

SAVING TAXES IN AN UNCERTAIN POLITICAL ENVIRONMENT | KTBH TAX DEPARTMENT

Although much is left to be decided in this election year, it is never too early to begin thinking about how the results of the election may affect you or your business.

Depending on what happens in the November election, there is a reasonable likelihood that top marginal brackets for ordinary income, as well as the tax rates for capital gains, may increase in 2009. There is also a possibility that these new rates could be made retroactive to January 1, 2009.

If you believe this will occur, then you should consider the following planning:

1. Incurring Capital Gains in 2008.

If, in the next 12 to 18 months, you are planning the sale of a property or a business that would result in a substantial capital gain, you should consider accelerating the sale into 2008 to take advantage of current capital gains rates.

If you borrowed money on real estate from a conduit or securitized lender, you may need the lender's approval to sell the property. This can take a long time. If you want to complete this by year-end, you need to start work on the transaction in the near future.

While closing in December of 2008 instead of January of 2009 may accelerate the payment of tax by a year, paying the tax early might be more than offset by paying the tax at

a significantly lower rate. The best strategy may be to close the deal in 2008 but defer payment until January 1, 2009.

The installment sale rules would then allow you to choose the year (2008 or 2009) in which to report the gain.

2. Accelerating Ordinary Income and Deferring Expenses.

Typical income tax planning (if anything is "typical" in an alternative minimum tax world) involves deferring income and accelerating expenses. In 2008, it might be advantageous to do just the opposite – accelerate income and defer expenses. This results in paying tax a year early, which will be rewarded if tax rates on ordinary income are significantly increased.

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3. Dividends From "C" Corporations.

If you have a "C" Corporation that will pay substantial dividends in the next few years, you should consider paying a much larger dividend in 2008 and reducing dividends for future years to take advantage of the current low tax rate.

On any of the above strategies, you should confer with your tax advisor and/or tax return preparer to be certain that any strategies are not adversely affected by alternative minimum tax, loss carryovers or other tax issues.

You may also contact the Katz Teller tax mavens – Bob Brant, Steve Kisling, Bill Russo, Jody Brant and Whitney Maxson – to discuss these strategies further.



HARASSMENT TRAINING: CAN YOU AFFORD TO WORK WITHOUT IT? **MATT RICH**



They say an ounce of prevention is worth a pound of cure. Perhaps nowhere is this more true than in the area of workplace harassment liability, where having a workplace harassment policy and training employees and managers on how to respond to inappropriate behavior can go a long way to reduce an employer's exposure.

Since the landmark United States Supreme Court decisions *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Industries Inc. v. Ellerth*, 524 U.S. 742 (1998), employers must provide employees with clear direction on how to raise concerns about harassment or they will be strictly liable for harassment by a supervisor – even if no one at the company was aware of the harassment. As a result, it is imperative that employers have harassment policies that guide employees in making harassment claims.

A good harassment policy includes a number of components. First and foremost, it should affirm the company's commitment to providing a workplace that is free of harassment of any nature, sexual or otherwise. You may not be aware, but the law now prohibits harassment based upon any protected category. As a result, in recent years we have seen claims for age harassment, race harassment, etc. It is therefore important that your policy apply to all forms of harassment, not just sexual harassment. The policy should define harassment and provide examples of inappropriate harassing behavior.

Once an employee has been educated on what harassment looks like, the next step is to communicate clearly the means by which he or she can report unlawful harassment. A good policy will have an individual (denominated by title, not name) to whom to report unlawful harassment, as well as an alternate individual (often someone of a different gender from the primary contact) in the event that the employee feels uncomfortable notifying the primary contact. The policy should instruct employees that prompt notification is required and is critical to a fair investigation.

Finally, the policy should confirm that all complaints will be investigated promptly and that appropriate action will be taken. Employees should be informed that making or pursuing a complaint in good faith will not be cause for retaliation, and that all complaints and information will be kept confidential to the extent practicable.

If you are an employer without a harassment policy or employee handbook, you are risking increased exposure in any lawsuit for workplace harassment or discrimination.



In addition to reviewing whether an employer has an effective policy, the Supreme Court in *Kolstad v. American Dental Association*, 527 U.S. 526 (1999), ruled that courts should consider whether or not an employer conducts training sessions for its employees or managers when determining whether to award punitive damages. Since that time, more than 10 states have enacted laws that require training.

While Ohio and Kentucky have not yet passed training laws, courts, including the Sixth Circuit Court of Appeals, have responded favorably to employer investments in prevention and harassment training (or, in some cases, negatively to a lack of investment). For example, in *EEOC v. Harbert-Yeargin, Inc.*, 266 F.3d 498 (6th Cir. 2001), the jury awarded punitive damages against an employer who, as the court observed, had an anti-harassment policy "in name only." *Harbert-Yeargin*, 266 F.3d at 514. The Sixth Circuit specifically cited the testimony of numerous employees that the employer had failed to provide harassment training in upholding the jury's punitive damages award. *Id.*

So what does all of this mean for you? If you are an employer without a harassment policy or employee handbook, you are risking increased exposure in any lawsuit for workplace harassment or discrimination. Further, if you do not make investments in employee training and education in this area, the possibility of punitive damages is very real.

If you have any questions about a harassment policy or handbook, Cynthia Gibson, Wijdan Jreisat and Matt Rich all have experience assisting clients with formulating employment policies and preparing employee handbooks. In addition, Cynthia and Wijdan routinely conduct harassment training seminars for managers and employees alike. Please contact our office if we can be of assistance to you in this regard.

INSIDE KTBH

Tedd Friedman and his wife, Sherri, received the 2008 Beacon of Light Humanitarian Award from Lighthouse Youth Services in recognition of their work with Most Valuable Kids of Greater Cincinnati, an organization that provides underprivileged children opportunities to attend cultural and sporting events in and around Cincinnati.

Cynthia Gibson presented a lecture on “Physician Professionalism: An Instrument for Managing Legal Risks,” at the 2008 Meeting of the Ohio Chapter of the American College of Surgeons. Cynthia is certified as a Senior Professional in Human Resources, and her lecture covered the legal standards for discrimination, harassment and malpractice claims, as well as a discussion of reported cases in which a physician’s lack of professionalism negatively affected his or her defense of the claim. Cynthia has also been asked to serve as a faculty member for the National Institute for Trial Advocacy (NITA), a recognized leader in teaching trial advocacy skills, at the University of Cincinnati College of Law in June.

Matt Rich received a 2008 Law Day Award for outstanding contributions to Kentucky Law Related Education. The award is presented to individuals who have demonstrated dedication to establishing comprehension and respect for constitutional democracy in Kentucky youth. Matt coached Fort Thomas Highlands High School to the 2008 Kentucky High School Mock Trial Championship, where they defeated Louisville DuPont Manual High School to bring home the school’s first state championship. The team went on to finish 12th in the nation in the High School National Championship in Delaware.

Jim McCarthy recently won a notable decision in the Ohio Supreme Court in an eminent domain/mandamus case involving riverfront property in Hamilton County. Jim represented a landowner whose property had been confiscated by the city of Cincinnati as a result of the city’s elimination of the landowner’s access to River Road. The Supreme Court agreed with the First District Court of Appeals that the landowner was entitled to a hearing to determine the amount the city should pay as just compensation for the elimination of the landowner’s means of access. Jim is a frequent speaker on issues involving eminent domain, including a speech he gave at the Eminent Domain seminar in Columbus, Ohio, on April 24 and 25 concerning partial takings and damage to residue.

Bob Pitcairn and Jim McCarthy were recently listed as top Ohio attorneys in business litigation in *Super Lawyers Corporate Counsel Edition 2008*. This issue is aimed at in-house counsel around the country to acquaint them with local counsel who have expertise in business litigation.

Mark Jahnke recently received the Neil H. McElroy Leadership Award from United Way of Greater Cincinnati for Resource Development. This award recognizes an individual who demonstrates the extraordinary energy and commitment to fund-raising that Neil H. McElroy demonstrated during his years with United Way. Mark has been a devoted United Way volunteer for the last 20 years, serving in multiple campaign functions, recruiting new members of the United Way, and leading Katz Teller’s rise to the number one spot on the United Way Tremendous 25 list as its United Way campaign chair. Mark’s son, David, actually presented him the award in a speech that was equal parts heartfelt and humorous.

Bob Pitcairn and Mark Jahnke were once again named in Chambers USA’s *Leading Lawyers for Business*, with Bob receiving recognition in Commercial Litigation and Mark in Corporate/Mergers & Acquisitions. Mark also moderated a panel discussion on developments in Mergers & Acquisitions at a recent meeting of the Association for Corporate Growth.

Andrea Scroggins, Katz Teller’s office manager, was one of 22 finalists selected by the Association of Legal Administrators to receive the ALA’s 2008 Quest Award. There were over 900 nominations nationally for this award, which recognizes a newer member who demonstrates traits from a “successful quest” and the ALA’s Performance Objective for Members.

Wijdan Jreisat was elected to the Leadership Council of the Women’s Fund of the Greater Cincinnati Foundation. The Fund is a means for individuals interested in supporting women’s issues to make charitable contributions in order to build a permanent endowment and grant funds for charitable efforts aimed at women’s issues. Wijdan has also been elected to the board of trustees of the Cincinnati Bar Association. The board is the governing body of that association.

Wijdan Jreisat, Bill Russo, Bob Pitcairn and Mark Jahnke were recently selected by *Cincy Magazine* as Leading Lawyers for 2008.

Reuven Katz starred as Art Hockstader, the former president of the United States, in a dramatic play reading of Gore Vidal’s “The Best Man,” produced and directed by Mary Sullivan and presented by the Polo Club Players. Reuven reports that his thespian exploits are not as exciting as shooting below his age in a round of golf last fall, but that he enjoyed the experience nonetheless.



MEET ADAM COLVIN | KTBH ASSOCIATE



Adam Colvin was born and raised in Edgewood, Kentucky, where he learned the value of hard work and family from his parents, Tom and Debbie. Even while they worked full-time, both were still able to coach and/or attend every sporting event he participated in – Debbie was very vocal!

Although Adam loved, and still loves, Northern Kentucky, it was clear to him from a young age that he would be attending high school in Cincinnati – as his grandfather, father, uncles and brother were all proud graduates of St. Xavier High School. Adam learned how to manage long hours while at St. X, where he dealt not only with the curriculum, but also with the rigors of being a member of the nationally ranked swim team. Adam enjoyed great success at St. X, being elected by his teammates as the captain of the swim team his senior year and graduating as valedictorian of the Class of 1996.

Adam attended college at Harvard University. He clearly missed the torture of swim practice, so he joined the crew team his freshman year. During his senior year, Adam was elected by the senior class as one of only eight Class Marshals. As a Class Marshal, Adam serves as a liaison between the Class of 2000 and the Harvard Alumni Association for life. Adam graduated with honors in 2000 with a degree in economics.

After graduation, Adam decided to give the other coast a try and began law school at UCLA. Adam realized Los Angeles had a lot to offer, especially when he met his wife, Jenn (also a law student at UCLA), at the first law school function. He immediately asked her out, and she finally said yes about 18 months later.

During the first year of law school, Adam realized that, although he enjoyed living in Los Angeles, he wanted to return home after he graduated. Adam interviewed at Katz Teller during the winter of his first year and knew right away that Katz Teller was the right fit. Adam was impressed by the firm’s sophisticated client base and the many opportunities the firm presented.

Adam graduated from UCLA in 2003 with a specialization in corporate law, and immediately moved back to Cincinnati. Jenn moved to Cincinnati about a year later and is currently an officer at the Midland Company.

At Katz Teller, Adam is an associate in the Corporate Department. His practice is concentrated in corporate, health care and real estate law. Adam handles a variety of matters relating to business organizations, including formation, structure, owner/shareholder relationships, business succession and other related issues. He has assisted clients in business, physician practice and commercial real estate acquisitions and sales.

Adam and Jenn live in Park Hills, Kentucky – just down the street from Adam’s brother, Josh, sister-in-law, Caroline, and their daughter. Adam and Jenn recently welcomed their first child – a daughter named Georgia. Georgia enjoys being awake all of the time.

Although Georgia gives him a little less free time these days, Adam enjoys hanging out with his family and friends, working out, playing basketball and watching movies. He is also an avid fan of the NBA, and tries to catch the Lakers on television as often as possible.

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