

BWM&S

BURKE, WARREN, MACKEY & SERRITELLA, P.C.

MARCH 2003

BWM&S BULLETIN

VOLUME 2 • ISSUE 2

REAL ESTATE LAW

RYAN COMPANIES

Does Chicago have Ryan cranes in it's future?

So what is the construction company that dominates the Minneapolis skyline doing in Chicago? "Building industrial parks," says Jeff Smith, Chairman of Ryan Companies Midwest Division. "We have taken on assignments that make sense in this market."

Ryan, a 60-year old design-build construction company, but a relative newcomer to Chicago, currently has projects underway in Joliet, Romeoville, and Bolingbrook — and a wealth of experience. It has built more than 5 million square feet of office space in Minneapolis over the last 5 years and has offices throughout the Midwest as well as Phoenix, AZ. Ryan's clients include Target and Kohl's.

Ryan provides a multi-disciplined team approach to its development projects. In-house teams handle various assignments and provide clients with well-rounded results and a fast turn around.

This was certainly the case for the Moline, Illinois-based Deere and Company. Deere recently approached Ryan regarding the need for a Midwest distribution facility. The facility would include 500,000 square feet under roof and an adjacent like-sized outdoor area. The particular challenge was a short time frame. Ryan had only 9 months to complete the



Jeff Smith, Midwest Chairman of Ryan Companies

Continued on page 4

TAX LAW

CONSIDER SELF-EMPLOYMENT TAX ISSUES WHEN FORMING A NEW BUSINESS

Entrepreneurs starting a new business venture frequently organize the venture as a limited liability company (LLC), "S" corporation, or general or limited partnership. One of the factors that makes these forms popular is that they are not subject to federal income tax. Instead, the taxable income generated by these entities is "passed through" to the income tax returns of the business owners. However, liability for self-employment taxes can make "pass through" entities lose some of their tax appeal.

Entrepreneurs seeking the tax efficiency of a "pass-through" entity are sometimes surprised to learn that income from a new "pass-through" business entity will

Continued on page 2

THIS ISSUE:

- A Charitable Deduction Tax Trap2
- Medicare Bill2
- Click on the Dotted Line3
- BWM&S's Martin Joins Chicago Board3
- Around the Firm4

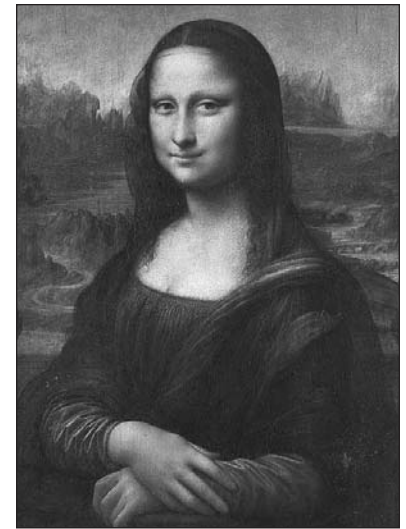
NEXT ISSUE:

- NeoPharm, Kingdom Properties — An IRS Distinction, Loan Workout Mechanics, and more...

A CHARITABLE DEDUCTION TAX TRAP

ESTATE PLANNING

Thinking of donating art to charity? Before letting go of that favorite piece, be aware that if you own the copyright to the work of art, you must donate both the art and the copyright to the charity to receive the charitable income tax deduction. More than one taxpayer has lost his or her charitable deduction by failing to adequately transfer the copyright. This tax trap can catch you whether transferring a Picasso or a photo archive. When structuring such a gift, talk to your attorney about the ins and outs of the laws of charitable contributions and artwork. For more information, contact your BWM&S attorney, Stephanie Denby at 312/840-7068, or Melanie Witt at 312/840-7041. **B**



Don't forget the copyright

Continued from page 1

CONSIDER SELF-EMPLOYMENT TAX ISSUES WHEN FORMING A NEW BUSINESS

not only be subject to individual federal and state income tax, but may also be subject to self-employment taxes. Self-employment taxes include a 12.4% tax for old age, survivor and disability insurance (applied against an individual's first \$87,000 of income) in addition to a 2.9% tax for medicare (applied without any maximum income limitation).



Terry Stein

If you are a partner in a general partnership, or if you own a membership interest in an LLC and are actively involved in the management or operation of the LLC, you may be subject to self-employment taxes on all of your income from the general partnership or LLC (other than certain income attributable to dividends, rentals from real or personal property, or gains or losses from sales or exchanges of capital assets).

If, on the other hand, you are a shareholder in an S corporation, only your wages (if any) from the S corporation will be subject to self-employment taxes, providing the S corporation pays you reasonable wages for the services you perform. If your wages from the S corporation are not reasonable, the IRS could argue that all of your S corporation income should be subject to self-employment tax.

If you are a limited partner in a limited partnership and you are not actively involved in the limited partnership's management or operation, your income from the limited partnership generally will not be subject to self-employment taxes.

When choosing the form of legal entity for any new business venture, numerous factors must be considered. Self-employment tax considerations typically do not by themselves dictate the form of entity chosen for a new business venture.

Nevertheless, the self-employment tax should always be one of the issues considered before making a final decision as to the form your new business will take.

For more information, please call your BWM&S attorney or Terry Stein at 312/840-7055. **B**

HEALTHCARE LAW

HOUSE BILL WOULD ESTABLISH MEDICARE DRUG DISCOUNT CARD

House Ways and Means Committee member Mark Foley (R-Fla.) has reintroduced legislation that would authorize the Centers for Medicare & Medicaid Services (CMS) to establish a Medicare-endorsed, prescription drug discount card program. The U.S. District Court for the District of Columbia had previously sided with the National Association of Chain Drug Stores and the National Community Pharmacists Association in striking down a CMS rule establishing a discount card program that was designed to provide seniors with access to discounted drugs. Legislation authorizing the card program passed the House last year but died in the Senate.

For more information, please call your BWM&S attorney or John Darrow at 312/840-7003 or Kevin Ryan at 312/840-7051. **B**

CLICK ON THE DOTTED LINE

Why Electronic Contracts Work

CORPORATE LAW

If you have ever purchased a product through the Internet, used licensed software on your computer, or accessed many web sites (including www.burkelaw.com), you have entered into a contract in electronic commerce. The contract was formed not with your physical signature on a document, but with your electronic approval of the transaction (such as hitting a “Check Out” button), installation of the software on your computer (with a “click-through” license agreement) or (in the case of our web site) your use of the site subject to certain disclaimers.

Unlike paper contracts, electronic contracts do not have a physical signature demonstrating that the parties have consented to the terms of the contract. To avoid uncertainty



regarding the legal validity of electronically-created contracts, and to encourage electronic commerce, Illinois and the federal government have enacted statutes stipulating that courts may not refuse to enforce a contract merely because it was made electronically. These statutes, however, do not change any other rules of contract law, so in all respects other than physical signatures electronic contracts can be enforced in the same way as paper contracts.



Mark Stern

Illinois has adopted the **Electronic Commerce Security Act**, found at 5 ILCS 175/5-105 et seq., which provides that information, records, and signatures shall not be denied legal effect, validity, or enforceability solely on the grounds that they are in electronic form. Electronic records satisfy the requirement of a “writing” for all legal purposes except for wills, trusts, living wills, powers of attorney for health care, situations where the law is “clearly repugnant” to the use of a non-paper format, or deeds and negotiable instruments unless the electronic record is maintained in such a manner as to ensure uniqueness.

The federal **Electronic Signatures in Global and National Commerce (“E-SIGN”) Act**, found at 15 U.S.C. § 7001 et seq., applies to “any transaction in or affecting interstate or foreign commerce” and provides that “a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.”

Neither statute requires the use of electronic means (as opposed to physical documents) in commercial transactions, but each provides that electronic commerce contracts will have the same legal status and enforceability as traditional paper contracts, with certain exceptions. Parties are also free to add additional security measures, such as passwords, to guard against fraud.

For more information, please contact your BWM&S attorney or Mark Stern at 312/840-7058. **B**

BWM&S



Michael J. Martin

health and life opportunities of at-risk

Michael J. Martin was recently asked to join the board of Chicago Youth Programs (CYP). CYP strives to improve the long-term

BWM&S’s MARTIN JOINS CHICAGO YOUTH PROGRAM BOARD

youth using a comprehensive approach aimed at developing their capabilities. CYP was founded in Chicago in 1984 by a group of Northwestern medical students concerned with the plight of children growing up in the Cabrini Green Housing project. Today CYP programs, from preschool through college levels, focus on one-on-one tutoring, mentoring, and free health

care provided by volunteers including healthcare professionals. CYP offers more than 48 programs at various Chicago locations. More than 95% of program youth live in poverty, with the majority living in public housing. For more information, please contact Mike Martin at 312/840-7011. **B**

BULLETIN

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The Bulletin is written by the firm of Burke, Warren, MacKay & Serritella, P.C. to keep clients and friends current on developments in the law and the firm that might affect their business or personal lives. This publication is intended as a general discussion and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is meant as general information only. Consult an attorney with any specific questions. This is a promotional publication. ©2003 Editor: Cy H. Griffith, Director of Marketing; Legal Editor: Jay S. Dobrutzky, Esq.

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AROUND THE FIRM



Melanie Witt

Melanie Witt joined BWM&S in January of 2002 as a member of the firm's Estate Planning Practice. Melanie's eight-year Estate Planning career includes banking as well as employment with another major Chicago law firm. She recently represented BWM&S at the 37th

Annual Philip E. Heckerling Institute on Estate Planning in Miami Beach, Florida, where the most current issues in the industry were discussed. Commenting on being named a director, Melanie said, "It is an honor for me to be a part of a team with this depth of talent and experience." **B**

BWM&S ANNOUNCES TWO NEW DIRECTORS



Steve Meinertzhagen

Stephen R. Meinertzhagen

joined BWM&S in 2000 and is a member of the Litigation Practice. Steve's background is in general commercial litigation. His practice now focuses on class action defense litigation in the mortgage lending

industry. On being named a director, Steve said, "This is a very proud moment for me. I'll do my best to carry on the firm's tradition of providing outstanding legal counsel to its clients." **B**

Continued from page 1

RYAN COMPANIES

facility, which was needed to support Deere's line of lawn care products. If Ryan missed the completion deadline, the facility would not be available for the seasonal needs of the product line. It would essentially sit idle for an entire 12-month period.

The Ryan team identified 10 potential sites for the client — each with various strengths. The site in Janesville, Wisconsin stood out because of a combination of infrastructure advantages as well as a clear demonstration by municipal leadership of their support for the project.

Together with legal assistance from BWM&S's John Stephens, Ryan was able to compress the entitlement and permitting, which included tax increment financing, into

a six-week period. Typically, this effort alone could require 6 months or more. "John stays focused on the solution instead of getting sidetracked on nitpicking details — just like we do," says Smith. Ryan completed the project within the precise week indicated in its contract with Deere.

Deere's appreciation for Ryan's work is expressed through ongoing assignments. "Over the last few years, we have been engaged by Deere to construct a total of three distribution centers and two divisional headquarters," said Smith.

What does the future look like to Ryan Companies in Chicago? "Our future mix of business in Chicago will expand to include suburban and center city office properties," says Smith. "I expect Chicago area residents will become much more familiar with Ryan cranes in the years ahead." **B**