

BWM&S

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

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TAX LAW

1031 EXCHANGES

There are only two things that are certain in life, but fortunately the IRS allows us to defer at least one of them. Under Section 1031 of the IRS Code, a taxpayer may swap “like-kind” personal property and defer the payment of the capital gains tax on the property swapped. For the purposes of a so-called “1031 exchange” (also known as a “tax deferred” or like-kind exchange), “personal property” includes any tangible depreciable capital asset and some forms of intangible assets, which are held for use in a trade or business or for investment (property held as inventory cannot be swapped in a like-kind exchange). To be like-kind, the property swapped and the property swapped for must both be classified under the same general asset class as set forth in IRS regulations.

People familiar with 1031 like-kind exchanges usually think of them in the context of real estate transactions. That’s because all real estate in the United States is “like” all other “kinds” of domestic real estate, regardless of the type, use or condition of the real estate. Therefore, the rule is invoked very easily and frequently. BWM&S routinely handles 1031 exchanges as part of its real estate practice.

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Ready for a change? Section 1031 can provide the opportunity for tax-free exchanges of real estate, vehicle fleets or even corporate jets.

CORPORATE LAW

NEOPHARM

In the search for the next cancer-fighting breakthrough, some might say look no further than Chicago’s North Shore. Lake Forest-based NeoPharm, Inc. is hard at work to become a world-recognized leader in cancer research. To



achieve this goal, NeoPharm seeks to commercialize unique new products by focusing resources and expertise on the development, acquisition and promotion of innovative cancer therapies.

Not yet a household name, NeoPharm could someday be one of the Chicago area’s most prized biotech companies. Since its formation in 1990, NeoPharm has been engaged in the research, development and commercialization of drugs

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BWM&S's WARREN RECEIVES IMBA DISTINGUISHED SERVICE AWARD

At the recent Annual Meeting of the Illinois Mortgage Bankers Association, incoming president Greg Thorpe named BWM&S's Jeff Warren as the recipient of its Distinguished Service Award.

For the last 15 years, Warren has served as a member of the Association's Legislative Committee, including the last seven years as its Chairman. The Committee focuses on balancing the concerns of individual borrowers represented by community groups with those of the mortgage industry.

Warren's recent activities have included working with the Illinois Office

of Banks and Real Estate to amend the current statutory and regulatory scheme with respect to predatory lending issues and licensing of loan officers. Given the current high volume of proposed legislation in this area, the Committee is seeking to reduce unnecessary limitations on lending.

Greg Thorpe says of Warren, "Jeff gives unselfishly of his time and energy. He is an enormous asset to IMBA."

The IMBA is an 83-year-old association and the primary body responsible for the welfare and interests of the mortgage lending industry in Illinois. **B**



Greg Thorpe and BWM&S's Jeff Warren

ESTATE PLANNING LAW

MACKAY TO PRESENT ON ESTATE PLANNING ISSUES AND DIVORCE



Karen MacKay

BWM&S's Karen MacKay will be a featured speaker at the Illinois Institute for Continuing Legal Education's 2nd Annual Family Law Conference in Chicago on April 9 at the UBS Tower. She will discuss the effects of divorce on certain types of planning instruments. According to MacKay, "Failing to revise your estate plan and beneficiary designations by deleting your ex-spouse

can have unintended and unfortunate results. In certain situations, an ex-spouse can still receive benefits from the deceased ex-spouse's assets, if the deceased spouse neglected to make the necessary changes." For more information, please call Karen MacKay at 312/840-7009. **B**

LABOR AND EMPLOYMENT LAW

WE WOULD PREFER THAT YOU PAY US NOW

There is a simple preventative process now available to companies to reduce their liability to sexual harassment lawsuits. As previously reported in the Bulletin, BWM&S offers online training for your employees to ensure they are aware of your policy and the law. It also provides documentation and evidence that they have read, understood and agreed to comply with company policy and the law. This comprehensive and efficient training procedure not only helps you avoid the legal and business costs of sexual harassment litigation, but may also serve as a defense to punitive damages in the event of an adverse verdict. Because it is online, training can be conducted quickly with minimal disruption and with maximum flexibility.

Doing nothing leaves you exposed to potentially serious harassment claims and the accompanying legal expenses. With a training cost of only \$40.00 per employee, there is simply no reason to delay. Your BWM&S lawyer can direct you to an online demo so you can sample the training yourself. You may also contact Martin LaPointe at 312/840-7012 or Cy Griffith at 312/840-7035 for additional information. **B**

KINGDOM PROPERTIES

One would think that America cut its ties to kingdoms when we split with George III some 228 years ago. Not so. And, in the case of “Kingdom Properties,” taxation is again a central and controversial issue.

The IRS applies the term Kingdom Property to large tracts of mostly undeveloped land — particularly tracts in prime locations. Private islands, large tracts of beachfront and other compound-



Stephanie Denby

style homes may be designated as Kingdom Properties. Properties used as hunting lodges, private ranches or other private recreation land located throughout the US also may fall within this category.

The catch is that the IRS is placing value on Kingdom Properties based on their potential use — not present condition. For estate or gift tax purposes, the IRS has started to value Kingdom

Properties aggressively based on speculative development value. The sum of its parts could greatly increase the property’s value. An owner may view a 20-acre tract as a \$3 million property, while the IRS may view the tract as 20 separate one-acre lots valued at \$500,000 each for a total value of \$10 million.

This unexpected and often unwelcome wealth gain can force owners to sell such properties in order to pay estate taxes.

It’s for the Birds

Owners of so-called Kingdom Properties do have options available to control (and limit) the potential tax burdens presented by the properties.

According to BWM&S’s Stephanie Denby, “The right answer



Kingdom or just a nice piece of property?

depends upon the the owner’s future land use plans.” Denby’s advice to clients includes establishing LLCs, donating tracts to land preservation groups and creating conservation easements.

LLCs, the most typical approach, can remain 100% within a family. Clients with long-term goals not to develop the property may be interested in donating a portion to a land conservation group or to place a conservation easement on the property to prevent development.

Denby has helped clients gift property to causes they support, including one who subdivided a portion to be added to the Appalachian Trail. Other clients have used easements to establish protected bird habitats, open air spaces, or even preserve scenic views. “These easements last for perpetuity and often work in tandem with a plan to keep the property in the family for many generations,” says Denby. “In all cases, advance planning is critical to keep these types of special properties in the family.” According to Denby, some structures present the added advantage of qualifying as a gift to charity, allowing the owner to take an immediate income tax deduction. For more information, please call Stephanie Denby at 312/840-7068. **B**

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However, business owners should be aware that 1031 exchanges for property other than real estate are also possible and present a substantial tax deferral opportunity, especially as a business looks to replace furniture, equipment, or perhaps a fleet of cars or trucks. By way of example, say a grocer wants to replace its fleet of delivery trucks. If the company sells the trucks, it would have to recognize a capital gain on the sale, which could be substantial if the trucks have been depreciated over several years. However, if the grocer plans on replacing the trucks, it can “swap” the old trucks for new trucks and



Dan Hardwick

defer the capital gains taxes from the sale of the old trucks. To accomplish the swap, the grocer must first identify the new trucks within 45 days after the sale of the old trucks, and purchase the new trucks within 180 days after the sale of the old trucks.

There are many aspects and types of 1031 exchanges that can be beneficial to a variety of business owners. If you think that you or your business may be able to benefit from a 1031 exchange, please call your BWM&S attorney, or Dan Hardwick at 312/840-7093. **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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NEOPHARM

for the treatment of various cancers. Currently, the Company has two novel proprietary technology platforms: its proprietary NeoLipid™ liposomal drug delivery platform (which encapsulates a drug within a fatty membrane known as a lipid) and a tumor-targeting platform (which is designed to help deliver cancer fighting drugs specifically to cancerous tumors). “We are developing new drugs and new ways to deliver drugs that may play a critical role in the fight against cancer,” says NeoPharm CFO, Larry Keny

While most US biotech activity takes place on the two coasts — in Boston, San Francisco and New Jersey — Kenyon sees no disadvantage to a Chicago location. “We have been able to attract top talent and build critical relationships,” says Kenyon. With the help of BWM&S’s Christopher Manning, NeoPharm has gone from a private venture capital start-up, with five employees, to a Nasdaq-listed biotech pioneer with 100 employees.

Working with attorneys from BWM&S, NeoPharm has created alliances with private academic, and governmental groups to assist in the development and clinical testing of prospective drugs, including Georgetown University, the National Institutes of Health and the U.S. Food and Drug Administration. In addition, the Company has ongoing Phase III clinical trials being conducted at leading institutions, including the University of Chicago, Northwestern University, and the University of California - San Francisco.

Now occupying corporate offices in Lake Forest, Illinois, and with its state-of-the-art 35,500 square foot R&D laboratory recently opened in Waukegan, Illinois, NeoPharm continues to closely monitor all of its development programs.

NeoPharm’s lead product under development is a drug known as IL13-PE38, which is being tested to treat glioblastoma multiforme, a deadly form of brain cancer. NeoPharm hopes to be able to start pivotal Phase III clinical trials for IL13-PE38 sometime in 2003. “We are committed to moving forward with our development program for IL13-PE38 to address the significant unmet needs of patients suffering from this terrible disease,” said Jim Hussey, President and CEO. That is a commitment with which the attorneys at BWM&S are honored to help. For more information, please call Christopher Manning at 312/840-7010. **B**



*Larry Kenyon,
NeoPharm CFO*