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

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WEALTH & SUCCESSION PLANNING

Important Tax Saving Benefits Now Available to Illinois Same-Sex Couples

Same Sex Couples Can Receive All Tax, Estate Planning Benefits of Marriage

Karen K. MacKay

Marriage has long provided significant tax and estate planning benefits to married couples. One June 1, 2014, Illinois became the 16th state to allow same-sex marriage, making same-sex couples eligible to employ estate planning techniques previously unavailable to them. These techniques include setting up estate plans designed to take advantage of the Federal and Illinois unlimited marital deduction and utilizing both spouses' estate exemption amounts. Federal and Illinois estate taxes of same-sex couples

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TAX LAW

2014 Year-End Tax Tidbits

Greg Winters

While 2014 did not see any significant tax legislation enacted, you should still analyze your tax position prior to year-end to determine whether there are steps you can take to minimize your overall liability.

The American Taxpayer Relief Act of 2012 ("ATRA"), which became effective in 2013, essentially extended the Bush-era tax rates for most Americans. For 2014, the tax

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CLIENT FOCUS

Trading Technologies

Named one of *Crain's Chicago Business'* "Chicago's Coolest Offices, 2014"

Leading companies know that attracting and keeping talented employees takes much more than competitive pay and benefits. Exciting work spaces designed for collaboration and a little fun can make a meaningful difference. We are excited that Firm client Trading Technologies was recently hailed in the *Crain's Chicago Business* feature "Chicago's Coolest Offices, 2014" for their cutting edge headquarters at 222 S. Riverside Plaza. Kudos also go to architect Mike Kelly of TKB who designed Trading Technologies offices in New York and London as well. Chicago-based Trading

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This open meeting space is used by TT's Sales group when conducting product demos or "All Hands on Deck" sales meetings.

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NEXT ISSUE: Client successes, the firm grows again and more.

Firm Supports Nonprofit Community through Work with Development Leadership Consortium

While the Nature Conservancy, the United Way, the Bill and Melinda Gates Foundation, the Girl Scouts of America, Doctors Without Borders, the American Heart Association, the US Olympic Committee, the Smithsonian and Habitat for Humanity meet a broad spectrum of public needs, they share at least one common trait: they are all nonprofit organizations (NPOs).

Like the powerhouse institutions listed above, NPOs are typically organized around a primary charitable mission, while legally recognized as "corporations." Whether large or small, NPOs engage in typical business transactions, such as employing staff and entering into contracts. They may own real estate and other significant assets. They often have a board of directors or trustees. Unlike for-profit corporations, however, any excess revenue accumulated is not returned to shareholders as profit, but is instead retained by the NPOs for expanding or otherwise furthering their mission.

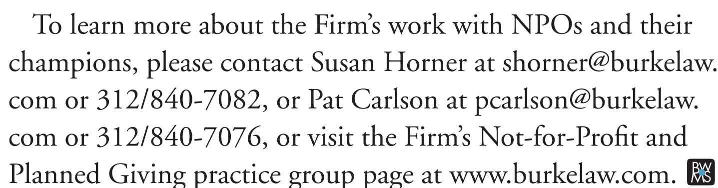
Capacity building (fundraising) is a never-ending and essential challenge for any NPO, as the ability to fulfill their charitable missions depends on it. Potential funding sources include grants from charitable foundations, donations, memberships, and government funding.

The Development Leadership Consortium (DLC) here in Chicago is one of a new breed of NPOs that mentors both new and experienced fundraising professionals, supporting their professional growth as committed, connected leaders of the Chicagoland philanthropic community.

Among its programs is the DLC Management Fellows, which targets up-and-coming NPO leaders who have worked in fundraising for 3 to 7 years. According to its facilitator, Tom Wick, the program "guides participants toward three primary goals: building a portfolio of knowledge of fundraising, building confidence and building professional networks." Wick is Chief Advancement Officer for the University of Chicago's Urban Education Institute and has spent more than 25 years in higher education fundraising and alumni relations. He has been a DLC mentor for the past 8 years. "Given the essential work performed by nonprofits, preparing the next generation of development leaders is critical," says Wick. "That is essentially what the DLC was designed to do."

Interested NPO professionals are encouraged to learn more about the DLC's fellowship and public program offerings, which can be found at http://chicagodlc.org/. Applications for DLC fellowship programs are accepted through June 1st every year, with each year-long program commencing in September.

Tom Wick, Chief Advancement Officer for the University of Chicago's Urban Education Institute, leads a discussion at a recent DLC Management Fellows meeting.



Led by partners Susan Horner and Patricia Carlson, the Firm supports the work of the DLC, and is hosting the DLC Management Fellows' monthly meetings for the 2014-15 session.

To learn more about the Firm's work with NPOs and their champions, please contact Susan Horner at shorner@burkelaw.com or 312/840-7082, or Pat Carlson at pcarlson@burkelaw.com or 312/840-7076, or visit the Firm's Not-for-Profit and Planned Giving practice group page at www.burkelaw.com.

Darrow-coached cross country team wins state championship!

The Firm's John Darrow (pictured back right) together with members of the Notre Dame grade school 2014 IESA Class A Boys Cross-Country State Champions! Notre Dame, located in Clarendon Hills, won its second state championship in three years.

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Firm Welcomes New Associates

Kara Krueger is an associate in the firm's Corporate and Real Estate groups. Kara was a Summer Associate at the firm in 2013. Ms. Krueger earned her B.A. in English, *cum laude*, and her Teacher Education Certification, from the College of the Holy Cross, in 2010 and her J.D., *magna cum laude* and Order of John Marshall from the John Marshall Law School in 2014, where she also received the John Marshall Distinguished Scholar Award. During law school, Ms. Krueger received CALI awards for Contracts II and Constitutional Law II. She also was a 2nd Place Regional Finalist in the American Bar Association Negotiation Competition in 2012 and a National Quarterfinalist in the American Bar Association Negotiation Competition in 2013.

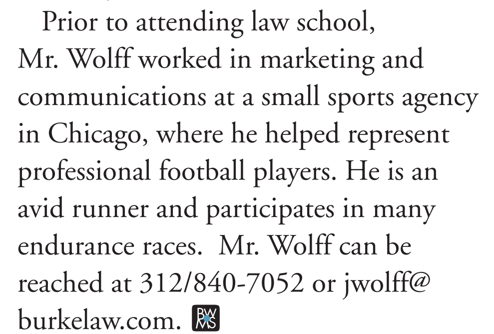
Kara A. Krueger

During law school, Kara served as the Articles Editor of *The John Marshall Law Review* and was a board member of the Professionalism & Engagement Student Advisory Board. She was also a judicial extern for a magistrate judge at the United States District Court for the Northern District of Illinois. Ms. Krueger can be reached at 312/840-7050 or kkrueger@burkelaw.com

Josh Wolff is an associate in the firm's Corporate and Real Estate groups. Josh was a Summer Associate at the firm in 2013. Mr. Wolff earned his B.A. in Journalism, *summa cum laude*, from the University of Missouri School of Journalism in 2009, and his J.D., *summa cum laude* and Order of the Coif, from the University of Illinois College of Law in 2014. He also received the Rickert Award for Excellence in Academic Achievement. During law school, Mr. Wolff received CALI awards for Contracts, Introduction to Advocacy, Employment Discrimination, Illinois Civil Procedure and Evidence, and Fact Investigation: The Kennedy Assassination. He also served as the Topics Editor of the *Illinois Law Review* and was a Teaching Assistant to first-year writing and advocacy courses.

Joshua M. Wolff

Prior to attending law school, Mr. Wolff worked in marketing and communications at a small sports agency in Chicago, where he helped represent professional football players. He is an avid runner and participates in many endurance races. Mr. Wolff can be reached at 312/840-7052 or jwolff@burkelaw.com.



BWM&S

Rewilding Chicago! Firm hosts Chicago River Summit

PHOTOS: BRITTANY HARTHAN

On October 3, 2014, the Firm hosted a packed house at Friends of the Chicago Rivers' 10th Annual Chicago River Summit. This year's meeting was titled Rewilding and the Urban Environment. *Pictured from left are Marc Miller, director of the Illinois Department of Natural Resources, the Firm's Dick Burke, and Margaret Frisbee, Executive Director of Friends of the Chicago River. Also pictured is Seth Magle, Director, Urban Wildlife Institute of the Lincoln Park Zoo.*

TAX TIDBITS

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Taxable Income Joint/(Single)	Tax Rate	Long-Term Capital Gains Rate	Qualified Dividend Rate
$0 - $18,150 ($0 - $9,075)	10%	0%	0%
$18,151 - $73,800 ($9,076 - $36,900)	15%	0%	0%
$73,801 - $148,850 ($36,901 - $89,350)	25%	15%	15%
$148,851 - $226,850 ($89,351 - $186,350)	28%	15%	15%
$226,851 - $405,100 ($186,351 - $405,100)	33%	15%	15%
$405,101 - $457,600 ($405,101 - $406,750)	35%	15%	15%
Over $457,600 (over $406,750)	39.6%	20%	20%

table is as follows:

In addition to the taxes set forth in the table, the Affordable Care Act created additional taxes that became effective in 2013 and are scheduled to continue indefinitely. The most prominent of these new taxes are:

Increased Medicare Tax – An individual is liable for an additional Medicare tax equal to 0.9% if the individual's wages, other compensation, or self-employment income (together with that of his or her spouse if filing a joint return) exceed the threshold amount for the individual's filing status. Thus, the wage withholding rate for Medicare taxes is 1.45% up to the income threshold and 2.35% (1.45 + 0.9) on amounts in excess of the threshold amounts. The threshold amount for purposes of the increased Medicare tax is $250,000 for married couples filing a joint return, $125,000 for married individuals filing a separate return, and $200,000 for single taxpayers.

Net Investment Income Tax - A surtax of 3.8% is imposed on the unearned income of individuals, estates, and trusts. For individuals, the surtax is 3.8% of the lesser of:

1. The taxpayer's net investment income; or

2. The excess of modified adjusted gross income over the threshold amount.

Investment income includes income from interest, dividends, annuities, royalties, rents (not derived from a trade or business), capital gains (not derived from a trade or business), trade or business income that is a passive activity with respect to the taxpayer, and trade or business income with respect to the trading of financial instruments or commodities. The threshold amount is $250,000 for married couples filing a joint return, $125,000 for married individuals filing a separate return and $200,000 for single taxpayers. The surtax on unearned income results in long-term capital gains and qualified dividends being taxed at rates as high as 23.8% (20 + 3.8).

The increased tax rate on long-term capital gains for high income taxpayers along with the additional 3.8% surtax on net investment income makes it all the more important that individuals monitor their capital gains and losses. If you have recognized gains during the year, you should consider selling investments that have losses to offset those gains.

Congress has failed to act on various tax extenders

While ATRA brought relative certainty to tax rates, Washington has failed to address various tax extenders that expired in 2013. Extenders are essentially tax items (credits or deductions) that have only been enacted for a period of time. Without an extension, these tax provisions essentially disappear. There are approximately 50 such items that expired over the past year that need to be addressed. These items range from the tax deduction for sales taxes paid (which would only apply if sales taxes paid exceed the amount of state income taxes paid) to research tax credits. The delay in addressing these extenders will likely cause a delay in the Internal Revenue Service issuing 2014 tax forms and a similar delay in processing returns.

One item that we are often asked about is the tax-free distribution of funds from an Individual Retirement Account for charitable purposes. Individuals age 70½ or older had been permitted for several years to make direct transfers of up to $100,000 annually from an individual retirement account to a charitable organization. By distributing funds directly from your IRA to charity, the distribution is not included in your taxable income. Consequently, you are not allowed to claim a tax deduction for the charitable contribution. Without this provision, if an individual wished to contribute IRA assets to charity, the individual would be required to take a distribution from his IRA and then contribute the funds to charity. The individual would be required to include the distribution in income, but would be allowed a charitable deduction for his contribution. Unfortunately, the deduction in many cases would not fully offset the additional income because of (among other things) the phase-out of itemized deductions for high-income taxpayers. Likewise, most states, including Illinois, do not allow a charitable deduction. As a result, including the IRA distribution into income before claiming the charitable deduction may also increase state taxes.

Maximize contributions to tax-deferred retirement accounts

Maximizing contributions to tax-deferred retirement accounts, such as an IRA or a company 401(k) plan will reduce your taxable income and your tax liability. The 401(k) contribution limit for 2014 is $17,500. In addition, individuals who will be at least 50 years of age by the end of 2014 may make an additional "catch-up" contribution of $5,500 in 2014. The contribution limit for 2015 will be $18,000 and the catch-up contribution limit for 2015 will be $6,000.

Contributions to IRA may also be tax deductible (depending upon your income and whether you participate in an employer sponsored retirement plan). For 2014, the contribution limit is $5,500. In addition, individuals who will be at least 50 years of age by the end of 2014 may make an additional "catch-up" contribution of $1,000 in 2014. The contribution limits for 2015 will not change.

ESTATE & GIFT TAXES

ATRA also brought much needed clarity to the estate and gift tax regime. Without ATRA, the tax-free exemption amount would have decreased from $5.12 million in 2012 to $1 million in 2013. ATRA essentially made permanent the Bush-era tax-free exemption amount. For 2014, the exemption amount is $5.34 million ($10.68 million for married couples). The exemption amount is indexed for inflation and will increase to $5.43 million ($10.86 million for married couples). The top tax rate for estate and gift tax purposes has also been set at 40%.

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. For 2014, the rate is a flat 40%. The tax is in addition to any gift or estate tax otherwise payable. As with the gift and estate tax, each taxpayer is allowed a $5.34 million GST tax exemption for 2014.

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

Many clients utilize a portion or all of their $5.34 million gift tax exemption ($10.68 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.

If you already have taken advantage of the current $5.34 million exemption amount or you are not in a position where it makes sense to gift a large amount, you should still continue to plan a gifting strategy going forward.

Annual Exclusion Gifts

In 2014, you may make a gift of $14,000 to any individual and certain trusts without any gift tax consequences. Married individuals may make gifts of up to $28,000. 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. To take advantage of your annual exclusions for 2014, gifts must be made by December 31. Gifts over $14,000 or gifts that will be "split" between spouses must be reported on a gift tax return, which must be filed in April 2015. The annual exclusion amount is scheduled to remain $14,000 in 2015, or $28,000 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 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.

Take Advantage of Today's Low Interest Rates

Interest rates remain at historically low

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Employers, Employees and Social Media– the NLRB weighs in

What's come to be known as "social media" has successfully infiltrated almost all aspects of business. Many businesses now see it as a marketing essential, while others consider it a key information source.

Many businesses have not only developed social media policies and guidelines for their employees (*vis a vis* protecting proprietary business information), but also have begun monitoring workplace activities in order to keep tabs on what its employees are doing and saying about their workplace or employer. Not surprisingly then, disputes have arisen concerning limits for such employee oversight — when is an employer crossing the line into actionable violation of employee rights? Similarly, what are the limits on protected employee behavior?

Fred Mendelsohn

In its most recent opinion on the subject, the National Labor Relations Board (NLRB) found that Triple Play Sports Bar, a non-union employer, twice violated Section 7 of the National Labor Relations Act (the "Act") by (1) firing two employees for participating in certain Facebook postings (one with a simple "Like" click), and (2) promulgating a Social Media Policy that was, on its face, illegal under the Act. One fundamental tenet of labor law is that employees have the right to "form, join or assist unions" and to "engage in other concerted activities for their mutual aid and protection." Employers simply cannot interfere with, restrain or coerce employees in exercise of these Section 7 rights, without running afoul of the NLRB, which is exactly what Triple Play did when it fired the two employees in question.

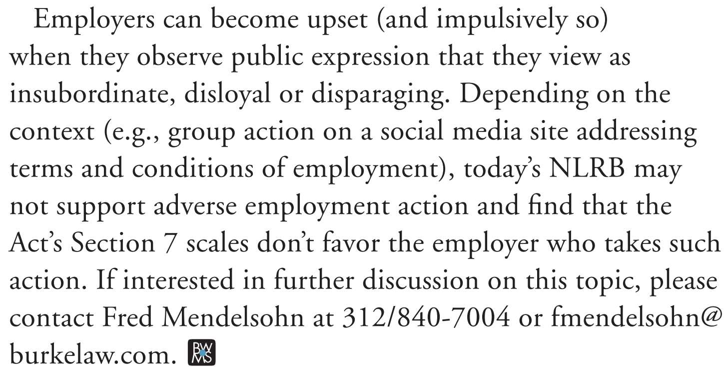
What exactly happened in this case? Suspecting that Triple Play had not withheld proper state income taxes from her paychecks, a former Triple Play employee posted a negative comment blaming Triple Play's owners for her state income tax shortfall. The Facebook conversation escalated as other employees joined in, including mention of reporting the situation to the NLRB. At one point, a current employee simply responded "Like," while another posted that she too owed state taxes and called one of the owners "an a--hole." Triple Play ultimately confronted the two employees about these posts and fired them for violating the company's Internet/Blogging Policy, which among other things precluded "inappropriate discussions about the company, management and/or co-workers."

It was undisputed that the postings were protected activity, because the ongoing discussion related to terms and conditions of employment (underreporting of income tax) and had evolved to the point where employees planned to raise the issue at a staff meeting (group action). The NLRB rejected Triple Play's argument that "liking" certain commentary makes one responsible for other defamatory statements posted in a discussion and found that the derogatory description of an owner was a non-actionable personal opinion. Ultimately, the NLRB balanced employees' Section 7 rights with the alleged inappropriate employee conduct, to determine whether such conduct fell outside of protection from the Act, finding that the employee conduct was, in fact, protected under Section 7.

The NLRB also analyzed the employer's policy, finding that its above-quoted language was overly broad and not comparable to restrictions in other policies which the NLRB has upheld. Specifically, the policy was in violation of the Act because employees reading it could reasonably conclude that the policy's "prohibition against inappropriate discussions" could "encompass [prohibition of] 'discussions and interactions protected by Section 7.'" The NLRB reinforced its conclusion by citing the two employee terminations as "an authoritative indication of the scope of [Triple Play's] prohibition."

The Triple Play decision reinforces key "Takeaways" for employers:

- Non-union employers are also at risk for legal action based on a violation of the Act and must consider that risk in addressing workplace issues.
- Even a "Like" or similar thumbs-up on social media postings can be concerted protected activity, which will be analyzed on a case-by-case basis. Employers should tread carefully in assessing social media content in the context of taking adverse employment action, as each case will be considered individually by the NLRB.
- Evaluating specific posts, or even a "Like," should be gauged against current law and/or reports that have been issued by the NLRB on various social media cases, and when policies and/or adverse employment action can violate Section 7 of the Act. Because the NLRB will balance employee rights to engage in concerted protected activity with the employer's right to take adverse action against employees viewed as disloyal or having engaged in improper conduct, professional advice should be considered before making final decisions.
- Employers should pay close attention to policies that can implicate Section 7 rights, and particularly policies where language might be interpreted as unlawful, such as the "inappropriate discussions" language of Triple Play's Internet/Blogging policy. The NLRB has found language such as "inappropriate" to be both legal and illegal, depending on the circumstances.
- Many different policies can become the subject of NLRB



scrutiny — not just social media policies. The NLRB has reviewed workplace policies ranging from "non-fraternization" to "no-access" to "confidentiality" and "non-disclosure." Regular review of company policies and procedures by outside counsel is sensible on many levels.

Employers can become upset (and impulsively so) when they observe public expression that they view as insubordinate, disloyal or disparaging. Depending on the context (e.g., group action on a social media site addressing terms and conditions of employment), today's NLRB may not support adverse employment action and find that the Act's Section 7 scales don't favor the employer who takes such action. If interested in further discussion on this topic, please contact Fred Mendelsohn at 312/840-7004 or fmendelsohn@burkelaw.com.

TRADING TECHNOLOGIES

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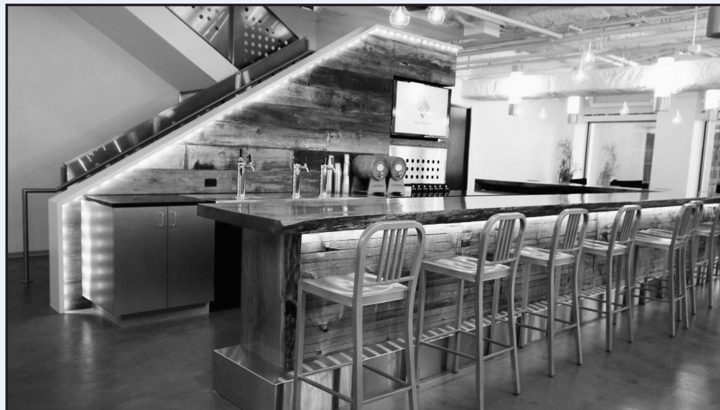
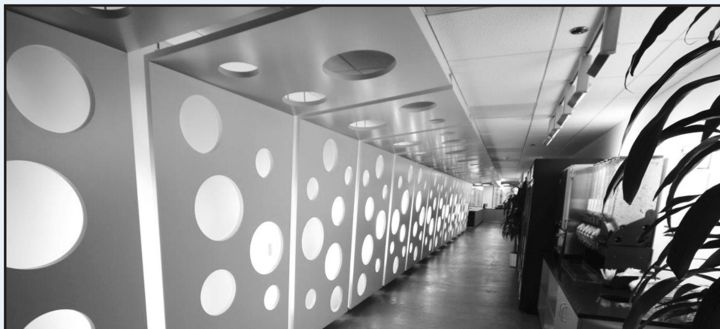
Technologies International, Inc. creates trading and analytics software that connects traders to markets around the globe. The Firm's Jeff Warren and Rachel Wanroy represented Trading Technologies in their Chicago lease negotiations.



The Tech Tap Bar is a community space. Staffed by IT by day, employees from across the company stop by for technology help of all kinds. The bar has become TT's focal point for internal events or for staff gathering after work to enjoy a glass of beer or wine, and recently hosted 200+ clients and prospects for drinks during an industry conference in Chicago.



This corridor, unofficially dubbed the "Green Cove," houses beverage coolers as well as snack and fruit displays.

TAX TIDBITS

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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 or marketable securities with high growth prospects are often ideal properties to transfer to a GRAT. While there has been considerable discussion about disallowing "zeroed-out" GRATs and requiring a minimum GRAT term of 10 years, Congress has not taken any action in this respect. As a result, GRATs remain a very attractive planning opportunity.

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.

This article was prepared by Greg Winters. For more information, please contact your attorney. You may also contact Greg at 312 840-7059 or gwinters@burkelaw.com.

Congratulations Mary!

The Firm congratulates their colleague Mary McWilliams on her completion of all 26 miles and 385 yards of the Chicago Marathon that took place on October 12, 2014.

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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. ©2014 Editor: Cy H. Griffith, Director of Marketing.

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SAME-SEX COUPLES

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can now be deferred until the surviving spouse's death, and in many cases, can be entirely eliminated by proper planning. Same-sex couples can also benefit from the portability of the Federal estate tax exemption amount, allowing the unused exemption amount of a deceased spouse to be used by the surviving spouse.

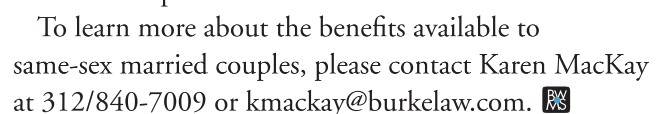
Same-sex couples may also "split" gifts to take advantage of the annual gift tax exclusion amount (which is currently $14,000 per donee per year, or $28,000 if the married couple both "split" gifts).

Marriage allows the surviving spouse of a same-sex couple to "roll over" the deceased spouse's IRAs and other qualified plan assets into his or her own IRA in order to postpone required minimum distributions, thereby reducing income taxes.

Enhanced creditor protection for a residence is also available through titling the property in tenancy by the entirety, and through the ability to transfer assets to a same-sex spouse without gift tax consequences.

Same-sex spouses now have priority to be the court-appointed guardian of their spouse, and to have authority for medical care decisions and property issues if their spouse is incapacitated. Illinois Powers of Attorney for Health Care and Property should also be in place to designate spouses as each other's agents to make decisions in the event one is incapacitated.

For many years, Illinois opposite sex couples could enter into legally binding premarital and postnuptial agreements, thereby settling their rights to one another's property in the event of divorce or death. That same opportunity to determine rights upon divorce or death is now available to same-sex couples.



To learn more about the benefits available to same-sex married couples, please contact Karen MacKay at 312/840-7009 or kmackay@burkelaw.com.