

Winter 2009

In Uncertain Times, A Guiding Hand

A Message from David P. Rosenblatt,
Managing Partner

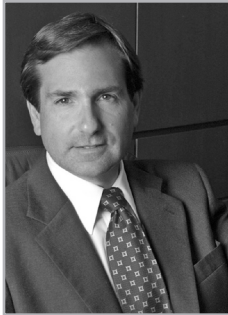
Dear Friends and Colleagues,

2008 was a tumultuous year. The global economic turmoil has affected virtually all of us and has created a malaise and uneasiness about the future. Decisions are put on hold, plans are revised, and everyone is waiting to see what the new year will bring. It is a time for planning carefully and yet strategically, for looking at opportunities and risks, and making careful judgments and plans. At Burns & Levinson we are optimistic that we will be able to assist our clients through the challenges they face. Our history and tradition of treating our clients as if their businesses and individual issues were our own enables us to provide a unique and supportive guiding hand as we go through troubled times.

We have added depth and expertise in various practice areas and will continue to do so. During the past year, Burns & Levinson has helped clients with major patent and commercial litigation, has guided many companies and individuals with employment concerns, and continued to assist our corporate and real estate clients as they address economic opportunities. Our Private Client Group has supported our clients through the personal challenges that are often exacerbated by a weakened economy. Many businesses and individuals are still thriving, even in these tough times. Simply put, Burns & Levinson's strong mid-size structure and personal attention allows our seasoned attorneys to work alongside one another to obtain the best legal results for our clients.

Things have been changing for us around

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AMAZING CLIENTS®



DIFFERENT TASTES

Jack Milan, Owner Catering to Perfection

Tucked inside a double brownstone building in Chelsea is one of the most critically acclaimed catering operations in North America.

Jack Milan's "Different Tastes" catering company (www.differenttastes.com) has captured a remarkable number of awards based on recognition by industry peers. Not only has Milan's operation won more CATIE awards (Catered Arts Through Innovative Excellence) than any caterer in North America, but it has twice been named "National Caterer of the Year" by *Catering Magazine* and, in 2006, was named "International Catering Company of the Year" by *Event Solutions* magazine.

The little catering powerhouse has remained purposefully small compared to most competitors in order to maintain consistency and quality for its clientele of corporate and social event sponsors and wedding planners. "We want unique and beautiful presentations and consistency of taste every time," says Milan, the former exclusive caterer to the Wang Center for 14 years. "What distinguishes us is our focus on simple elegance," he adds, noting that "we avoid presentations of vertical piles [of food] and we don't make things that are overly spiced or sauced."

Milan instead aims for clean and uncluttered presentations and tastes. "You should be able to taste the individual ingredients. If you mix too many colors on a palate, you always get brown, and the same principle applies to your food," he explains.

Thus, a Different Tastes meal consists of unique courses offered for a memorable taste experience. For example, at MIT's Capital Campaign gala, Milan served: crab cakes with remoulade sauce; oysters with mignonette, lemon and sake-lime sauce; wild mushroom strudel with an herbed cream

sauce; pan-seared swordfish with sesame-sprinkled herbs, tenderloin steak on Parmesan basil polenta; chocolate truffles and cranberry/pear tartlets for dessert.

The visual presentation is also memorable, featuring creations such as edible soup spoons or mashed potatoes made to look like pears. "Our goal is to make conversation pieces for every event, and the challenge is continuing to top our past performances, which are eventually imitated by others," says Milan.

His company also focuses on "consistency of service," so he trains staff with the use of a 40-page manual setting specific standards for every part of the service experience, from the proper setting of tables to the proper methods of serving food and drink. "We also stress friendly service and willingness to accommodate people with specific requests," Milan says. "It is attention to the smallest details that makes an experience," he asserts.

The eldest of seven boys, Milan learned how to "take charge" at an early age. "I always knew how things should be done and how I wanted them done," he recalls, noting that his parents encouraged him to take chances and to listen to the beat of his own drum.

So it was hardly a surprise to them when Jack turned his back on a successful career as a data processing consultant more than 30 years ago to build his own business based on his passion for great food. Milan explains that it was not a willy-nilly decision, noting that he had been hosting some of Chicago's best cooks at private dinner parties for some

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New Requirements for Employer Contributions under the Massachusetts Health Reform

by Evelyn A. Haralampu

Effective October 1, 2008, new, more stringent regulations were issued by the Division of Healthcare Financing and Policy that prescribe new rules as to how employers may now meet the contribution requirements under the Massachusetts Health Reform.

An employer with 11 or more full-time equivalent employees who work in Massachusetts must meet certain requirements regarding group health insurance covering its Massachusetts employees. Beginning on January 1, 2009, employers with more than 50 full-time equivalent workers in Massachusetts have a greater burden for providing health insurance for their employees.

Nondiscriminatory Employer Contributions

Under the insurance non-discrimination rules, an employer must make available the same level of co-payments to all similarly situated, full-time employees for whom health insurance is provided under a group policy issued or delivered in Massachusetts. For example, an employer would be required to offer the same premium co-payment for family coverage for all of its full-time employees with families. Failure to do so would affect the employer's ability to obtain group coverage from an insurer authorized to issue or deliver group medical insurance in Massachusetts, because the carrier is prohibited from selling insurance to a Massachusetts employer with discriminatory co-pays.

Massachusetts also regulates the amount that an employer must contribute toward an employee's health coverage. An employer with 11 or more full-time equivalent employees working in Massachusetts must either make a "fair and reasonable" premium contribution for its employees or pay the annual "fair share contribution" of \$295 per employee. Whether a premium contribution is fair and reasonable is determined by two alternative tests (primary and secondary). Beginning on January 1, 2009 an employer with more than 50 full-time equivalent employees must cover at least 35 percent

of its full-time employees and pay certain premiums or enroll at least 75 percent of its full-time employees in healthcare.

Employees who work 35 or more hours per week are counted as full-time under the Massachusetts Health Reform law. An employee who works both full-time and part-time during a calendar quarter is treated as full-time if he or she worked at least 35 hours per week during a majority of the weeks in the quarter. Thus, an employee who works 10 weeks full-time, and two weeks part-time is counted as a full-time employee. If the employee is otherwise treated as full-time and eligible for the employer's health plan then that employee is counted as well. For example, if an employer's health plan treats employees who work 30 hours per week as full-time, those employees would be treated as full-time for purposes of the Health Reform tests.

If the employee works in Massachusetts but resides elsewhere, he or she is still counted for applying the fair and reasonable premium contribution tests. Employees working a majority of their time under 35 hours per week are excluded.

Primary Test (25 Percent Coverage)

Prior to the recently enacted changes, all employers have been required to meet either the primary or secondary test for healthcare. This alternative testing continues to apply for employers with 50 or fewer employees in Massachusetts. In order to meet the primary test, an employer's plan must generally cover at least 25 percent of its countable, full-time employees each calendar quarter and the employer must make some (undefined) contribution toward that coverage. At least 25 percent of the employer's full-time employees must actually be covered under a medical plan for this rule to apply. No particular level or type of coverage is required, so a stripped-down health plan could qualify for purposes of this test. Seasonal, temporary and part-time employees, as defined above, are excluded from the coverage test.

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Secondary Test (33 Percent Contribution)

Under the secondary test, the employer must offer to pay at least one third of the premium cost of the group health coverage offered to all of its full-time employees. For purposes of applying the secondary test, employers may exclude employees who have not worked 90 days since their date of hire and employees who did not perform service for 12 consecutive weeks.

Special Rules Effective January 1, 2009

Effective January 1, 2009, any employer with 50 or fewer full-time equivalent employees in Massachusetts must meet either the primary or secondary test. Effective January 1, 2009, an employer with more than 50 full-time equivalent employees must meet both the primary and secondary test or enroll at least 75 percent of its full-time employees in its healthcare plan.

Free-Rider Surcharge

Failure to meet one of the fair and reasonable premium contribution tests or new rules beginning on January 1, 2009 subjects the employer to a \$295 annual tax per employee. It could also subject the employer to a free-rider surcharge if the employer does not have a \$125 cafeteria plan and employees obtain subsidized care from the state. A \$125 plan allows employees to pay health insurance premiums on a pre-tax basis through payroll deductions.

An employer with more than 10 employees that does not pass a qualifying test and does not adopt and maintain a \$125 plan is subject to a free-rider surcharge, if any of its employees received state funded health services that total at least \$50,000 in a fiscal year. If an employer adopts and maintains a \$125 plan that covers all of its employees and meets the Massachusetts rules, then the

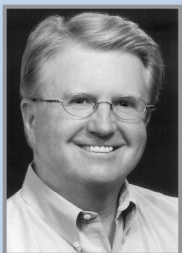
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Different Tastes –

Catering to Perfection

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JACK MILAN, Owner of
Different Tastes

time while he was attending graduate school, soliciting their advice and asking each of them to grade him on presentation, creativity and consistency from first taste to last.

After a period of soul-searching, Milan finally decided

it was time to open his first restaurants on Newbury Street and in the Galleria Mall, known as the “Stockpot.” It offered five special soups that changed daily, a fresh salad bar and desserts. The restaurants were a success, but it was not long before Milan was looking for a bigger challenge. So, he and his business partner sold them, and he sought to perfect his training under the tutelage of Odette Bery, a renowned caterer and owner of the once fashionable Beacon Hill restaurant “Another Season.” There, he learned the classic French techniques that form the basis of culinary art, doing

everything from kitchen prep work to making sauces and eventually running the catering operations.

“I felt so loyal that I could never have gone into competition with Odette, but when she decided to give up the catering business, that is when I got into it [in 1981],” Milan recalls, noting that he first targeted corporate clients for their event work.

“My business training really helped me in those early years,” says the chef who holds a Master’s in Business Administration for finance. “I’ve known a lot of food people who were very artistic but failed because they were not capable of watching the bottom line,” Milan adds.

He suggests that attention to legal issues, like attention to business principles, is also essential to survival and success. “Burns & Levinson keeps me legal. They do all my filings for things like permits, licenses and trademarks, and they help protect my business from trouble,” says Milan, adding that he has trusted Robert D. Friedman, partner, as his principle counselor for more than 25 years.

“Bob pays attention to details and he is a perfectionist, just like me,” Milan says. “But he also calls me just to talk, and he shows a real interest in me and in my business,” the long-time caterer adds.

He also suggests that having a reliable and consistent legal team behind him allows

him to focus on his own business. “It is like the relationship I have with a client who says to me, ‘I never worry about turning things over to you because I trust you to take care of the details and make everything come out right.’”

Milan says that Burns & Levinson provides him with the same kind of first-class service he provides to his own customers. “My company is not large, but I always feel prioritized and valued as a client, and I always get the feeling that my success is their success,” says Milan.

In fact, Milan’s success has been so consistent that he has constantly sought out new and greater challenges. He has diversified his offerings to include floral arrangements, music, entertainment, and other key elements of an event experience. Now, he’s working on “Edibles by Jack” which consist of edible hors d’oeuvres spoons, a line of gluten-free muffins and brownies, and picnic lunches of elegant simplicity.

For those who think they cannot afford the best during tough economic times, Milan has advice: “There are creative ways to reduce costs without reducing quality, and a great caterer will work within your budget to achieve your objectives in different ways, just as a great lawyer will find more than one way to get a result.”

*This article was contributed by
John Cunningham, freelance writer/editor*

2009 Alters the Landscape for Estates

by Clifford R. Cohen

On January 1, 2009 several important changes to the U.S. transfer tax laws (which govern estate, gift and generation-skipping transfer taxes) took effect. Many individuals should reconsider their estate plans as a result.

One such change affects the amount of property that, upon death, may be passed free of federal estate tax. Under former U.S. law, the value of property able to pass estate-tax-free to persons other than a spouse was capped at \$2,000,000. This amount has been increased, for deaths occurring in calendar year 2009, to \$3,500,000. However, this amount is decreased by the total value of lifetime taxable gifts, which are, generally, non-deductible gifts in excess of the annual exclusion amount (discussed below).

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The lifetime limit for taxable gifts which can be made free of gift tax remains at \$1,000,000. This means that, although a person may have exhausted his or her ability to make tax-free gifts above the annual exclusion amount, he or she can still transmit at death an additional \$2,500,000 of assets by will, trust, beneficiary designation or other means of succession without incurring a federal estate tax. For married couples, combining this with the unlimited marital deduction means that all federal transfer tax may be postponed until the death of the second spouse. Then, if the estate plan and the

assets are structured correctly, or can be restructured post-mortem with the aid of an attorney, the tax will only be imposed on the couple’s combined assets in excess of the first \$7,000,000 of value.

There is a catch, however, for residents of Massachusetts and Rhode Island. Both states have a state estate tax, and the exemption is capped, at \$1,000,000 per person for Massachusetts, and at \$675,000 per person for Rhode Island. Thus, a significant disparity exists between the state’s estate tax and the federal estate tax. While both states have the unlimited marital deduction, married couples should take care that their joint estates are analyzed by an attorney to see if both federal and state estate tax can and should be postponed until the second death, which can be accomplished by use of a special trust structure. Alternatively, it may make more economic sense to pay some “first to die” state estate tax. Single individuals should consult an attorney to determine if additional lifetime gifting

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makes sense since neither Massachusetts nor Rhode Island has a gift tax.

For 2009, the amount of the annual exclusion applicable to gifts has increased to \$13,000. Therefore, each individual can give this amount to an unlimited number of persons in each calendar year without any use of the lifetime gift tax exemption. Married couples can choose to “split” gifts—if one spouse gives a donee \$26,000 or less, the gift can be claimed on a gift tax return as made equally by both spouses, thus falling within the exclusion amount. Annual exclusion gifts can be a very efficient way, over time, to reduce the value of an individual’s taxable estate. For non-cash gifts, this technique can be combined with discounts used by appraisers to determine the value of fractional or minority interests of certain assets, in order to pack more value into the gifts.

Another important change is that the generation-skipping transfer (GST) tax exemption—the value of tax-free assets which can be given directly to

grandchildren or lower generations or placed in trust for the lifetime of the next generation—has also been increased to \$3,500,000 per decedent. For plans which establish trusts based on the exemption amount, it is worth reviewing whether this change distorts the intent of the plan. Such plans, signed when the exemption was lower, may have an undesired result now that this amount has been significantly increased.

The federal changes noted above are in effect for 2009. However, Congress is widely expected to act this year to alter the transfer tax laws for years 2010 and going forward. Under current law, a one-year repeal of the estate and generation-skipping tax is scheduled to take effect for 2010. While Congress’ actions are unpredictable, given current economic circumstances, it is probable that this law will not take effect.

On the subject of the economy, it is also important to note that values and interest rates may be at or near the lowest they will be for some time. This currently provides a very good opportunity to make gifts at low value and intra-family loans at advantageous rates.

New Requirements for Employer Contributions under the Massachusetts Health Reform

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employer is not subject to the free rider surcharge. The free rider surcharge, as so revised, went into effect on July 1, 2007. Prior to the revision of the regulation, a greater number of employers were exposed to the surcharge.

Other Penalties

If an employer fails to pay the fair share contribution due under Massachusetts law, the overdue amount is assessed a penalty of 12 percent per annum from the date due until the date paid. In addition, any matter may be referred to the attorney general if the employer has

evaded any penalty or contribution due, or has made any false statement to avoid complying with the law.

Conclusion

These rules are peculiar to Massachusetts and, so far, have not been challenged in the courts. Employers without employees working in Massachusetts are not subject to these rules. Unless other state insurance laws apply, an employer doing business outside of Massachusetts is subject only to federal law which imposes neither non-discrimination nor contribution requirements for group health insurance offered by employers. As the law regarding healthcare develops at both the state and federal levels, more changes may be in store for employers.

Note on Tax Services: This is a reminder that Burns & Levinson offers **Income Tax Return Preparation Services** for individuals, trustees, executors and other fiduciaries, both private and charitable. Howard E. Schwartz, Tax Manager in our Private Client Group,

supervises this aspect of our practice. Howard is also available for trust and estate accounting services. Please call your Private Client Group attorney or call Howard directly at 617.345.3575 to see if we can make your tax season an easier one.

Focus

Focus is published three times a year by Burns & Levinson LLP for clients and friends of the firm. This newsletter provides general information and does not constitute legal advice.

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our offices as well. We have renewed our lease at 125 Summer Street through 2020, and have begun reshaping some of the walls at our Boston headquarters, building a new conference center and expanding from 87,000 square feet to 103,000 square feet. We are currently in the third phase of an eight-phase renovation project which includes many “green” practices to help make our facilities be more efficient and sustainable. Visitors and clients to our office will note a redesigned and spacious lobby, new ergonomic conference rooms, updated equipment and an overall sense of brightness and vitality. We have also extended our lease at our Providence office, confident that the future will bring better things to Rhode Island.

While recognizing potential tough times ahead, we maintain our pledge to provide amazing client service and outstanding value, to sustain our commitment to top quality legal services while building relationships with and for our clients. As always, we are your partner in your business and personal endeavors.

Whatever the future holds, know that Burns & Levinson will be there to guide you. Best wishes for a happy and healthy 2009.



David P. Rosenblatt

