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.

EX-ATTORNEY CONVICTED OF STEALING MORE THAN $800,000 FROM ELDERLY VICTIM WITH DEMENTIA

The United States Attorney's Office from the Southern District of Ohio recently issued a press release that highlights how elderly individuals suffering from dementia may be vulnerable to financial abuse. The press release can be found here.

As the release explains, the attorney defrauded his client—an elderly woman in her 80s—over the course of seven years, between 2012 and 2019. The attorney's law license was revoked in 2015. The attorney stole the funds using a myriad of methods, including utilizing his role as the victim's power of attorney and status as a lawyer to transfer money to himself, to force the victim's signature on a revocation of a family member's separate power of attorney, and to cash out the victim's U.S. Treasury Bonds and life insurance policies. The attorney was sentenced to five years in prison and ordered to pay $882,502 in restitution.

This tragic story underscores the difficulties in flagging and investigating alleged financial abuse when the victim is not capable of protecting his or her own interests. It also rebuts the assumption that some courts and attorneys make in inheritance litigation that one only needs to look back a year or two prior to the victim's death to evaluate whether elder financial abuse of the victim may have occurred. Here, the victim suffered dementia for at least seven years.

If you or a loved one suspects that an elderly person with dementia is being taken advantage of, you should consider reporting elder abuse. There may also be options to pursue an investigation through a civil action. For example, in Wisconsin, there are routes to seek court review of an agent's conduct under a financial power of attorney.

Trevor C. Lippman is a shareholder at the law firm of O'Neil Cannon. Lippman assists clients with all matters related to inheritance disputes, including questions surrounding the creation

and administration of trusts and wills. Lippman has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. To schedule an initial consultation with Lippman, call 414.276.5000 or email him at trevor.lippman@wilaw.com.

TAX AND WEALTH ADVISOR ALERT: THE PITFALLS OF PAYABLE ON DEATH ACCOUNTS

Payable on Death (POD) accounts are offered by banks and other financial institutions to permit an account owner to designate a beneficiary to receive the funds in a savings, checking, CD, or similar account, upon the account owner's death. If there is a POD beneficiary on a joint account, the named beneficiary will receive the funds upon the death of the last account owner (see our previous article discussing the drawbacks of joint accounts here). Some financial institutions will allow the account owner to name multiple beneficiaries. A POD account is an easy way to transfer the account assets upon the account owner's death: the beneficiary or beneficiaries can withdraw the funds by simply providing a death certificate, without a probate or other court proceeding.

While POD accounts offer a streamlined transfer of assets upon death, they limit planning opportunities for the account owner and may create unnecessary complications. The designation of a POD beneficiary assumes that the beneficiary will survive the account owner, which is not always the case. If a POD beneficiary on an account dies before the account owner and the beneficiary designation has not been changed, the default in Wisconsin law provides that under certain circumstances, the descendants of that POD beneficiary will inherit the account. Consider the example of Jane who designated her daughter Sue as the POD beneficiary on her bank account. If Sue predeceases Jane, upon Jane's death, Sue's children would be entitled to Jane's bank account. Now assume that Jane designated her two children as beneficiaries: Sue and John. If Sue predeceases Jane, Sue's share will still go to her children, unless John can prove in court that Jane intended that he receive the full account. Another complication is that under Wisconsin law, if Sue predeceases Jane, and John presents the bank with Jane and Sue's death certificates, the bank can pay the full account to John instead of paying half of the account balance to Sue's children. If this sounds confusing and contradictory, it is!

Another downside is that financial institutions can interpret POD provisions differently. You may set up accounts at different financial institutions that are not handled the same way upon your death. In some cases, the financial institution's interpretations may not withstand a legal challenge.

Additionally, a POD beneficiary is not required to pay your estate expenses, including funeral costs, from the account. This could create a hardship for your family or other loved ones if the POD beneficiary refuses to pay for your funeral or other final debts.

Finally, a will or trust does not override a POD designation, so it is essential to coordinate your POD designation with your estate plan. A POD naming your revocable trust does not have the risks discussed above and is often an important step in your estate planning. But if you create an estate plan and forget to change your POD designation, your POD designation will control the disposition of the assets in that account, regardless of what your will or trust states.

When it comes to estate planning, it is crucial to be aware of the potential pitfalls associated with POD accounts. In order to ensure your accounts and other assets are disbursed according to your wishes, contact our Estate and Succession Planning Group. Additionally, if you have a dispute over the payment of POD accounts, our Inheritance Litigation Group can assist.

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.

ESTATE PLANNING ATTORNEY ERIC PETERSON JOINS O'NEIL CANNON

Attorney Eric Peterson, a 2016 graduate of Marquette University Law School, has joined O'Neil Cannon. He is a member of the firm's Estate and Succession Planning Practice Group, where he will assist clients in all matters relating to estate planning, succession planning, and trust administration. Eric's experience provides him a deep understanding of the intricacies in preserving and distributing assets for individuals and families. With a personalized approach, Eric is dedicated to helping clients navigate the complexities of estate planning and crafting comprehensive strategies that align with their goals and wishes. We are very pleased to welcome Eric 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** or contact your O'Neil Cannon attorney.

THE WILAW QUARTERLY NEWSLETTER

Newsletter Article Highlights:

- Employee Retention Credit: Maximizing COVID Relief by Supplementing PPP
- The Death of Lisa Marie Presley Leads to Brewing Trust Dispute
- Spousal Lifetime Access Trusts, A Powerful Estate Planning Tool for Complex Estates

Firm News:

- Christa Wittenberg Elected to the Firm's Board of Directors

- O’Neil Cannon Serves as Legal Advisor to Diamond Vogel, Inc. in Acquisition of Subsidiary of The Sherwin-Williams Company
- O’Neil Cannon Ranked in 2023 “Best Law Firms”

Click the image below to read more.



EMPLOYEE RETENTION CREDIT (ERC): MAXIMIZING COVID RELIEF BY SUPPLEMENTING PPP

The Paycheck Protection Program has been commonly heralded as the foremost source of financial relief for businesses during COVID-19. However, the Employee Retention Credit or “ERC,” is a lesser-known replacement or supplement for PPP that has remained largely unleveraged by employers. Enacted in March of 2020 under the CARES Act, the ERC provides qualifying employers with tax relief and potential refundable tax credits for all or a portion of the 2020 and 2021 tax years, up to $26,000 per full time employee in the best-case scenarios. Although originally created under the CARES Act, the ERC has been the subject of numerous amendments, modifications and IRS interpretations, all of which have muddied the waters for employers seeking to responsibly and accurately file for the credit. With this complex backdrop, this article will describe the general requirements and procedure for claiming the credit in addition to answering frequently asked questions regarding the same. However, any employer seeking to file for the ERC should first coordinate with its advisors, particularly its accountants and attorneys, to ensure accuracy, navigate potential pitfalls, and to avoid liabilities in applying for and claiming the credit.

How to Qualify – Eligible Employers

The threshold question for any business seeking to claim ERC is whether the business constitutes an “eligible employer,” a requirement that can be met in one of three ways. Eligible employers must fall into one of the following categories:

1. The business was fully or partially suspended due to a government order during 2020, 2021, or some period therein (“Full or Partial Suspension”);
2. The business experienced a significant decline in gross receipts during a 2020 or 2021 quarter (“Sales Testing”); or
3. The business was a “recovery startup.”

For clarity, both for-profit as well as non-profit organizations may take advantage of the ERC provided that the entity constitutes an eligible employer.

Full or Partial Suspension: For a business to constitute an eligible employer via Full or Partial Suspension, the Federal government, or a state or local government having jurisdiction over the business, must have promogulated orders or other mandatory proclamations or decrees that suspend more than a nominal portion of the business's operations. Under Full or Partial Suspension, a business will constitute an eligible employer for those periods of time that the applicable governmental orders caused the business to be fully or partial suspended.

Sales Testing: For a business to constitute an eligible employer via Sales Testing, the business must have experienced a significant decline in gross receipts for each calendar quarter in which the business is claiming the ERC.

- For 2020, a business will be deemed to experience a significant decline in gross receipts beginning as of the first 2020 calendar quarter in which the business's gross receipts measure less than 50% of gross receipts for the same calendar quarter in 2019, and this Sales Testing period will continue to run until the first calendar quarter after the business's gross receipts measure more than 80% of gross receipts for the same calendar quarter in 2019.
- For 2021, a business will be deemed to experience a significant decline in gross receipts for each calendar quarter in which the business's gross receipts measure less than 80% of gross receipts for (i) the same calendar quarter in 2019 or (ii) the immediately preceding calendar quarter in 2019. Additionally, for businesses not in existence in 2019, a business may opt to use 2020 calendar quarters as the comparative quarters for Sales Testing.

Recovery Startups: For a business to constitute an eligible employer as a recovery startup, the business must have begun operations after February 15, 2020, and have less than $1,000,000 in revenue for the applicable calendar year(s).

Extent of Employee Retention Credit – Qualified Wages

For those businesses that constitute an eligible employer, the ERC is (i) limited to a percentage of "qualified wages" paid to employees during the applicable calendar quarter, and (ii) first credited against "applicable employment taxes," with the remainder refunded to the taxpayer, all with different rules applicable in different calendar quarters.

- **2020 Q1 – Q4:**
  - For eligible employers with no more than 100 full time employees, qualified wages mean all wages paid to any W-2, full time employee, during the Full or Partial Suspension or Sales Testing Period.
  - ERC is limited to $5,000 per employee, equivalent to 50% of the qualified wages paid to each employee during the applicable Full or Partial Suspension or Sales

Testing period up to $10,000 in qualified wages per employee for the entire 2020 calendar year.

- **2021 Q1 – Q3:**
  - For eligible employers with no more than 500 full time employees, qualified wages mean all wages paid to any W-2, full time employee, during the Full or Partial Suspension or Sales Testing Period.
  - ERC is limited to $7,000 per employee per fiscal quarter, equal to $21,000 across the first three quarters of 2021, equivalent to 70% of the qualified wages paid to each employee during the applicable Full or Partial Suspension or Sales Testing period up to $10,000 in qualified wages per employee per fiscal quarter.
- **2021 Q3 – Q4:**
  - The same rules as 2021 Q1 – Q3 apply, but recovery startup businesses may claim ERC not to exceed $50,000 for quarters 2021 Q3 and 2021 Q4, provided that the recovery startup does not qualify for or claim ERC under Full or Partial Suspension or Sales Testing.
  - Additionally, for 2021 Q4, ERC is only available for businesses that constitute post recovery startups and is no longer available for businesses via Full or Partial Suspension or Sales Testing.

Coordination with Other Programs – PPP and ERC

ERC may be limited for otherwise eligible employers when the business took part in other COVID relief or tax credit programs. Although an eligible employer may claim ERC even if the business received PPP loan forgiveness, the employer's qualified wages taken into account for ERC purposes must be reduced by any qualified wages constituting "payroll costs" in connection with PPP loan forgiveness. Additionally (among several other limitations), to avoid double-dipping on wage-based tax credits, wages taken into account for various other tax credits, including the following, may not also be utilized in claiming ERC: (i) R&D tax credit; (ii) Indian Employment Credit; (iii) Active-Duty Members Credit; (iv) Work Opportunity Tax Credit; and (v) Empowerment Zone Employment Credit.

Claiming the Employee Retention Credit – Procedure and Applicable Deadlines:

Today, the method by which an eligible employer claims the ERC is by amending its Form 941 quarterly federal tax returns (via Form 941-X). Additionally, businesses will generally have to amend their income tax returns in connection with claiming the ERC as any deductions taken for qualified wages will have to be reduced to the extent of the ERC received. The credit is available for as long as a business is able to amend its original form 941s. For an eligible employer's 941s filed in connection with the 2020 fiscal year, the business will generally have until April 15, 2024, to file a 941-X, three years after the general deemed filing date for such 941s. For an eligible employers 941s filed in connection with the 2021 fiscal year, the business will generally have until April 15, 2025, to file a 941-X, three years after the general deemed filing date for such 941s. However, due to the lead time associated with filing for, being approved for and receiving any applicable refund in

connection with the ERC, as well as the general requirement that the business's applicable income tax returns be amended, businesses desiring to claim the ERC should consider taking steps to claim the credit sooner rather than later, allowing for significant lead time.

Disclaimer – Seek Legal and Accounting Advice

Given the legal and accounting complexity associated with the Employee Retention Credit, any individual or business seeking to claim the credit must reach out and coordinate with their attorneys and accountants to determine the extent to which they qualify for ERC, if at all. This article is for informational purposes only and should not be relied on as either legal or accounting advice.

For questions or further information relating to the Employee Retention Credit please contact Attorney Samuel D. Nelson or Attorney Chad J. Richter.