



SPECIAL INSERT

TAX LAW CHANGES, NEW IRS RULES

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Magavern Attorneys Rally to Local Historical Causes

Attorneys at Magavern Magavern Grimm LLP have come to the aid of two historically significant causes in the City of Buffalo.



Sycamore

The firm joined efforts with Re-Tree WNY Co-Chairman Paul Maurer to help rescue a 200-year old sycamore threatened by a deadly defoliating fungal disease. Theresa E. Quinn, a firm associate, represented homeowners challenging the City's order to demolish the 119-year old White Bros. Livery & Boarding Stable on Jersey Street.

Both were successful.

Concerned community leaders and citizens established Re-Tree WNY to reforest public areas where trees were destroyed during the October, 2006 surprise snowstorm. Paul Maurer asked the Magavern

firm – Buffalo's second oldest law firm, established in 1826 – to "adopt" Buffalo's second oldest tree, age estimated at 180 to 250, the legendary sycamore at 404 Franklin Street.

Richard A. Grimm, III, a partner in the firm, announced that the firm would commit \$1,500 to pay for a treatment that included a fertilizer infusion and an antifungal application. Within a few weeks, leaves sprouted – a hopeful sign of success.

"The people in our firm have had a strong connection to the city for so long that this was a natural tie-in for us," Grimm said. "This magnificent tree was

just a sapling when our firm's founding fathers were starting our law practice. We are thrilled to have this opportunity to help keep the tree alive for future generations."

In the Stable matter, an emergency situation, Quinn was joined by her husband, Jeffrey P. Santoro, also an attorney. They live in the resurgent "Cottage District," where the three-story brick structure is located. Helping to coordinate the efforts of neighborhood residents, they drew substantial news media attention to the deteriorating condition of the building, which had not been diligently inspected in recent years.

Quinn tapped the expertise of James L. Magavern, counsel to the firm, and Richard A. Moore, firm partner, in pursuing a solution that would preserve as much as possible of the original architecture. "The neighbors raised money and hired engineers and architects who substantiated their claim that preservation and shoring up of the building made economic sense, when considering the ramifications of demolition on the neighborhood," she explained. They won their challenge.



White Bros. Livery & Stable

Negotiations in State Supreme Court resulted in a partial demolition that preserves most of the structure. A developer acquired the building and plans to develop it into residential space. Quinn notes that the Magavern firm provided more than 60 hours of pro bono attorney time to this landmark case.

Firm Lawyers Selected for National, State Publications

Magavern Magavern Grimm LLP partners Bruce D. Reinoso and Cheryl Smith Fisher will be included in the 2009 edition of *The Best Lawyers in America*.

Mr. Reinoso is listed under the Elder Law specialty and Ms. Fisher is listed under Ethics and Professional Responsibility Law.

Selection to *The Best Lawyers in America* is based on a peer review survey of 2.5 million confidential evaluations by top attorneys across the nation. Published since 1983, this referral guide to the legal profession has been described by *The American Lawyer* as "the most respected referral list of attorneys in practice."

This is the third year that Mr. Reinoso is featured and the second year for Ms. Fisher.

Five Magavern firm attorneys are featured in the current Upstate New York edition of *Super Lawyers*. They and their practice areas are: Ms. Fisher, business litigation, employment and labor, bankruptcy and creditor/debtor rights; James L. Magavern, government/cities/municipalities, health care, land use/zoning; Edward J. Markarian, appellate; Mr. Reinoso, elder law, estate planning and probate, trust and estate litigation; and Thomas E. Schofield, business/corporate. The publishers seek to identify outstanding attorneys throughout the nation, based upon statewide surveys of peer attorneys and the publisher's independent research. *Super Lawyers* is a resource for attorneys and consumers searching for legal counsel in specific areas of expertise.

Successful Artist Values Advice from Magavern Firm Special Counsel

Artist Daniel Predmore, whose paintings of the City of Buffalo Skyline and the Canadian Horseshoe Falls appear on the Magavern Magavern Grimm LLP website, is a client of the firm who credits "excellent legal advice" for helping to develop his one-time hobby into a thriving business.

Daniel sought out Susan M. Lankenau, special counsel to the firm whose practice area is intellectual property law and intellectual property litigation, early in his career when someone started using one of his images without his permission.



Daniel Predmore

"It's helpful to have a lawyer who is accessible and who has the answers you need," he said. "That has saved me a lot of

money and headaches. I wanted to paint and develop my business without worrying about copyright infringement."

He added: "Susan got to know me and often stopped by to see my work at the art shows I do."

Daniel began drawing while a student at Sweet Home High School and continued on and off for years. "I thought of it as a hobby – until I

made my first sale," he said. Today, his studio in North Tonawanda is the site of all his creative endeavors, which now include painting in oils, acrylics and watercolors. His original etched glass drawings are featured on a line of glassware, paperweights and ornaments.

Many of his works feature images of well-known local landmarks, such as Shea's Buffalo, the Central Terminal, Buffalo City Hall, Albright-Knox Art Gallery, University at Buffalo, Buffalo and Erie County Historical Society, Ralph Wilson Stadium, and Niagara Falls. Others were inspired by his travels in France and England.

The artist is working on a series of paintings of area colleges and he plans to develop a line of glassware featuring those images. Through January 31, his paintings are on display in the lobby of the HSBC bank headquarters in downtown Buffalo. Magavern Magavern Grimm LLP hosted an exhibit of his abstract works last summer at the firm's Rand Building offices.

Daniel captured first place honors in the Abstract Painting category at the 2008 Allentown Art Show in Buffalo and he is preparing to enter the 2009 show, June 13 and 14. His work is sold at several retail stores and at the Buffalo and Erie County Historical Society. His website is www.predmore.com.

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Firm Associate Tapped for Erie County Legislature



Raymond Walter

Magavern Magavern Grimm LLP associate Raymond W. Walter has been chosen to be the Erie County Legislator for the 4th District, succeeding newly-elected New York State Senator Michael Ranzenhofer. The district includes the towns of Clarence and Newstead and portions of Amherst and Cheektowaga. He was sworn in on January 8 by New York State Supreme Court Justice Frank Caruso during the Legislature's 2009 opening session.

Mr. Walter will continue to be a lawyer with the Magavern firm, where his practice areas are estates and trusts and elder law.

He had been serving on the 21st Century Commission, a non-partisan volunteer group of community leaders whose purpose is to study the future structure and functions of the Legislature and to make recommendations. He previously was a research assistant for the Erie County Charter Revision Commission, and was a member of the transition team for Erie County Executive Chris Collins.

Mr. Walter is on the board of the Amherst Senior Citizen Foundation. He is a magna cum laude graduate of University of Buffalo Law School. Before starting his legal career, he worked as a sales manager and business manager in the area automobile industry.

New IRS Rules Impact Exempt Health Care and Other Not-for-Profits



Brendan McCafferty

There is important new guidance from the Internal Revenue Service (IRS) for health care organizations and other not-for-profits that are tax-exempt as part of their 501(c)(3) designation.

The regulations issued by the IRS identify the factors it will consider when deciding whether or not to revoke the tax-exempt status of a 501(c)(3) organization that engages in excess benefit transactions. The rule explains the interaction between the "intermediate sanction" rules under IRC Section 4958 – which govern excess benefit transactions –, and the public benefit rule – which requires that 501(c)(3) organizations serve a public rather than a private interest. The final rule provides examples of benefits that may result both in excise taxes on an excess benefit transaction and in an organization losing its exempt status.

Background

Tax-exempt organizations under Section 501(c)(3) must operate exclusively for "exempt" purposes, those that are charitable, educational, religious, or scientific. Excess benefit transactions involve non-exempt purposes that jeopardize an organization's exemption status.

An "excess benefit transaction" is one in which an economic benefit is provided by a tax-exempt organization, directly or indirectly, to or for the use of a "disqualified person," and the value of the economic benefit provided exceeds the value of the consideration received by the organization. A

"disqualified person" is anyone in a position to exercise substantial influence over the affairs of the tax-exempt organization, namely board members, presidents, chief executive officers, treasurers, chief financial officers, etc.

***"Excess benefit transactions...
can result in the
loss of exemption status."***

Examples

If such an organization provides its executive director with a compensation package that is far higher than that received by others in similar organizations in the same geographical area performing comparable services, the executive director may be seen as having received unreasonable or excessive compensation. Excise taxes may be imposed on the executive director under Section 4958 of the Code. Generally, the tax will be on the amount of the compensation package that is deemed excessive. In some cases, a tax also will be imposed upon board members or others who approved the compensation package.

Excess benefits transactions can occur in other instances, such as when a board member sells a building to the tax-exempt organization for an amount in excess of its fair market value. Any exchange of compensation and other compensatory benefits in return for the services of a disqualified person, or exchange of property between a disqualified person and the tax-exempt organization, where the value of the compensation or property exceeds fair market value, can be construed as an excess benefit transaction.

Intermediate sanction rules (Section 4958 of the Internal Revenue Code) were established in the mid-1990s as a way to provide sanctions short of revoking tax-exempt status in cases where an organization's assets are misused by insiders, such as officers or directors, for an insider's benefit. The IRS can fine the offending individual directly, and avoid revoking the organization's exempt status.

The Final Rules

Excess benefit transactions that make the organization no longer operate exclusively for an exempt purpose can result in the loss of exemption status. The IRS considers these factors in choosing between a sanction or outright revocation:

- the size and scope of the organization's regular and ongoing activities that further the organization's exempt purposes before and after the excess benefit transactions occurred;
- the size and scope of the transaction(s) relative to the size and scope of the organization's regular and ongoing activities that further the organization's exempt purposes;
- whether the organization has been involved in multiple excess benefit transactions with one or more individuals;
- whether the organization has implemented safeguards that are reasonably calculated to prevent such transactions in the future; and
- whether the involved transactions have been corrected or the organization has made other good faith efforts to redress the granted benefit.

The fourth and fifth factors weigh more heavily in favor of continuing to recognize exemption where the organization discovers the excess benefit transaction(s) and takes action before the Commissioner discovers it.

McCafferty Addresses Tax Practitioners

Attorney Brendan P. McCafferty, special counsel to Magavern Magavern Grimm LLP and a certified public accountant, was a featured speaker at the 55th Tax Institute on November 6 and 7 at the Hyatt Regency Hotel. The Institute provides tax practitioners with the most current information about the substance and administration of tax laws. It is sponsored by the University at Buffalo School of Management, the New York State Society of Certified Public Accountants, and the Erie Institute of Law's Continuing Legal Education.

An exempt organization can take steps to ensure that an economic benefit will be considered as compensation, including reporting the benefit as wages and withholding the proper amount of income tax. This intent can be substantiated with Form 990, Form W-2, Form 1099, or Form 1040. An approved written employment contract or documentation from an officer or decision-making body authorized to approve compensation also may be acceptable.

Basic Safeguards

Following are some steps that boards can take to help ensure compliance with IRS regulations:

- Pre-approve compensation arrangements, loans, reimbursements, bonuses, etc.
- Rely on data from truly comparable organizations in determining executive compensation
- Adequately document the basis for all compensation arrangements
- Avoid self-dealing arrangements in which the organization gets back from a disqualified person less than what it gave
- Have a written policy that aims to prevent and redress excess benefit transactions

For more information, contact Brendan McCafferty at 856-3500 or bmccafferty@magavern.com.

Now is the Time to Think About Personal Finances; Here's a Quick Reference to Key Tax Law Changes Starting This Year

The beginning of a new year is always a good time to define and evaluate personal financial goals.

To help with tax planning, our firm offers these highlights of key tax law changes for individuals and estates for 2009 and beyond. Please note that, with a new presidential administration and unresolved economic problems, some of the laws summarized below may change.

Capital Gains and Dividend Tax Rates

In 2008, the long-term capital gains from the sale of assets held longer than one year were taxed at zero percent for sellers in the 10 or 15 percent tax brackets. The zero percent rate continues through 2010. For taxpayers in higher brackets, the long-term capital gains rate is 15 percent. Likewise, for the same period, there is a zero percent tax rate on dividend income for taxpayers in the 10 and 15 percent tax brackets.

In 2011, the maximum long-term capital gains tax rate goes back to 20 percent. A lower 10 percent tax rate will be available for individuals to the extent that they are in the 10 percent and 15 percent tax brackets. Also in 2011, dividend income will be taxed as ordinary income at the taxpayer's highest marginal tax rate.



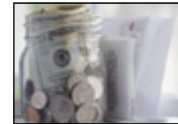
Kiddie Tax



The kiddie tax rules became more strict in 2008. Previously, a child's unearned income over \$1,700, such as gains and dividends, was taxed at the parents' marginal rate until the year the child became 18. The threshold was increased to \$1,800 in 2008; however, the threshold age was raised to 19 and to 24 for full-time students whose earned income is less than half their support. This is intended to discourage families from shifting appreciated assets to their kids to take advantage of the zero rate on capital gains.

Estate and Gift Taxes

In 2009, the \$2 million federal estate tax exemption rises to \$3.5 million, with a maximum tax rate of 45 percent. The federal estate tax is eliminated in its entirety for estates of individuals dying in 2010. For individuals dying after 2010, the federal estate tax laws revert back to a \$1 million exemption and a 55 percent maximum rate.



The repeal of the estate tax for 2010 did not include a parallel repeal of the gift tax. In 2010, the maximum lifetime gift tax exemption (the amount that can be transferred without gift tax) is \$1 million. Gifts in excess of this exemption amount will be taxed regardless of the exemption for transfers at death. Beginning in 2010, the gift tax rate will equal the highest individual income tax rate, currently scheduled to be 35 percent. After 2010, the rate will mirror the estate tax rate, currently scheduled to be 55 percent in 2011.

In 2009, the annual gift tax exclusion is increased from \$12,000 to \$13,000 per recipient. With spousal gift splitting, married couples can now give \$26,000 per recipient per year free of tax or gift tax return filing requirements.

Magavern Firm Special Counsel Successfully Challenges NYS Division of Taxation Audits

Brendan P. McCafferty, Special Counsel to Magavern Magavern Grimm LLP, provided expert testimony in a significant New York State Division of Tax Appeals case. The matter, involving consecutive sales tax audits of a popular restaurant in Buffalo, could have resulted in corporate and personal income tax assessments and penalties to the owners of the restaurant in addition to sales tax assessments and penalties.

Mr. McCafferty, who is an attorney and a Certified Public Accountant, provided testimony which successfully challenged the Division of Taxation's indirect audit methodologies. He analyzed their audit reports and provided additional expert testimony to show that the methods utilized were unreasonable. An administrative law judge canceled the notices of deficiency and no penalties were assessed on the business or its owners.

Mr. McCafferty has an extensive background in the areas of accounting, finance, taxation and law.

To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this newsletter, is not intended or written to be used and cannot be used by any person for the purpose of (i) avoiding any penalties that may be imposed by the Internal Revenue Service, or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

Firm Partner Chairs Special Meals on Wheels Appeal



Rich Grimm

Responding to a request from Meals on Wheels (MOW) for Western New York for critically-needed dollars to ensure meal deliveries to frail elderly and special needs individuals in the last weeks of 2008, Magavern Magavern Grimm LLP partner Richard A. Grimm, III, volunteered to be chairman of a year end fund drive.



The appeal brought in total contributions of more than \$70,000 to pay for an extra 25,000 meals. Benjamin A. Gair III, MOW Chief Executive

Officer, explained that Western New York's economic woes spiked demand beyond the projected 840,000 meals in the agency's annual budget.

"On behalf of the homebound individuals we are privileged to serve, we extend most sincere thanks to Rich Grimm for stepping forward to help," Gair said. "His leadership was vital to our success."

Grimm said: "I and the people in our firm recognize the importance of Meals on Wheels' dedicated efforts to eliminate hunger and loneliness among those who have outlived family, friends and financial resources. Once again, the caring Buffalo-area community came through for this organization, which has been tackling the problems of hunger by delivering nutritious food and friendship since 1969."

Lawyers for Learning Draws Volunteer Tutors

Two Magavern Magavern Grimm LLP attorneys are volunteers participating in the Lawyers for Learning program sponsored by the Bar Association of Erie County.

James L. Magavern, counsel, and Ellen G. Spencer, associate, have one-on-one weekly tutoring sessions with students at School 18 on Buffalo's West Side. Mr. Magavern is matched with a fourth grade boy, while Ms. Spencer works with a fifth grade boy.

"I look forward to it," Ms. Spencer said. "It's nice to sit with students and see how they progress." The tutors assist with reading, writing and homework assignments; read books and play educational games. The outreach program stresses positive reinforcement and encouragement. Organizers report that the weekly sessions help to improve students' self esteem, academic performance and attendance.



New Mental Health Parity Act Will Affect Millions of Americans

Magavern Magavern Grimm LLP partner Aven Rennie's article about the Wellstone-Domenici Mental Health Parity and Addiction Act is featured in the Mental Health Association of Erie County's January newsletter.

Attorney Rennie discusses the Act, which aims to equalize health insurance benefits for treating mental health and substance disorders with the coverage that most health plans now provide for medical and surgical costs. The new legislation will take effect on January 1, 2010. It is expected to mainly benefit the approximately 82 million Americans enrolled in ERISA-regulated plans that are not now subject to state parity laws.

Theresa Quinn Rehearsing for Musical

The Jewish Repertory Theatre of Western New York has cast Magavern firm associate Theresa Quinn in its upcoming production, "Hello Muddah, Hello Fadduh! The Allen Sherman Musical," opening February 25 at the Road Less Traveled Theatre, 639 Main St., in Buffalo's Market Arcade.

She has the role of Esther, a piano player from Long Island, in the show, which runs through March 15. In addition to her legal career, Ms. Quinn is an accomplished musician, vocalist and musical director.

Magi Award for Laurence Woodward



Laurence Woodward

The Lutheran Foundation of Western New York has honored Laurence H. Woodward, a senior partner and chairman of the firm's Estates and Trusts Department.

He received a Magi Award, recognizing him as a person "who has exemplified stewardship of faith and talent in remarkable ways."

Mr. Woodward is chairman of the Board of Directors of Lutheran Church Home. He also is a member of the Board of Directors of the Niagara Lutheran Health System and serves on its Long Range Planning Committee.

Contact him at 856-3500 or at lwoodward@magavern.com.

Firm Partner Named to Board

Upstate New York Transplant Services (UNYTS) has named Magavern firm partner Richard A. Grimm, III, to its Donate Life Foundation Board.

UNYTS seeks to boost awareness and action with regard to organ, eye, tissue and blood donation throughout Western New York, and to assist donor families. Established in 1981, the not-for-profit organization is headquartered in downtown Buffalo.



Three Magavern Attorneys Included in Who's Who in Law 2008

Who's Who in Law 2008, published by *Business First* and the *Buffalo Law Journal*, includes three Magavern firm attorneys.

They and their practice areas are James L. Magavern, counsel, municipal law; Edward J. Markarian, partner, appeals; and Bruce D. Reinoso, partner, trusts and estates.

Those selected were nominated by their peers. Lawyers fill out questionnaires to indicate the names of other lawyers to whom they would refer cases.

A Day at the Beach Benefits Research

Carly's Club, an organization that supports pediatric oncology research at Roswell Park Cancer Institute, received \$350 thanks to the efforts of Magavern firm Attorneys Aven Rennie and Susan Lankenau.



They participated in the sixth annual "Carly's Crossing," an untimed mile swim at Lake Erie's Gallagher Beach on August 16, 2008. The fund-raiser commemorates the life of Carly Collard Cottone, a young cancer patient who succumbed to an aggressive form of brain cancer.