Burke, Warren, MacKay & Serritella, P.C.

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BWM&S

Talent pool grows

Firm introduces new partners and associates

Class Action Defense practice expands

Victoria R. Collado and Andrew D. LeMar recently joined the firm's Consumer Financial Services Class Action Defense Group. Each has an extensive background defending banks, mortgage lenders and related financial services entities in class action litigation.

Chaired by LeAnn Pedersen Pope, the group has defended several of the country's major banks and mortgage companies as lead counsel in over 100 nationwide class action cases involving a variety of federal and state claims.

"I am thrilled that Victoria and Andrew have joined our team of talented attorneys," says Pope. "Victoria and Andrew are first-rate class action

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PHOTO BY STEVE LEONARD

Burke, Warren, MacKay & Serritella, P.C. recently added six new attorneys including (from left) Stephen R. Schuster, Mary Kruit McWilliams, Andrew D. LeMar, Victoria R. Collado, Richard L. Lieberman and David Y. Paek. Introductions to each are included in this issue with the exception of Mr. Lieberman who was profiled in the Fall issue of the Bulletin. See his tax article on page 6. As the firm grows, we remain committed to providing highly personalized client service with a focus on long-lasting personal relationships.

MEDIA SPOTLIGHT

Women in Law 2009: Firm featured in Chicago Lawyer's annual review

To highlight the firm's commitment to empowering women with key leadership roles, Chicago Lawyer *magazine featured Burke, Warren, MacKay & Serritella, P.C. in its annual* Women in Law *publication. The following is an excerpt from the article on name partner Karen K. MacKay and Class Action Defense Group Chair LeAnn Pedersen Pope.*

Some of the partners who founded the firm in 1992 had practiced together since the early 1970s. At the time, women's names almost never appeared on the doors of large or midsized firms. "When we put the firm together," says Karen K. MacKay, "we were not trying to prove anything by including a woman's name in the firm name. We focused on building a quality firm to serve our clients. It didn't occur to us that putting my name on the door was groundbreaking or even unusual. We had good professional relationships and wanted to work together."

MacKay helped create the new firm's business model as well

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COMMUNITY INVOLVEMENT

SELINGER ELECTED TO VICE CHAIR OF CHARITY BOARD

Melissa C. Selinger

Melissa C. Selinger was recently elected as Vice Chair of the Metro Board of Metropolitan Family Services. The charity has been assisting Chicago families for over 150 years and currently provides 55,000 families and individuals with counseling and supportive services.

Over the past year, Selinger has served on the Metro Board—which is the "junior" board of the organization—and was instrumental in organizing the 2009 Metropolis summer soirée and fundraiser. With generous support from organizations and people including the firm and many attorneys here, over $135,000 was raised to support child abuse and protection programs as well as the Legal Aid Bureau. Guests included Ben Bradley of ABC News, Jim Oberweis of Oberweis Asset Management, members of the Duchossois family and several other notable young professionals.

"We want to be a major catalyst and resource for promoting family and community strengths," says Selinger. "Many families right now are facing incredible challenges and need these services. I look forward to continuing the board's good works." Selinger is currently organizing the Metropolitan Family Services 2010 Metropolis fundraiser, which will be held in June.

For more information, visit http://www.metrofamily.org. Melissa C. Selinger can be contacted at 312/840-7097 or mselinger@burkelaw.com.

UIC FAMILY BUSINESS COUNCIL UPDATE

FIRM'S MICHAEL SHARES BUSINESS SUCCESSION ADVICE AT UIC FAMILY BUSINESS COUNCIL'S EDUCATIONAL PROGRAM

The firm's Jonathan W. Michael was a featured speaker at the University of Illinois at Chicago's Family Business Council Fall Educational Program. The presentation, entitled BusinessKillers,® was designed to educate business owners about unique business succession strategies that should be established to avoid mistakes that could jeopardize the future of their business and their personal finances.

"A large part of the firm's practice focuses on family owned and closely held businesses," says Michael. "Ultimately, every business owner will participate in the transfer of his or her business. At Burke, Warren, we focus a lot of our energy counseling our clients on business succession issues. If the goal is to sell the business, we work with our clients to maximize the sale proceeds. If the goal is to transfer the business to family, then we work with our clients to structure a business succession plan that, at the end of the day, will secure an uninterrupted transition of the business while keeping the family unit intact."

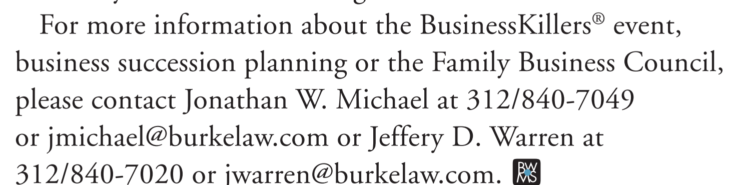
In 2009, the firm became the strategic law partner of the University of Illinois at Chicago's Family Business Council (FBC). With a membership of over 70 family owned and closely held businesses, the FBC is the largest organization of its kind in Chicago. The FBC is backed by the resources of the University of Illinois at Chicago.

The FBC was founded on the belief that family owned and closely held businesses offer a challenging and fulfilling way to create a personal and community based legacy. One of the unique aspects of the FBC is the opportunity to participate in a peer-to-peer forum. Each forum is comprised of approximately nine members who meet on a regular basis in an atmosphere of confidentiality and trust to talk about business, family and personal issues.

Jonathan W. Michael

On February 17, 2010 the FBC will host its Winter Educational Event, "Leadership in the Face of Adversity," at the Elysian Hotel in Chicago's Gold Coast.

For more information about the BusinessKillers® event, business succession planning or the Family Business Council, please contact Jonathan W. Michael at 312/840-7049 or jmichael@burkelaw.com or Jeffery D. Warren at 312/840-7020 or jwarren@burkelaw.com.



WOMEN IN LAW *Continued from page 1*

as run the firm's Wealth and Succession Planning practice. As a veteran of a major Chicago firm, respected nationally for its estate planning and tax practices, she was well versed in the complex needs of wealthy individuals and families.

MacKay's group has grown to become one of the most prestigious wealth management practices in the Midwest. The firm now counts as clients several notables on *Forbes Magazine's* list of the 400 richest Americans and represents individuals, families and fiduciaries in all phases of estate planning, trust administration, charitable giving, succession planning, ownership transition, trust and estate litigation and risk management. In 2004, MacKay was recognized for her work as Chicago's leading estate planning practitioner by receiving the Chicago Estate Planning Council's highest honor, the Austin Fleming Distinguished Service Award.

Karen K. MacKay

LeAnn Pedersen Pope

LeAnn Pedersen Pope was also one of the original partners when the firm began in 1992. As chair of the firm's Consumer Financial Services Class Action Defense Group, Pope oversees a national class action and multi-district litigation practice group representing financial institutions nationwide. Pope's class action defense practice grew out of a business litigation practice just as the proliferation of class action litigation against the mortgage banking industry was beginning. That was almost 20 years ago. From a handful of class action cases, Pope built a practice that has grown to become the firm's largest.

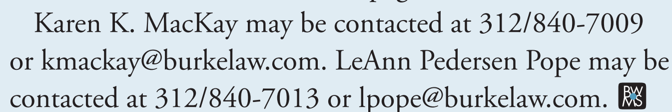
Over the years, Pope's group has successfully defended several of the nation's largest banks and mortgage banking companies in over 100 class action cases filed in federal and state courts throughout the country.

The firm's cultural openness to empowering women with leadership roles in key practice groups encouraged Pope to reach for more than gender diversity within the firm. She founded the firm's diversity committee in 2006, and spearheaded the firm's active participation in the Chicago Bar Association (CBA) "Call to Action" initiatives to promote diversity within the firm's attorney ranks and to increase the number of women in leadership positions.

"In my view, diversity at the firm improves the quality of our legal work and helps us bring a broader perspective to the problems our clients face," says Pope. "Our diversity efforts and CBA commitments were a natural fit here. These moved us in a very positive direction."

Even with the heavy demands of legal careers, many BWM&S female professionals are also the primary child care providers at home, balancing family needs and career obligations. "A little flexibility goes a long way with women attorneys," says Pope. "Being willing to make scheduling adjustments has allowed us to keep and attract excellent talent. It makes good business sense because we are able to retain the benefit of our investment in people and also offer clients the continuity they want."

For the full article, please visit http://www.burkelaw.com or http://www.chicagolawyermagazine.com and click on "Women in Law 2009." The article is on pages 10 and 11.

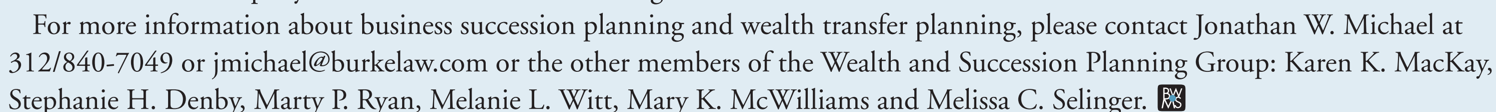


Karen K. MacKay may be contacted at 312/840-7009 or kmackay@burkelaw.com. LeAnn Pedersen Pope may be contacted at 312/840-7013 or lpope@burkelaw.com.

WEALTH & SUCCESSION PLANNING

Michael Presents at DePaul's Wealth Management Conference

On October 28, the firm's Jonathan W. Michael was a featured speaker at DePaul University's annual Wealth Management Conference. The audience was comprised largely of accountants and financial planners. Michael's presentation, "Estate Planning in a Changing Tax Environment—The Only Thing Certain is Uncertainty," addressed wealth transfer strategies that accountants and financial planners should consider in light of the current tax laws and the proposed legislation by the Obama administration. Other featured speakers included representatives from Ariel Investments, The Northern Trust Company, Goldman Sachs and Morningstar.



For more information about business succession planning and wealth transfer planning, please contact Jonathan W. Michael at 312/840-7049 or jmichael@burkelaw.com or the other members of the Wealth and Succession Planning Group: Karen K. MacKay, Stephanie H. Denby, Marty P. Ryan, Melanie L. Witt, Mary K. McWilliams and Melissa C. Selinger.

TALENT POOL *Continued from page 1*

defense attorneys as well as solid individuals. They are both a pleasure to work with."

Collado previously practiced at Mayer Brown LLP where she focused on the defense of class actions and the representation of businesses in international disputes and arbitrations. In her class action practice, she served clients including banks, mortgage companies, automobile finance companies and telecommunications companies. She successfully defended claims of violations of state and federal consumer statutes, as well as fraud and breach of contract claims.

"I am pleased to join the team at Burke, Warren and work with some of the best people in the field," explains Collado.

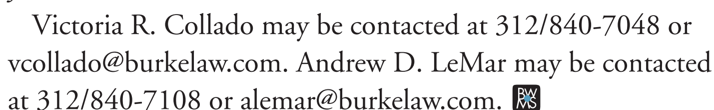
Collado graduated with highest honors from the University of Texas School of Law in 1990. She was a member of the prestigious Order of the Coif and has argued before the U.S. Court of Appeals for the Seventh Circuit. Fluent in Spanish, Collado has been involved in cases with European and Latin American multinational companies.

As a former associate at Dykema Gossett PLLC, LeMar has defended many financial services clients against claims under the FCRA, Fair Housing Act, Equal Credit Opportunity Act, Truth in Lending Act and Fair Debt Collection Practices Act, as well as various state consumer protection laws. He also has experience with mass accident class actions, securities fraud actions, employment law and deceptive trade practices.

"BWM&S has one of the busiest class action defense practices in the region, and I am happy to be a part of it," says LeMar. "As a growing practice, this is the right place to be."

LeMar graduated cum laude from Indiana University School of Law in 2003 where he served as editor of the Indiana Law Journal.

Victoria R. Collado may be contacted at 312/840-7048 or vcollado@burkelaw.com. Andrew D. LeMar may be contacted at 312/840-7108 or alemar@burkelaw.com.



Mary McWilliams joins firm

Mary Kruit McWilliams is the newest Director in the Wealth & Succession Planning practice of Burke, Warren, MacKay & Serritella, P.C.

McWilliams counsels professionals, entrepreneurs and families of all levels of wealth in connection with their lifetime and testamentary wealth transfer planning and charitable giving. Having joined the firm after eleven successful years representing high net worth clients at McDermott Will & Emery LLP, one of the largest estate planning practices in the U.S., she has extensive experience in designing and implementing sophisticated wealth transfer techniques and charitable gifts of all forms. McWilliams also advises corporate and individual fiduciaries in the administration of decedents' estates.

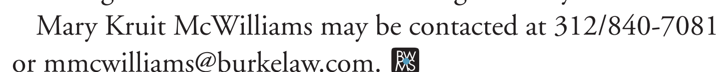
It is McWilliams' goal to build authentic and collaborative relationships with her clients, their families and their advisors, in order to design and implement highly personalized, lifetime and testamentary wealth transfer and succession plans that align closely with her clients' goals, philosophies and values. It is her strong desire to offer a holistic and balanced approach to wealth transfer planning and charitable giving. Clients have commented that McWilliams' engaging nature and ability to connect with people make discussing the sensitive issues inherent in estate planning a positive experience.

"BWM&S allows me to be a better steward of my clients' resources by providing a platform that supports personalized, quality legal services at reasonable rates," says McWilliams. "I am excited by this opportunity to represent individuals and families of all levels of wealth, and I am thrilled to have joined such a highly respected estate planning group. The response I have received from my clients and their advisors has been phenomenal."

For many years, McWilliams has been serving as a director of Chicago Hope, Inc., a public charity in the Logan Square neighborhood of Chicago serving the poor through various mercy ministries.

McWilliams is admitted to the Illinois bar and is admitted to practice before the United States Tax Court and the Northern District of Illinois. She is also a member of the Chicago Estate Planning Council and the Christian Legal Society.

Mary Kruit McWilliams may be contacted at 312/840-7081 or mmcwilliams@burkelaw.com.



David Paek and Stephen Schuster, former 2008 summer associates, join firm

David Y. Paek is a new associate and member of the firm's litigation practice group. He earned his B.A. in American Studies from Northwestern University and his J.D. from Boston University in May 2009.

A native of Skokie, IL, Paek interned for the Honorable Shelley Sutker-Dermer, Presiding Judge of the Circuit Court of Cook County's Second Municipal District, and worked as a summer associate for the firm in summer 2008.

"With friends and family in the Chicago area, I initially applied for the firm's summer associate program. I am delighted with how things worked out," says Paek.

For Paek, the firm provides invaluable experience. "From working with talented senior attorneys to learning the art of legal practice, you learn that the law is more than legal work. It's developing relationships with clients."

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TALENT POOL *Continued from page 4*

In addition to his focus on litigation, Paek is interested in the globalizing legal market and the effect of emerging economies. He also serves as a lay leader at the Lakeview Church in Skokie.

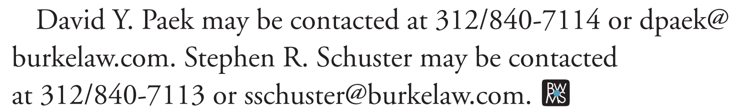
Stephen R. Schuster, new associate and member of the firm's real estate and corporate practice groups, worked as a summer associate for the firm in summer 2008. He earned his B.A. in English from Notre Dame University in 2006 and J.D. from DePaul University in May 2009 where he earned CALI awards for Contracts I and II.

A Chicagoland native, Schuster grew up knowing many attorneys at BWM&S. "My father was a partner here and I am familiar with the culture of the firm and the good people here," says Schuster.

As a graduate of St. Ignatius College Prep, he maintains roots to the city as an organizer of Cristo Rey Jesuit's High School's ¡Viva! fundraiser in the Pilsen neighborhood. Prior to interning as a summer associate at BWM&S, he interned at McCarthy and Duffy LLP where he worked on real estate transactions.

Schuster is currently studying for certification as an associate in Leadership in Energy and Environmental Design (LEED) to supplement his focus on commercial and industrial leasing. "When a client is interested in green building and sustainability, it's important to have practical knowledge and to know the nuts and bolts of LEED," he says.

David Y. Paek may be contacted at 312/840-7114 or dpaek@burkelaw.com. Stephen R. Schuster may be contacted at 312/840-7113 or sschuster@burkelaw.com.



LITIGATION

Stanton presents on gray markets to brand protection managers in Silicon Valley

From earth moving equipment to shampoo to semi-conductors, virtually every industry is affected by the rise of gray markets. Known also as parallel imports, gray market goods are products that are intended for foreign sale and use, but instead are imported and sold—without the distributor's consent—inside the United States. Estimates of the size of gray markets vary, but according to a 2003 KPMG report, gray market products are worth $40 billion in sales and represent more than $5 billion of lost profits.

Aaron H. Stanton

Legal challenges against gray markets, however, remain difficult. Despite federal restrictions on parallel imports, it is difficult to prove that goods meet the "materially different" requirement under the law.

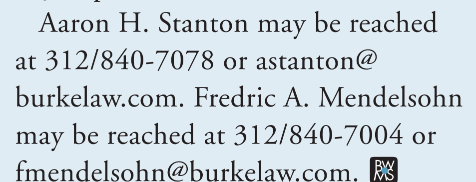
Earlier this year, the firm's Aaron H. Stanton and Fredric A. Mendelsohn won a judgment—on behalf of Hyundai Construction Equipment USA—against an illegal importer of construction vehicles under the Lanham Act. This victory under the Lanham Act was Hyundai Construction's first-ever successful gray market legal challenge and opens the door for further action against other unscrupulous importers.

Stanton was invited to present at a recent national meeting of the Alliance of Gray Market and Counterfeit Abatement (AGMA) in Sunnyvale, California at the corporate headquarters of Juniper Networks. AGMA is a coalition of prominent technology companies including Hewlett Packard, Cisco, Dolby, Sun Microsystems, IBM, Hitachi and Nortel. The alliance is one of the largest and most influential brand protection and anti-gray market organizations in the world.

"The sale and distribution of gray market goods can be destructive to any industry," says Stanton. "Our approach under the Lanham Act, as opposed to the International Trade Commission, and success was of particular interest to the AGMA members," who for the most part use the International Trade Commission, as opposed to the Lanham Act, to fight gray market importers.

Other speakers at the conference included Marla Briscoe, Brand Protection Manager at Hewlett Packard; Marc Brandon, Director of Brand Protection at Symantec; and Lorne Morris, Director of Compliance at Juniper Networks.

Aaron H. Stanton may be reached at 312/840-7078 or astanton@burkelaw.com. Fredric A. Mendelsohn may be reached at 312/840-7004 or fmendelsohn@burkelaw.com.



Tax Year-End Review 2009

By Richard L. Lieberman

Richard L. Lieberman

From a tax perspective, 2009 got off to a fast start. Within two weeks of taking office, President Obama issued an Executive Order establishing the President's Economic Recovery Advisory Board ("ERAB") led by Paul Volker, former Federal Reserve Chair under Presidents Carter and Reagan. Modeled on the Foreign Intelligence Advisory Board created by President Dwight D. Eisenhower to provide an independent voice on intelligence issues, the ERAB was tasked with responsibility to, among other things, report directly to the President on the design, implementation, and evaluation of policies to promote the growth of the American economy, establish a stable and sound financial and banking system, create jobs, and improve the long-term prosperity of the American people. Many people also believed that the ERAB would recommend substantive tax law changes, including the possibility of a full rewriting of the Internal Revenue Code as last occurred in 1986.

As in the case of many other well intentioned efforts, the continuing rise in unemployment coupled with the steady decline in consumer optimism stood in the way of any major changes in tax law during 2009. Other than the changes tied to various health care proposals, most of the tax law changes were relatively low-key. In short, 2009 was not a year either Congress or the President chose to add to the uncertainty already being felt by both individuals and businesses. If anything, many of the enacted tax law changes were designed primarily to quickly move money into the hands of individuals and businesses in order to prime the economic pump.

While the federal government ran up a 2009 deficit exceeding $1 trillion, the fiscal pain was not without its other governmental victims. According to a report from the Nelson A. Rockefeller Institute of Government released in late November, preliminary tax collection data for the July-September quarter of 2009 show continued widespread and sharp declines for most states for all three major sources of tax revenue, as well as for overall taxes. In fact, the Rockefeller Institute study shows that tax revenues declined in at least 44 states during 2009. The biggest revenue declines were in corporate income tax revenues (-19.4%) and personal income tax revenues (-11.4%). State sales tax revenues declined 8.2%. The ten states with the biggest tax revenue declines are:

State	Decline
1. Alaska	-52.4%
2. Vermont	-31.6%
3. Oklahoma	-28.4%
4. Utah	-20.5%
5. Montana	-20.2%
6. North Dakota	-17.3%
7. Arizona	-16.3%
8. Delaware	-15.7%
9. Louisiana	-14.9%
10. Colorado	-14.1%

Clearly, 2010 will see tax increases across the board at the federal, state and local government levels. It is also likely that 2010 will bring a renewed focus on alternative revenue raisers from carbon taxes to (potentially) a value-added tax. Increasing reliance on property taxes, sales taxes and user fees are also likely as state and local governments dig out of 2009 deficits and look for ways to fund the ever increasing demand for services as well as their rapidly escalating pension costs. In Illinois alone, unfunded pension costs remain the "hidden" time bomb in the state's ever growing budget deficit.

HEALTH CARE PROPOSALS IN THE SPOTLIGHT

As we approach year-end, the dominant tax law focus is on the revenue raisers required to support the various health care proposals. Both the House Ways and Means Committee and the Senate Finance Committee have voted out of committee proposals not only to radically change the way health care is provided, but also to raise the revenue needed to pay the costs of what is expected to be a $1 trillion program over ten years. The $1 trillion or so expected to be spent on health care over the next 10 years is in addition to the separate 2009 budget deficit, which alone exceeds $1 trillion. As such, the revenue raisers in both health care bills are targeted solely to recovery of health care related costs, and will not contribute in any way to the funding of the current or future federal budget deficits.

The key revenue provisions included in H.R. 3962, the "Affordable Health Care for America Act," include:

Sec. 551. Surcharge on AGI in excess of $1 million. The bill would impose a 5.4% surcharge on adjusted gross income (AGI) above $1,000,000 (married filing a joint return) and $500,000 (single). *This proposal has been estimated to raise $460.5 billion over ten years.*

Sec. 552. Excise tax on medical devices. The bill would impose an excise tax on the sale (other than for resale) or lease of medical devices equal to 2.5% of the sales price. The tax is deductible for income tax purposes. Retail sales of devices that are available to the general public, and are of a type (and purchased in a quantity) that is purchased by the general public, sales for export, and sales of devices for use in further manufacturing would be exempt from the excise tax. *This proposal has been estimated to raise $20 billion over ten years.*

Sec. 553. Expansion of information reporting requirements. Under present law, a taxpayer is required to file an information return if the taxpayer makes aggregate payments of $600 or more to a recipient for services or determinable gains in the course of a trade or business during the calendar year. Notwithstanding this general requirement, taxpayers are not required to file information returns for payments to corporations. The bill would require taxpayers to file an information return for aggregate payments of $600 or more in a calendar year to a corporation. *This proposal has been estimated to raise $17.1 billion over ten years.*

Sec. 554. Delay implementation of worldwide allocation of interest. In 2004, Congress provided taxpayers with an election to take advantage of a liberalized rule for allocating interest expense between United States sources and foreign sources for purposes of determining a taxpayer's foreign tax credit limitation. Although enacted in 2004, this election was not available to taxpayers until taxable years beginning after 2008. Last year, the House of Representatives delayed the phase-in of this new liberalized rule for two years (for taxable years beginning after 2010) as part of the *Housing and Economic Recovery Act of 2008* (P.L. 108-289). The bill would further delay the phase-in of this new rule for an additional nine years (for taxable years beginning after 2019). *This proposal has been estimated to raise $26.1 billion over ten years.*

Sec. 561. Limitation on treaty benefits for certain deductible payments. The bill would prevent foreign multinational corporations incorporated in tax haven countries from avoiding tax on income earned in the United States by routing their income through structures in which a United States subsidiary of the foreign multinational corporation makes a deductible payment to a country with which the United States has a tax treaty before ultimately sending these earnings to the tax haven country. *This proposal has been estimated to raise $7.5 billion over ten years.*

Secs. 562 and 563. Codification of the economic substance doctrine and tax penalties on understatements of income. The economic substance doctrine is a judicial doctrine that has been used by the courts to deny tax benefits when the transaction generating these tax benefits lacks economic substance. The courts have not applied the economic substance doctrine uniformly. The bill would clarify the manner in which the economic substance doctrine should be applied by the courts. However, the bill does not change current-law standards used by courts in determining when to utilize an economic substance analysis. Under the provision, in any case in which the economic substance doctrine is relevant to a transaction, the economic substance doctrine would be satisfied only if (1) the transaction changes in a meaningful way (apart from federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-federal tax purpose for entering into such transaction. The provision also imposes a 20% penalty on understatements attributable to a transaction lacking economic substance (penalty increased to 40% in the case of transactions in which the relevant facts affecting the tax treatment of the transaction are not adequately disclosed). *This proposal has been estimated to raise $5.7 billion over ten years.*

Consistent with the House bill, the Senate bill includes a barrage of higher taxes to pay for the bill's immense price tag. Also like the

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House bill, the revenue raisers in the Senate bill are not intended to fund either the 2009 or subsequent fiscal year budget deficits.

The Senate bill includes 17 tax increases designed to raise $370.2 billion in revenues over 10 years. These include:

1. 40% excise tax on health coverage in excess of $8,500/$23,000 ($149.1 billion);
2. Employer W-2 reporting of value of health (negligible revenue effect);
3. Conform definition of medical expenses ($5.0 billion);
4. Increase penalty for nonqualified health savings account distributions to 20% ($1.3 billion);
5. Limit health flexible spending arrangements in cafeteria plans to $2,500 ($14.6 billion);
6. Require information reporting on payments to corporations ($17.1 billion);
7. Additional requirements for section 501(c)(3) hospitals (negligible revenue effects);
8. Impose annual fee on manufacturers & importers of branded drugs ($22.2 billion);
9. Impose annual fee on manufacturers & importers of medical devices ($19.3 billion);
10. Impose annual fee on health insurance providers ($60.4 billion);
11. Study and report of effect on veterans health care (no revenue effect);
12. Eliminate deduction for expenses allocable to Medicare Part D subsidy ($5.4 billion);
13. Raise 7.5% AGI floor on medical expenses deduction to 10% ($15.2 billion);
14. $500,000 deduction limitation on taxable year remuneration to health insurance officials ($0.6 billion);
15. Additional 0.5% hospital insurance tax on wages > $200,000 ($250,000 joint) ($53.8 billion);
16. Modification of section 833 treatment of certain health organizations ($0.4 billion); and,
17. Impose 5% excise tax on cosmetic surgery ($5.8 billion).

The Obama Administration has also proposed new taxes to finance its health care reform proposal. The potential new taxes in the Administration's proposal include, among many other things:

1. an income surtax on taxpayers earning more than $500,000 a year;
2. a limit on itemized deductions for taxpayers with a top income tax rate greater than 28 percent;
3. a value-added tax;
4. an increase in the Medicare portion of the payroll tax to 3.4 percent for incomes great than $200,000 a year ($250,000 for married filers);
5. an excise tax on sugar-sweetened beverages including non-diet soda and sports drinks;
6. higher taxes on alcoholic beverages including beer, wine, and spirits;
7. an increase in the payroll taxes on students; and among many other potential revenue raisers; and
8. a $500,000 deduction limitation for the compensation paid by health insurance companies to their officers, employees, and directors.

To be sure, much remains to be done in both the House and Senate before any final health care proposal is passed. In fact, it is entirely possible that the final health care proposal will look very different from the current versions and will have a very different mix of revenue raisers from those already proposed. What is certain is that both individuals and businesses need to prepare for the coming barrage of new taxes directed solely at funding health care beginning in 2010.

EXPIRING TAX BREAKS WAITING IN THE WINGS

As year end approaches, there are a plethora of tax benefits that will expire on December 31, 2009 absent affirmative steps to extend their respective lives. In late November, House Ways and Means Committee Chairman Charles Rangel, D-N.Y., announced his intention to introduce legislation in December that would keep a variety of tax breaks from expiring. Importantly, rather than sending the bill through the Ways and Means Committee, Rangel announced that he will send the bill directly to the full House for consideration. There are approximately 73 tax provisions set to expire by year end, including the credit for research and experimentation expenses, deductions for tuition and state and local taxes, film and TV production expensing rules, a deduction for contributions

of food inventory, tax breaks for certain expenses by school teachers, and a myriad of other tax benefits.

The Tax Extenders Act of 2009 would provide individuals and businesses with approximately $30 billion in tax relief in 2009. The $30 billion in tax relief includes more than $5 billion in individual tax relief and more than $17 billion in business tax relief, including, among many other items, the following:

INDIVIDUAL PROVISIONS

1. Extension of the deduction of State and local general sales taxes;
2. Extension of the above-the-line deduction for qualified tuition and related expenses; and
3. Extension of the additional standard deduction for real property taxes.

BUSINESS PROVISIONS

1. Extension of the R&D credit;
2. Extension of 15-year straight-line cost recovery for qualified leasehold, restaurant and retail improvements;
3. Extension of expensing of "brownfields" environmental remediation costs; and
4. Extension of employer wage credit for activated military reservists.

CHARITABLE PROVISIONS

1. Extension of provision encouraging contributions of capital gain real property for conversation purposes;
2. Extension of enhanced deduction for corporate contributions of computer equipment for educational purposes;
3. Extension of tax-free distributions from individual retirement account plans of up to $100,000 per taxpayer, per taxable year for charitable purposes; and
4. Extension of special rule for S corporations making charitable contributions of property.

EXPIRING COMMUNITY ASSISTANCE PROGRAMS

1. Extension of tax incentives for Empowerment Zones;
2. Extension of New Markets tax credit for one year; and
3. Extension of tax incentives for Renewal Communities.

NOL CARRYBACKS FOR BUSINESSES LARGE AND SMALL – A NARROW WINDOW OF OPPORTUNITY

The Worker, Homeownership, and Business Assistance Act of 2009 (the "Act"), as signed into law by President Obama on November 6, 2009, creates a narrow window of opportunity for taxpayers of all sizes with net operating losses to obtain immediate tax refunds. Pursuant to the Act, a taxpayer with a net operating loss ("NOL") arising in taxable years ending after December 31, 2007 and beginning before January 1, 2010 (generally referred to as an "applicable NOL"), may elect to carry back the NOL for up to five, instead of the usual two, prior taxable years. This temporary expansion of the NOL carry back rules could mean significant tax refunds for taxpayers who have suffered substantial losses in 2008 or 2009.

On November 23, 2009, the Internal Revenue Service released Rev. Proc. 2009-52 prescribing when and how to elect under IRC section 172(b)(1)(H) to carry back an applicable NOL for a period of 3, 4, or 5 years for (1) taxpayers that have not claimed a deduction for an applicable NOL; (2) taxpayers that previously claimed a deduction for an applicable NOL; and (3) taxpayers that previously filed an election under IRC section 172(b)(3) or 810(b)(3) (concerning life insurance companies) to forgo the NOL carry back period.

Taxpayers should consult their tax advisors regarding year-end planning opportunities that optimize their 2009 NOL so they can recoup the optimal amount of taxes paid over the past five taxable years. Taxpayers may need to conduct a multi-year analysis to determine whether the election should be made with respect to an applicable NOL generated in 2008 or 2009, and whether the election should be for a three-, four- or five-year carry back period.

TO ROTH OR NOT TO ROTH – THAT IS THE QUESTION

One tax topic for which almost every U.S. citizen seems to be aware concerns the issue of Roth IRA conversions. Whether they have heard it from their accountant, lawyer, investment advisor, banker, insurance agent, or even their dentist, everyone seems to know that a traditional IRA can be converted into a Roth IRA beginning January 1, 2010 without a limitation based on modified adjusted gross income.

Traditional IRAs have contained a conversion opportunity since Roth IRAs were initially introduced. However, many people were generally precluded from making the conversion to a Roth IRA if their modified

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adjusted gross income exceeded $100,000. Beginning January 1, 2010, that ceiling is repealed. As a result, virtually every owner of a traditional IRA will be allowed to convert that account to a Roth IRA.

In general, traditional IRAs provide a current deduction with a delayed tax cost at the time of withdrawal. Roth IRAs, sometimes referred to as tax-prepaid IRAs, do not provide a current deduction, but also do not attract tax at the time of withdrawal. As a result, funds contributed to a Roth IRA are not deducted from the taxpayer's income as they are contributed. Instead, those funds are excluded from income upon withdrawal from the account, thereby allowing appreciating assets to grow tax-free (in a manner very similar to the tax effect of a Grantor Retained Annuity Trust or GRAT).

Under the new rules, taxpayers will now have an opportunity to move funds from a tax-deferred platform (the general model for traditional IRAs) to a tax-free platform at a comparatively reasonable current tax cost.

There are numerous reasons for making current contributions to a Roth IRA, as well as converting an existing traditional IRA to a Roth IRA. These include, among other things, the suspension of the required mandatory distribution requirement under traditional IRAs at age 70 ½, and the income-tax free status of future Roth IRA distributions to beneficiaries.

Of course, nothing good ever comes without a price, Roth IRA conversions included. Generally, the conversion of a traditional IRA to a Roth IRA is similar in effect to the current withdrawal of funds from the traditional IRA account *sans* the 10% penalty. A current distribution from a traditional IRA is taxable in full at current rates (although the resulting tax can be paid over two tax years).

In short, a Roth IRA conversion involves trading today's income tax rates for tomorrow's tax rates. Moreover, there is no escaping the fact that a Roth IRA conversion accelerates an income tax liability to the year of conversion, which may be too bitter a pill to swallow for too many people.

For those who can afford the upfront tax cost, and for those who believe that future tax rates at the time of withdrawal will be less than current rates, the Roth IRA can be a good investment. In general, for every pre-tax dollar in an existing traditional IRA, its owner, assuming a 30% tax rate, can effectively add $.30 of after-tax funds held outside a tax preferred account to her tax sheltered account. Not a bad investment assuming one has the funds to pay the up-front cost (and those funds should never be derived from the balance in the traditional IRA).

Whether to make a Roth conversion or not is a difficult financial question requiring an analysis of current and expected future tax rates, expected appreciation within the account, and your investment profile, among other things. A discussion with your accountant, attorney, investment advisor, insurance broker, and, yes, perhaps even your dentist, is absolutely required before making the final decision to convert a traditional IRA to a Roth IRA.

THE LATEST ON HOME-BUYER TAX CREDITS

At the end of the week before Thanksgiving, President Obama signed a law that extends through next spring a temporary tax credit of up to $8,000 for some first-time home buyers. The law also adds a new tax credit of up to $6,500 for certain repeat home buyers.

Under the new law, first-time home buyers continue to receive a tax credit of as much as 10% of the purchase price, up to a maximum of $8,000. To qualify as a "first-time" home buyer, the purchaser (including both partners of a married couple) must not have owned a principal residence for the three years prior to the current purchase. The new home must also be the taxpayer's principal residence for the next three consecutive years.

Unlike many tax credits, the first-time home buyer credit is refundable, which means that taxpayers will receive a refund for each dollar that exceeds the total amount of tax due. In other words, if a taxpayer only owes $5,000 in tax, the taxpayer could potentially receive a $3,000 cash refund (assuming all of the applicable requirements are satisfied). As under the original program, credits do not apply with respect to purchases from a lineal ancestor or descendant, which means a parent can still sell her home to her daughter, but her daughter will not qualify for the $8,000 credit.

There are some differences between the old law and the new law that are worth noting. Under the new law, a sales contract must be signed before May 1, 2010 and the sale must close prior to July 1, 2010. Unlike the earlier program, there is now a sales price ceiling. Specifically, for all purchases made after November 6, 2009, no credit is available for a home selling for more than $800,000.

As mentioned above, the new law encourages repeat home buyers to participate in the program, but limits the credit to a maximum of $6,500. For repeat home buyers to qualify, they must have lived in one residence for five consecutive years out of the past eight. There is also no requirement

that the new home price exceed the cost of the old home.

As most people expected, the former home buyer credit was riddled with fraud. To combat those who would abuse the new program, the new law contains various anti-abuse measures. For example, buyers must generally be 18 or older, and no taxpayer may take a credit if he or she is claimed as a dependent on someone else's return. Taxpayers taking the credit will also have to furnish proof of purchase, which will likely be a HUD-1 form.

Late Breaking Illinois Development of Interest Regarding Pass-Through Entities

It is our understanding that the Illinois General Assembly, by vote late in the Fall Session, has passed a bill restoring the ability of a partnership or LLC (taxed as a partnership) to deduct reasonable compensation paid to partners for services in determining Personal Property Replacement Tax.

We generally understand that the Governor is prepared to sign the Act, which essentially repeals the earlier law eliminating the subtraction modification. However, as of the date this newsletter goes to press, there is no word on whether the change will become effective for 2009. Considering the large number of taxpayers affected by both the earlier change in law and its repeal, we suggest that you contact your BWMS tax advisor as soon as possible for guidance.

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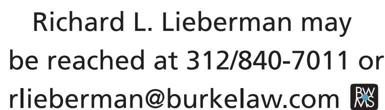

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Estate & Gift Tax Considerations: No Change to Federal Estate Tax

We still have a Federal estate tax. The death tax-free exemption amount is $3.5 million for 2009 with a top estate tax rate of 45%. Under current law, the estate tax is scheduled to be repealed for one year in 2010, but revert to its pre-2001 Tax Act level of only $1 million per taxpayer for persons dying in 2011 or thereafter, with a top tax rate of 50%.

Congress has been discussing, and we anticipate they will enact, a one-year extension of the estate tax for 2010 with a tax-free exemption amount equal to $3.5 million and a top estate tax rate of 45%. Congress will likely attempt to address long-term solutions for the estate tax in 2010.

Annual Exclusion Gifts

In 2009, you may make a gift of $13,000 to any individual and certain trusts without any gift tax consequences. Married individuals may make gifts of up to $26,000. 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 or estate tax. While the economic downturn has hit everyone, making gifts of assets with deflated prices may prove advantageous in the long-run as you are able to remove more assets from your taxable estate without incurring a current gift tax obligation. To take advantage of your annual exclusions for 2009, gifts must be made by December 31. Gifts over $13,000 or gifts that will be "split" between spouses must be reported on a gift tax return, which must be filed in April 2010. The annual exclusion amount will remain at $13,000 in 2010 ($26,000 for married couples).

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 dollar 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, individuals are also allowed a lifetime gift tax exemption. The gift tax exemption amount is currently a flat $1 million and is scheduled to remain at that level through 2010. Many clients make use of their $1 million lifetime exemptions by gift strategies such as Grantor Retained Annuity Trusts and other techniques that leverage the use of the exemption. A gift of appreciating property during your lifetime removes all future appreciation from your taxable estate at your death.

Generation Skipping Tax

The generation-skipping transfer

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WEALTH & SUCCESSION PLANNING

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("GST") tax is still in place. Generally, the tax applies to lifetime and death-time transfers to or for the benefit of grandchildren or more remote descendants, at a 45% flat rate for 2009. The tax is in addition to any gift or estate tax otherwise payable. However, each taxpayer is allowed a $3.5 million GST tax exemption for 2009. Like the estate tax, the GST tax is scheduled to be repealed for one year in 2010. However, along with the estate, it is anticipated that the GST tax will be extended for one year with an exemption amount of $3.5 million for 2010.

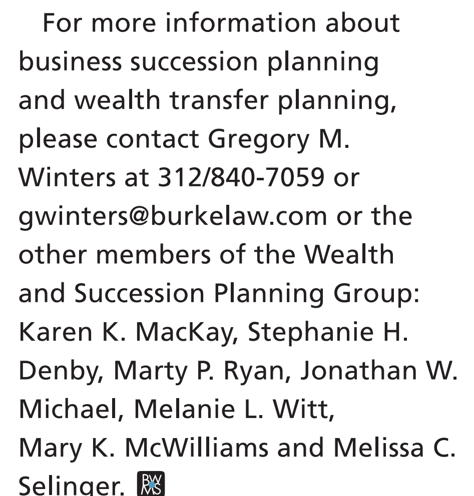
Consider Lifetime Gifts that take Advantage of both the Gift Tax Exemption and GST Exemption

Many clients utilize their $1 million gift tax exemption ($2 million for a married couple) by structuring long-term GST exempt trusts benefiting multiple generations. Such trusts will remain exempt from all gift and estate tax as long as the trust remains in existence. Under Illinois law, such trusts can last in perpetuity, thereby allowing you to create a family endowment fund for your children, grandchildren and future descendants.

Take Advantage of Today's Low Interest Rates

Interest rates remain at historically low levels. 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 resulting from the transfer of 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 rate 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.

Low interest rates also make sales to "defective" grantor trusts more attractive. Under this strategy, a taxpayer creates a trust, typically for his or her spouse and descendants. The taxpayer then sells assets to the trust taking back a note requiring the trust to repay the taxpayer in installments. The trust is structured so that it is ignored for income tax purposes, resulting in no income tax consequences upon the sale. The interest paid on the note is typically at the applicable federal rate, which changes month to month based on current market rates. The lower the interest rate on the note, the greater the amount of assets that will accumulate in the trust free of estate, gift and GST taxes.



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