *Dean Paul Kirgis, Alexander Blewett III School of Law*

**8:05 - 9:00 a.m.**

## **Basis Consistency Rules and Reporting Requirements** - *Martin Burke and Elaine Gagliardi*

Congress enacted new basis consistency rules and reporting requirements effective for estate tax returns filed after July 31, 2015. The reporting requirement applies to a broader range of assets than does the basis consistency rule itself. The presentation addresses these differences, the proposed and temporary regulations and implications for basis reporting going forward.

**9:00 - 10:00 a.m.**

## **Charitable Planning Tricks and Traps** - *Larry Katzenstein*

This presentation focuses on a variety of charitable planning tricks, traps and new developments. It addresses a potpourri of topics including PATH Act changes in valuation of interests in income-only charitable remainder trusts; charitable gifts of tangible personal property; division of charitable trusts on divorce; issues on early termination of charitable remainder trusts; use of qualified contingencies in charitable remainder trusts; and marital deduction issues in charitable planning, to name a few.

**10:00 - 10:15 a.m. Break**

**10:15- 11:15 a.m.**

## **Current Developments in the Taxation of Corporations and Their Shareholders and Partnerships and Their Partners** - *Martin McMahon*

2016 brings with it numerous developments in the areas of partnership and corporate taxation. This session reviews the most significant statutory enactments, judicial decisions, IRS rulings, and Treasury regulations promulgated during the last twelve months that affect the domestic income taxation of corporations and their shareholders, and partnerships and their partners.

**11:15 - 12:15 p.m.**

## **The Tax Free Spin-off under I.R.C. § 355** - *James Delaney*

The tax free spin off can yield important benefits when planning the sale of a business. This session reviews different kinds of divisive corporate transactions and how they are structured. The tax consequences of the various structures will be examined with a focus on the technical requirements for qualifying corporate spin-off transactions as tax free under IRC 355. It finishes up with an update on IRS ruling policy in the area of spin-offs and the potential impact of recently issued proposed regulations and IRS guidance on divisive reorganizations.

**12:15 - 1:15 p.m. Luncheon**

The annual Tax Institute Luncheon is generously hosted by:

**CROWLEY | FLECK** PLLP  
ATTORNEYS

Tax, Trusts and Estates Practice Group

**1:15 - 2:15 p.m.**

## **Income Tax Exit Strategies from Businesses** - *Steve Gorin*

As you guide clients through transitioning their businesses to family members or key employees, income tax consequences can have a huge impact. We will compare and contrast corporations with partnerships (including LLCs) regarding transitioning a business, dividing an entity among beneficiaries, securing a basis step-up for the business' assets, and structuring a business to avoid not only the 3.8% tax on net investment income but also the self-employment tax. We will also discuss tricks and traps regarding nonqualified deferred compensation. Add significant value to clients with estates under \$5 million - and even more for larger closely-held businesses.

**2:15 - 3:15 p.m.**

## **Oil, Gas and Coal Taxation** - *Jon Forman and Roberta Mann*

Following a brief overview of Montana's oil, gas and coal resources, the presentation moves to a discussion of the tax perspectives of owners, investors, and developers and outlines the major tax benefits of oil, gas and coal. It discusses the different ways of transferring mineral properties and their tax consequences. Finally, it explores some of the details of the tax provisions, concluding with some comments about the future of the taxation of oil, gas and coal.

**3:15 - 3:30 p.m. Break**

**3:30 - 5:00 p.m.**

## **Annual Federal Income, Estate and Gift Tax Update** - *Sam Donaldson*

Professor Donaldson returns with his annual overview of the important cases, rulings, regulations and legislation from the past 12 months affecting individuals, estates and trusts. Maybe this time he will get it right.

**5:00 p.m. Reception**

The annual Tax Institute Reception is generously hosted by:





6:45 a.m.

## BETTR Law Section of the State Bar of Montana

Annual meeting in the back of the seminar room.

7:15 a.m. Continental Breakfast

8:00 - 9:00 a.m.

## Washington Outlook on Estate Planning - Ron Aucutt

An up-to-the-minute report from Inside the Beltway, addressing questions like: Is the estate tax really permanent? Does the presidential campaign, or even the election, matter? Can anything happen in the last months of the Obama Administration? What in the world is happening with valuation discounts?

9:00 - 10:00 a.m.

## Sibling Rivalries in Family Owned Businesses -

*Louis Mezzullo*

Succession planning for family businesses often necessitates planning to address tensions among siblings. The presentation addresses factors that tend to cause sibling and cousin rivalries; ethical issues, obstacles to achieving a workable business succession plan and other policies to avoid disputes; special considerations applicable to family-owned businesses; and planning for possible divorce. It uses case studies to illustrate many of the types of disputes that can arise and, in some cases, how to avoid the dispute.

10:00 - 10:15 a.m. Break

10:15 - 11:15 a.m.

## Getting Ready for the Biggest Change in Estate Tax Planning in a Generation - Jonathan Blattmachr

The Treasury Department has issued proposed regulations that, if adopted, would eliminate any lack of control (minority) discounts for estate, gift and generation-skipping transfer tax purposes for transfers of family controlled entities, not just with respect to holding companies, such as family limited partnership, but also with respect to active businesses. In some instances, the proposals also would reduce or eliminate many lack of marketability discounts. The methods by which these changes would occur need to be thoroughly understood. This presentation will explain how these changes would occur, the dangers they will present and what can be done before they become effective (which likely will not be before early 2017). Whether these regulations will be lawful will also be discussed.

11:15 - 12:00 a.m.

## Repaired and Improved: The Capital Expenditure Regulations - Pippa Browde

Capitalization regulations promulgated in 2013 enacted new hurdles for claiming deductions. This presentation takes a close look at the capitalization regulations that provide guidance on how to distinguish between deductible supplies, repairs, and maintenance versus capital expenditures. Topics covered include making the election for the "de minimis" safe harbor, the unit of property improvement rules, disposition of property and accounting methods, and practical tips for implementation.

**Ronald D. Aucutt** is a partner in the Tysons Corner, Virginia office of McGuireWoods LLP and is co-chair of the firm's Private Wealth Services Group. He has contributed to the formation of tax policy through legislation since 1976, as well as in Treasury regulations, was named in January 2014 to the Internal Revenue Service Advisory Council, and in January 2015 was appointed chair of its "OPR Subgroup" (working with the IRS Office of Professional Responsibility). Ron is a Fellow and former President (2003-04) of The American College of Trust and Estate Counsel (ACTEC), an academician of The International Academy of Estate and Trust Law and former member of its Council (2000-04), a former Vice Chair (Committee Operations) of the American Bar Association's Section of Taxation (1998-2000), a Fellow of the American College of Tax Counsel and the American Bar Foundation, and a member of the Christian Legal Society. He is also a member of the Advisory Committee of the University of Miami Philip E. Heckerling Institute on Estate Planning and Tax Management's Advisory Board on Estates, Gifts, and Trusts. He has been a lecturer in law at the University of Virginia School of Law. He has lectured on estate planning subjects at over 150 tax institutes and conferences nationwide and is the author of more than 200 published articles on estate planning and other tax subjects. He is co-author of *Structuring Estate Freezes*, published by Warren, Gorham & Lamont and supplemented twice a year. Ron was recognized as one of Washington's 31 "Best Lawyers" in the December 2011 issue of *Washingtonian* and as one of the top 30 "Stars of the Bar" in the December 2009 issue of *Washingtonian*; he holds Chambers USA's "Band 1" ranking for Wealth Management; and he was elected to the National Association of Estate Planners and Councils Estate Planning Hall of Fame and given the designation of Distinguished Accredited Estate Planner in 2009. He was awarded the 1995-1996 Estate Planner of the Year Award by the Washington, D.C. Estate Planning Council. His biography appears in *Who's Who in America*, *Who's Who in American Law*, *Who's Who in Finance and Industry*, and *Who's Who in the World*. He is also listed in the *Best Lawyers in America*. Ron was in the Navy from 1970 to 1973. He served in Vietnam and achieved the rank of lieutenant. Ron received a B.A. degree in 1967 and a J.D. degree in 1975, both from the University of Minnesota.

**Jonathan G. Blattmachr** is a principle of Pioneer Wealth Partners, LLC, a boutique wealth advisor firm in Manhattan, and the director of estate planning of the Alaska Trust Company. He is a retired member of Milbank, Tweed, Hadley & McCloy and of the New York, California and New York bars. He has authored or co-authored seven books and over 500 articles. He has chaired several committees of the New York and American Bar Associations and the American College of Trust and Estate Counsel. Jonathan is a Fellow and a former Regent of the American College of Trust and Estate Counsel and past chair of its Estate and Gift Tax Committee. Among professional activities, which are too numerous to list, Jonathan has served as an Advisor on The American Law Institute, Restatement of the Law, Trusts 3rd, and as a Fellow and Director of The New York Bar Foundation and as a Fellow of the American Bar Foundation. Jonathan graduated from Columbia University School of Law cum laude, where he was recognized as a Harlan Fiske Stone Scholar, and received his A.B. degree from Bucknell University, majoring in mathematics. He served as an officer in the United States Army from 1970 to 1972 and was awarded the Army Commendation Medal. He is co-developer of Wealth Transfer Planning, a computerized system for lawyers that automatically generates estate planning documents, such as wills and trusts, and provides specific client advice using a form of artificial intelligence.

**Pippa Browde**, an Associate Professor of Law at the Alexander Blewett III School of Law at the University of Montana, teaches courses in Federal Income Taxation, Tax Procedure, Taxation of Business Entities, and Taxation of Property Transactions. Prior to teaching, Professor Browde worked as a tax attorney for the Internal Revenue Service Office of Chief Counsel in Sacramento, California and New York City. She clerked for the Honorable Cynthia A. Fry on the New Mexico Court of Appeals. Professor Browde earned her J.D. from the University of New Mexico School of Law and her LL.M. in Taxation from New York University School of Law.

**J. Martin Burke** is Emeritus Professor of Law and formerly served as Regents Professor of Law and Dean of the University of Montana School of Law. He served as the Director of the UM Tax Institute for more than 25 years. Burke has taught in the tax programs at New York University, the University of Florida, and the University of Washington. He earned his J.D. at the University of Montana School of Law and his LL.M. in Taxation at New York University. He is co-author with Michael K. Friel of *Taxation of Individual Income* (11th Ed.) (LexisNexis 2015), *Taxation of Partnerships and Limited Liability Companies Taxed as Partnerships* (Carolina Academic Press 2016) and *Understanding Federal Income Tax* (5th ed.) (Carolina Academic Press 2016). He is co-author with Friel and Elaine Hightower Gagliardi of *Modern Estate Planning* (2d ed.) (LexisNexis 2002).

**James M. Delaney** is the Associate Dean and a Professor of Law at the University of Wyoming College of Law. In 2012-2013, Professor Delaney served as Counsel to the Chief Judge of United States Tax Court. He earned his LL.M. in taxation from the University of Florida in 1997 and his JD from Gonzaga University in 1992. As an undergraduate, he earned his BA in Economics from the University of Washington. Prior to accepting his position as a professor at the University of Wyoming College of Law, he practiced tax law at Perkins Coie in Seattle, Washington and served as tax counsel to General Electric Capital Assurance. Professor Delaney is a member of the Washington State Bar Association. He teaches Federal Income Taxation and Business Entities Taxation and he has taught Business Organizations, Business Planning, Estates & Trusts, Estate & Gift Taxation, and Estate Planning.

**Samuel A. Donaldson** is a Professor of Law at Georgia State University in Atlanta, Georgia. Prior to joining the Georgia State faculty in 2012, he was on the faculty at the University of Washington School of Law for 13 years. At UW, Professor Donaldson served for two years as Associate Dean for Academic Administration and for six years as the Director of the law school's Graduate Program in Taxation. He teaches a number of tax and estate planning courses, as well as courses in the areas of property, commercial law and professional responsibility. Professor Donaldson is an Academic Fellow of the American College of Trust and Estate Counsel (ACTEC) and a member of the Bar in Washington, Oregon, and Arizona. Among his scholarly works, he is a co-author of the West casebook, *Federal Income Tax: A Contemporary Approach*, and a co-author of the *Price on Contemporary Estate Planning* treatise published by Wolters Kluwer. Professor Donaldson has served as a visiting professor of law both at Northwestern University and at the University of Florida Levin College of Law. An amateur crossword constructor, his puzzles have been published in *The New York Times*, *The Wall Street Journal*, *The Washington Post*, and other outlets.

**Jonathan B. Forman** is the Alfred P. Murrah Professor of Law at the University of Oklahoma, where he teaches courses on tax and pension law. Professor Forman served in Washington, DC, as the Professor in Residence for the Internal Revenue Service Office of Chief Counsel for the 2009-2010 academic year, and he was a member of the Board of Trustees of the Oklahoma Public Employees Retirement System (OPERS) from 2003 through 2011. Professor Forman is also active in the American Bar Association, the American College of Employee Benefits Counsel, the American College of Tax Counsel, the Association of American Law Professors, and the National Academy of Social Insurance. Professor Forman has lectured around the world, testified before Congress, and served on numerous federal and state advisory committees. Professor Forman has more than 300 publications including *Making America Work* (Urban Institute Press 2006). In addition to his many scholarly publications, Professor Forman has published op-eds in *Barron's*, the *Los Angeles Times*, the *Dallas Morning News*, the *Cleveland Plain Dealer*, the *Washington Times*, the *Daily Oklahoman*, and numerous other newspapers and magazines. Professor Forman earned his law degree from the University of Michigan in 1978, and he has Master's degrees in economics and psychology. Also, prior to entering academia, it was his privilege to serve in all three branches of the federal government, including as Tax Counsel to the late Senator Daniel Patrick Moynihan (D-NY).

**Elaine Gagliardi** is a Professor of Law at the Alexander Blewett III School of Law at the University of Montana and teaches in the areas of business and estate planning. She currently serves as Associate Dean of Students and as Director of the law school's Montana Tax Institute. Gagliardi is an Academic Fellow of the American College of Trust and Estate Counsel and of the American College of Tax Counsel. She has served as a past Chair of the State Bar of Montana's Business, Estates, Trust, Tax and Real Estate Section. She co-authors, with J. Martin Burke and Michael K. Friel, *Modern Estate Planning* (2d ed.) (LexisNexis); currently authors *How to Save Time and Taxes Handling Estates* (Matthew Bender), and co-authors with James Delaney, *Estate and Gift Tax Questions and Answers* (2d Ed., Lexis Publishing 2013). Prior to teaching, Gagliardi practiced with Perkins Coie LLP in Seattle, and Day, Berry & Howard LLP, Hartford, Connecticut, and clerked for Hon. James R. Browning, Ninth Circuit Court of Appeals, and Hon. William J. Jameson, U.S. District Court, District of Montana. She earned her B.A. from Yale University, her J.D. from University of Montana, and her LL.M. in Taxation from New York University.

**Steve Gorin**, a partner with Thompson Coburn LLC, St. Louis, Missouri, is a nationally recognized practitioner in the areas of estate planning and the structuring of privately held businesses. An active member of the American College of Trust and Estate Counsel and of the ABA Real Property Trust and Estate Section, he has served as chair of the Real Property Probate and Trust Section's Business Planning Group and of ACTEC's sub-committee on Pass-Through Entities. He serves as the technical editor of LSI electronic newsletter, quarterly publishes the *Business Succession Solutions* newsletter, and has written several articles for nationally recognized professional journals. He speaks regular at national conferences, including most recently at the Heckerling Institute of Estate Planning, the ACTEC Annual Meeting and the ABA Real Property Trust and Estate Law Section Advanced Skills Training. He is also a licensed CPA and credentialed as a Chartered Global Management Accountant. Steve is listed in the *Best Lawyers in America* and in *Missouri and Kansas City Super Lawyers*.

**Larry Katzenstein** is a partner in Thompson Coburn LLP, St. Louis, Missouri and practices in the firm's private client services area with a concentration on estate planning and charitable giving, and representation of exempt organizations. He regularly speaks at American Bar Association-American Law Institute estate planning programs, and also speaks at the Notre Dame Tax Institute, the University of Miami Heckerling Estate Planning Institute and the Southern Federal Tax Institute. Larry is an adjunct professor at the Washington University School of Law where he has taught both estate and gift taxation and fiduciary income taxation. A former chair of the American Bar Association Tax Section Fiduciary Income Tax Committee, he is current chair of several Tax Section charitable planning subcommittees. He is a fellow of the American College of Trust and Estate Counsel and a member of its Charitable Planning Committee, and is a member of the advisory board of the New York University National Center on Philanthropy and the Law. Larry is also the creator of Tiger Tables actuarial software, which is widely used by tax lawyers and accountants as well as the Internal Revenue Service.

**Roberta Mann** is the Loran L. Stewart Professor of Business Law at the University of Oregon School of Law. She teaches and writes about tax law, with a particular emphasis on how the tax system affects the environment. Professor Mann served as the only tax lawyer on the National Academies of Science committee studying the greenhouse gas impact of the Internal Revenue Code. She is active with the ABA Tax Section, the National Tax Association, and the Portland Tax Forum, and regularly speaks at the annual Global Conference on Environmental Taxation. Before beginning her teaching career, Professor Mann served on the staff of the Joint Committee on Taxation and worked for the Office of Chief Counsel of the Internal Revenue Service in Washington, D.C. Mann earned her LL.M. in Taxation with distinction from Georgetown University Law Center and her J.D. cum laude from the Arizona State University College of Law. Mann also holds an M.B.A. from Arizona State University.

**Martin J. McMahon Jr.** is the James J. Freeland Eminent Scholar in Taxation and Professor of Law at the University of Florida College of Law, where he teaches in the Graduate Tax Program and is Editor-in-Chief of the *Florida Tax Review*. He received a B.A., in economics from Rutgers University, a J.D. from Boston College Law School, and an LL.M. in Taxation from Boston University Law School. Professor McMahon taught previously at the University of Kentucky, and has been a visiting professor at the University of Virginia. He was the Professor-in-Residence in the Office of Chief Counsel of the Internal Revenue Service in 1986 and 1987, and has been an instructor in the NYU/IRS Continuing Professional Education Program. Prof. McMahon is the co-author with Boris Bittker and Lawrence Zelenak of the treatise *Federal Income Taxation of Individuals* (Warren, Gorham & Lamont 1988, 2d ed., 1995, 3d ed., 2002), and, with the late Paul McDaniel and Daniel Simmons, of four text books on federal income taxation, *Federal Income Taxation* (Foundation Press, 1995, 4d ed., 1998, 5th ed., 2004, 6th ed., 2008), *Federal Income Taxation of Business Organizations* (Foundation Press 1991, 2d ed., 1997, 3d ed., 1999, 4th ed., 2006, 5th ed., 2014), *Federal Income Taxation of Corporations* (Foundation Press 1997, 2d ed., 1999, 3rd ed., 2006, 4th ed., 2014), and *Federal Income Taxation of Partnerships and S Corporations* (Foundation Press, 1991, 2d ed., 1997, 3d ed., 1999, 4th ed., 2006, 5th ed., 2012). In addition to publishing over fifty articles on various income taxation issues, Professor McMahon is a frequent speaker at tax conferences around the United States, and has lectured on U.S. taxation in a number of other countries, including Sweden, Germany, Poland, England, the Netherlands, Peru, and Chile. He has chaired the Teaching Taxation Committee of the ABA Tax Section and the Tax Section of the Association of American Law Schools. Professor McMahon is a fellow in the American College of Tax Counsel and the American Law Institute.

**Louis A. Mezzullo** is a consulting partner with the firm of Withers Bergman. His principal areas of practice are Taxation, Estate and Business Succession Planning, and Employee Benefits. He is a Past President and Fellow of the American College of Trust and Estate Counsel, a Past Chair of the American College of Tax Counsel, a past chair of the ABA Real Property Trust and Estate Law Section, and a Charter Fellow of the American College of Employee Benefits Counsel. He has authored several books, including *An Estate Planner's Guide To Family Business Entities*, published by the American Bar Association, Section of Real Property, Probate and Trust Law (3rd Edition 2012), and *Estate Planning For Owners Of Closely Held Business Interests*, 809 Tax Management Portfolio, published by the Bureau of National Affairs, Inc. (4th Edition 2013). He was on the faculty of the University of Miami School of Law Graduate Program in Estate Planning from 2004 to 2007 and on the faculty of the University of San Diego School of Law in 2009. He was an adjunct professor of law at the University of Richmond Law School from 1978 until 2006. He is listed in *Who's Who in American Law*, *Who's Who in Emerging Leaders* and *Who's Who in America* (Marquis Who's Who Publishers) and in the *Best Lawyers in America* (for Tax, Employee Benefits and Trust and Estates) (Woodward/White Publishers) and was listed as one of the top 50 Lawyers in the 2013 Edition of the *San Diego Super Lawyers* and in the Top Attorneys in Business Services in the *Corporate Counsel Edition of Super Lawyers*. He is also ranked in the top category for wealth management in the Western Region by Chambers, USA.

# REGISTRATION

# EVENTS

## Hotel Accommodations

A block of rooms for the Montana Tax Institute is available at the DoubleTree Hotel; (406) 728-3100. Ask for "Tax Institute 2016." There are additional rooms at the Comfort Inn - University; (406) 549-7600.

## Registration Information

The registration fee for the 64th Annual Montana Tax Institute is \$325 if received by September 23. After September 23, the registration fee is \$350. This fee covers tuition, presentation outlines, lunch on Friday, and the continental breakfasts on Friday and Saturday.

**Refund Policy:** A full refund is available if the cancellation is received by September 30, 2016. Cancellations will be refunded less a \$50 processing fee if received after September 30, 2016. Cancellations will not be accepted after October 7, 2016. Attendee substitutions are welcomed.

**To pay by check** and register for the 64th Annual Montana Tax Institute, please complete the registration form below and return it with payment, payable to the Blewett School of Law at the University of Montana, to:

Alexander Blewett III School of Law  
University of Montana  
Attn: Tax Institute Registration  
32 Campus Drive  
Missoula, MT 59812-6552

**To pay by credit card** and register online for the 64th Annual Montana Tax Institute, please visit [umt.edu/tax-institute](http://umt.edu/tax-institute).

Please register in advance. A limited number of walk-in registrations will be accommodated, with course materials not available until after the program.

## Celebrate Piano: Pianissimo!

October 14 • 7:30 p.m. • UM Music Recital Hall

The UM School of Music presents the ninth annual "Pianissimo!" concert, featuring some of Montana's favorite pianists in solo, duet and multiple piano performances. Tickets are \$25 for general admission, \$20 for seniors, and \$10 for students. Website: [umt.edu/music](http://umt.edu/music).

## Present Tense: Prints from the Jordan D. Schnitzer Collection

Presented by the Montana Museum of Art and Culture, this exhibition explores the advent of idiosyncratic language in the visual arts in postwar America and the role of text in contemporary printmaking. Open to the public with a suggested \$5 donation. Exhibit is on display in the Paxson and Meloy Galleries at the UM Performing Arts and Radio-TV building. Friday hours: 12-6 p.m.; Saturday hours: 12-3 p.m. Website: [umt.edu/montanamuseum](http://umt.edu/montanamuseum).

## University of Montana vs. Sacramento State

October 15 • 2:30 p.m. • Washington Grizzly Stadium

Tickets are available for the GRIZ vs. Sacramento State game by calling the UM Box Office at (406) 243-4051.

### Application for Continuing Education Credits for the 64th Annual Montana Tax Institute is being made to:

- Montana State Bar Continuing Legal Education
- Idaho State Bar Continuing Legal Education
- Washington State Bar Continuing Legal Education
- Montana Board of Public Accountants (pre-approval not required)

All other affiliations must submit independently including Certified Financial Planners and Insurance Professionals.

## REGISTRATION 64th Annual Montana Tax Institute

Full Name: \_\_\_\_\_

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Profession: \_\_\_\_\_

Please check if you would like to receive communications from our sponsors.

### Payment Information

Check enclosed payable to the Blewett School of Law at UM

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Note:** For multiple registrations, a separate form must be completed for each registrant.

## Detach and return registration form. Please register in advance.

**\$325** if registration is received by September 23, 2016

**\$350** if registration is received after September 23, 2016

I am interested in the following Continuing Education Credits:

Montana CLE

Idaho CLE

Washington CLE

Certified Public Accountant

Enrolled Agent

Other: \_\_\_\_\_

Alexander Blewett III

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