Oregon Business Lawyer

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Risky Business: Ethical & Risk-management Issues for Business Lawyers

By Mark J. Fucile, Fucile & Reising LLP

Disciplinary and claims statistics published annually by the Oregon State Bar and the Professional Liability Fund reflect that, although business lawyers are relatively infrequent targets of bar complaints and civil claims, when claims occur they are typically larger and more complex than their counterparts in other practice areas. These findings suggest structuring risk-management efforts by business lawyers to lessen the particular threats they and their firms face.

This article is based on my presentation at the Business Law Section's CLE conference this past fall. Like the presentation, this article looks at three comparatively simple approaches to risk management for business lawyers:

- Know your client.
- Define your client.
- Stick with one client.

In this Issue

Articles

As in the CLE presentation, this article includes Northwest cases as illustrations of each point. The approaches discussed will not prevent all claims, but, if followed consistently, may at least temper some of the principal risks in today's business practice environment.

Know Your Client

> "'[The mastermind] was so charismatic and his Ponzi scheme so sophisticated that he duped everyone, including [the lawyers].'" *Norton v. Graham and Dunn, P.C.*, 2016 WL 1562541 at *11 (Wn App Apr 18, 2016) (unpublished).

The law firm involved in *Norton* had the unfortunate experience of discovering that a seemingly astute and celebrated chief of a client corporation had actually used the corporation to perpetrate a multi-million-dollar Ponzi scheme. Commonly in this scenario, once the Ponzi scheme unravels, the mastermind is inevitably on the way to jail, the company the mastermind used as the investment vehicle is often in bankruptcy or similar receivership, and there are a host of duped investors who want their money back.

Often, the professionals that provided services to the company—including law firms—become magnets for lawsuits by the defrauded investors and bankruptcy trustees or receivers. The former frequently allege that the lawyers involved aided the mastermind through their legal work and the latter often contend that the lawyers did not prevent the mastermind from looting the company. The gist of each is usually a variant of "the lawyers must or should have known." Claimants often point to asserted case-specific "red flags" that may only appear to be such in hindsight.

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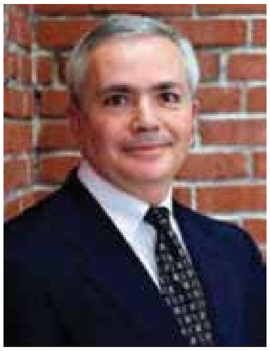

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory, and attorney-client-privilege matters for lawyers, law firms, and legal departments throughout the Northwest.

He is a past member of the OSB Legal Ethics Committee and is also a past chair of the WSBA Committee on Professional Ethics. He is a co-editor of the OSB Ethical Oregon Lawyer, *the WSBA* Law of Lawyering in Washington *and the WSBA* Legal Ethics Deskbook.

Before co-founding his own firm in 2005, Mark was an in-house ethics counsel for a large Northwest regional law firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus.

The specific legal theories claimants assert vary and can often be potentially quite broad. The dollar amounts sought are usually large—sometimes even exceeding available insurance coverage.

The nature of typical claims in this setting suggest three approaches law firms can take proactively to lessen their risk.

First, specify what the firm has been hired to do in a written engagement agreement—and generally stick to it unless modified by a later amendment. Oregon RPC 1.2(b) encourages lawyers to specifically define what they have been hired to do. A firm that has been retained to undertake a specific task for a client—and has defined that task in an engagement agreement—will have a better argument later that the nature of its work was sufficiently limited that it neither could have nor should have anticipated that the principal manager of a seemingly successful business was actually the mastermind of a Ponzi scheme.

Second, avoid using terms like "general counsel" in firm marketing. Although not defined in the RPCs, the term "general counsel" implies that a firm is involved in a client's daily operations. Having advertised yourself as being intimately close to company management, it is difficult to "unring that bell" when it turns out that the mastermind has used the company in a massive fraud.

Third, evaluate co-marketing with clients carefully. On some occasions, it is the client that is using the law firm in its advertising—for example, touting that it "partners" with successful professional service firms. Again, having allowed a client to describe your firm as its "partner" makes it more difficult to distance the work performed from what the mastermind was doing unbeknownst to you. This does not mean that a law firm should never engage in co-marketing with clients. But, if you do, make sure that you really know your client.

Define Your Client

> "During oral argument, [Law Firm] could not explain why an engagement letter was not executed at the outset of the . . . representation. Similarly troubling to the court was the fact that [Law Firm] could not advise the court as to whether [Client] was identified as a firm client in [Law Firm's] conflicts check system."
> *Atlantic Specialty Insurance v. Premera Blue Cross*, 2016 WL 1615430 at *13 (WD Wash Apr 22, 2016) (unpublished).

Atlantic Speciality involved a law firm whose Seattle office was disqualified from a major piece of litigation for a long-time client because the firm's Portland office had taken on a corporate affiliate without an engagement agreement—and apparently without including the names of the affiliate's other corporate family members in the firm's conflict system.

The Portland matter was an insurance-coverage case in federal court. Although the firm's Portland office had not sent an engagement letter, the client had forwarded a set of "case handling guidelines" to the firm that essentially defined the client to include its entire corporate family. While the Oregon case was still active, the firm's Seattle office was retained by a long-standing client to defend it in a coverage action in federal court there.

The Seattle litigation was being pursued by an affiliate of the same carrier the firm was representing in Oregon. When the law firm filed its appearance in the Seattle case, the carrier moved to disqualify the firm on the ground that it had an unwaived conflict. The federal district court in Seattle agreed and disqualified the firm. Being disqualified for a conflict a law firm should have anticipated can lead to both the forfeiture of fees on the matter concerned and potentially a civil claim for breach of fiduciary duty.

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When acting as corporate counsel for a closely held corporation, law firms should generally stick to that role and not attempt to also advise feuding shareholders involved in internal disputes.

Law firms can—and generally should—define in an engagement letter the exact corporate entity they represent and limit their representation to the specific entity involved. The information then must be carefully and consistently put into the firm's conflict database. If you do not do that as a law firm, someone else—like another member of the client's "corporate family" or a court as in *Atlantic Specialty*—may do it for you. As in *Atlantic Speciality*, the failure to define the client in an engagement agreement may lead to a disqualifying conflict.

Stick With One Client

> "The complaint, however, alleges that the corporation hired the lawyers, that the corporation had no interest in the dispute between plaintiff and [Other Directors] and that the work that the lawyers performed was outside the scope of any legitimate employment on behalf of the corporation." *Granewich v. Harding*, 329 Or 47, 58–59, 985 P2d 788 (1999).

In *Granewich*, a law firm had taken on a closely held start-up with three founders who were also its directors. Later, two of the founders had a falling-out with the third and forced him out of the company.

The third then sued the other two—and the law firm. The former director contended that the other two directors had breached their fiduciary duties to him. He also asserted that the law firm had assisted in this alleged breach by, in essence, siding with the two majority shareholders in their intramural dispute and assisting them in pushing him out of the company.

The Oregon Supreme Court concluded that the founder who had been forced out had stated a legally viable claim against the law firm for assisting in the breach of the two directors' fiduciary duty to the third.

On the limited record before it because the case had reached the appellate level following a dismissal on the initial pleadings in the trial court, the Supreme Court noted that—at least as alleged—the law firm had exceeded its role as corporate counsel and taken on the two majority shareholders against the third.

Granewich highlights that, when acting as corporate counsel for a closely held corporation, law firms should generally stick to that role and not attempt to also advise (either formally or by letting events transpire) feuding shareholders involved in internal disputes.

If shareholders do devolve into conflict, the most prudent course is for the warring camps to obtain their own lawyers while the company's lawyer remains just that—corporate counsel. To the extent that corporate counsel implements any aspect of a resolution of the intramural dispute, it is prudent to document that this is done on behalf of the corporation rather than the warring parties.[1] ◆

Endnote

1. *Reynolds v. Schrock*, 341 Or 338, 142 P3d 1062 (2006), discussed—but did not limit—*Granewich*. Rather, *Reynolds* addressed the separate issue of whether a lawyer could provide a client with otherwise lawful legal advice that, if followed, would potentially constitute a breach of fiduciary duty by the client to a third party. The Oregon Supreme Court in *Reynolds* concluded that a lawyer could do so as along as it did not amount to assisting a client with fraud or other unlawful conduct.

Bar Seeks Comments on Proposed Changes to Rules of Procedure

The OSB Board of Governors has approved several changes to the rules of procedure that govern Oregon's attorney regulatory system. These changes, which will be proposed to the Oregon Supreme Court following a 60-day comment period, involve: (1) enhancements to the role, jurisdiction and functioning of the adjudicator; (2) clarifications pertaining to investigations and formal proceedings; (3) modifications to reinstatement rules, and to Form A and Form B resignations; and (4) housekeeping and error corrections since the rules were amended in 2018.

Details of the proposed changes are available on the Oregon State Bar website at https://www.osbar.org/_docs/resources/ProposedChangestoBRs.pdf

Members are welcome to submit comments and questions in writing. Direct them to ropcomments@osbar.org by April 29, 2019.

Investor-ready? How to Prepare Your Clients for Success in Raising Capital

By Meredith Fox, Senior Associate, White Summers Caffee & James, LLP

Meredith Fox is a Senior Associate in the Portland office of White Summers Caffee & James, LLP, where her practice focuses on corporate formation, governance, tax planning for corporations and partnerships, and a wide range of business transactions including mergers and acquisitions, financings, and general business matters.

After law school, she went on to receive her LL.M. in Taxation from the University of San Diego School of Law, with an emphasis on domestic and international corporate tax planning.

Your client has a great idea and a great team, and now needs capital. How do you, the attorney, make sure the company is ready to enter into financing and the transaction is smooth and efficient? By discussing client goals and needs, and educating clients on proper record-keeping, you can help to avoid the potential headaches and pitfalls that can derail a financing deal, and ensure your client is investor ready.

Choice of Entity: Does It Matter?

Yes, choice of entity matters to investors, but the attorney should discuss with the client both short-term and long-term goals.

If your client is not looking to take in funding in the first few years, he may want to take advantage of the pass-through entity options, including partnerships and LLCs. These types of entities enable individuals to take advantage of profits and losses of the company on their personal tax returns. Instead of paying income taxes at the corporate level, income is allocated among the members and the taxes are applied at each member's level. Losses, which are common in the first few years of a startup, can be deducted by the members. If there are profits, the members get to receive distributions of those profits in the year they were generated. This can be particularly attractive to clients who are not seeking funding right away, and they may want to take advantage of the tax benefits of a pass-through. It does require more careful tax reporting and capital-account recording, and could place certain requirements related to self-employment tax payments on members. You should always advise clients who want to explore pass-through entities to hire a CPA or tax preparer who understands partnership tax reporting.

However, if your client is looking for funding within the first year or two of operations, choosing an entity that is attractive to investors avoids costs and complications, including potential tax pitfalls, related to converting the entity down the road.

Most investors are looking to invest in a C corporation. The corporate law is well established in almost all states, with Delaware usually being the preferred state of incorporation due to its corporation-friendly laws. There is no requirement to report profits and losses every year on the investors' tax returns as there is with partnerships and no complicated operating agreements or capital-account recording is required. Investors like this because many do not want to have to report profits and losses each year, and would prefer to simply hold stock in a corporation and pay tax only upon sale of the company or their interests. Some venture funds are also restricted from investing in pass-through entities if they have tax-exempt partners who want to avoid active trade or business income, and reinvestment requirements of LLCs may prevent or complicate the ability of the LLC to reinvest cash needed to grow the business, which could result in the company needing to find additional investment.

Investors generally want to continue to invest in a structure with which they are familiar, and the corporate entity is easy to understand and requires nothing other than holding of shares as a passive investment.

Keep It Clean

Once the entity choice has been made, how does your client prepare for the financing? Teach the client to keep the company and its records clean. The most arduous and often time-consuming part of the financing process is the diligence review. It is usually the point where your client starts to get frustrated with the process and wants the whole thing over with. How can an attorney help to prevent deal fatigue and potential deal-killing issues?

Educating your clients from the very beginning on the importance of record-keeping and proper organizational documentation can save time and potentially thousands of dollars in legal costs on a deal.

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Investor-ready? *Continued from page 4*

Providing your client with all the needed documentation goes only so far; all parties must sign it.

The initial capitalization of the company should be prepared and calculated so the founders are not unreasonably diluted upon receiving capital. Assets (in particular intellectual property) owned by the founders and used in the business should be properly transferred into the company at formation. Vesting on the founders' stock should be discussed at formation to avoid potential vesting restrictions imposed by investors at the time of financing. Working through and discussing these issues with the founders at the outset of the company creation can help to save time and money and avoid issues that could delay or end a financing deal.

However, initial record-keeping is not enough. Attorneys should be working with clients and educating them on their record-keeping responsibilities to avoid costly "clean-up" during a financing. The investors' attorneys will be spending a good deal of time reviewing the records of your client, and some more than others will require even the tiniest of errors or omissions to be corrected.

Many of my startup clients are worried about budgets and growing legal fees. To help them save money I have prepared form board consents, employment and contractor agreements, and other documentation they might need in order to properly record the internal workings of the company. Yes, this does reduce some of the fees that I can charge, but saving your clients money makes them happier to work with you and more likely to come back to you instead of employing another attorney or firm.

In addition to standard internal documentation related to board consents and onboarding employees, it is extremely important that the company can trace the ownership of all of its assets, especially intellectual property, into the company.

As mentioned above, the founders should transfer any ownership they have in the assets to the company at formation, usually in exchange for their initial stock. Your client should be aware of how important intellectual property ownership will be to potential investors, and documentation should be in place between the company and the founders, employees, contractors, and any service providers who work with the company and may be contributing to the improvement and development of the company's assets.

Having such individuals or organizations sign proprietary information, non-disclosure, and/or confidentiality agreements as part of the company's regular practice demonstrates to investors that the company is proactive in the protection of its intellectual property and assets, including the investor's capital investment.

Providing your client with all the needed documentation goes only so far; all parties must sign it. Yes, this seems obvious, but you may be surprised by how many times founders, in their haste to get a project moving, forget to round up all the signatures they need. It is usually not until deep into the diligence process that this is discovered. At that point, the investor's attorney may insist that the only resolution to this roadblock is to track down the missing signature, which could be nearly impossible. I've had the closing of deals be delayed for weeks as my client and I worked to obtain signatures from a former founder living off the grid in Mexico, and a developer backpacking in Nepal. I wish I were exaggerating.

Due diligence can be the most arduous part of a financing, but by educating your clients on ways that they can internally prepare for a diligence review, you can often drastically reduce the time, expense, and potential delays that come with an unprepared or unorganized client.

Client Needs

Throughout the process of assisting your clients on their corporate forms and record-keeping, it is paramount to discuss and analyze their needs and expectations related to entering into a financing. What are their short-term and long-term goals? Do they understand what type of investor they should be targeting, and what type of oversight and participation in the business those investors may require? Are they ready to give up some of their control? By discussing these issues with your clients and educating them on what it will mean to have an outside investor (no matter the type or size), you can help your clients to be investor-ready. ◆

2018: The Year in Tax

By Valerie H. Sasaki, Samuels Yoelin Kantor LLP

Valerie Sasaki is a partner at Samuels Yoelin Kantor LLP in Portland. She specializes in jurisdictional tax consulting, working closely with Fortune 50 companies involved in audits before the Oregon or Washington Departments of Revenue. She also works with business owners on tax, business, and estate planning issues in Oregon and Southwest Washington.

Valerie is a graduate of the University of Oregon School of Law, and earned a Master of Taxation Laws from the University of Washington School of Law.

She is the current Chair of the Business Law Section.

There is an old curse: "May you live in interesting times." The implication, of course, is that, were someone to draw out the Venn diagram fields showing the overlap between "peaceful/prosperous/nice" and "interesting," one might see that there is not a lot of overlap. For many in the tax community, the past year has been *interesting* as we saw major changes in the tax world at both the state and federal levels.

Tax Cuts and Jobs Act

Technically the Tax Cuts and Jobs Act (TCJA) passed in 2017, but the full effect of thousands of tax lawyers wailing and gnashing their teeth wasn't felt until 2018. Most of the major provisions of the TCJA were effective beginning in 2018, with some to sunset in 2025 (unless we get additional action by Congress). Major themes of the TCJA were reduction in availability of deductions for average wage-earning individuals, decrease in overall tax rates, an attempt to get parity between tax treatments of debt and equity, and major changes to depreciation and expensing methodologies.

The reduction in availability of individual deductions (which increased the tax base) and the decrease in overall rates appear designed as a bread-and-circuses approach to satisfying the voter base, while not moving the needle on the tax that middle and upper-middle income level Americans would be paying. [NOTE: The comparison between the collapsing Roman empire's approach to distracting the populace and the current political environment is purely my own analogy and in no way reflects the views, politics, or position of this newsletter's editorial board or any person involved with anything remotely official.]

The TCJA had some winners and losers, as with most legislation these days. For example, winners appear to be real estate investors and real estate investment trust (REIT) investors. Losers appiar to be individual middle-income taxpayers and certain nonprofit organizations.

There were unintended consequences to the TCJA, as with most legislation that is passed unread but with great speed. One example is the potential impact on charitable organizations. The TCJA made it less likely that most individual taxpayers will itemize their deductions.

This means that contributions to charitable organizations are less likely to be useful as a legal tax shelter for most individuals. Therefore, individuals might decrease charitable contributions. The TCJA also changed rules related to intercompany aggregation of tax attributes for related organizations, which will have an effect on nonprofit entities' unrelated business income tax obligations. Congress has not had great success in fixing things recently, so we are waiting to see if we ever get a technical corrections bill to address those unintended consequences.

IRS wage withholding tables for employers were updated at the end of February 2018. The General Accounting Office estimated in July that up to 21% of taxpayers were under-witholding. Those folks are discovering the problem now and will be writing larger-than-expected checks to IRS to cover the shortfall. Additionally, IRS was slow to get regulations out and still has not issued regulations on many key provisions of the TCJA.

Tax Rate Reductions

On the personal income side of things, the TCJA decreased most individual income-tax rates. This includes a decrease of the top marginal rate from 39.6% to 37%.

The TCJA permanently decreased the highest marginal corporate tax to 21%.

The Schedule Formerly Known as "A"

Historically, taxpayers who have expenses that are eligible for certain exemptions (medical, state tax, mortgage interest, miscellaneous business expenses) itemized their deductions on "Schedule A." The TCJA increased the personal income tax exemption from $6,500 to $12,000 for individuals and $13,000 to $24,000 for married persons filing jointly. This was part of a coordinated effort to have fewer Americans itemize deductions.

Also in the "let's make it uncool to itemize" camp was a cap on the amount of state taxes individual taxpayers could deduct from "whatever" to $10,000. This means that I can take the amount I wasn't able to deduct due to the cap, multiply it by my effective rate, and estimate my new (unimproved) tax liability. This is irritating.

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[NOTE: Let it be said that my opinions regarding my own personal income tax liability in no way reflect the opinions of the editorial board of this newsletter, should they have opinions on this topic, which I doubt.]

Finally, the TCJA eliminated (temporarily, we hope) miscellaneous deductions that taxpayers were able to take on Schedule A, subject to a 2% floor. These expenses were unreimbursed employee business expenses, tax preparation fees, expenses for production of income, and investment fees.

The calculation on what any specific taxpayer's 199A deduction actually is can get complicated.

Section 199A

Your tax-lawyer buddies probably just kept talking and talking about 199A all of last year. We think it's cool to talk in code sections. For those who don't, 199A is a new provision that allows non-corporate taxpayers to take a roughly 20% deduction against their pass-through entity income. This applies to "qualifying taxpayers" who have "qualified business income" from a "qualified trade or business."

Certain folks who engage in specified trades or businesses–who apparently have bad lobbyists–are required to start phasing out the deduction once taxable income exceeds $157,500 ($315,000 for marrieds filing jointly). Lawyers and accountants are both in this category.

The phrase "qualified business income" means the non-investment income of a non-corporate business. So, if an entity has some invested short-term capital, income from that capital would not count. Also excluded from the definition are foreign income items and certain amounts paid to owners.

IRS issued final regulations and three additional pieces of guidance in January 2019 on 199A. The calculation on what any specific taxpayer's 199A deduction actually is can get complicated, so please seek help from your client's accounting professional when advising on this issue.

There was a huge outcry over the Oregon legislature's decision to disconnect from the 199A deduction. However, Oregon's pass-through entity (PTE) program provides a reduced rate of tax for active pass-through income, which will get many taxpayers to more or less the same point. Be aware that a taxpayer needs to opt into PTE treatment, as it is not automatic.

Other

Congress saw an opportunity with the TCJA to make major changes to address perceived abuses (whether real or imagined) whereby corporations were moving their tax base out of the USA. One technique that has gotten a lot of press recently is the corporate inversion. The idea behind an inversion is that certain items of income are sourced to a corporation's headquarters and other items are sourced to where the income-producing activity occurs. If a corporation moves the headquarters outside of the US, the items that are sourced to the headquarters may escape US corporate taxation. One item that gets sourced to a corporate headquarters is typical income from intangibles. So, companies have intercompany debt agreements where the US entity pays interest to an entity not included in the US consolidated group. This creates a deduction at the US corporation for amounts that it pays to foreign entities. The interest associated with that payment may be deductible on the US tax return, which lowers the US tax base of that entity. See, e.g., the Tim Hortons/Burger King reorganization. Because public outrage of this technique was very vocal, the TCJA incorporated items to offset the benefit of the arrangement. So, the TCJA contains modifications to IRC 163(j), which disallowed excess interest deductions for interest paid to exempt related parties.

Another overlay of the TCJA was an attempt to level the playing field between debt and equity. Debt had preferential tax and bankruptcy treatment. So, there remains an outstanding question of whether the changes to 163(j) should also apply to debt-like things. IRS issued proposed regulations in November 2018, a mere eleven months after passage of the TCJA, that said certain items—for example, guaranteed payments for use of capital under IRC 707(c) and non-cleared swaps with significant nonperodic payments—would be considered "interest" for purposes of the new section.

The TCJA also made major changes to depreciation methodologies. Some of these changes were temporary (depreciation expensing for new or used personal property and qualified improvement property).

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Virtually all pre-2018 operating agreements for LLCs should be examined and updated.

Some of these changes were permanent (first-year expensing, qualified improvement property, and alternative depreciation methods).

Implementation of the Centralized Partnership Audit Regime

This was a sleeper issue for many business lawyers. It largely got buried in the hubbub around the TCJA and, to be perfectly honest, most "normal" people don't find partnership audits as sexy as some of us do.

On August 6, 2018, IRS issued final regulations on its Centralized Partnership Audit Regime (CPAR). These rules are complicated and intended to replace the Tax Equity and Fiscal Responsibility Act (TEFRA) regime from 1982. There were a lot of good reasons to do this. However, the new CPAR rules change how almost all partnership audits will be conducted.

What non-tax business lawyers need to know is that virtually all pre-2018 operating agreements for LLCs should be examined and updated to at a minimum include language designating an individual to speak for the entity (CPAR got rid of the "tax matters partner"), and addressing indemnification for changes that relate to a prior year but where the tax impact of an audit adjustment is implemented in the current year. This can be an issue where the partners (or members) are not the same between the review (prior) year and the adjustment (current) year.

South Dakota v. Wayfair

Some of you, particularly those who work in a small corner of SW Portland, may have heard screaming and a few bad words on June 21, 2018. I apologize. On that date, the US Supreme Court issued its holding in *South Dakota v. Wayfair*, 585 US ___, 138 S. Ct. 2080 (2018).

Future scholars may debate the validity of the logic underpinning this decision. In particular, the dissent point in *Wayfair* that *stare decisis* is an important concept deserves some consideration. However, the majority holding in *Wayfair* is significant because it overturned the high court's 26-year-old holding in *Quill Corp. v. North Dakota*, 504 US 298 (1992). *Quill* stood for the proposition that a state may not require a company to collect and remit sales tax unless that company had a physical presence in that state.

In the post-*Wayfair* era, taxpayers who have economic activity attributable to a state may be required to collect and remit sales taxes to that state. The states setting the threshold for what constitutes substantial nexus are all over the place. While many are using the standard South Dakota used in *Wayfair* (more than $100,000 of sales into the state or 200 transactions), not all states use the same threshold

For example: a small Portland, Oregon, widget maker that sells $100,001 of widgets to a California customer (even on one transaction) may be required to collect and remit sales taxes to California on its California sales. The Seaside, Oregon, artisan who makes crocheted jewelry and sells 201 items to California customers for $5 each may also be required to start collecting and remitting sales tax on her California sales.

It is important to note that certain states such as Washington, our friendly neighbor to the north, already had "turn your client in or pay" regimes for companies selling into the state. These continue in tandem with the new *Wayfair*-like regimes that states are implementing. Washington, for example, requires that vendors who have more than $10,000 (!) of gross receipts sourced to Washington either start collecting and remitting sales tax on sales to Washington customers or tell those customers they should pay use tax and then disclose their Washington customer information to the Washington Department of Revenue.

In Conclusion

For those of us in tax practice, 2018 was a very exciting, interesting year. Thus far, 2019 has been notable primarily for the federal government shutdown and additional clarification on things that should have been clarified in 2018. However, the year is still young and the legislature is in session. Anything could, and probably will, happen. ◆

Business Law Section News

Subcommittee Reports

Participation in a Business Law Section subcommittee is a good way to expand your professional network.

Continuing Legal Education

The next Business Law Section CLE program, "Employment Law: What Corporate Lawyers Need to Know," will take place Wednesday, April 3, 2019, from 8:00 to 9:00 a.m. (Breakfast will be served.)

Melissa Healy and Alisha Kormondy of Stoel Rives will present an informative session on employment law as it applies to corporate lawyers, including a discussion of recent developments, common pitfalls, and tips for minimizing risk.

The program will be live in **Portland** (Perkins Coie) and webcast in **Bend** (Schwabe, Williamson & Wyatt), **Eugene** (University of Oregon School of Law), and **Medford** (Brophy Schmor). Watch for the Bar's upcoming announcement email for more information, including registration.

Do you have ideas for a business law CLE program? Please contact CLE subcommittee chair Kara Tatman at ktatman@perkinscoie.com.

Outreach

During 2018, the subcommittee engaged with the CLE subcommittee to expand reach of CLE presentations to cities outside Portland, co-hosted a Portland-based social event with OSCPA, and helped plan the annual executive committee retreat. It also explored the possibility of co-hosting an annual charity event.

Discussion at the retreat addressed the value and nature of outreach, as originally intended when the subcommittee was created, and whether it remains useful to Section members to host events and seek opportunities to connect with non-legal professionals. Some of the initial goals of the subcommittee (such as making CLE opportunities available to members outside of the Portland metro area) are being handled by the CLE subcommittee at this time.

New Business Lawyers

The subcommittee meets monthly and its members participate in working groups that focus on education, social events, law schools, and newsletter participation.

The subcommittee will be hosting a social event with students from Oregon's three law schools on Thursday, March 14, at 5:30 p.m. at The Senate (71 SW 2nd Avenue, Portland). The subcommittee will provide snacks and encourages all interested students and business lawyers to attend for the opportunity to network and discuss the transition from law student to business lawyer.

If you would like to be involved with the subcommittee or its activities, please reach out to the subcommittee's chair, Will Goodling of Stoel Rives LLP, at (503) 294-9501 or william.goodling@stoel.com.

Legislation

The Business Law Section's Legislation Subcommittee drafted, revised, and proposed legislation to provide a process corporations can use to fix defective corporate acts. This was drafted and introduced as Senate Bill 359.

David Ludwig and Valerie Sasaki testified before the Senate Committee on the Judiciary on Monday, February 4. That committee referred the bill to the Senate with a "do pass" recommendation. The bill passed the Senate and is now before the House Judiciary Committee.

Last year, the Section submitted a proposal to the Oregon Laws Commission suggesting that the commission explore adoption of the Revised Uniform LLC Act. The commission accepted the Section's proposal and established a workgroup to examine the best way forward on the proposal for Oregon. That workgroup held its first meeting on March 1, 2019, and anticipates meeting regularly throughout the year.

Upcoming Events

CLE Programs

Lessons and Experience from the Oregon Civil RICO Cases
March 18, 2019/12:00–1:15 p.m.
Cannabis Law Section brown-bag luncheon
888 SW Fifth Ave., Suite 1600, Portland
RSVP to Mandy Rynders at mandy@gl-lg.com

Drafting Indemnity Agreements in Business and Commercial Transactions
March 22, 2019/ 10:00–11:00 a.m.
Audio Seminar via Telephone
https://or.webcredenza.com/program?id=94312

ABA Business Law Section Spring Meeting
March 28–30, 2019
Vancouver, B.C.
https://www.americanbar.org/groups/business_law/events_cle/spring_2019/?sc_cid=CL1903SPR-B1

Employment Law: What Corporate Lawyers Need to Know
Wednesday, April 3, 2019/8:00–9:00 a.m.
Perkins Coie: 1120 NW Couch St., Portland
and webcast in Bend, Eugene, and Medford
Presented By OSB Business Law Section
(Details on page 9)

Partnership Taxation
April 17, 2019/Noon–1:30 p.m.
Red Star Tavern
503 S.W. Alder Street, Portland, OR 97204.
Presented by OSB Taxation Section
https://ebiz.osbar.org/ebusiness/Meetings/Meeting.aspx?ID=1954

Contract Drafting Series
Begins April 18, 2019
Standard Insurance Center, Auditorium, Portland
A series of weekly, one-hour Multnomah Bar Association seminars on contract drafting, negotiating, and litigating.
https://www.mbabar.org/education/contract-drafting-series-2019/

Social Events

New Business Lawyers Social with Law Students
Thursday, March 14 , 2019/ 5:30 p.m.
The Senate, 71 SW 2nd Avenue, Portland
(Details on page 9)

50-Year Member Recognition Luncheon
March 22, 2019/11:30 a.m.–1:30 p.m.
Tualatin Country Club, 9145 SW Tualatin Rd., Tualatin
Honoring those who became members of the Oregon State Bar in 1969
To register, contact Leone Gholston, (503) 431-6348 or events@osbar.org

Announcements

Job Posting

Buckley Law is an established firm in Lake Oswego dedicated to the success of our clients, and we are looking to add a partner in business and tax. CPA or LL.M. preferred, with at least a partial book of business.

This partner will provide advice to firm clients in formation, transactional work, and possibly estate/tax planning for high-net-worth clients.

- Eight+ years of experience
- CPA/LL.M. preferred
- Excellent client and staff management skills
- Client development
- Plays well with others

Send resume/CV and cover to resumes@buckley-law.com.
For more information, contact Gina at gch@buckley-law.com.

Office Space Available

Up to three windowed offices are available in a downtown Portland historic building at 65 SW Yamhill.
Price is $700/office. Support space also available at $200/cubicle.

Includes internet, copier/scanner, two conference rooms, shower, coffee, tea, microwave, refrigerator, and storage.

Call Kevin at McGaughey Erickson (503) 223-7555.

Oregon State Bar Business Law Section

The mission of the Oregon State Bar Business Law Section is to provide excellent service to the diverse group of business-law practitioners throughout the State of Oregon by providing regular, timely, and useful information about the practice of business law, promoting good business lawyering and professionalism, fostering communication and networking among our members, advocating improvement of business law, and supporting Oregon's business infrastructure and business community.