

# BOND

## TAX LAW

### What We Do

At Bond, our tax professionals provide clients with a full range of services involving every level of complexity and sophistication in tax law. We represent individuals, businesses and tax-exempt organizations in planning, transactional, adversarial, reporting and criminal tax matters. The diversity of our firm's large client base and our many special issue referrals have developed our expertise in non-routine areas of practice.

Income tax and estate planning have been the staples of our practice for many years, attracting clients of all kinds with special family planning needs. Our experience with succession planning for closely held businesses and their owners involves the interplay of tax, estate planning and business issues. Employee benefit counseling on tax issues represents a significant portion of our practice through involvement with both large and small client benefit plans. We provide business tax planning to optimize the benefits of the various forms of business entities and provide advice regarding the structure of taxable and tax deferred merger and acquisition transactions. Our counseling for tax-exempt organizations involves establishing and maintaining the exemption as well as unrelated business tax issues. Through our office in Albany, we also offer the means to address many New York State tax matters, particularly legislation and tax assessment controversies.

### Our Range of Services

- Business Tax Planning
- Compliance
- Corporate Reorganizations
- Counseling Closely Held Businesses
- Criminal Defense
- Employee Benefits
- Estate and Gift Tax
- Foreign Related Party Transactions
- Individual Pension and Retirement Planning
- Limited Liability Companies and Partnerships
- New York State Taxes
- Personal Tax Planning
- Real Estate Development
- S Corporations
- Tax Audits and Appeals
- Tax-Exempt Financing
- Tax-Exempt Organizations, Including Colleges and Universities
- Taxation of Cooperatives

### Business Tax Planning

Our attorneys are actively involved with tax planning for business transactions. We are well versed with the structuring, acquisition, reorganization and disposition (taxable or tax deferred) of partnerships, limited liability companies and corporations, including S corporations. Much of the transactional planning and implementation involves closely held corporations and the tax effect on the entity as well as on the individual owners. Transactions include entity sales, mergers, spin-offs, recapitalizations and liquidations for corporations, joint ventures and limited liability companies as well as redemptions,

### About Bond, Schoeneck & King

Bond serves individuals, companies and public-sector entities in a broad range of areas.

With more than 300 lawyers and 16 offices, we represent clients in manufacturing; agribusiness; commercial lending and real estate and construction; energy; health care and long term care as well as municipalities, school districts, higher education and other exempt and nonprofit organizations. We maintain 11 offices across New York; and one each in Boston; Kansas City; Naples; West Palm Beach; and Red Bank, New Jersey.

Bond is committed to understanding our clients' needs and providing comprehensive, practical, high-quality and responsive solutions. We strive to maintain the highest professional and ethical standards, and to provide leadership in community activities, pro-bono work and service to the Bar.

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reorganizations and valuation freezes of individual owner interests. We are consulted on sophisticated partnership tax law issues involving unique economic sharing arrangements. We also have substantial experience with the New York State Empire Zone and Brownfield Tax Credit programs, representing many clients seeking to maximize their tax benefits under these programs.

Business transactions include:

- Tax-free real estate exchanges
- Acquisitive and split-up business reorganizations
- Valuation freeze recapitalizations
- Shareholder agreements
- Choice of entity
- Real estate development activities

## Compliance

The preparation of income, gift and estate tax returns is a service for clients with whom we consult for planning or for estate and trust administration matters. Our attorneys provide clients generally with advice for the tax reporting of unique income or expense issues. We are consulted by businesses and review tax returns on matters involving the withholding of payroll taxes, the reporting of payments to aliens, the reporting of pension and welfare benefit plans, and reporting by tax-exempt organizations.

## Corporate Reorganizations

Corporate reorganizations consist of acquisitions, split-ups and spin-offs of a business, stock redemptions and recapitalizations all of which must be structured to address detailed Internal Revenue Service Regulations in order to achieve a desired tax result (i.e., usually tax deferral). Our understanding of accounting and financial issues helps us to achieve the intended economic and business results within the framework of those Regulations. In many acquisitions, our planning involves the preservation of tax attributes consisting of accounting methods and net operating losses.

## Counseling Closely Held Businesses

Many of our business clients are closely held by members of a family or by a few business partners. Our counseling is designed to address the interplay of those issues affecting the business and its owners. This is of particular significance for a business entity which passes through to the owners its items of income and deduction (e.g., partnerships, limited liability companies and S corporations). The choice of entity is of particular importance when forming a new business or when structuring an acquisition or reorganization transaction.

## Criminal Defense

Criminal matters for corporate and individual taxpayers involve the failure to file returns, the misstatement of taxable income and the failure to remit payroll and sales taxes. Our experience includes the substantive, procedural and practical backgrounds necessary to practice in this area.

## Employee Benefits

Our practice includes the design, implementation and administration of all forms of retirement and welfare benefit plans for large and small businesses, including national corporations, universities, hospitals and professional corporations. We provide ERISA and tax consulting services on nonqualified deferred compensation arrangements, cafeteria plans, all forms of qualified retirement plans, including 401(k) plans, multiemployer plans (including withdrawal liability and delinquent employer contribution issues), fiduciary responsibility issues and tax-sheltered annuities for employees of tax-exempt organizations.

We also engage in ERISA defense litigation involving benefit claims and issues of fiduciary responsibility.

Specific types of matters with which we have been involved include:

- Qualified and nonqualified stock option plans
- Phantom stock plans
- Employee stock ownership plans (ESOPs)
- Internal Revenue Service and Department of Labor audits
- Reporting and disclosure
- Qualified domestic relations orders (QDROs)
- Qualified medical child support orders (QMCSOs)
- Severance pay and early retirement plans
- Educational assistance plans
- Dependent care assistance plans
- Tax-sheltered annuity plans
- Golden parachute payments
- Church plans
- Prohibited transactions
- VEBA trusts
- Early retirement incentives

## Estate and Gift Tax

Estate tax planning involves the orderly transfer of assets from one generation to another at the lowest tax cost. Accomplishing these objectives requires the use of many sophisticated tax strategies such as the marital deduction bequest (both outright and in trust), generation skipping transfers, lifetime transfers (either outright or with a retained income or remainder interest), choice of residency and various forms of charitable giving. Much of our estate planning involves succession planning for the closely held business and the tax effect on the entity as well as on the individual owners. We have extensive experience representing clients in estate tax valuation audits and residency issues between New York and Florida, as well as probate litigation. We also provide advice regarding estate and income tax planning for qualified plans and Individual Retirement Accounts (IRAs). Estate planning involves more than just tax considerations, and we pride ourselves in our abilities as counselors. Our handling of family relationships in an objective and impartial manner is often important to managing the estate administration process.

Planning techniques include:

- Irrevocable life insurance trusts
- Grantor retained interest annuity and unitrusts (GRITs and GRATs)
- Self-canceling installment notes (SCINs)
- Defective grantor trusts
- Qualified personal residence trusts (QPRTs)
- Change of state residency
- Revocable living trusts
- Generation skipping trusts
- Family limited partnerships
- Charitable gifts, trusts and foundations

### Foreign Related Party Transactions

We have advised taxpayers regarding the requirements for reporting transactions with foreign related parties, including the proper pricing for services and the transfer of deliverables and intangibles, the disclosure of information upon a tax audit and the possible interplay of United States and foreign country tax treaties.

### Individual Pension and Retirement Planning

Planning for the payment of retirement benefits from qualified pension plans, 403(b) plans, non-qualified plans and IRAs requires an understanding of ERISA, the qualification rules under the Internal Revenue Code, the age 70 minimum distribution rules, and the income tax ramifications. We combine this counseling with estate and financial planning to reduce estate tax and provide for maximum income tax deferral.

### Limited Liability Companies and Partnerships

The limited liability company is a relatively new choice of business entity which provides the combination of flexible management, pass-through of taxable income, limited liability and a statutory governance format. We have extensive experience with the partnership tax rules which apply to partnerships (formed as joint ventures, general and limited partnerships) and to limited liability companies, including the intricate income and loss allocation and tax basis rules applicable to nonrecourse financing, and the unique application of the family partnership as part of an estate plan.

### New York State Taxes

We handle various types of New York State tax matters for our clients and for referred clients on single issue assignments. Through our Albany Office, our attorneys routinely meet with the Department of Taxation and Finance for the resolution of tax audits and assessments.

Tax issues include:

- Sales tax
- Change of state residency
- Truck mileage tax
- Highway use tax

- Gasoline and petroleum taxes
- Business franchise tax
- Credits for business investment
- Tax on real property transfers
- Empire Zone tax credits
- Brownfield tax credits

### Personal Tax Planning

Advising individual taxpayers is a service designed to build retirement assets through tax-deferred benefit plans, and to preserve accumulated wealth by minimizing income and estate tax costs through the effective use of tax strategies. Income tax planning has changed considerably over the last 15 years. The emphasis today is on tax deferral of earnings and investment income, and acceleration or the proper timing of tax deductions. The deferral of income is accomplished through the use of deferred compensation arrangements and qualified retirement plans. For taxpayers with real estate or with tax sheltered investments, we plan the matching of passive income and losses. We consult on non-routine matters, including divorce property settlements and qualified domestic relations orders; dispositions of interests in partnerships, limited liability companies and S corporations; tax planning for withdrawals from qualified retirement plans and IRAs; timing for the recognition of accrual income and deductions; and constructive receipt income issues.

### Real Estate Development

We regularly counsel real estate developers in the structuring of partnerships and limited liability companies for development projects, planning and implementing tax-deferred Section 1031 exchange transactions including reverse exchanges, build-to-suit exchanges and partner cash-outs, and many other tax matters regularly encountered in real estate development projects. We also help our clients maximize economic development incentives such as Empire Zone and Brownfield tax credits and Industrial Development Agency payment-in-lieu-of-tax (PILOT) agreements.

### S Corporations

The S corporation continues to be a viable choice of entity in many situations, even though the limited liability company has replaced it in many transactions. We advise clients regarding the making and revocation of the S corporation election, the requirements for qualification, and the rules involving passive income, accumulated adjustments accounts, built-in-gain and tax basis.

### Tax Audits and Appeals

We frequently participate in Federal and New York State administrative proceedings to resolve tax assessment disputes. These activities include the drafting of requests for federal Private Letter Rulings and New York Advisory Opinions; advocacy proceedings with examining tax auditors with federal appellate conferees and with New York State conciliation conferees; actions in Federal Tax Court and the New York Tax Tribunal; and appearances before assessors,

boards of assessment, judicial hearing officers and courts for the review of real property tax assessments.

### Tax-Exempt Financing

Acting as bond counsel, underwriter's counsel, or borrower's counsel for all types of tax-exempt financing transactions involves structuring the transaction, and in particular dealing with the issues of eligibility for tax-exempt financing and compliance with arbitrage limitations. In addition, we are bond counsel for "taxable" bond issues which are exempt from sales and property taxes.

Bond financings include:

- General obligation bonds
- Revenue bonds
- Private activity bonds
- 501(c)(3) bonds
- Small issue bonds
- Solid waste disposal facilities
- Airport facilities
- Housing facilities
- Oil and gas facilities
- Power and co-generation facilities
- Industrial and manufacturing facilities

### Tax-Exempt Organizations

Consultations with both large and small tax-exempt organizations involve the qualification and maintenance of tax-exempt status. We handle all types of tax matters that confront tax-exempt organizations, including unrelated business taxable income issues, private foundation matters, scholarship and remitted tuition issues, deferred compensation arrangements, sales tax and real property tax exemption questions. We also advise charities and individuals regarding the structuring of charitable gifts or bequests of appreciated property, and split-gifts with a retained income or remainder interest involving charitable lead or remainder trusts and charitable annuities.

Specifically, with regard to Colleges and Universities, we regularly provide counsel on the following issues:

- Compliance with not-for-profit tax exemption requirements under Federal and State tax laws
- State real property tax-exemption laws
- Unrelated business income tax matters, including issues relating to internet sales, affinity credit cards, bookstore sales, sponsorship acknowledgements, royalties, and many other activities relevant to the unrelated business income tax

- Private inurement and intermediate sanction issues
- Joint ventures with for-profit entities
- Structuring ancillary activities using subsidiaries and other affiliates, including single member limited liability companies
- Qualified tuition programs under Internal Revenue Code Section 529
- Scholarship and remitted tuition issues
- Employment tax and income tax withholding requirements for non-resident alien and other employees
- Sales tax issues, including sales tax on transactions involving affiliated entities
- Structuring charitable gifts and bequests under the tax law
- Tax and financial issues relating to endowments and the return on them
- Real property tax exemption matters, including issues relating to potential non-exempt use of college and university property, and real property valuation and assessment controversies.

### Taxation of Cooperatives

Cooperative entities enjoy unique taxation rules for the pass-through of taxable income to its members. Applying these rules requires an understanding of the cooperative method of doing business and the distinctions between patronage and nonpatronage income. We have had the opportunity to be involved with several cooperative entity transactions.

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