19 O'NEIL CANNON LAWYERS SELECTED AS 2024 BEST LAWYERS; ANOTHER 4 NAMED BEST LAWYERS: ONES TO WATCH

We are pleased to announce 19 of our lawyers have been included in the 2024 Edition of *The Best Lawyers in America*, and an additional four have been selected as 2024 *Best Lawyers: Ones to Watch*.

The following are the O'Neil Cannon lawyers named to the 2024 lists:

Best Lawyers in America

- Douglas P. Dehler – Litigation – Insurance
- James G. DeJong – Corporate Law, Mergers and Acquisitions Law, and Securities / Capital Markets Law
- Seth E. Dizard – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy
- Peter J. Faust – Corporate Law and Mergers and Acquisitions Law
- John G. Gehringer – Commercial Litigation, Construction Law, Corporate Law, and Real Estate Law
- Joseph E. Gumina – Employment Law – Management and Litigation – Labor and Employment
- Dennis W. Hollman – Corporate Law and Trusts and Estates
- Grant C. Killoran – Commercial Litigation and Litigation – Health Care
- JB Koenings – Corporate Law
- Dean P. Laing – Commercial Litigation, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Defendants
- Gregory W. Lyons – Commercial Litigation and Litigation – Insurance
- Patrick G. McBride – Commercial Litigation
- Joseph D. Newbold – Commercial Litigation
- Chad J. Richter – Business Organizations (including LLCs and Partnerships) and Corporate Law
- John R. Schreiber – Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law and Litigation – Bankruptcy

- Jason R. Scoby – Corporate Law
- Steven J. Slawinski – Construction Law

Best Lawyers: Ones to Watch

- Trevor C. Lippman – Litigation – Trusts and Estates
- Erica N. Reib – Labor and Employment Law – Management and Litigation – Labor and Employment
- Kelly M. Spott – Trusts and Estates
- Christa D. Wittenberg – Commercial Litigation

About Best Lawyers

Best Lawyers has published their list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals.

Best Lawyers: Ones to Watch recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice in the United States.

Lawyers on *The Best Lawyers in America* and *Best Lawyers: Ones to Watch* lists are divided by geographic region and practice areas. They are reviewed by their peers on the basis of professional expertise, and they undergo an authentication process to make sure they are in current practice and in good standing.

TAX AND WEALTH ADVISOR ALERT–UNDERSTANDING THE "STEP-UP IN TAX BASIS": A SUMMARY OF IRC SECTION 1014 AND DOUBLE STEPPED-UP BASIS FOR MARITAL PROPERTY IN WISCONSIN

When a loved one passes away, the emotional toll can be overwhelming, and dealing with the complexities of tax implications may not be a priority. However, understanding the concept of "step-up in tax basis" can significantly impact the tax burden on inherited assets. In this blog post, we'll explore the basics of the step-up in tax basis, focusing on IRC Section 1014, and how Wisconsin's marital property laws can provide a double stepped-up basis for inherited assets.

What is a “Step-Up in Tax Basis”?

Under normal circumstances, when you sell an asset that has appreciated in value since you acquired it, you are subject to capital gains tax on the difference between the purchase price (cost basis) and the selling price. However, when an individual passes away and bequeaths assets to their heirs, these assets receive a “step-up in tax basis.” This step-up means that the tax basis of the inherited assets is adjusted to their fair market value on the date of the decedent’s death. As a result, any unrealized capital gains up to that point are effectively wiped out, reducing or eliminating the capital gains tax burden for the heirs.

IRC Section 1014: Understanding the Legal Basis for Step-Up

The Internal Revenue Code provides the legal framework for the step-up in tax basis. Specifically, IRC Section 1014 outlines the rules governing the determination of the basis of property acquired from a decedent. According to this section, the basis of inherited property is generally its fair market value at the date of the decedent’s death. There are certain exceptions and adjustments depending on the nature of the asset and the circumstances of the transfer, but the general principle remains the same: assets inherited after someone’s passing receive a new, stepped-up tax basis.

It is important to note that certain types of assets such as 401(k)s, annuities, or IRAs do not receive the step-up in basis as these assets contain what is known as “Income in Respect of Decedent.” These assets are subject to income tax when inherited by the heirs.

Double Stepped-Up Basis for Marital Property in Wisconsin

Wisconsin is one of the nine states in the United States that follows a community property system. Under this system, certain assets acquired during a marriage are considered marital property, jointly owned by both spouses. When one spouse dies and leaves their share of the marital property to the surviving spouse, the tax basis of the deceased spouse’s share is stepped-up to its fair market value on the date of their death, as per IRC Section 1014.

Now, here’s where Wisconsin’s marital property law provides an added benefit. When the surviving spouse inherits the deceased spouse’s share of the marital property, the tax basis receives another step-up to its fair market value on the date of the surviving spouse’s death. This is known as a “double stepped-up basis.”

The double stepped-up basis can be highly advantageous for the surviving spouse and their heirs. It allows the appreciation of a certain asset owned during the marriage to be shielded from capital gains taxes entirely if the asset is later sold by the surviving spouse’s heirs. This significant tax benefit can help preserve more of the family’s wealth and provide more financial flexibility for future generations.

Conclusion

The step-up in tax basis is a critical concept to understand when dealing with inherited assets. Under IRC Section 1014, inherited assets generally receive a new tax basis equal to their fair market value on the date of the decedent's death, eliminating or reducing the capital gains tax burden. In Wisconsin, the marital property laws add an extra layer of advantage by providing a double stepped-up basis for assets acquired during a marriage. This double step-up can have a substantial positive impact on the overall tax liability for the surviving spouse and their heirs, offering a valuable tool for preserving family wealth and passing it on to future generations.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- The Pitfalls of Payable on Death Accounts
- Section 1202 Stock: An Attractive Tax Benefit for Investors in Small Businesses
- Pregnant and Nursing Employees Have Newly Expanded Rights
- A Michigan Jury R-E-S-P-E-C-Ts Aretha Franklin's Wishes

Firm News:

- O'Neil Cannon Welcomes Attorneys Eric Peterson and Kyle Kasper
- Chambers and Partners Recognizes Faust and O'Neil Cannon for M&A Excellence
- Attorney Seth Dizard to Receive 2023 Judge Dale E. Ihlenfeldt Bankruptcy Award
- O'Neil Cannon Serves as Legal Advisor to i3 Product Development in Its Sale to Helios Technologies

Click the image below to read more.

A MICHIGAN JURY R-E-S-P-E-C-TS ARETHA FRANKLIN'S WISHES

In 2018, the "Queen of Soul" Aretha Franklin passed away, leaving behind four sons and a multimillion-dollar estate. Since this time, Franklin's sons have been engaged in a fierce legal

battle regarding the application of contradictory handwritten wills and the proper division of her assets. Recently, a jury in the probate court in Pontiac, Michigan decided that Franklin's handwritten will drafted in 2014 revoked a previous handwritten will and will set forth how Franklin's assets will be divided amongst her children.

Initially, it was believed that Franklin died without a valid will and her estate assets would be distributed in accordance with Michigan's intestacy law. Under Michigan law, because Franklin was not married at the time of her death, her entire estate was to be distributed equally to her four children. However, months after Franklin's death, two conflicting handwritten wills were found in Franklin's home. The first document was discovered in a locked cabinet and was dated 2010. This document was approximately twelve pages long and was signed by Franklin on each page. The second document was dated 2014 and was found inside a spiral notebook tucked under a couch cushion. The 2014 document was significantly shorter than the 2010 document and was only signed "Franklin" with a smiley face nearby. The two handwritten wills were each drafted by Franklin herself and did not list any parties as witnesses. The legal battle revolved around which of the two handwritten wills would apply as they had conflicting terms for the division of Franklin's assets.

Two of Franklin's sons argued that the 2014 document revoked the 2010 document and met the legal standard for a "holographic will" under Michigan law. Typically, a will is only valid under Michigan law if it meets three requirements: (1) it is in writing; (2) it is signed by the testator or, while the testator is present, by another at the testator's direction; and (3) it is signed by at least two witnesses in a reasonable time after seeing the testator sign or after the testator acknowledges the signature. However, unlike Wisconsin, Michigan recognizes handwritten or "holographic" wills if the document is signed, dated, is in the testator's handwriting, and demonstrates by clear and convincing evidence that the testator intended the document to be their will. After less than an hour of deliberations, the jury determined that the 2014 handwritten document revoked the 2010 document and shall serve as Franklin's will.

Had Franklin been a Wisconsin resident at the time she drafted the conflicting handwritten wills, the legal battle between her children likely never would have occurred. In Wisconsin, for a will to be valid it must meet certain requirements: (1) it is in writing; (2) it is signed by the testator or signed in the presence of the testator at their direction; and (3) it is signed by at least two witnesses (who are unrelated and disinterested) within a reasonable time after witnessing the signing of the will, after the testator's acknowledgment of their signature on the will, *or* after the testator's acknowledgement of the will. Wisconsin does not recognize holographic wills, and neither Franklin's 2010 nor 2014 holographic wills would have been upheld as valid regardless of a showing of Franklin's intent. Instead, Franklin's estate would be distributed in accordance with Wisconsin's default probate laws.

Estate planning can be a complex and stressful process for families, that too often ends in

disputes between loved ones. The estate planning team at O'Neil Cannon is dedicated to assisting its clients navigate the estate planning process and creating a personalized plan that meets their goals and wishes for distributing their assets. In the event that disputes arise, O'Neil Cannon's inheritance litigation team is also prepared to assist its clients in all matters related to disputed estate planning documents. To schedule a consultation with a member of O'Neil Cannon's estate planning or inheritance litigation teams, please call (414) 276-5000.

ATTORNEY KYLE KASPER HAS JOINED O'NEIL CANNON

Attorney Kyle Kasper, a *magna cum laude* graduate of Marquette University Law School, has joined O'Neil Cannon. Kyle is a member of the firm's Litigation Practice Group. While in law school, Kyle was actively involved in numerous organizations, including the Moot Court Association, Marquette Law Review, and Marquette Sports Law Review. Additionally, Kyle was selected as an Academic Success Program leader where he assisted law students with their legal writing and research. We are very pleased to welcome Kyle to O'Neil Cannon.

O'Neil Cannon, founded in Milwaukee in 1973, is a full-service law firm that focuses on meeting the many needs of businesses and their owners. Our experienced attorneys work with businesses and their owners at all stages of the business life cycle, helping them start, grow, and transition their businesses. We also assist business owners with their personal legal needs, including tax and estate planning and family law. For more information about the services we provide, please visit our website.

TAX AND WEALTH ADVISOR ALERT–SECTION 1202 STOCK: AN ATTRACTIVE TAX BENEFIT FOR INVESTORS IN SMALL BUSINESSES

Investors in small closely held businesses looking for ways to reduce their tax liability might want to consider taking advantage of Section 1202 stock, also known as Qualified Small Business Stock. Section 1202 of the Internal Revenue Code offers a tax break for individuals who invest in certain qualified small businesses.

So, what exactly is Section 1202 stock? In simple terms, it refers to shares of stock issued by qualified small businesses that meet specific criteria outlined in the tax code. The main advantage for investors holding these stocks lies in the potential exclusion of a portion of their capital gains from taxation upon the future sale of these stocks.

Under Section 1202, eligible investors can potentially exclude up to 100% of their capital gains from the sale of qualified small business stock held for more than five years. However, it is important to note that the tax benefits provided by Section 1202 are subject to certain limitations and restrictions. For instance, the exclusion of capital gains is limited to the greater of $10 million ($5 million for married taxpayers filing separately) or ten times the investor's basis in the stock. Also, the exclusion only applies to investments made after August 10, 1993. Despite these limitations, Section 1202 stock can result in substantial tax savings and provide a significant incentive for individuals looking to invest in startups or small businesses.

To qualify for these tax benefits, the small business must meet certain requirements. First, the company should be a domestic C corporation. Additionally, the business must have total gross assets of $50 million or less at the time the stock is issued.

Another crucial condition is that the company must be engaged in an active trade or business. The Section 1202 exclusion does not apply to any business primarily providing professional services such as health, law, engineering, architecture, accounting, actuarial science, performing arts, athletics, banking, insurance, financing, leasing, and investing fields, any business operating a hotel, motel, or restaurant, or any business that is primarily holding assets for investment. However, there are exceptions for certain technology-focused businesses that meet specific criteria.

Notwithstanding these limitations, Section 1202 stock remains an attractive tax benefit for investors in small businesses. Investors should plan carefully to determine whether their investment qualifies for the Section 1202 exclusion, and to understand the specific requirements and limitations of this tax benefit. As with any tax-related matter, it is crucial to consult with a qualified tax attorney before making investment decisions. A tax attorney can help navigate the complexities of Section 1202 and ensure compliance with all applicable regulations.

Overall, Section 1202 stock can offer a significant tax break for small business owners and investors. By taking advantage of this provision, investors can potentially reduce their tax liability and support the growth of small businesses.

CHAMBERS AND PARTNERS RECOGNIZES FAUST AND O'NEIL CANNON FOR M&A EXCELLENCE

Attorney Pete Faust and O'Neil Cannon's mergers and acquisitions team have been named by Chambers and Partners as among Wisconsin's best deal lawyers.

O'Neil Cannon is one of only seven Wisconsin law firms ranked by Chambers in the mergers and acquisition/general corporate category.

Faust, the firm's president and managing shareholder, is one of 23 Wisconsin lawyers individually honored by Chambers in the same category.

In addition to Faust, O'Neil Cannon's mergers and acquisitions team includes JB Koenings, Britany Morrison, Chad Richter, Jason Scoby, James DeJong, Dennis Hollman, Nicholas Chmurski, Michael Kennedy, Samuel Nelson, and Nancy Wilson.

Chambers is a London-based research firm that ranks the top lawyers and law firms in 185 countries. More than 200 Chambers researchers interview thousands of lawyers and clients as part of an in-depth analysis of the leading lawyers and law firms.

O'NEIL CANNON SERVES AS LEGAL ADVISOR TO I3 PRODUCT DEVELOPMENT IN ITS SALE TO HELIOS TECHNOLOGIES

O'Neil Cannon advised i3 Product Development (i3) in its recent sale to Helios Technologies (NYSE: HLIO). i3, a custom engineering services firm with over 55 engineers, specializes in electronics, mechanical, industrial, embedded, and software engineering. Its solutions are used across many sectors, including medical, off-highway, recreational and commercial marine, power sports, health and wellness, agriculture, consumer goods, industrial, sports, and fitness. i3 has business locations in both Sun Prairie and Middleton, Wisconsin.

Helios Technologies is a global leader in highly engineered motion control and electronic controls technology for diverse end markets, including construction, material handling, agriculture, energy, recreational vehicles, marine, and health and wellness.

Josef Matosevic, Helios' President and Chief Executive Officer, stated, "The acquisition of i3 Product Development will turbocharge our efforts to be the most innovative company focused

on the intersection of the hydraulics and electronics markets. This flywheel acquisition fits into our technology roadmap strategy like a glove and will continue to make us incredibly tough for our competition to follow."

The O'Neil Cannon deal team was led by Attorney Chad Richter with assistance provided by O'Neil Cannon attorneys Britany Morrison, Nick Chmurski, Erica Reib, Sam Nelson, and Michael Kennedy.

TAX AND WEALTH ADVISOR ALERT: POWERS OF APPOINTMENT – A TOOL TO ADD FLEXIBILITY INTO AN ESTATE PLAN

A power of appointment is a legal instrument that grants an individual (the "appointee") the authority to decide how a particular asset or assets will be distributed upon the death of the individual who created the power (the "donor"). The appointee can exercise this power during their lifetime or in their will, and they can direct the asset to be given to any person or entity they choose.

When selecting the type of power of appointment to include in an estate plan, the donor generally has two options: 1) a general power of appointment, or 2) a limited power of appointment.

A general power of appointment allows the appointee to direct the asset to an entity or individual of their choosing without restriction. In contrast, a limited power of appointment restricts the appointee's choices to a specific group of people or entities.

Powers of appointment can be useful in estate planning for several reasons. First, they provide flexibility in the distribution of assets. The donor can create a power of appointment that allows the appointee to redirect the asset if the original beneficiary is unable to receive it for any reason, such as if they pass away before the donor or if they disclaim their inheritance.

Second, powers of appointment can be used to address changes in circumstances that occur after the estate plan is created. For example, if the donor's family circumstances change, they can create a power of appointment that allows the appointee to redirect the asset to a different family member or to a charitable organization.

Third, powers of appointment can be used to minimize taxes. By creating a power of

appointment, the donor can direct the asset to be distributed in a way that minimizes the tax burden on their estate and the estate of the ultimate beneficiary.

In conclusion, powers of appointment can be a useful tool in estate planning. They provide flexibility, allow for changes in circumstances, and can minimize taxes. However, it is important to work with a qualified estate planning attorney to ensure that powers of appointment are created and implemented correctly to achieve the intended goals.

ATTORNEY SETH DIZARD TO RECEIVE 2023 JUDGE DALE E. IHLENFELDT BANKRUPTCY AWARD

The Eastern District of Wisconsin Bar Association announced that attorney Seth Dizard has been selected as the recipient of the 2023 Judge Dale E. Ihlenfeldt Bankruptcy Award. This honor will be presented to Dizard during the EDWBA's annual meeting May 25 at Saint Kate – The Arts Hotel.

The Judge Dale E. Ihlenfeldt Bankruptcy Award recognizes individuals who have demonstrated outstanding work in the practice of bankruptcy and insolvency law in the Eastern District of Wisconsin.

To learn more about how Dizard and O'Neil Cannon can assist you or your business, please visit our Banking, Receivership and Creditors' Rights page or contact us at 414-276-5000.