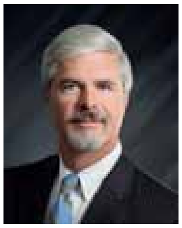
HANCOCK ESTABROOK, LLP

COUNSELORS AT LAW

NEWS

MAY 2012

FORMING A CORPORATION OR AN LLC MAY NOT PROTECT YOU



R. JOHN CLARK

Most business people know that when you start a business, you are well-advised to do so through a separate legal entity, typically a corporation or a limited liability company (LLC), in order to protect yourself from personal liability. Even conducting business through a corporation or LLC, however, may not protect you from all claims. Under certain circumstances, the safeguards of a separate entity may be disregarded and claims asserted directly against the entity's principals.

Seeking recovery directly from the officers or owners of an entity rather than the entity itself is called piercing the corporate veil. While courts are generally reluctant to pierce a corporate veil, since it may discourage individuals from starting businesses and hiring employees, they will apply the doctrine to correct a wrong.

Under what circumstances may corporate principals be held personally liable? Generally, that depends on the nature of the claim and the actions that were taken—or not taken—by the principals.

For example, personal liability may be imposed for unpaid payroll withholding taxes or sales tax. An entity with employees is required to withhold taxes from the employees' wages and forward them to the government. Entities that sell products are required to charge, collect and remit sales tax. The failure to collect and pay these obligations may give rise to personal liability on the part of the persons responsible for overseeing the collection efforts.

New York's Lien Law imposes similar obligations, impressing a trust on money paid by an owner to a contractor under some circumstances. If the contractor fails to use the money for its intended purpose—to satisfy subcontractor claims—the contractors' principals may be held personally liable.

New York's Business Corporation Law permits personal liability to be imposed on the 10 largest shareholders of certain corporations for wages or salaries owed to its employees.

Officers or directors of a business may be held liable for conduct that is found to be wrongful or fraudulent even if it isn't illegal.

Conducting business in the corporate form is viewed as a privilege, and the abuse of that privilege can result in personal liability.

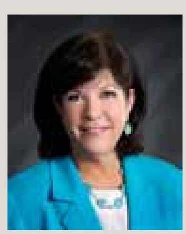
When determining whether the privilege has been abused, courts will consider whether the owners of the corporation have met the required corporate formalities. Have they held regular meetings of shareholders and directors and kept minutes of the meetings? Is the corporation adequately capitalized? Have its assets been commingled with those of other entities or individuals or made available for the personal use of its officers or directors? Has there been fraud or wrongdoing perpetrated through the business? This is by no means a comprehensive list.

It is still advisable to form a separate legal entity through which to operate a business. You should be aware, however, that doing so is not an absolute guarantee of freedom from personal liability.

R. John Clark is a partner in the Banking & Finance Practice and the leader of the Bankruptcy & Creditors' Rights Practice.

Please contact him at rjclark@hancocklaw.com if you are interested in learning more about this topic.

MESSAGE FROM OUR MANAGING PARTNER



JANET CALLAHAN

As beautiful spring weather arrives in Central New York, we are pleased to introduce our Hancock Estabrook newsletter, a source of information for our clients and contacts. In these newsletters, we will bring you timely and useful articles on various legal issues, stripped of legalese and hopefully inspiring you to further thought and action. We will also include announcements about what our lawyers and our firm are doing that may be of interest. We hope you will find our newsletters helpful, and that you feel free to contact us with questions about the topics presented or for whatever legal advice you may need.

YOUR BUSINESS AND YOUR FAMILY: 2012 OPPORTUNITIES

MARION HANCOCK FISH

For the next eight months, until December 31, 2012, family business owners have the opportunity to transfer ownership to younger generations at potentially significant tax savings.

The reason? The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 features a gift tax exemption or credit equivalent of $5 million, doubling the amount to $10 million for married couples. By utilizing these gift tax credits, ownership in a family business may be passed, fully or partially, to younger family members.

Transferring wealth during lifetime, whether the family business or other assets, reduces overall transfer tax costs because the gifted asset is valued for tax purposes as of the date of the gift. If you anticipate that your wealth will appreciate over time, transferring these assets at today's lower value can mean a significant reduction in transfer taxes. Put another way, the appreciation in value of the transferred wealth from the time of the gift until your death escapes taxation.

As illustrated in the adjacent chart, this gift tax credit is at an all-time high. However, like the earlier tax law which phased in the full repeal of gift and estate tax, the 2010 Act includes an automatic sunset provision. This means that unless Congress acts again, the gift tax credit will automatically fall back to $1 million as of January 1, 2013.

Year	Gift Tax Credit Amount	Max. Gift Tax Rate	Estate Tax Credit Amount	Max. Estate Tax Credit Amount
2001	$675,000	55%	$675,000	55%
2002	$1 million	50%	$1 million	50%
2003	$1 million	49%	$1 million	49%
2004	$1 million	48%	$1.5 million	48%
2005	$1 million	47%	$2 million	47%
2006	$1 million	46%	$2 million	46%
2007	$1 million	45%	$2 million	45%
2008	$1 million	45%	$2 million	45%
2009	$3.5 million	45%	$3.5 million	45%
2010	Temporary Repeal – Sunset on December 31, 2010			
2011	$5 million	35%	$5 million	35%
2012	$5.12 million	35%	$5.12 million	35%
2013*	$1 million	35%	$1 million	35%

While we cannot predict the future, it is widely believed that the gift tax credit will at least be pared down to $3.5 million or $2 million or somewhere in between. In fact, as you can see from the chart, this is likely to be the first time we have experienced a reduction in tax credits. This year, the tax planner's motto is *carpe diem*, and rightly so.

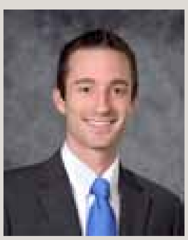
Is 2012 the year for you to take action?

*Unless Congress acts, the 2010 Act will sunset in 2013 and the credits will fall back to 2002 levels.

Marion Hancock Fish is a partner in the Trusts & Estates Practice. Please contact her at mfish@hancocklaw.com if you are interested in learning more about this topic.

ANNOUNCEMENTS

JAIME J. HUNSICKER

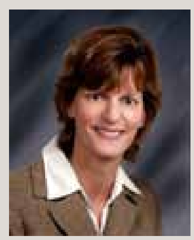


DANIEL K. MANNION

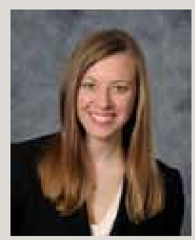
ROBERT J. THORPE

Our newest attorneys, Jaime J. Hunsicker, Daniel K. Mannion and Robert J. Thorpe, were recently admitted to practice in New York. Ms. Hunsicker is a graduate of Syracuse University College of Law. Mr. Mannion is a graduate of University at Buffalo Law School. Mr. Thorpe is a graduate of Tulane University Law School.

MARY C. KING



MELINDA B. BOWE



HOLLY K. AUSTIN

Mary C. King, Melinda B. Bowe and Holly K. Austin were recently elected as partners. Ms. King focuses on estate planning, trust and estate administration, estate and gift taxation, elder law, guardianships and special needs planning. Ms. King is admitted in both New York and Florida. Ms. Bowe represents employers in all aspects of labor and employment law, including serving as chief spokesperson in collective bargaining, contract administration and grievance arbitration. Ms. Austin focuses her practice on all aspects of environmental law, including permitting; state and federal environmental, health and safety regulatory compliance and enforcement; remediation; and zoning and land use.