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

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WEALTH & SUCCESSION PLANNING

MAKE YOUR YEAR-END FINANCIAL RESOLUTIONS BEFORE NEW YEAR'S

Karen MacKay

Greg Winters

The 109th Congress passed the Tax Increase Prevention and Reconciliation Act of 2005 and the Pension Protection Act of 2006. While not as newsworthy as previous tax law changes, the Acts include provisions that may impact your tax and estate planning.

Members of the firm's Wealth & Succession Planning practice group compiled the following tax and estate planning opportunities including key elements from the two Acts. Action on your part before year-end may yield significant financial benefits. Please contact your BWM&S attorney for more information.

Income Tax Considerations

Assess Your Tax Situation First

To plan properly, assess your current tax situation first. Individuals and businesses should:

- Estimate income, deductions, credits and exemptions for the year;

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The new Chicago sculptural installation, Agora, by world-renowned, Polish artist Magdalena Abakanowicz, was donated to the city by the artist, the Republic of Poland Ministry of Culture, and a private foundation. The iron figures were created in Poland as a gift to Chicago, a Sister City of Warsaw, the first international city to become a "sister city" of Chicago. Located at the northeast corner of Michigan Avenue and Roosevelt Road, Agora was a collaboration of the Parkways Foundation, the Chicago Park District and the City of Chicago. BWM&S provided the legal assistance in connection with the exhibit, which opened in November.

LABOR & EMPLOYEMENT

HOTLINE TO RISK MANAGEMENT

Marty LaPointe

Over the last two years, Marty LaPointe, chair of the firm's labor & employment practice, has counseled hundreds of companies across the U.S. on sensitive employment matters.

The consultations are connected to a four-part risk management program jointly designed by LaPointe and a long-time business associate who heads an insurance group. The elements of the program include EPLI (Employment Practices Liability Insurance) policies, online manager training, a quick-response hotline, and nationwide legal responses when EEOC or state agency charges are filed.

"We designed the program to better serve companies that face employment risk," says LaPointe. Companies purchase EPLI policies for coverage against discrimination, wrongful termination and harassment claims. Beyond insurance, training makes the insured company managers fully aware of appropriate employment practices.

The next step is when an insured needs help with an employment situation; they contact Burke Warren's John Fogarty or LaPointe. "When a situation is still brewing, we work to defuse a problem

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NEXT ISSUE: Trust litigation, the mortgage fraud epidemic, And more.

Associate joins firm's litigation practice

Susan Miller

The lawyers at Burke, Warren, MacKay & Serritella, P.C. are pleased to announce that Susan Miller has joined the firm as an associate and a member of the firm's litigation practice group.

Ms. Miller, a summer associate with the firm in 2005, graduated from the University of Illinois College of Law, *cum laude*, in 2006 where she was a member of the Frederick Green Chicago Moot Court team. During law school, Ms. Miller worked for the Illinois Attorney General's Child Welfare Litigation Bureau over the summer of 2004. In the fall of 2004, she worked as a legal extern for the Honorable Ilana Diamond Rovner of the U.S Court of Appeals for the Seventh Circuit.

Ms. Miller received her B.A., *magna cum laude*, in History with a minor in Politics from Mount Holyoke College located in South Hadley, Massachusetts, in 2003, but wanted to return home to Chicago to begin her career.

"After college, I looked into pursuing a PhD in history as well as an advanced degree in library science," says the Hinsdale native. "Law was the right choice for me and so was Burke Warren," says Ms. Miller. "In a relatively short period of time, I've had the opportunity to support our class action defense, automotive franchise, and religions practice groups and to work closely with many of the outstanding attorneys here. I look forward to gaining hands-on experience, learning from accomplished attorneys, and developing my practice here at BWM&S." Ms. Miller can be reached at 312/840-7051 or smiller@burkelaw.com. B

Associate joins corporate and real estate practices

The attorneys of Burke, Warren, MacKay & Serritella, P.C. welcome new associate Matthew C. Oesterle, who has joined the firm's real estate and corporate practice groups.

Mr. Oesterle, one of the firm's 2005 summer associates, brings to the firm a strong academic background together with valuable business experience. He graduated with high honors from Chicago-Kent College of Law in 2006 and was elected to the Order of the Coif legal honor society by the faculty members. While at Chicago-Kent, Mr. Oesterle was an Executive Articles Editor for the Chicago-Kent Law Review, in which his article "It's as Clear as Mud: A Call to Amend the Federal Trademark Dilution Act of 1995" was published. He also served as a legal extern in the chambers of the Honorable Joan H. Lefkow of the U.S. District Court for the Northern District of Illinois during the summer of 2004.

Mr. Oesterle earned his B.A. with honors in criminology from the University of Missouri in 1992, where he was a member of the Honors College. His work between his undergraduate studies and law school

Matthew C. Oesterle

included several years as a retail sales manager for a major technology manufacturer and three years as a store manager for a national bookseller. Mr. Oesterle also spent several years supervising the collateral processing unit of the commercial lending department in a large midwest bank.

"For me the road to law school was varied and long, but the goal was much anticipated," says Mr. Oesterle, who opted to gain valuable business experience before tackling his legal studies. "It is truly the culmination of a 20-year dream for me to practice law and I could not imagine a better firm at which to practice. My experience in business and management should help me to understand and anticipate the needs of our clients, whom I look forward to meeting and working with to achieve their business goals." Mr. Oesterle can be contacted at 312/840-7042 or at moesterle@burkelaw.com. B

HOTLINE

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before a claim is filed," says LaPointe.

The role played by the firm changes when a discrimination charge is filed. "We investigate the insured's situation carefully, then mount a hard hitting response aimed at the overseeing agency, the complaining party and any attorney who might think about taking the case," says LaPointe. This phase is designed to reduce the number of cases going into litigation, which is more costly and risky.

John Fogarty

The theory behind the program, and the hotline in particular, is to deal appropriately with employment issues and claims as soon as possible and reduce the overall exposure to claims. Once an employer becomes aware of an employment situation, the hotline helps a manager understand what to do in a given situation and how to communicate it. According to LaPointe, "It is important not only to take appropriate action, but to be as open and honest with an employee as possible."

"The program is growing because it works," says LaPointe. "Of the numerous hotline issues that we have handled, none to date has resulted in a claim."

For more information, please contact Mr. LaPointe at 312/840-7012 or mlapointe@burkelaw.com or Mr. Fogarty at 312/840-7087 or jfogarty@burkelaw.com. B

TAX AND ESTATE PLANNING

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- 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; and
- Determine the amount of tax you must pay in withholdings or estimated taxes to avoid underpayment penalties.

Consult your tax advisor to take the actions necessary to make the best of your situation.

Accelerate Deductions and Defer Taxable Income

By deferring taxable income into a future year or accelerating deductions, you can reduce your current tax liability. Taxes can be paid in a later year, allowing you to invest the savings in the interim. One common method for accelerating deductions is for taxpayers to make estimated tax payments for their 4th quarter state tax liability prior to year-end (ahead of the January 15 due date). You can claim a deduction for state taxes paid on your 2006 federal return.

Make 2007 Deferral Elections for Non-Qualified Deferred Compensation Plans

Many employers allow their executives to defer a portion of their compensation each year through non-qualified deferred compensation plans. If you are eligible to participate in a non-qualified deferred compensation plan, you are generally required to file your 2007 deferral election on or before December 31, 2006.

Gifts to Charity

A charitable contribution made before year-end can be claimed as a deduction on your 2006 income tax return. Also, by contributing publicly traded stock to a charity, you will avoid tax on the stock's appreciation and be able to deduct 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. Gifts over $5,000 that are not cash or publicly traded stock require an appraisal.

Tax-Free Distributions From IRAs for Charitable Purposes

Through 2007, individuals age 70½ or older are permitted to make direct transfers of up to $100,000 annually from their individual retirement account to a charitable organization. By distributing funds directly from their IRA to charity, the distribution is not included in the donor's taxable income. Conversely, the donor is not allowed to claim a tax deduction for the charitable contribution.

Modification of Recordkeeping Requirement for Certain Charitable Contributions

As we move into the New Year, be advised that new recordkeeping requirements have been imposed upon donors of cash contributions. Beginning in 2007, a donor contributing money to a charitable organization (regardless of the amount) must maintain a cancelled check, bank record or receipt from the donee organization showing the name of the donee organization, the date of the contribution and the amount of the contribution.

Max Out your 401(k)

Consider contributing the maximum amount to your 401(k) plan. The contribution limit was increased to $15,000 in 2006. In addition, individuals who will be at least 50 years of age by the end of 2006 may make an additional "catch-up" contribution of $5,000 in 2006. In 2007, the contribution limit increases to $15,500. The catch-up contribution limit remains at $5,000 for 2007.

Avoid Underpayment Penalties

Make sure that you have paid enough in federal and state withholding taxes to avoid penalties. For 2006, 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 2005 federal income tax return (110 percent, if your adjusted gross income for 2005 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 2006 federal income tax return, whichever is less.

Estate & Gift Tax Considerations

No Change to Federal Estate Tax in 2006

This year, the estate tax was not repealed nor did Congress revise the current Code provisions. The death tax-free exemption amount is $2 million but is scheduled to increase to $3.5 million in 2009. The top estate tax rate will be 45% in 2007. Under current law, the estate tax is scheduled to be repealed for one year in 2010, but reverting to its pre-2001 Tax Act level of only $1 million per taxpayer for persons dying in 2011 or thereafter, with a top rate of 50%.

Annual Exclusion Gifts

In 2006, you may make a gift of $12,000 to any individual and certain trusts without any gift tax consequences. Married individuals may make gifts of up to $24,000. 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.

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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.

Contribute to 529 Education Savings Plan

In planning for the future college costs of a child or grandchild, consider contributing to a 529 Education Savings Plan. So long as assets are used for qualified educational expenses, assets in a 529 Education Savings Plan grow tax-free (not just tax-deferred). Qualified educational expenses include tuition, fees, and books for a post-secondary education. Contributions are considered completed gifts and are excluded from your taxable estate. You can contribute up to $60,000 ($120,000 for married couples) per beneficiary in a single year without incurring federal gift tax provided no further gifts are made to the same beneficiary over the next five year period.

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 (“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 2007. The tax is in addition to any gift or estate tax otherwise payable. However, each taxpayer is allowed a $2 million generation-skipping tax (“GST”) exemption for 2006-2008, which is scheduled to increase to $3.5 million in 2009.

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 lasts. 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 have been trending up, but they still remain at relatively low levels. Low interest rates enhance the benefits of several gift and estate planning strategies. Two such strategies are the “grantor retained annuity trust” or GRAT and a sale to a “defective” grantor trust.

This article was prepared by Karen MacKay and Greg Winters of the BWM&S Wealth & Succession Planning and Taxation practices. Ms. MacKay can be reached at 312/840-7009 or kmackay@burkelaw.com. Mr. Winters can be reached at 312/840-7059 or gwinters@burkelaw.com. Additional information is available at www.burkelaw.com. B