



Techniques You May Still Employ in 2010 to Minimize Your Estate Tax Hit in 2011

WE SPENT MOST OF 2010 WAITING for new estate tax legislation. With autumn in full swing, it seems less and less likely that Congress will be able to agree on a new game plan. For 2010 only, there is no federal estate tax. (The federal gift tax and the Connecticut estate tax remain in effect.) If no new legislation is passed, in 2011, the federal estate tax will return with a \$1 million exemption and tax rates ranging from 41% to 55%. This change will subject significantly more estates to federal estate tax. The following planning opportunities may still be pursued in 2010 to reduce the tax hit in 2011 and beyond:

Taxable Gifts. A donor may make tax free gifts of \$13,000 per donee each year (called the "annual exclusion") and additional gifts totaling \$1 million (the "lifetime exemption") before having to pay any gift tax. In 2010, gifts in excess of the annual exclusion and lifetime exemption will be taxed at 35% rather than potentially at 55% in 2011. This represents a 20% tax savings available this year only!

Short-Term Grantor Retained Annuity Trust ("GRAT"). Congress has attempted to eliminate short-term GRATs, but has not yet done so. A GRAT is a trust to which the donor makes a gift and from which the donor receives a stream of future payments (an "annuity") for a set number of years. The "gift" for gift tax purposes is calculated

based on the size of the gift, the number of years the annuity is paid, and the federal interest rate (the "7520 rate"). At the end of the annuity payments, any funds remaining in the trust pass to the donor's children. GRATs are most effective if created when the 7520 rate is low and the assets gifted to the trust appreciate quickly. With a GRAT, you keep the underlying property and gift away the appreciation at a very low tax cost.

Intra-Family Loans. Currently, funds may be loaned to a family member at a very low interest rate – 0.35% for loans of less than three years and 2% for loans up to nine years. If the loaned funds are invested and appreciate more than the interest charged on the loan, you have removed this appreciation from your estate. At your death, the note could be part of a child's share of your estate. All of the appreciation on the loaned property is a tax-free gift to the child.

These opportunities may or may not be right for you but are worthy of consideration as a means to minimize estate taxes. *For more information, please contact Heather J. Lange (hlange@brodywilk.com).*

Contractors Now Subject to New Lead Paint Rules

AS OF APRIL OF 2010, contractors have become fully subject to lead paint regulations which were first passed by the federal Environmental Protection Agency in 2008. These regulations apply to renovations, repair and painting projects and include work performed by

(continued on page 2)

(continued from page 1)

general contractors, as well as specialty contractors such as painters, carpenters, electricians, plumbers and window installers. All contractors performing work subject to these regulations must become certified by filing an application, including a fee, and by taking an approved training course. All workers at a job site must be trained by a certified renovator.

Job sites which are covered by this regulation include buildings constructed prior to 1978 which are residential homes or apartments, and child occupied facilities such as schools and day care centers. Project locations which are exempt include housing for the elderly or disabled and areas which have been determined to be lead paint-free by a certified inspector. Minor projects which impact painted areas of less than six square feet of interior space per room or twenty square feet of exterior space are not subject to the regulations; however some projects such as window replacement and demolition are not exempt. Special rules apply to emergency repairs.

For covered projects in owner occupied units, the lead paint information pamphlet must be delivered to the owner with a signed receipt or return receipt mailing. For rental units, delivery of the pamphlet may be verified by delivery receipt, certification of delivery or return receipt mailing. For repairs to common areas, notification may be given by posting signs. For child occupied facilities, parents of children using the facility must be given or mailed the pamphlets or signs must be posted. Records of the notice given must be maintained by the contractor for three years.

Before an interior project is started, the contractor must take specified precautions to contain lead paint chips and dust. High speed equipment used during a job, such as sanders, must have HEPA exhaust control. After the project is completed, procedures must be followed to clean the work area.

Compliance with these regulations will take time and money for both large and small contracting companies. Additional requirements may apply to federally funded projects and federally subsidized housing. The Environmental Protection Agency has already begun auditing Connecticut companies. *For more information, please contact Barbara S. Miller (bmiller@brodywilk.com).*

START ME UP:

HOW SOME FAMILIES ARE NOW TRANSFERRING WEALTH TO CHILDREN IN A POOR JOB MARKET

A TREND IN WEALTH TRANSFER has been making the news of late: investing in a new business and your child in one step; essentially, buying your child a business. Where parents in the past may have merely put in a good word or even called in a personal or professional favor to help their child secure a position after graduation, these days an increasing number of parents are taking it a step (or five steps) further by investing their own funds in a franchise or start-up and putting their child in charge. Observers say that it's just another effect of the continued recession. With jobs remaining hard to find, even for college graduates, parents in a position to do so are getting more proactive in their efforts to see their children gainfully employed, even if they have to become the employer to do it.

There are many factors to consider before investing in or purchasing a business and handing it over to a son or daughter. Besides the question of whether you can afford it financially, a parent must understand that by becoming, in effect, their child's boss or, at least, a silent partner, the relationship between parent and child takes on a radically different dynamic. Furthermore, if the parents' retirement savings are being used to fund the start-up, a whole new pressure is put upon the child in his or her new role as the maker (or breaker) of mom and dad's chances at a happy and secure retirement.

A child's chances for success in the new business, however, can be increased by some serious consideration of the following issues at the outset:

- Make sure your child understands the level of commitment the endeavor will require of him or her. If your son or daughter views the enterprise as an experiment or as a means to kill time until the economy improves, and does not fully understand the investment at stake, you should be prepared that they may not also take the responsibility of running the business seriously.
- Be mindful of your child's particular interests, abilities and business acumen before deciding on a business plan. A child without much experience in managing a business may not be a candidate for a solo start-up. He or she may

be better suited overseeing a franchise with an existing brand and built-in support and resources. In addition, you should not expect your child to fully commit and invest in a business in which they have no personal interest or skill.

- Be prepared to act in your role as investor to an employee, rather than as parent to a child. You cannot be afraid to critique your child and hold him or her to the consequences of poor performance or inaction when it comes to protecting your investment.

Should you decide to forge ahead after careful contemplation of these issues, seek out the advice of a business attorney and an accountant with experience in start-ups and franchises. These professionals will provide invaluable help in structuring the legal and financial details of the venture such as how much control you and your child will have relative to each other in the operation of the business, and, when and how you can expect to start seeing a return on your investment. *For more information, please contact Justin L. Galletti (jgalletti@brodywilk.com).*

Six Things to Consider Before Purchasing a Franchise

PURCHASING A FRANCHISE is an attractive option for people who are looking for new challenges or who are unable to find work in their previous careers. Becoming a successful franchise owner requires a significant investment of money and time. Before you sign the franchise agreement, here are some important things to consider:

1. REPUTATION OF THE FRANCHISE

A franchise that is already well-established in your area is more valuable than a start-up franchise or one that is new to your area. Keep this in mind when evaluating whether the franchise fees and royalties you will be required to pay to the franchising company (the “franchisor”) are fair.

2. THE AMOUNT OF YOUR INITIAL INVESTMENT

You should review the franchise disclosure document (FDD) carefully to determine what else, besides the initial franchise fees, you will need to pay the franchisor (for supplies, equipment, etc.) and what the FDD estimates you will pay to vendors before you can open your franchise.

3. EXCLUSIVITY

Most franchisors will grant you an exclusive area to operate without competition from the franchisor and its other franchise owners (the “franchisees”). You should be wary of any limitations that could limit your profitability – such as a reduction in your exclusivity if the area’s population increases above a certain level.

4. SATISFACTION OF THE FRANCHISEES

Some franchisors treat their franchisees poorly (e.g., failing to provide enough support or finding ways to increase their royalties at the expense of the franchisees’ profits). Speaking with existing and former franchisees, and investigating any litigation between the franchisor and its franchisees, will allow you to gauge whether the franchisor will help or hinder your business.

5. CHANGES TO THE FRANCHISE AGREEMENT

Most franchisors will not agree to dramatic revisions to their franchise agreements (if it does, this may be a red flag that it does not have a good business model in place). However, you may be able to get the franchisor to agree to make certain changes that will improve your deal, such as increasing your exclusive area or providing additional training.

6. CHANCES OF SUCCESS

Is there a sufficient demand for the franchisor’s products and a lack of competition within your area? Have you chosen a prime location with proper zoning approval? Do you have the necessary experience and qualifications to operate the business efficiently? Answering yes to these questions will improve your chances of success. *For more information, please contact Mark W. Klein (mklein@brodywilk.com).*

Broker/Attorney Relationships: Friends Not Foes

IT IS IMPORTANT, especially in today’s real estate market, for brokers and attorneys to establish cooperative relationships that extend beyond the life of real estate transactions. Much can be done to achieve this state beginning with the understanding that real estate transactions are not adversarial by nature. It is not the goal of the attorney to “win” the closing. From the outset,

(continued on page 4)

(continued from page 3)

brokers and attorneys should discuss and define their respective roles in a transaction from binder through contract. This can pave the way for a harmonious journey as well as a lasting referral relationship based on trust.

Both parties need to be responsive to the needs of the client, reasonable with fees, and mindful that there is no purpose to giving away services or commissions. Each should earn compensation through good work. Brokers and attorneys should communicate openly and regularly during the course of a transaction and exchange pertinent information regarding legal and market developments, trends and changes. Finally, brokers and attorneys need to trust each other to do their jobs and navigate the waters. Within the spirit of cooperation, it is still sometimes necessary to say “no” in a negotiation in order to strengthen a client’s negotiating position.

The work involved in real estate transactions has increased dramatically as a result of our current economic climate. Brokers and attorneys are putting in more time and effort than ever before to bring matters to a conclusion. In return, by putting clients first and making an investment in each other, brokers and attorneys will both meet their goals and, ideally, win clients for life. *For more information, please contact Brian T. Silvestro (bsilvestro@brodywilk.com).*

SELLING YOUR BUSINESS?

LEARN HOW AN ADVANCE INTERNAL DUE DILIGENCE PROCESS CAN GREATLY ENHANCE A SALE

A SUCCESSFUL BUSINESS SALE requires strategy, preparation and hard work. Failure to complete a deal can be devastating and create unfortunate consequences such as disgruntled employees, a damaged reputation in the marketplace and, possibly, a lawsuit with the buyer. One truly effective method to improve the likelihood of a successful transaction is to conduct an internal legal due diligence process prior to a sale.

This action can pave the way for a smooth due diligence phase that the buyer will undertake after a letter of intent is signed.

It is not uncommon for a buyer doing its due diligence to submit a request to the selling company for an extensive list of documents and information to assess the selling company’s business. During this phase, if the buyer turns up something previously undisclosed and unexpected (e.g., the discovery of a hazardous waste spill on company property years ago), it can lead to different scenarios. The best case is that the seller is able to explain why there is no current problem and the buyer elects to move on to the next inquiry. The worst case, if it is a complicated and unresolved problem, is that it might cause the buyer to lose interest in the purchase and walk. The “in-between” case is that it is fixable within a reasonable period of time, but has the effect of creating leverage for the buyer to renegotiate the price (in a “what else have you not told me that I need to be looking out for” moment).

Selling companies can mitigate this risk by getting in front of the process and identifying potential problems well before a letter of intent is signed. Troublesome items can be spotted and fixed while the company has time and before top executives become distracted with the closing sale process. While the best thing to do, ideally, is to take care of problem items when they surface, comprehensive pre-sale legal due diligence and follow-up remedial action can add substantial dollars to the bottom line of a sale.

Actions that should be taken include the following:

- Verifying compliance with environmental laws in all leased and owned facilities;
- Performing a UCC lien search and real estate (if part of the sale) title search and obtaining the release of any prior and now irrelevant UCC financing statements, mortgages or assignments of leases;
- Determining that all business licenses are current;
- Reviewing key company contracts for assignability;
- Confirming ownership of all intellectual property rights, including the works of current and former employees and consultants; and
- Ensuring the corporate minute books and stock ledgers are up to date and that all Secretary of the State annual reports have been filed.

One important thing for company executives to keep in mind is to be candid with your advisors about any "skeletons in the closet." It is important to admit weaknesses now and correct them in order to avoid re-trading down the line. *For more information, please contact Thomas J. Walsh, Jr. (twalsh@brodywilk.com).*

Representative Matters

BRODY WILKINSON has acted as general counsel to professional golfer Tiger Woods since he turned pro in 1996. Peter T. Mott spent the greater part of this past year working with Florida matrimonial attorney Thomas J. Sasser on Mr. Woods' recent marital dissolution, as reported in the parties' joint press release.

Brody Wilkinson's Business Group represented the principal of a Connecticut privately-owned company in the sale, initially, of a minority interest in the company to a publicly-traded Canadian company. The seller received both cash and shares in the Canadian company with an earn out opportunity depending on a potential increase in the value of the Connecticut company. In addition, the Canadian company obtained the right to acquire the balance of the principal's interest in the company through a right of first refusal exercisable at any time and a call option exercisable two years after the initial purchase. The principal agreed to continue to operate the Connecticut company pending its anticipated acquisition. Thomas J. Walsh, Jr. and James E. Rice handled the transaction for the principal and the company.

Brody Wilkinson's Trusts & Estates Group represented Jennifer Hagel Smith (widow of George Smith, a 26-year old Greenwich man who disappeared in 2005 while on his honeymoon cruise in the Mediterranean) in acquiring probate court approval of her settlement agreement with Royal Caribbean Cruise Line which was contested by her husband's parents. The parents subsequently appealed the probate decision and a global settlement of their differences was recently reached. Douglas R. Brown served as lead counsel in representing Ms. Hagel Smith in the probate court proceeding.

Brody Wilkinson's Business Group served as environmental counsel to a major Connecticut non-profit medical facility in its receipt of financing

by a \$104,560,000 State of Connecticut Health and Education Facilities Bond. Barbara S. Miller worked on this transaction.

Brody Wilkinson's Trusts & Estates Group created and implemented a plan taking advantage of low interest rates to transfer a minority interest in a highly profitable closely-held business to the next generation of family. The technique involved a so-called sale to a defective grantor trust whereby a trust was created to which the stock in the company was sold in exchange for cash and a promissory note. With today's IRS required interest rates at extraordinarily low levels, the dividend from the stock supports both interest and principal payments on the promissory note. Further, due to the tax characteristics of the trust, no capital gain was recognized on the sale of the stock and interest payments on the note are not reportable on the tax return of the parent. The stock and all appreciation on the stock after the sale will pass to the next generation gift tax-free. Ronald B. Noren and Robert L. Teicher worked on this particular engagement while several other members of the Trusts & Estates Group completed similar matters throughout the year.

Brody Wilkinson's Business Group concluded a 10-year succession plan for a CT-based manufacturing firm that involved a recapitalization of an S-Corp into voting and non-voting shares, followed by the placement of non-voting shares into a 10-year GRAT, and, ultimately, the installment sale of the parents voting stock to the children who manage the company. William J. Britt worked on all phases of the succession plan.

Brody Wilkinson's Litigation Practice Gets a Boost

WE ARE PLEASED TO WELCOME Stephen J. Curley to the firm as of counsel. Mr. Curley's substantial litigation experience and capabilities deepen and broaden the scope of Brody Wilkinson's existing Litigation practice. Mr. Curley represents a full spectrum of commercial clients including banks, securities firms, hospitals and corporations in complex construction, shareholder derivative defense, insurance defense, lender liability, employment and contract actions. He handles all phases of litigation, arbitration and mediation from

(continued on page 6)

(continued from page 5)

preliminary investigation through trial and appeal for clients ranging from large national corporations and mid-sized regional companies to small businesses and individuals. Mr. Curley is based in Stamford, Connecticut, where he has maintained his own law office since 2002, providing Brody Wilkinson with an entrée into the Stamford market. Prior to 2002, Mr. Curley worked at the Stamford-based law firms of Pillsbury Winthrop and Cummings & Lockwood. He is admitted to practice in Connecticut; New York; the District of Columbia; U.S. District Courts for the District of Connecticut, the District of Columbia and the Southern and Eastern Districts of New York; the U.S. Courts of Appeals for the Second, Fourth and Seventh Circuits; and the United States Supreme Court. Mr. Curley is a member of the American and Connecticut Bar Associations. He serves on the Connecticut Bar Association's Board of Governors and House of Delegates and is secretary of the Connecticut Bar Association for the 2010-2011 term. Mr. Curley is also a member of the American Bar Association's House of Delegates.

He received his A.B., *with honors*, from Bowdoin College in 1988 and his J.D., *cum laude*, from Boston College Law School in 1991, where he was executive editor of the *Uniform Commercial Code Reporter-Digest*. Mr. Curley resides in Fairfield, Connecticut, with his wife, Megan, and two children.

Accolades & Credits

BRODY WILKINSON WAS RANKED IN 2010

by *U.S. News - Best Lawyers* as a "Best Law Firm" in the area of Trusts and Estates Law. The methodology used to complete these rankings involved surveying law firm clients; leading lawyers and law firm managers; partners and associates; and marketing officers and recruiting officers. Surveys were sent to, among others, 52,480 clients; 43,900 lawyers; 2,314 marketing officers; and 2,322 recruiting officers across the country. Firms were ranked in eighty-one practice areas.

Peter T. Mott and **James E. Rice** were selected by their peers for inclusion in the 2010 edition of *The Best Lawyers in America* in the areas of Trusts and Estates and Energy Law, respectively. Published since 1983, *Best Lawyers* is the oldest and preeminent peer-review publication that serves as an important reference guide to the legal profession in the United States. Through an exhaustive and confidential peer-review process comprising more than 2.8 million evaluations by top attorneys in the country, *Best Lawyers* compiles lists of attorneys in 78 different practice areas across all 50 states. *The American Lawyer* describes this annual publication as "the most respected referral list of attorneys in practice."

Barbara S. Miller was again recognized as a leading environmental lawyer in Connecticut by *Chambers USA* in its 2010 edition. *Chambers* is an international publisher of legal profession guides and is widely respected throughout the world for its comprehensive research and review process. *Chambers* employs a team of 100 full-time researchers to conduct interviews, identify and rank the world's best lawyers who exceed client expectations by delivering the highest level of technical capability, business acumen, service and value.

Peter T. Mott, Ronald B. Noren, Thomas J. Walsh, Jr., Barbara S. Miller and **Douglas R. Brown** were selected by their peers in 2010 as "Connecticut Super Lawyers." In addition, **Heather J. Lange** was selected as a "Connecticut Rising Star." All six attorneys were listed in the special supplement to the February 2010 issue of *Connecticut Magazine* along with their designated practice areas:

Peter T. Mott, Estate Planning and Probate; Tax
Ronald B. Noren, Estate Planning and Probate

Thomas J. Walsh, Jr., Business/Corporate; Real Estate; Banking

Barbara S. Miller, Environmental; Business/Corporate; Employment and Labor

Douglas R. Brown, Estate Planning and Probate; Estate and Trust Litigation

Heather J. Lange, Estate Planning and Probate; Tax; Non-Profit

Based on a rigorous, multiphase peer-review process, Super Lawyers is a credible, comprehensive and diverse listing of attorneys in more than 70 practice areas. Super Lawyers listings are used as a resource guide to assist businesses and individuals in hiring legal counsel. Super Lawyers is published by Law & Politics as a special supplement in top newspapers and city and regional magazines across the country. The published list represents no more than 5% of the lawyers in the state.

Several Brody Wilkinson attorneys were elevated by Martindale-Hubbell in 2010 to an "AV" rating as a result of an extensive peer-review process, including **S. Giles Payne, Thomas J. Walsh, Jr., Seth L. Cooper, Douglas R. Brown** and **James E. Rice**. With this development, Brody Wilkinson, an "AV-rated firm, now has 11 "AV-rated" attorneys.

Ronald B. Noren was elected last fall for a fourth one-year term as chairman of the Board of Bridgeport Hospital with an accompanying directorship on the Board of the Yale-New Haven Health System. During the spring and summer, he also led a successful search for a new CEO for the Hospital after the announcement of the retirement of the current CEO.

Peter T. Mott is serving his second term as chairman of the 900-member Estates and Probate Section of the Connecticut Bar Association.

Thomas J. Walsh, Jr. was appointed to serve on the Board of Directors of Fairfield Museum and History Center.

William J. Britt participated in Ragnar Relay New England, a 24-hour running relay race spanning a distance of 180 miles beginning in Connecticut and ending in Boston. Mr. Britt and his team finished first in the Masters division. The race benefited the Boys & Girls Club of Hartford.

Douglas R. Brown recently participated as a guest on the WICC radio program "Smart Money" to discuss estate planning and probate litigation. Mr. Brown also spoke on "Insolvent Estate

Procedures" at the Potpourri of Practical Tips seminar before the Connecticut Probate Assembly and the Connecticut Bar Association (CBA). The program is a continuing legal education seminar for Connecticut probate judges, their staff and members of the CBA. In addition, Mr. Brown presented an Estates and Probate section seminar on "How to Evaluate & Handle a Will Contest" for the CBA. Mr. Brown also served as a probate law panelist at a Connecticut Judicial Branch program on "Raising the Bar: A Bench-Bar Symposium on Professionalism."

Robert L. Teicher recently spoke at the 2010 Annual Meeting of the Connecticut Bar Association (CBA) on "Tax Considerations in the Purchase and Sale of a Business." Earlier in the year, Mr. Teicher presented a continuing education program for the CBA on "Tax Procedure: Controversies and Litigation Before the IRS and DRS." In addition, Mr. Teicher addressed the Tax Law Committee of the Fairfield County Bar Association on the topic of "Tax Traps in Life Insurance."

Brian T. Silvestro recently spoke to three independent Fairfield County-based realtor groups on "The Importance of Building Strong Broker/Attorney Relationships." In addition, Mr. Silvestro was named head coach of Fairfield Ludlowe High School's boys varsity basketball team. Prior to this appointment, Mr. Silvestro served as a long-time junior varsity coach and varsity assistant at the school.

Heather J. Lange was named to the Board of Directors of the Bridgeport Y. In addition, Ms. Lange, an avid equestrian, is assisting in a 10-week program at Pegasus Therapeutic Riding at Kelsey Farm in Greenwich. Pegasus provides equine-assisted activities and therapies to more than 200 children and adults with physical, cognitive and emotional disabilities.

Mark W. Klein was appointed to serve on the Executive Committee of the Connecticut Bar Association's Franchise Dealership and Distribution Section.

Justin L. Galletti was selected by a panel of judges as a winner in the Fairfield County 2010 "40 Under 40" competition. Sponsored by the *Fairfield County Business Journal*, the competition recognizes 40 business professionals under the age of 40 years for their exceptional leadership qualities, commitment to professional development and personal achievements.

Jennifer A. Basciano
William J. Britt
Seth O. L. Brody
Douglas R. Brown
Seth L. Cooper
Stephen J. Curley
Justin L. Galletti
Mark W. Klein
Heather J. Lange
Diane F. Martucci
Lisa F. Metz
Barbara S. Miller
Peter T. Mott
Ronald B. Noren
Frank F. Ober
S. Giles Payne
James E. Rice
Brian T. Silvestro
Robert L. Teicher
Melinda E. Todgham
Thomas J. Walsh, Jr.

Trusted Advisors, Practical Solutions

Introduction to Brody Wilkinson's Art, Antiques & Collectibles Practice

OVER THE YEARS, the firm has handled many client matters related to art and antiques. As a result, we recently formalized an Art, Antiques & Collectibles practice led by Seth L. Cooper. Brody Wilkinson represents art dealers, artists, appraisers, auction houses, estates and trusts, foundations, galleries, museums and private collectors in a broad spectrum of legal matters. We advise clients in transactions ranging from artwork purchase and sales agreements; to gallery and studio leases; commission agreements; auction contracts; grant financing; and artist-dealer disputes. In addition, we assist clients in connection with the formation of foundations; charitable giving; tax structuring; estate and tax planning; and probate litigation. *For more information, please contact Seth L. Cooper at slcooper@brodywilk.com or visit www.brodywilk.com.*

PRIMERUS Spotlight

BRODY WILKINSON IS A PROUD MEMBER of Primerus, the leading alliance of small- and medium-sized, top-rated, independent firms. Primerus has 160 law firms located in Canada, China, Cyprus, England, France, Germany, Greece, Hungary, Mexico, the Netherlands, Puerto Rico, Switzerland, and in 44 states across the United States. Primerus firms provide clients with responsive, partner-level service at reasonable fees. Law firms in the U.S. and Canada must be AV-rated using the Martindale-Hubbell peer-review service. For firms outside of North America, consideration is given to respected resources, such as Chambers Global Guide, Legal 500 EMEA and IFLR 1000. Additionally, once approved for membership, every Primerus firm is audited, annually, to ensure that the legal services they continue to provide to clients are of a consistent, high quality, year after year. Each member is committed to the following standards: Integrity, Excellent Work Product, Reasonable Fees, Continuing Legal Education, Civility and Community Service. To learn more about Primerus, visit www.primerus.com.