

BWM&S

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

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TAX LAW

THE TAX MAN COMETH YOUR END-OF-YEAR TAX TO DO LIST

As another year winds to a close, it is time again to consider year-end tax planning strategies. In May, President Bush signed into law the Jobs and Growth Tax Relief Reconciliation Act of 2003 ("2003 Tax Act"). In addition to providing taxpayers with reduced tax rates, the 2003 Tax Act also presents taxpayers with additional planning opportunities and challenges. Below is a brief discussion of several income and estate tax-planning strategies. Please contact your BWM&S attorney to discuss these and other strategies in further detail.

INCOME TAX CONSIDERATIONS

Assess Your Tax Situation

The first step in planning any strategy is to assess your current tax situation. Unless you know where you stand currently, you cannot properly plan for the future. We recommend that individuals and businesses alike do the following:

- Estimate your income, deductions, credits and exemptions for the year;
- Determine when any carryover items from prior taxable years (e.g., net operating losses, deduction for excess charitable contributions) will expire;
- Identify taxable items for which you can control the timing;
- Determine the amount of tax you must pay in the form of withholdings or estimated taxes to avoid underpayment penalties; and
- Consult with your tax advisor to review your situation and take the actions necessary to make the best of your situation.

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On December 20, 2003, the **Chicago Park District** will unlock the doors to a long, lost world with **GIANTS: African Dinosaurs at the Garfield Park Conservatory**, created by **Project Exploration**. This major new exhibition premieres the first-ever display of new African dinosaurs, renders skeletons as garden sculptures and immerses visitors in a prehistoric world full of wonder. Project Exploration is a Chicago-based nonprofit science education organization to make science accessible to the public, especially city kids and girls, co-founded by paleontologist Dr. Paul Sereno and educator Gabrielle Lyon. Visit www.dinogiants.org or www.projectexploration.org.

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Mezzanine financing, Class Action Defense, New directors, And More...

SERRITELLAS AWARDED CARITAS CHRISTI URGET NOS AWARD BY CATHOLIC CHARITIES

Catholic Charities presents its Caritas Christi Urget Nos award to individuals in recognition of their outstanding service and witness to the mission of Catholic Charities as active lay women and men in the Church.

The Firm's James Serritella and wife Ruby were recently honored with the *Caritas Christi Urget Nos* Award. According to Catholic Charities Director of Operations Walter Ousley, "I always thought of him (James) as the Catholic Church's version of Perry Mason. He has been counsel to me for many years. I respect him immensely."

The award recognizes the Serritellas' efforts in the creation and delivery of the *Gala of the Arts* event. The Serritellas conceived of an idea that would showcase religious art in many cases created by Chicago artists. The events draw crowds of 500 or more patrons. The Gala, now an annual event, is an important fundraiser for Catholic Charities. **B**



Pictured from left are Francis Cardinal George of the Archdioceses of Chicago, Ruby and James Serritella, and Rev. Michael Boland, Administrator of Catholic Charities.

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Accelerate Deductions and Defer Taxable Income

By deferring taxable income into a



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future year or accelerating deductions, you can reduce your current tax liability. While you will eventually have to pay the tax in a later year, you can invest the savings in the interim. One of the more common methods for accelerating deductions is for those taxpayers that make estimated tax payments to pay their 4th quarter state tax liability prior to year-end (the payment is not due until January 15). By making the payment early, you can claim a

deduction for state taxes paid on your 2003 federal return.

While it is generally preferable to minimize current year taxable income, remember to keep track of any carryover items generated in prior years. Many carryover items terminate after a specified period of time. For example, net operating losses can only be carried forward for a certain number of years (the carry forward period varies depending upon when the loss was generated). An individual or business should avoid deferring income to a later year or accelerating deductions into the current year only to see a loss carryover expire.

Gifts to Charity

If you are considering a charitable contribution, you may want to make it before the end of the year so that you can claim the deduction on your 2003 income tax return. If you hold appreciated stock, you may consider contributing the stock to your favorite

charity. By contributing publicly traded stock to a charity, you will avoid tax on the stock's appreciation; moreover, you will be allowed a deduction for the full value of the stock. Regardless of the type of contribution, you must maintain a proper record of your gifts. For cash donations over \$250, obtain a written receipt from the charity. If you give a non-cash gift, ask for a letter estimating the value of the gift. Keep in mind that gifts over \$5,000 that are not cash or publicly traded stock require an appraisal.

Put Capital Losses to Work

The stock market has rebounded nicely in 2003. Unfortunately, given the market's poor performance in prior years, many taxpayers recognized substantial capital losses in 2000 through 2002 that they could not claim because they did not have capital gains to offset these losses. If you have capital losses that were suspended from prior years, you may consider locking-in some

NEW ASSOCIATE JOINS BWM&S'S LITIGATION PRACTICE



Bradley I. Schecter

Burke Warren MacKay & Serritella welcomes Bradley I. Schecter as the newest member of its litigation team.

Mr. Schecter practiced in the litigation group of a large Chicago-based law firm prior to transitioning to BWM&S. "As a student planning a career in law, my intention was always to become a litigator," said Schecter. "I was impressed with the degree and types of work that litigation associates at Burke, Warren were doing. I wanted to be a part of that."

"Burke, Warren offers associates an opportunity to take more responsibility for cases and get into court. We are given significant responsibility for our work and the clients we serve," said Schecter. "These factors combined with the firm's commitment to help young associates build their careers clinched my decision to join Burke, Warren," said Schecter.

Mr. Schecter focuses his practice in commercial litigation and constitutional law. He has experience handling a broad range of disputes, including commercial contract, consumer fraud, fiduciary duty, real estate, bankruptcy, insurance coverage and securities litigation. Mr. Schecter has represented a wide variety of clients, ranging from large corporate clients to small businesses to individuals requiring pro bono representation with respect to criminal matters.

Mr. Schecter received his B.A., with honors, *magna cum laude*, from Miami University (Ohio). He was awarded his J.D., *magna cum laude*, from the University of Illinois College of Law. While in law school, Mr. Schecter was a member of the University of Illinois Law Review. He is admitted to practice in both state and federal court in Illinois and is a member of various bar associations.

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of the gains you realized in 2003 by selling appreciated stock. You can utilize the previously suspended capital losses to offset these gains.

Corporations with suspended capital losses should always consider strategies to generate capital gains since corporations are only allowed to carry forward capital losses for 5 years (there is no time restriction on an individual's ability to carry forward a capital loss).

Is a Reduced Tax Rate on Dividends Right for You?

One of the cornerstones of the 2003 Tax Act was the reduction in the tax rate imposed against individuals on dividends to 15% (5% for low income taxpayers). Previously, dividends were taxed as ordinary income subject to tax at rates as high as 38.6%. While the reduced tax rate is certainly a benefit to investors, taxpayers should note that dividend income taxed at the 15% rate is not considered investment income for

purposes of determining the amount of investment interest expense that can be deducted. Investment interest expenses (e.g., interest incurred in a margin account) are only deductible to the extent a taxpayer has investment income to offset these expenses. As a result, taxpayers may be precluded from claiming a deduction for investment expenses as a result of the reduced tax rate on dividends.

Taxpayers may file an election to not have all or a portion of their dividend income taxed at the 15% rate. In doing so, the dividend income will be considered investment income. Such an election may be beneficial to a taxpayer with a large amount of investment interest expense (incurred either currently or carried forward from a prior year).

Closely Held C Corporations Should Consider Dividend Distribution

Just as many publicly traded

companies have increased their annual dividends, closely held C corporations might consider increasing their dividend distributions. Prior to making any dividend distribution, an analysis of earnings and profits should be done to determine whether the distribution would be taxed as dividends, capital gains or a return of capital to the shareholders.

Max Out Your 401(k)

Consider contributing the maximum amount to your 401(k) plan. The contribution limit was increased to \$12,000 in 2003. In addition, individuals who will be at least 50 years of age by the end of 2003 may make an additional "catch-up" contribution of \$2,000 in 2003.

Avoid Underpayment Penalties

Make sure that you have paid enough in federal and state withholding taxes

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to avoid penalties. For 2003, you will avoid a penalty for the underpayment of estimated tax if your tax payments (including withholdings) have been timely made and are at least equal to 100 percent of the tax shown on your 2002 federal income tax return (110 percent, if your adjusted gross income for 2002 exceeded \$75,000 if you were married, but filed separately, or \$150,000 for other taxpayers) or 90 percent of the tax shown on your 2003 federal income tax return, whichever is less.

ESTATE & GIFT TAX CONSIDERATIONS

Annual Exclusion Gifts

In 2003, you may make a gift of \$11,000 to any individual and certain trusts without any gift tax consequences. Married individuals may make gifts of up to \$22,000. Gifts may be made outright or in trust and may be in the form of cash, securities, real estate, artwork, jewelry or other property. Giving property that you expect to appreciate in the future is an excellent way of utilizing your annual exclusion gifts because any post-gift appreciation is no longer subject to gift taxes or estate taxes in your estate. To take advantage of your annual exclusions for 2003, gifts must be made by December 31 of this year. Gifts over \$11,000 or gifts that will be "split" between spouses must be reported on a gift tax return, which must be filed in April 2004.

Payment of Tuition and Medical Expenses

In addition to annual exclusion gifts, you may pay tuition and medical expenses for the benefit of another person without incurring any gift or generation skipping transfer ("GST") tax or using any of your estate or GST tax

exemption. These payments must be made directly to the educational institution or medical facility. There is no limit for these types of payments and you are not required to file a gift tax return to report the payments.

Lifetime Gifts Using Gift Tax Exemption

In addition to annual exclusion gifts and the payment of tuition and medical expenses, you may currently make gifts of \$1 million during your lifetime without incurring a gift tax liability. Although the amount that may be exempted from estate tax upon your death will be reduced by the amount of such lifetime gifts, any future appreciation on the gifted property will be removed from your taxable estate. If you want to take advantage of the lifetime exemption, a family limited partnership could be an ideal vehicle. As a result of the recent increases to your GST exemption, greater amounts may also be transferred to multi-generational or "dynasty" trusts.

Take Advantage of Today's Low Interest Rates

Low interest rates enhance the benefits of several gift and estate planning strategies. One such strategy is the "grantor retained annuity trust" or GRAT. A GRAT is an irrevocable trust to which a donor transfers property and retains the right to receive a fixed annuity for a specified term. At the expiration of the term, the property usually passes outright or in trust for the benefit of descendants or other named beneficiaries. The amount of the gift that results when you transfer the property to the GRAT is the present value of the remainder interest that passes to the beneficiaries at the end of the term. Under the valuation methods adopted by the IRS, the lower the interest rates at the time of the gift, the lower the present value of the remainder interest and the smaller the amount of the gift that must be reported to the IRS. Interests in closely held family businesses are often ideal properties to transfer to a GRAT.

For more information, please contact Greg Winters at 312/840-7059 or gwinters@burkelaw.com. **B**