

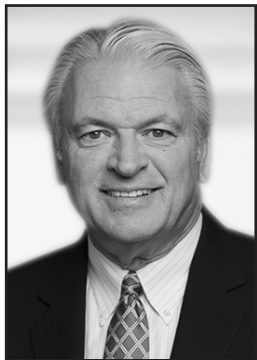


BWM&S

LEADING RESTRUCTURING, BANKRUPTCY ATTORNEY JOINS BURKE, WARREN

The attorneys at Burke, Warren, MacKay & Serritella welcome new partner David K. Welch.

Recognized as one of the Chicago's leading authorities on restructuring and bankruptcy matters, Welch represents debtors, trustees, creditors' committees, secured creditors, unsecured creditors and equity holders. Welch will chair the Firm's new Restructuring, Insolvency and Bankruptcy practice group.



David K. Welch

"We assist very successful business people who are dealing with some of the most stressful events in their business lives," said Welch. "Working very closely with our clients, we identify the problems, consider together their best options, then select and implement strategies to move forward."

Continued on page 4



Firm Hosts Illini Athletics Director Josh Whitman

A return to bowl games and tournament play for the Fighting Illini? At a recent event at Burke, Warren, MacKay & Serritella, the University of Illinois' Athletic Director, Josh Whitman, told attendees that it could happen sooner than you think. Since his hire in

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INTERNAL INVESTIGATIONS

BURKE, WARREN'S INSTITUTIONAL RISK MANAGEMENT & INTERNAL INVESTIGATIONS GROUP

Every day, new allegations of workplace harassment and discrimination are leveled at well-known people from across the country and beyond, rocking industries from Hollywood to Wall Street, Silicon Valley, Washington and more, causing turmoil within many organizations and businesses not to mention the lives of the people involved.

Workplace harassment and discrimination cases are no longer remote, but may arise in your own city, building or suite of offices. The days where most look the other way are gone.

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AVOIDING MISSTEPS IN THE USE OF BACKGROUND CHECKS THAT CAN LEAD TO CLASS ACTION EXPOSURE

Background checks have long been a critical screening tool for employers. However, background checks, conducted in a lawful manner have now become imperative for companies wishing to avoid liability and class action risk. Some of the country's largest companies — Disney, Home Depot, Wal-Mart, Marriott and Starbucks — face class action lawsuits arising from issues from background checks. Other large-scale employers, including Publix, Postmates, Wells Fargo and Uber, have already agreed to pay millions in class settlements to resolve background check disputes. The reality is that compliance is not always simple and employers should proceed carefully and with legal guidance.

In addition to complying with states' specific requirements, employers must consider the Fair Credit Reporting Act ("FCRA") before conducting background checks. The FCRA requires that prior to obtaining a background report, the employer must disclose to the individual that the company may use information contained within the report as the basis for employment-related decisions. The disclosure must be a stand-alone written, "clear and conspicuous" document. The FCRA also requires that the employer obtain written authorization from the individual prior to conducting any screening. This employee's authorization can be obtained when the company's disclosure is made. In addition, if the company wishes to retain the right to periodically check employee backgrounds during the period of employment, the disclosure document must state that intent.

After reviewing the background report, the employer must notify the individual before taking any adverse action. The employer must provide the individual with a copy of the background report and a copy of a summary of rights, thus granting the individual the opportunity to refute any information in the report. For example, the report could contain information regarding someone with the same or a similar name, include evidence of identity theft, or include expunged information.

While avoiding class action risk is one reason to implement good practices related to background checks, the risk of losing out on a good employee because of inaccuracies in a background report is another.

If the employer decides to take adverse action based upon information contained within the report, it must first provide the individual with a notice stating the basis for its decision and the specific information that it relied upon. Moreover, the employer must provide the individual with: (i) the name, address, and phone number of the consumer reporting company



Danielle Gould



Rachel Yarch


that supplied the report; (ii) a statement that the company that supplied the report did not make the decision to take the unfavorable action and thus is unable to provide specific reasons for the company's action; (iii) a notice of the individual's right to dispute the accuracy or completeness of the information contained within the report; and (iv) information regarding how the individual can obtain any additional free reports from the company within 60 days. Skipping any one of these steps can expose the company to potential liability.

Employers should also consider the Guidance issued by the Equal Employment Opportunity Commission ("EEOC"). The Guidance provides that across-the-board prohibitions on hiring or promoting based on criminal history has the potential to lead to discrimination and is unlawful.

Essentially, the EEOC strives to prevent applicants and employees from being placed in the "NO" pile for hiring or promotion decisions simply because he or she has some sort of criminal background. Rather, the EEOC requires employers to make decisions based on criminal background information that are job related and consistent with business necessity. The mandate requires that companies consider the type of conviction, the timing of the conviction, and whether it is reasonably related to the position being applied for.

In many cases, employers are right to consider criminal convictions in hiring, and must do so given the potential liability they face in the event of any negligent hiring and retention claim resulting from harms caused by their employees.

However, employers, their human resource personnel, and their counsel must ensure compliance with the law and implement a reasonable and thoughtful approach, in both conducting background checks and in making hiring and firing decisions based on the information obtained.

For more information, please contact Danielle Gould at 312/840-7070 or dgould@burkelaw.com, or Rachel Yarch at 312/840-7029 or ryarch@burkelaw.com. 

DOES YOUR COMPANY OBTAIN FINGERPRINTS OF EMPLOYEES OR CUSTOMERS?

Ensure compliance with the Illinois Biometric Information Privacy Act

In 2008, Illinois passed the Biometric Information Privacy Act, arguably the most stringent law of its type in the United States. The Act governs private entities' use of "biometric identifiers," which include a retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry. Although the Act has been in place for several years, it has recently garnered new attention after several class action lawsuits were filed earlier this year alleging violations of the Act.

The Act's Requirements

Under the Act, it is illegal for a private entity to obtain a person's biometric information unless the entity: (1) informs the person in writing that such information is being collected



Elizabeth Pall

or stored; (2) discloses the purpose and length of term for which the information is being collected, used, and stored; and (3) receives a written release from the person to collect, use or store the information.

Once a private entity is in possession of an individual's biometric information, it must comply with the Act's requirements regarding the disclosure of such information. First, the entity may not *sell* or *profit* from a person's biometric information. Second, the entity may not *disclose* an individual's biometric information unless: (1) the individual consents to the disclosure; (2) the individual has authorized a financial transaction, the completion of which requires the disclosure; or (3) the disclosure is required by law or pursuant to a valid warrant or subpoena.



Victoria Collado


The Act also requires entities in possession of biometric information to develop a written policy setting forth a retention schedule and guidelines for destroying biometric information, which may be stored for no longer than 3 years. During the retention period, the entity must protect the biometric information in the same manner it would protect other forms of confidential information.

In 2017 alone, more than 30 putative class action lawsuits have been filed in Illinois against a wide variety of companies, including airlines, hotels, healthcare companies, and restaurants, alleging violations of the Act. The most common allegation in these lawsuits is that an employer has used its employees' fingerprints for timekeeping purposes without complying with the Act's requirements.

Litigation Related to Biometric Information

The Illinois Act is considered the strongest in the nation because it allows private parties to bring a lawsuit and provides generous damages for any person harmed by a violation of the Act — \$1,000 or actual damages for negligent violations and \$5,000 or actual damages for intentional or reckless violations. In both cases, individuals may also recover their attorneys' fees and costs.

In 2017 alone, more than 30 putative class action lawsuits have been filed in Illinois against a wide variety of companies, including airlines, hotels, healthcare companies, and restaurants, alleging violations of the Act. The most common allegation in these lawsuits is that an employer has used its employees' fingerprints for timekeeping purposes without complying with the Act's requirements.

Businesses and employers should be cognizant of whether they are using or storing data which would be considered a "biometric identifier" under the Act. If they are, they should closely follow the steps above with respect to obtaining biometric information, disclosing such information, and developing and implementing a written policy related to biometric information. For more information on how to bring your company into compliance with the Biometric Information Privacy Act, please contact Elizabeth Pall at 312/840-7099 or epall@burkelaw.com or Victoria Collado at 312/840-7048 or vcollado@burkelaw.com. 

FIRM'S CAUHORN COACHES TEAM TO MOCK TRIAL NATIONAL CHAMPIONSHIP


The Firm's Josh Cauhorn coached students from the Corboy Fellowship at Loyola University Chicago School of Law which recently competed in and won the *In Vino Veritas* National Mock Trial Tournament at Golden Gate University in San Francisco. Over the weekend of October 28-29, Josh's team bested



John Cauhorn

teams from more than 15 law schools, including University of California-Hastings, Catholic University and American University.

Josh's students dominated in the preliminary rounds, easily making their way through semifinals and into the final round, where they prevailed over students from Tulane University. Josh was joined by co-coaches and attorneys Tracey Hawkins of Prusak Law Group

and Koga Ndikum-Moffor of Chicago Public Schools. Loyola's Corboy Fellowship and trial advocacy program is regularly ranked by U.S. News & World Report in the top ten in the country. 



Members of the Philip H. Corboy Fellowship in Trial Advocacy at Loyola University Chicago from left Edet Nsemo, Britney Pennycook, Teresa Russo and Benjamin Horwitz post victory at the In Vino Veritas National Mock Trial Tournament at Golden Gate University in San Francisco.

ATTORNEY JOINS FIRM

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Members of the group are experienced in handling virtually every aspect of insolvency, including restructuring, reorganization, bankruptcy, debt resolution and business and commercial litigation. They represent corporate debtors, company directors, individuals, lenders, bondholders, liquidators, receivers, administrators, trustees, assignees for the benefit of creditors, unsecured creditors' committees, insurers, unions, pension fund trustees and landlords in all aspects of restructuring and bankruptcy.

Welch and his son, Firm associate Brian Welch, had practiced together at a Chicago-based boutique specializing in restructuring matters. "This was the right



Brian Welch

business and legal communities, joining Burke, Warren was an easy decision for us."

David Welch can be reached at 312/840-7122 or dwelch@burkelaw.com. Brian Welch can be reached at 312/840-7117 or bwelch@burkelaw.com. 

time for us to become part of a full-service firm," said Welch. "Given my long work history with many of the attorneys here and the Firm's strong reputation within the

ILLINI ATHLETICS DIRECTOR

Continued from page 1

February 2016, Whitman has made a number of strategic personnel moves, including the hiring of former Chicago Bears coach Lovie Smith and basketball coach Brad Underwood. Whitman, who played in the NFL and then practiced as an attorney before beginning his career in collegiate athletics administration, addressed attorneys, clients, and friends of the Firm, recapping his efforts to reestablish the Fighting Illini as a championship contender, describing his vision for the athletic department, and answering questions from attendees. Approximately one quarter of the Firm's attorneys have at least one degree from the University of Illinois.

QUICK TIPS FOR PREVENTING AND ADDRESSING WORKPLACE HARASSMENT

In light of the mounting allegations against — and even admissions from — certain elected officials, well-known journalists, and high-ranking Hollywood moguls, employers must



Rachel Yarch

be vigilant in taking steps to protect their workplaces and employees from sexual and other forms of harassment. While this issue remains a complicated one, there are

some simple risk management steps that can be taken in order to minimize the risk of harassment in the workplace and to increase a company's lines of defense against such claims.

Maintain a strong, legally compliant anti-harassment policy that all employees must sign and acknowledge;


Require your entire management/ leadership team take an anti-harassment training course and document course content and their attendance;

Notify employees in writing about who and how to contact members of management or human resources about sexual or any other form of harassment they experience;

Establish a zero tolerance policy concerning management's obligation to report concerns/complaints of harassment from employees;

Investigate all complaints, regardless of management's view of credibility; and

Document the steps taken to investigate complaints and to address conduct.

If you have questions regarding any of the risk management steps, Burke, Warren, MacKay & Serritella has a number of skilled attorneys who can provide counsel on these issues. For more information, please contact Rachel E. Yarch at 312/840-7029 or ryarch@burkelaw.com. 

FIRM WELCOMES NEW ASSOCIATES

Burke, Warren, MacKay & Serritella welcomes associates R. Jake Jumbeck and Eric Bernard.

R. Jake Jumbeck is an associate in the Firm's Litigation and Restructuring, Insolvency and Bankruptcy practices. He was a summer associate at the Firm during 2016.

Jake earned his B.A., *summa cum laude*, from Marquette University in 2014 and his J.D., with honors, from Emory University School of Law in 2017. During law school, Jake was a member of the Homer Drake Jr. Georgia Bankruptcy American Inn of Court, a teaching assistant for first year legal writing, and the editor-in-chief of the *Emory Bankruptcy Developments Journal*. Jake can be reached at 312/843-5821 or jjjumbeck@burkelaw.com.



R. Jake Jumbeck




Eric Bernard

Eric Bernard is an associate in the Firm's Litigation group. He was also a member of the Firm's summer associate class of 2016.

Eric earned a B.A., *summa cum laude*, from Carthage College in 2014, where he was a member of the cross country and track & field teams. He was captain of Carthage's cross country team his senior year. Eric earned his J.D., *magna cum laude*, from University Illinois

College of Law in 2017. Prior to law school, Eric served as a congressional district intern for the Illinois 13th Congressional District.

Eric can be reached at 312/843-5820 or ebernard@burkelaw.com. 

2017 YEAR-END TAX PLANNING SUMMARY

An old Chinese curse provides “may you live in interesting times”. Regardless of your political persuasion, most people would agree that the last 12 months have certainly been interesting.

Few people expected Donald Trump to win the presidency and fewer expected the Republican party to take control of both the House and the Senate. The President and Congress have encountered various challenges attempting to implement their policies during the past year, and now pressure in mounting on them to deliver on tax reform.



Greg Winters

While both the House and the Senate have each passed a draft of tax legislation, there are still significant obstacles on the road to tax reform. Whether a unified version of the tax reform passes and what provisions will be included in any final reform

package are still questions to be answered. Until we have been provided with additional clarity, we believe the best course of action is to continue to operate with the structure that is in place, but to monitor the situation for developments. If tax reform is enacted, we will follow-up with a detailed summary of the legislation. In the interim, our message at year-end is much the same as it has been in prior years.

Review Current Tax Situation

First, conduct a thorough assessment of your current tax situation, including a review of current year income and deductions (including capital gains and losses); an estimate of income and deductions for future years; a review of any carryover items (e.g., net operating loss or charitable contribution carryover); and identification of taxable items for which you can control the timing.

Once you have a full understanding of your current tax position, you will be able to make more informed decisions about what steps should be taken to minimize your tax exposure going forward.

Defer Income

If you have the ability to do so, consider deferring some income until 2018. You will reduce your 2017 tax liability. Also, if tax reform is enacted, lower tax rates may be effective in 2018. As a result, you may be able to not only defer the payment of taxes but also reduce your total tax liability.

Accelerate deductions

Each year, we discuss the possibility of accelerating certain itemized deductions. This year, that advice is even more timely. While we do not know what will happen with tax reform, both the House and the Senate tax proposals would eliminate many deductions. Chief among the items that may be eliminated is the deduction for state and local income taxes. 4th quarter estimated tax payments are due on January 15, 2018. By making these 4th quarter state estimated tax payments on or before December 31st, taxpayers are allowed to claim the deduction on their 2017 tax returns. By waiting to make these state tax payments until 2018, taxpayers run the risk of having the deductions disallowed altogether.

Review Capital Gains and Losses

The stock market has performed very well over the past year. If you expect to recognize a capital gain this year, you should review your portfolio for possible capital losses that can be used to offset the gains. If you have any capital loss carryforwards, you should review your portfolio for capital gain opportunities to make use of such carryforwards. In general, net capital losses are deductible dollar-for-dollar against net capital gains. Excess losses are allowed to offset up to \$3,000 (\$1,500 for individuals filing married filing separate tax returns) of ordinary income per year. Losses over and above the limit may be carried forward indefinitely.

Maximize Contributions to Retirement Accounts

Maximize contributions to tax-deferred retirement accounts, such as Individual Retirement Accounts or a company 401(k) plan. The 401(k) contribution limit for 2017 is \$18,000. In addition, individuals who will be at least 50 years of age by the end of 2017 may make an additional “catch-up” contribution of \$6,000. The limit for contributions to IRA accounts for 2017 is \$5,500. Individuals who will be at least 50 years of age by the end of 2017 may make an additional “catch-up” contribution to their IRA account of \$1,000.

Self-employed individuals may consider establishing a simplified employee pension (SEP) plan. By utilizing a SEP, self-employed individuals may be able to contribute up to \$54,000 to a tax-deferred retirement account. Further, contributions for 2017 need not be funded until the extended due date for filing the individual’s 2017 tax return.

If you have a high deductible health plan (“HDHP”), consider fully funding a health savings account (“HSA”). For 2017, an individual with family coverage through a HDHP is allowed to contribute up to \$6,750 to an HSA. If the

individual is age 55 or older, they are allowed to make an additional “catch-up” contribution of \$1,000 to their HSA (for individual coverage under an HDHP, the contribution limit is \$3,400 along with a “catch-up” contribution of \$1,000 for individuals age 55 or older).

IRA Charitable Rollover

In 2016, Congress and President Obama made permanent the provision allowing individuals age 70½ and older the ability to distribute up to \$100,000 annually from an IRA to a charitable organization. By distributing funds directly from your IRA to charity, the distribution is not included in the account owner’s taxable income (and the account owner is not allowed to claim a tax deduction for the charitable contribution).

2018 Illinois Planning Opportunities

While we wait for additional guidance on tax reform at the federal level, there are opportunities you may begin to consider at the state level as we move into 2018.

Illinois Invest in Kids Act

As part of the comprehensive education legislation enacted in August 2017, Illinois created a program to provide financial scholarships to low-income children to attend private and parochial schools. Under the legislation, individuals would contribute funds to the program and would be able to designate the school(s) they would like to benefit. Those funds would then be awarded to eligible students at the applicable schools to offset the cost of tuition and fees. Donors would be allowed a credit of 75 cents for every dollar contributed to the program (i.e., a gift of \$10,000 under the program would result in an Illinois tax credit of \$7,500). While donors are permitted to specify a particular school they would like to benefit, they are not permitted to designate a particular student to receive funds under the program.

Contributions under the plan are limited and individuals wishing to participate in the program will be required to apply with the Illinois Department of Revenue. Applications will begin to be accepted on January 2, 2018. It is anticipated that the credits available under this program will be quickly filled. Individuals interested in the program should plan to apply on January 2, 2018. Please contact your attorney at BWM&S for additional information.

Illinois Angel Investment Tax Credit

In August 2017, Illinois renewed its Angel Investment Tax Credit program. Under the program (which previously expired at the end of 2016), individual investors are allowed a credit of 25% of funds invested in a qualified new business venture. Generally, a qualified new business venture is defined to be a

small business that is involved in innovation, employs fewer than 100 people, is headquartered in Illinois, has been in existence for fewer than 10 years and has the potential to create jobs or capital investments in Illinois. Companies seeking recognition as a qualified new business venture must apply with the state. Illinois is still drafting rules for the new program and additional guidance is expected in early 2018. However, individuals considering an investment in an early stage innovation company should consider whether the business entity may qualify under the program and consider having the business apply for recognition under the program prior to completing an investment.

Estate & Gift Taxes

As is true with income taxes, we are in a holding pattern with estate and gift taxes. While the House bill has proposed a termination of the estate tax (beginning in 2023), the Senate bill would keep the estate tax intact. Both the House and the Senate propose to increase the exemption amount to approximately \$11 million per person (or \$22 million for a married couple). However, there is still a great deal of uncertainty as to whether any significant change to the estate and gift tax will be enacted. Again, we will follow-up with a detailed analysis of any gift and estate tax legislation that may be enacted.

Current Exemption Amount

For 2017, the estate and gift exemption amount is \$5.49 million (\$10.98 million for married couples). The exemption amount is indexed for inflation and will increase in 2018 to \$5.60 million (\$11.20 million for married couples). The top tax rate for estate and gift tax purposes has 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 2017, the rate is a flat 40 percent. 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 \$5.49 million GST tax exemption for 2017.

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

Many clients utilize a portion or all of their \$5.49 million gift tax exemption (\$10.98 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 \$5.49

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INSTITUTIONAL RISK MANAGEMENT

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Organizations may be held indirectly liable for inappropriate workplace conduct, even when the conduct is virtually invisible to management at the time it occurs. Also, corporations across all industries can face burdensome allegations of fraud, inquiries from government and regulatory entities, and allegations of whistleblowers. Proactive and reactive policies must be established and disseminated throughout the organization. Everyone needs to be educated on workplace harassment and discrimination.

Attorneys in Burke, Warren's Institutional Risk Management & Internal Investigations group have been assisting organizations and the individuals involved when allegations surface for more than thirty years. That experience includes working with educational institutions, government entities, religious and not-for-profit institutions, and corporations confronted with allegations of employee or student misconduct — including allegations of sexual or gender-based misconduct and sexual harassment.

These measures serve to mitigate reputational, brand, and litigation exposure. For institutions and corporations facing such concerns,



Joseph Roddy

ensure our clients' ability to protect their reputations and brands while minimizing potential damages.

The Institutional Risk Management & Internal Investigations group is chaired by Joe Roddy, who prosecuted numerous jury trials and oversaw a multitude of criminal investigations while serving in the Cook County State's Attorney's office. In private practice, Mr. Roddy has coordinated and conducted internal investigations for Fortune 500 companies, closely held companies, and local municipalities.


"Workplace misconduct can negatively impact any organization. It is imperative that organizations promptly address the misconduct and follow through on remediating it," says Roddy. "Regulatory bodies, juries, and the general public will understand that mistakes are made and people do foolish things. However, if it appears that the organization turned a blind

our attorneys' extensive crisis management experience and their skill in managing the public relations component of investigations while maintaining the client's privacy,

eye or dragged its heels, all credibility will be lost and dire consequences will follow."

The group's work includes helping clients enact protective measures such as establishing policies to prevent employee misconduct, designing and implementing compliance procedures, and providing employee training and audit programs. The pervasive use of technology requires that risk management strategies and internal investigations encompass cyber platforms as well.

Group attorneys represent and assist clients faced with threatened or pending criminal or civil proceedings, in their dealings with government agencies, state and local regulatory bodies, and grand juries, and they can advise on best practices for responding to a subpoena or a request for a face-to-face interview. Former prosecutors, seasoned civil litigators, and employment law specialists assist in advising clients until the best possible outcome is identified and achieved.

Joseph Roddy can be reached at 312/840-7033 or jroddy@burkelaw.com. 

YEAR-END TAX PLANNING

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million exemption amount or you are not in a position where it makes sense to gift a large amount, you should still continue a gifting strategy going forward.

Annual Exclusion Gifts

In 2017, 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 2017, 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 2018. The annual exclusion amount will increase to \$15,000 in 2018, \$30,000 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

AMAZON, TAX CREDITS, AND YOUR BUSINESS

When Amazon announced its search for a second headquarters, the e-commerce giant set off a frenzy among cities looking to reap the benefits of a generation-defining business opportunity. According to Amazon, the eventual winner can expect \$5 billion in construction investments and 50,000 high-paying jobs, along with tens of thousands of additional jobs and tens of billions of dollars in additional investment in the community. In their HQ2 pitches, 238 different cities pulled out all the stops. One Georgia city's mayor even offered to create a new town named Amazon.

Chicago, which has recently secured the corporate headquarters for McDonald's, Motorola Solutions, and ConAgra Foods, was one of the cities to submit an HQ2 bid. Along with Governor Rauner, numerous city and state officials and several influential businesspeople, Mayor Emanuel submitted Chicago's bid, billing Chicago as "an extraordinary opportunity for Amazon." The bid touted Chicago's talented pool of potential employees, accessibility to public transportation and international airports and wide-ranging tax incentives. Chief among the tax


incentives in Chicago's proposal is \$1.32 billion in Illinois EDGE tax credits.

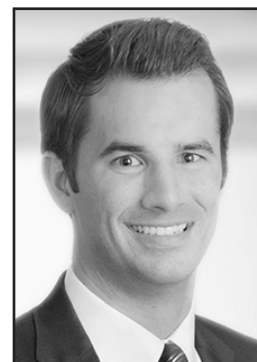
The Illinois Economic Development for a Growing Economy (EDGE) program previously expired last spring, but a new bill extended it through June 30, 2022. The purpose of the EDGE program is to stimulate job growth, encourage capital investment and promote entrepreneurship. A company's EDGE tax credit eligibility depends upon, among other things, the number of employees that the company has. If the company has over 100 employees, the company must make a capital investment of at least \$2.5 million in Illinois. Additionally, the company must create 50 full-time jobs or increase its full-time, worldwide employee headcount by 10%. If the company has less than 100 employees, there is no minimum capital investment requirement. However, the company must create the lesser of 50 full-time jobs or 5% of its full-time, worldwide employee headcount.

Companies seeking EDGE tax credits submit applications to the Illinois Department of Commerce and Economic Opportunity (DCEO). The application must include, among other information, a summary of the project and the

investment amount, the planned number of full-time employees involved and financial statements.

The company must also demonstrate that the project would not occur but for the EDGE credits. If the company qualifies, it must enter into an agreement with the DCEO, which specifies the terms and conditions regarding the credits. The DCEO determines the amount of EDGE credits granted based on its review of the application.

While the renewed EDGE program is currently undergoing administrative review regarding certain procedural aspects, the DCEO is now accepting EDGE applications from companies already in Illinois and those looking to relocate here. If you are interested in learning more about the legal requirements of the EDGE program, please contact Tim Dondanville at tdondanville@burkelaw.com or 312/843-5824. 



Tim Dondanville

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.

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 or marketable securities with high growth prospects are often ideal properties to transfer to a GRAT. While there has been

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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 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. ©2017 Editor: Cy H. Griffith, Director of Marketing.

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YEAR-END TAX PLANNING

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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.

Example

Individual funds a GRAT with \$1 million. The GRAT’s term is 5 years and its assets appreciate at a rate of 6%. Assuming the applicable IRS interest rate is 2.2% (the rate in effect for November 2017) and the GRAT is “zeroed-out”, the remainder value of the GRAT assets at its termination would be approximately \$135,000. In other words, the GRAT structure would have allowed the individual to transfer assets valued at approximately \$135,000 to his children or designated beneficiaries without incurring any gift tax obligation or utilizing any of his or her lifetime exemption amount. If the

assets inside the GRAT were to appreciate at a rate of 8%, the remainder that would be available to the trust’s beneficiaries would be approximately \$220,000.

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 in effect at the time of the sale. 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.

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