

BWM&S

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

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ESTATE PLANNING

MACKEY RECEIVES PRESTIGIOUS AUSTIN FLEMING AWARD



Karen MacKay (center) is presented the Austin Fleming Award by Suzanne M. Timble of the Privatebank & Trust Co. and past CEPC president. Pictured from left are other members of the BWM&S Estate Planning group: Jonathan Michael, Martin Ryan, Greg Winters, Pam Faulkner and Melanie Witt.

The Chicago Estate Planning Council is the area's leading organization for professionals in the estate planning field with more than 700 members. The organization recently awarded its top honor, the Austin Fleming Distinguished Service Award, to Karen MacKay, of Burke, Warren, MacKay & Serritella, P.C.

CEPC Executive Director Kathleen Callaghan says, "The award demonstrates just how much respect there is for Karen among her peers for her knowledge as well as for her contributions to the community."

Karen is a founding partner of Burke, Warren, MacKay & Serritella, P.C. and chairs its estate planning practice. Under Karen's leadership, the practice has grown in the number of clients served as well as in the complexity of matters handled for clients. Burke, Warren, MacKay & Serritella, P.C.

Continued on page 4

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ZERO TO SEVENTY IN LESS THAN 24 MONTHS!

NueVista Group's growth exceeds technology industry expectations

When it comes to new ventures in the tech services sector, ramping up from zero to more than 70 employees in less than 24 months is no small accomplishment, especially following the technology bubble of the 1990s. However, that's exactly what is occurring at Oakbrook-based NueVista Group, an information technology staffing, consulting, and business strategy firm. NueVista's meteoric growth has occurred while many other technology services firms are cutting back on staff or ceasing operations entirely.

According to Stuart Emanuel, NueVista chief executive, opportunities to solve business problems through technology

solutions are abundant. The trick is to know where to look.

Continued on page 3

INSIDE THIS ISSUE:

- Firm Launches BWM&S Tax Update2**
- New Litigation Associate Joins Firm3**
- Firm Responds to Client Billing Needs4**

NEXT ISSUE:

AIT Worldwide Logistics, Year-end Tax Planning, And More...

FIRM LAUNCHES BWM&S TAX UPDATE

eNewsletter keeps recipients current on important tax law changes

Massive changes occurring within US tax law will likely continue following the reelection of President Bush. To help keep friends and clients of Burke Warren MacKay & Serritella, P.C. current on tax-related developments and strategies, the firm recently launched *BWM&S Tax Update*, an electronic newsletter delivered via email.

What follows is an abbreviated version of a recent *Tax Update*. Subscription information for this free service is included below.

American Jobs Creation Act of 2004

On October 22, 2004, only eighteen days after the Working Families Tax Relief Act of 2004 was enacted, President Bush signed into law the **American Jobs Creation Act of 2004** (the "Jobs Act").

The Act ushers in a breathtakingly large variety of tax incentives and revenue offsets that apply both widely and to specialized industries and taxpayers.

The Jobs Act is the most comprehensive federal tax bill enacted in nearly two decades. Below is a brief description of some of the most noteworthy provisions of the Jobs Act:

INDEX

1. **Restrictions On Deferred Compensation: Immediate Action Required!**
2. **New Deduction For U.S. Production Activities**
3. **Provisions Favoring S Corporations**
4. **Extension Of \$100,000 Expensing; Cutback On Deduction For Big SUVs**

5. **Deduction Of State And Local General Sales Taxes**
6. **Changes Affecting Charitable Contributions**
7. **Deduction Of Attorneys' Fees In Certain Civil Rights Cases**
8. **Tax Shelter And Anti-Abuse Provisions Changes Relating To International Tax**
9. **Miscellaneous Business Incentives Agricultural Tax Relief And Incentives**

Restrictions On Deferred Compensation: Immediate Action Required!

The Jobs Act creates new Code Section 409A and provides that all previously-untaxed compensation that has been earned but deferred under a nonqualified deferred compensation plan subject to Code Section 409A will be immediately taxable if (i) the nonqualified deferred compensation plan fails to satisfy any of several new requirements pertaining to distributions, acceleration of benefits, and deferral elections; and (ii) such compensation is not subject to a "substantial risk of forfeiture." In addition, a 20% penalty will be imposed on any amount not timely included in income under these rules. Interest will also be assessed on any resulting underpayment, at the underpayment rate plus one percentage point.

Stock appreciation rights ("SAR") plans; phantom stock and phantom unit plans; restricted stock unit plans; option plans under which "in the money" nonqualified stock options are issued; Supplemental Executive Retirement Plans ("SERPs"); plans which contain "haircut" provisions allowing a participant to accelerate the time of distribution provided the participant



Terry Stein

pays a penalty; and offshore rabbi trust arrangements are among the types of plans likely to be hardest hit by new Code Section 409A. Code Section 409A is not limited solely

to arrangements between an employer and employee, or to arrangements having more than one participant. However, certain types of nonqualified deferred compensation are exempt from new Code Section 409A.

The new rules, which contain transitional and anti-abuse rules, generally apply to amounts that are deferred after December 31, 2004, under a nonqualified deferred compensation plan subject to Code Section 409A. Moreover, if a nonqualified deferred compensation plan subject to Code Section 409A is materially modified after October 3, 2004, amounts previously deferred under such plan will be treated as amounts deferred after 2004 (hence, subject to the new rules).

Virtually every nonqualified deferred compensation plan should be immediately reviewed to determine whether the plan is subject to the harsh new restrictions imposed by the Jobs Act. The IRS is expected soon to issue guidance providing a limited time period during which a nonqualified deferred compensation plan that is subject to Code Section 409A and that was adopted before December 31, 2004, may be amended without causing prior deferrals to become taxable under Code Section 409A. In many cases, however, it will be advisable to simply adopt an

Continued on page 3

ZERO TO SEVENTY

Continued from page 1



Stuart N. Emanuel,
NueVista CEO

“Even in an uncertain economy, many companies are investing in systems that help them increase revenue or improve profitability. Part of our success is linked to our ability to discover opportunity niches and help clients understand what they can achieve,” says Emanuel.

Although the NueVista name is a relative newcomer to the Chicago market, the people and ideas behind the company’s success are not. Emanuel and his partners have been in the technology

consulting industry for years, and Emanuel previously managed Spherion Technology Group, a \$750M IT services provider formerly headquartered in the Chicago area.

“Our success is based on our clients’ success,” says Emanuel. “We get there with good processes and great people. For example, our business development team focuses on business issues first and technology second. We staff engagements with very experienced consultants, many having worked with us in the past. This approach has helped us foster long-term relationships and a sound following with senior IT people in Chicagoland.”

Results speak for themselves: 21 of Chicago’s largest 25 companies are on NueVista’s active client list, representing all major industry sectors including financial services, government, insurance, consumer products, manufacturing, health care and pharmaceuticals.

“As with most new ventures, we rely heavily on outside experts to help ensure our long term success,” said Emanuel. “Burke, Warren functions as NueVista’s de facto general counsel. “Pat Bruks, Terry Jeffrey, Brett Smith and Terry Stein have all contributed to our success and we see them as being a big part of our future”. **B**

TAX UPDATE

Continued from page 2

entirely new plan before making additional awards of nonqualified deferred compensation.

The complete version of this *BWM&S Tax Update* is available at Burkelaw.com. If you would like to receive future email distributions of *Tax Update*, or if you wish to submit a question or suggest a topic to be addressed in *Tax Update*, please contact Terry Stein at 312/840-7055 or tstein@burkelaw.com.

Tax Update is edited by Terry Stein, chair of the firm’s income tax practice. Mr. Stein focuses his practice on federal and state taxation, with particular emphasis on executive compensation, mergers and acquisitions and the taxation of middle marketing companies. Mr. Stein received his J.D. from Harvard Law School. **B**

LITIGATION

LITIGATION ASSOCIATE JOINS FIRM

BWM&S welcomes Alexander D. Marks as an associate in its litigation practice. A native of Sterling, Illinois, Mr. Marks received his undergraduate degree in Business Administration, with high honors, from the University of Illinois at Urbana-Champaign in 2001. He received his J.D. degree, *magna cum laude*, from the University of Illinois College of Law in 2004, where he received Rickert Awards for excellence in Trial Advocacy and Oral Advocacy. He is admitted to practice in Illinois.

During the summer of 2002, Mr. Marks was a legal intern for the Illinois Attorney General’s Office and, prior to joining the firm as an attorney, he was a legal intern for our firm during the summer of 2003. Commenting on



Alexander D. Marks

joining the firm, Alex said, “It is a great privilege for me to join the outstanding group of attorneys at BWM&S.

The quality of work

produced mirrors the quality and character of the individuals that I will get the chance to learn from and interact with on a daily basis. I am very excited for this wonderful opportunity.” Alex can be reached at 312/840-7022 or amarks@burkelaw.com. **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. ©2004 Editor: Cy H. Griffith, Director of Marketing; Legal Editor: Jay S. Dobrutzky, Esq.

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CLIENT BILLING NEEDS DRIVE MAJOR BWM&S CHANGES



Greg Pocias

Clients of the firm are beginning to receive invoices that look much different than our previous ones. In the fall of 2003, Burke, Warren, MacKay & Serritella, P.C. engaged an outside consultant to meet with a cross section of firm clients to gather their comments and suggestions concerning our firm and the services we provide.

When we undertook this survey, we committed in advance to responding appropriately to the constructive suggestions of our clients. One such suggestion mentioned by a number of our clients was the need to improve the formatting of our invoices, make them more informative, and offer more

options to meet the various billing requirements of our clients.

We responded to these comments by assembling a team headed by the firm's Director of Information Services, Greg Pocias, together with Controller Phyllis Marquis and Accounting Manager Karen Osmolski. The group selected Thompson Elite's Enterprise software, a billing and accounting system, as the vehicle for instituting many of the recommended changes.

The eight-month integration process, representing a significant investment of time and financial resources, is now complete. This process involved intensive planning, scheduling, a test conversion of 12 years worth of data, validating, training, final conversion and implementation.

"Clients in today's legal market expect their attorney to have detailed matter information at their fingertips," says Pocias. "Clients also want billing options such as the content and formatting of the bills they receive. The firm's investment in the new billing and accounting system accomplishes all of this as well as allows for other labor-saving opportunities to be rolled out in the months ahead."

Invoices mailed in October represent the external "roll-out" of our new system. We hope clients are pleased with the new format of our invoices. We appreciate your business and welcome your suggestions. **B**

MACKAY

Continued from page 1

now counts members of some of the wealthiest families in the U.S. among its estate planning clients.

Karen received her undergraduate degree from Smith College and JD from the University of Michigan. In 1992 Karen, together with other partners including Richard Burke and Jeff Warren, formed our firm.

"Working in Chicago all of my career, I of course am aware of the significance of the Austin Fleming Award," says MacKay. Reflecting on the award, MacKay continued, "While the Austin Fleming Award is a tremendous honor for me, it also reflects the abilities of the other members of our estate planning team. I know our clients will appreciate the fact that our estate planning department is being recognized in this way."

Given the unprecedented volume of changes to the laws impacting estate planning, what is next for Karen? "The laws have been a political football over the last several years. Our goal has always been to provide sound tax advice and strategy that holds up in an ever changing environment." **B**