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Copywrite provides current developments in entertainment and sports law, section news and other information of interest to section members.

The symbol of Atlanta, the Phoenix rising from the ashes, the *Copywrite* is reborn from its ashes at the request of the section members. The intent of the *Copywrite* is to provide members of the State Bar and the Entertainment and Sports Law Section with information related to our specialty. We hope that you find it interesting, entertaining and educating. We request that all members of the section submit articles as contributions from our members are invaluable. From unique experiences in our specialty to interesting tidbits of news that will keep the section current, the Board eagerly awaits your input. We hope you enjoy the newsletter and look forward to an exciting and prosperous 2009.

The Board of the Entertainment and Sports Law Section of Georgia.

OPENING OFFER

As entertainment lawyers, our practices and clients are experiencing the uncertainty of a weak economy and an unstable entertainment industry. For example, the market for recorded music has been in a tailspin as a result of declining sales, changing media and delivery formats, and the expanding availability of free content, both legal and illegal. Similarly, independent film production has been impacted by the unavailability of credit and the tightening of investment capital. Nevertheless, while this is a time of great uncertainty, it also holds the potential for great opportunity.

Now is the time for our clients to hone, refine and re-test business models, creative ideas, artistic talent and financing strategies in order to better prepare themselves for success. As attorneys, it is incumbent upon us to aid our clients in making good decisions that will help them weather the current storm and be poised for the opportunities that are on the horizon. Whether we are advising them to perfect their craft, build and exploit their brands or identify new markets for their goods and services, we should encourage our clients to invest in themselves and plan for their own success.

However, as we counsel and advise our clients, we cannot forget about our own businesses. Many of our law practices may have been affected as well by the downturn in both the economy and the entertainment industry. The challenges of building and sustaining an entertainment practice in this environment are evident. Nevertheless, we each have the opportunity to revisit and refine our daily practices, our current strategies and our long-term goals and objectives. Look closely at how you manage your law practice and be prepared to make changes that will help you survive and thrive in this current market and beyond.

J Martin Lett
Chair – Entertainment and Sports Law Section
State Bar of Georgia

FUTURE THINKING

ESTATE PLANNING & ASSET PROTECTION FOR PROFESSIONAL ATHLETES AND ENTERTAINERS

BY LATRESA D. MCLAWHORN

Personal Possessions. Property Ownership. Royalties. Investment and Business Assets. Consider all the things you own and the likelihood that you will accumulate possessions as you get older. Who will take over ownership when the inevitable happens? How can you help empower your clients to thoughtfully organize their assets in a manner that allows them to control who gets what and the manner in which the eventual recipient may use and enjoy those assets? Strategic estate planning provides individuals with such control.

Estate planning is a means of providing control over the distribution of property one accumulates during his or her lifetime. Everyone has some form of estate plan, either the one he or she creates and controls or the one the government creates and controls based on state intestate statutes, which may or may not align with one's personal wishes. As a result, no matter how large or small the estate, strategic estate planning should be part of every adult's overall financial plan to maximize control over hard-earned assets and establish the individual legacy and family security one desires.

A strategic estate plan is especially critical for entertainers and professional athletes because of their unique family responsibilities, assets and tax exposure. Unfortunately, we have all heard tragic stories about people, especially entertainers and professional athletes, who die intestate–leaving a messy estate for family members and loved ones to fight over. Often the estates of many athletes and entertainers are liable for significant estate taxes due to improper planning to strategically remove assets from the estate during one's lifetime. It is also common for entertainers and athletes to live and own property in multiple states. As a result, an estate must give special consideration to the applicable estate administration, probate, privacy, tax and real property laws and procedures for each state. Special estate planning consideration is required for intellectual property valuations, such as copyrights; how those valuations affect estate taxes; and the estate administration of that intellectual property. The commonality of blended families, responsibility for various loved ones, tax liability and special property ownership considerations make a clear plan of distribution critical. Accordingly, a little planning now can minimize taxes, jurisdictional concerns and heartache for family members and loved ones later.

This article highlights the basic estate planning tools that every adult should employ regardless of age or net worth. It will also briefly discuss advanced estate planning tools that can address issues that are unique to professional athletes and entertainers. It will also briefly discuss federal and state estate and gift taxes. Finally, this article will discuss asset protection tools that may minimize exposure to lawsuits, which professional athletes and entertainers may be uniquely exposed to due to their celebrity, net worth or business interests. Please note that this article is an excerpt from a larger piece as a complete analysis is

ADVANCED ESTATE PLANNING TECHNIQUES ARE REQUIRED FOR TAXABLE ESTATES AND ESTATES THAT CONTAIN ASSETS THAT REQUIRE SPECIAL TRANSFER ADMINISTRATION, SUCH AS INTELLECTUAL PROPERTY.

impossible in the space available. Please contact the author directly for more detailed information.

Introduction to Estate Planning

Every adult's estate plan should include a last will and testament, durable healthcare power of attorney, durable financial power of attorney and a living will or advanced medical directive. A last will and testament is the vehicle that usually provides instructions regarding the allocation of property and personal possessions after death, whereas a durable healthcare power of attorney, durable financial power of attorney and living will or advanced medical directive governs one's affairs during one's lifetime if he or she is unable to do so due to short- or long-term incapacity or disability. Every adult should include these basic estate planning documents in his or her overall financial plan to distribute property and personal possessions according to his or her personal wishes. Moreover, failure to execute these documents, especially durable powers of attorney and a living will or advanced medical directive, could have a disastrous effect on loved ones who will be left to ascertain the incapacitated individual's intentions regarding healthcare and financial matters. Proper powers of attorney and a living will are particularly important for non-married individuals because a person is not immediately designated to make such decisions. Accordingly, every adult should have a basic estate plan. But professional athletes and entertainers with unique or more substantial estates require more advanced estate planning.

Advanced Estate Planning

Advanced estate planning techniques are required for taxable estates and estates that contain assets that require special transfer administration, such as intellectual property. Advanced estate planning is particularly useful for professional athletes because many obtain the bulk of their wealth during the first few years of their careers and, as a result, have unique retirement concerns. This section will focus on the use of trusts within an advanced estate plan and the estate planning requirements for some intellectual property assets.

Trusts

A will is a vehicle used to provide instructions to distribute property and possessions based on one's personal wishes, but a trust should be used to pass substantial financial assets or assets upon which one would like to place very specific transfer restrictions. Trusts combine investment and possible tax-saving opportunities to provide for heirs during and after death while ensuring that personal assets will be used exactly as the grantor intended. Moreover, trusts can be used to ensure that heirs are not forced to liquidate assets to pay estate taxes. Trust may be established to provide a multitude of benefits for both the grantor and his or her beneficiaries.

There are many types of trusts which provide benefits ranging from trusts for children to trusts that provide annuity payments to increase the growth rate of trust assets; however, many of the primary benefits of a trust deal with the reestablishment of legal ownership of assets. Many of the tax benefits of a trust arrangement come from the fact that a trust separates the legal ownership of an asset from the benefit of that asset. Where the separation of ownership and benefit is recognized by the Internal Revenue Service ("IRS") and courts, trust assets are not calculated within the grantor's estate at death and estate taxes are not levied on those assets. Additionally, trust assets can be used for the benefit of trust beneficiaries, while shielding trust assets from the potential creditors of those beneficiaries. Within limits, trusts can also help achieve several important goals: management of personal assets in the event of disability, management of assets for children or family upon the grantor's death, avoidance of probate in multiple jurisdictions, avoidance of creditor's claims, privacy, minimization of estate and other transfer taxes, protection for loved ones, ownership of insurance policies, and control over business interests. In accomplishing all of these goals, trusts can often remain confidential and thus protect grantor and beneficiary privacy. Trusts, unlike wills and many other documents, do not always have to be filed in the public record. This can offer the opportunity to retain anonymity and privacy for many trusts provided that the grantor or his or her representative takes special precautions. The appropriate type of trust will depend upon an individual's personal financial situation, future objectives and tax exposure. Overall, using trusts in a gift, charitable or estate plan can provide significant benefits while preserving some control over what happens to the transferred assets.

GEORGIA DOES NOT HAVE A GIFT TAX OR AN INHERITANCE TAX, BUT IT DOES HAVE AN ESTATE TAX.

Intellectual Property

There are specific estate planning concerns related to intellectual property ownership, but this section only focuses on estate planning issues specific to copyrights. With a few important distinctions, a copyright generally is like any other intangible asset within one's estate. Thus, copyrights can be owned jointly, held in trust and transferred by gift or at death just like any other property.[1] For example, estates of ASCAP writer members are allowed to sell or irrevocably assign the right to receive ASCAP writer royalties.[2] ASCAP also permits living members to assign royalties irrevocably to a family member, living trust or family-held company.[3] A copyright owner is also allowed to include provisions in his or her will that transfer the right, title and interest in any musical works, including the right of public performance, subject to any contractual licenses that may have been made during the owner's lifetime.[4] But the Copyright Act includes specific regulations that dictate who receives an owner's renewal or termination rights despite any instruction to the contrary in the owner's will.[5] These regulations vary depending on whether a work is created before or on or after Jan. 1, 1978.[6] Accordingly, special consideration must be given to the handling of copyrights within an estate to insure that renewals and transfers are made according to the owner's personal wishes and in accordance with copyright law requirements.

Tax Considerations

One of the key considerations of a comprehensive estate plan is federal and state transfer taxation. There are three different federal transfer taxes: gift tax, estate tax and generation-skipping transfer tax. Additional state transfer taxes may also be imposed. This section will only explore the basics of federal estate and gift taxation and briefly highlight Georgia transfer taxes.

Estate Tax

Many entertainers and professional athletes are potentially exposed to significant federal estate tax liability if their net worth is more than the federal estate tax exemption. The federal estate tax exemption amount is the amount of money an individual may leave his or her heirs free from federal estate tax. Currently, the exemption amount is set at $3.5 million, and the estate tax imposed on assets above that amount is 45 percent. This means that without a strategic estate plan, the federal government will take 45 cents for every dollar more than $3.5 million that one leaves behind. The state of Georgia will also impose estate taxes.

Georgia does not have a gift tax or an inheritance tax, but it does have an estate tax. The tax is an amount equal to the amount allowable as a credit for state death taxes under Section 2011 of the Internal Revenue Code ("IRC.").[7] Accordingly, the state estate tax rate can be as much as sixteen percent. In effect, the estate taxes paid to Georgia may be used to reduce the federal estate taxes due to the IRS. As a result, it is imperative that a comprehensive estate plan be implemented to

TO PROTECT ASSETS AND KEEP THEM IN THE FAMILY, MANY ARE SETTING UP TRUSTS THAT: 1) PROTECT ASSETS IN THE EVENT OF A DIVORCE; 2) MAY PROVIDE CREDITOR PROTECTIONS; AND 3) PROVIDE LIFETIME ACCESS TO INCOME AND PRINCIPAL WHILE RESTRICTING TRANSFERS TO LINEAL DESCENDANTS INSTEAD OF IN-LAWS.

minimize this potential tax liability. Bottom line, there is no reason to give the IRS money the agency did not work for when the IRC provides tools to minimize one's tax exposure.

Gift Tax

The gift tax applies to gratuitous transfers of any property during one's lifetime. But each individual can give as much as $13,000 each to any number of relatives or friends every year before owing any gift tax. This $13,000 gift may be in cash or, considering the market, in stock or mutual fund shares. Additionally, a married donor may give up to $26,000 to each recipient each year if the donor's spouse consents to the gift and a gift tax return. The gift tax does not apply to payments made for a recipient's educational and medical expenses as long as the gift is made directly to the educational institution or medical provider and the payments are for "qualified" expenses under the IRC[8] The exclusion for educational and medical expenses is unlimited in amount and available regardless of relationship between the donor and recipient. Similarly, a donor may make unlimited charitable gifts without incurring a gift tax as long as the gift is made to a qualified charitable organization.[9] Additionally, spouses who are both U.S. citizens may give each other unlimited gifts without gift tax consequences. A donor may still avoid gift taxes on nonexempt individual gifts that exceed $13,000 as long as the donor is within the limits of his or her unified lifetime credit. The unified lifetime credit allows a donor to make lifetime gifts above the annual exclusion amount up to $1 million during one's lifetime without incurring gift tax. Once an individual has made gifts that exceed his or her lifetime credit amount, a 45 percent gift tax will apply. There are several trust-based strategies that may be included in a comprehensive estate plan to maximize the growth rate of collective gifted assets.

Asset Protection

Asset protection is essential to safeguard assets from creditors and potential lawsuits. Anyone, at anytime, can be sued for a substantial amount of money, but professional athletes and entertainers are particularly susceptible to lawsuits due to their celebrity. To protect assets and keep them in the family, many are setting up trusts that: 1) protect assets in the event of a divorce; 2) may provide creditor protections; and 3) provide lifetime access to income and principal while restricting transfers to lineal descendants instead of in-laws. Fortunately, individuals may implement various asset protection techniques to protect assets from lawsuits and future creditors.

While estate planning usually involves issues associated with preserving and passing property at death, asset protection techniques address the immediate need to protect assets during one's lifetime. Asset protection planning involves applying lawful techniques that create layers of protection to frustrate and discourage potential creditors' attempts to seize one's assets. The general idea underlying asset protection is that a creditor can reach virtually any asset owned by a debtor, but cannot reach assets not owned by the debtor. Once a creditor determines that assets are actually owned by various entities, and not the individual debtor, the right to a potential claim is often outweighed by the expense and time associated with going forward with any legal action. Therefore, the focus of all asset protection planning is to remove the debtor from legal ownership of assets while retaining the debtor's control over and beneficial enjoyment of the assets. It is important to note that if a debtor transfers property with the intent to defraud existing creditors the transfers will not be successful. A transfer of assets to hinder or delay existing creditor's collecting efforts can be voided. It is important to implement a proper asset protection plan based on one's assessable liability exposure well before a lawsuit or creditor claim arises. An individual's degree of exposure to potential liability, the types of assets he or she owns, and the individual's total net worth are essential factors to consider when developing a comprehensive asset protection plan. Accordingly, asset protection planning often includes establishing a series of trusts, partnerships and entities to hold legal title to assets.

Many professionals, as well as professional athletes and entertainers, establish their own businesses to manage their individual talents, as well as those in whom they place a personal or business interest. For example, many athletes and entertainers have business investment interests in real estate, franchising, record labels and publishing companies. It is often recommended that athletes and entertainers place those business interests in a separate entity, such as a limited liability company, to protect their interests and manage the income from such investments. It is important to note that putting all business assets into a single limited liability entity, such as an LLC, can provide personal liability protection to the member-owner of that business with an important exception. If the member-owner is responsible for the event leading to the liability the fact that the company is a limited liability entity does not protect the member-owner from personal liability. Additionally, there is little asset protection for the member-owner if a creditor is successful in its action against the company. Since the bulk of most business owners' wealth is in the assets of their companies, a successful creditor attack against the company will wipe out the majority of most owners' wealth by wiping out the value of the ownership interest in the business. One solution is to create multiple entities to implement multiple buffers to those assets. If one entity is attacked successfully by creditors, its assets will disappear. But, if properly planned, the bulk of the overall assets, contained in the other entities, will survive intact. Additional asset protection tools include: 1) family limited partnerships; 2) protective language in partnership agreements and operating agreements; 3) spendthrift trusts; and 4) qualified personal residential trusts.

PROPER ESTATE PLANNING SHOULD BE A PART OF EVERY ADULT'S FINANCIAL PLAN, REGARDLESS OF AGE OR NET WORTH.

Conclusion

Proper estate planning should be a part of every adult's financial plan, regardless of age or net worth. But a comprehensive estate plan is essential for athletes and entertainers to maximize control over hard-earned assets and minimize extensive tax exposure. Additionally, a comprehensive asset protection plan can be incredibly valuable in the event of a lawsuit or creditor attack. Both you and your clients work hard for the things you own. Don't allow your state to determine how those assets are distributed and don't give the IRS money it did not work for when there are multiple vehicles and strategies available to minimize tax exposure and, most importantly, minimize the strain on your family and loved ones during a period when proper planning could help them the most. Estate planning is essential.

Endnotes

1. 17 U.S.C. § 201(d) (1976).
2. ASCAP Estates & Claims Department, Estate & Trust Planning for Music Copyright Owners (January 2008), available at http://www.ascap.com/estates/pdf/ASCAPEstateTrustPlanningForMusicCopyrightOwners.pdf.
3. Id.
4. Id.
5. 17 U.S.C. §§ 302 -304.
6. Id.
7. IRC § 2011.
8. Id. § 2503(e).
9. Id.

McLawhorn is the principal of The McLawhorn Firm, PLLC where she practices estate planning, asset protection and nonprofit law. She advises professional athletes and private equity firm owners, as well as other business owners and professionals. You can reach McLawhorn's at lmclaw@mclawhornfirm.com.

VIDEO BROADCAST

GEORGIA FILM, TELEVISION AND DIGITAL TAX CREDITS–THE 2008 ACT
BY ANDREW VELCOFF, ESQ

In May 2008, the Georgia General Assembly enacted legislation which significantly enhanced and improved the scope of available tax credits to Georgia taxpayers for the production of motion pictures, television productions, music videos, interactive entertainment and sound recording projects used in feature films, series pilots or movies for television. By amending Code Section 48-7-40.26 of Article 2, Chapter 7, Title 48 of the Official Code of Georgia Annotated, otherwise known as the "Georgia Entertainment Industry Investment Act" (the Act), the legislature made significant improvements and enhancements to the Act, widely applauded from within the entertainment community, immediately placing Georgia at the top of states across the country providing incentives for entertainment production.

The amendment (the "2008 Act") eliminates the more complicated approach under the original 2005 version, the 2008 Act, which had previously provided for different levels of tax credits depending upon a variety of factors, including the location of the counties in which the expenditures took place, how much of the expenditures were allocated to Georgia labor and whether the applicable production company made a specified base investment in multiple television projects. Under the 2005 Act, the available tax credits had ranged between nine percent and 17 percent of the applicable production expenditures, significantly below what had become the "state of the art" incentive packages offered by other states in recent years.

By contrast, the 2008 Act provides for one unitary rate of tax credits for all projects with a potential tax credit of up to 30 percent. This is accomplished through the implementation of a base rate of 20 percent for all productions with an additional 10 percent available for any producer electing to include a Georgia animated logo, Georgia promotion and/or Georgia advertisement (in lengths ranging from five to 15 seconds, depending on the nature of the project) in the project for the life of its distribution.

The 2008 Act also retains a mechanism for the transfer and sale of tax credits, thereby enabling (and incentivizing) out of state producers who may not be Georgia taxpayers to bring their projects to Georgia, create and sell the tax credits and ultimately reap an economic benefit while creating production employment which would not otherwise exist. The same is true for local producers who may not have sufficient taxable income or payroll tax liability to apply the credit themselves. This, in turn, has created a secondary market for the acquisition of tax credits giving rise to a subgroup of brokers and financiers who specialize in monetizing the credits, creating a welcome source of financing for producers at all levels.

Through the passage of the 2008 Act, the Georgia Department of Economic Development, the Georgia Film, Music and Digital Entertainment Office and the Georgia legislature had hoped that the new package would enhance economic development in the state by incentivizing out of state producers from Hollywood, New York and other places to bring production activities into Georgia, as well as supporting the efforts of local producers who would now be better able to utilize the tax credits to subsidize production financing. In the few short months following the enactment of the 2008 Act, the anecdotal evidence clearly suggests that these hopes were well placed.

Below is a discussion of the major points of the Act in its amended form. For a full understanding of the availability of the credits, the Act should be reviewed in its entirety. Both the Georgia Department of Revenue and the Georgia Film, Music and Digital Entertainment office are in the process of drafting regulations which have not been finalized as this article goes to press. When finalized, those should be reviewed as well prior to proceeding under the Act.

GEORGIA TAX CREDITS ARE GENERALLY AVAILABLE FOR "QUALIFIED PRODUCTION ACTIVITIES" WHICH ARE DEFINED IN THE ACT AS THE PRODUCTION OF NEW FILM, VIDEO OR DIGITAL PROJECTS PRODUCED IN GEORGIA AND APPROVED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT...

Qualified Production Activities

Georgia tax credits are generally available for "qualified production activities" which are defined in the Act as the production of new film, video or digital projects produced in Georgia and approved by the Department of Economic Development, such as feature films, series, pilots, movies for television, commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, television series, television pilots or movies for television. Of significance, the Act provides that these projects must be "recorded in this state, in whole or in part … intended for multi-market commercial distribution … [and] shall not include the production of television coverage of news and athletic events." The Act does not define the term "recorded" nor does it specify a minimum amount or percentage of production which must take place in Georgia.

State Certification

In order for a production to qualify for the application of tax credits, the production must be certified by the Department of Economic Development in accordance with regulations promulgated pursuant to the Act. The Act does not require that a production be certified prior to its commencement and the Department of Economic Development has had a practice of retroactively qualifying productions. The 2008 Act itself is retroactive to Jan. 1, 2008. Productions taking place before that date would be covered under 2005 Act.

Applicable Production Expenditures

Assuming that a particular project satisfies the requirement of being a "qualified production activity" and is ultimately certified by the Department of Economic Development, the production expenditures which may be applied to the tax credit include "pre-production, production and post-production expenditures" incurred in the state of Georgia. These include customary production costs such as set construction, wardrobe, makeup, costs associated with photography, sound synchronization, lighting, editing, equipment rental, vehicle leasing, food and lodging, film processing and transfer, sound mixing, computer graphics, animation services and payroll.

In addition, the Act provides that airfare is covered if purchased through a Georgia-based travel agency or travel company, or directly from a Georgia headquartered airline, as well as insurance costs and bonding if purchased through a Georgia-based insurance agency. Specifically excluded are post-production expenditures for marketing and distribution.

Although the Act excludes amounts payable to any single employee for any single production in excess of $500,000, this has been reportedly interpreted by the Georgia Department of Revenue to apply only to payments to individuals as employees on the basis of a W-2, but not payments to loan-out companies providing

EARLY FEEDBACK FROM THE DISTRIBUTION COMMUNITY SUGGESTS THAT A NUMBER OF DISTRIBUTORS ARE LIKELY TO BE RECEPTIVE TO THE INCLUSION OF A QUALIFIED GEORGIA PROMOTION IN EXCHANGE FOR THE ECONOMIC BENEFIT OF AN ADDITIONAL 10 PERCENT CREDIT.

the services of individuals working under a personal services contract, on the basis of Form 1099.

Base Investment / Tax Credit

The Act requires that a production company seeking to secure the tax credit must have a base investment in the state of expenditures used in state certified productions in excess of $500,000 for production companies whose average annual total production expenditures in Georgia did not exceed $30,000,000 for 2002, 2003 and 2004. For companies whose average annual total production expenditures exceeded $30,000,000 for those years, the base investment must exceed $500,000 in excess of $30,000,000. A qualifying production company shall be allowed a tax credit of 20 percent of the base investment in the state with an additional tax credit of 10 percent of the base investment if the qualified production activity includes a qualified Georgia promotion.

Qualified Georgia Promotion

A production company may elect to include a “Qualified Georgia promotion” in the project in order to secure the additional 10 percent tax credit. The Qualified Georgia promotion must be approved by the Department of Economic Development and is defined in the 2008 Act as consisting of a:

Qualified movie production which includes an approximately five-second animated logo that promotes Georgia within its presentation and all promotional trailers worldwide for the life of the project;

Qualified TV production which includes an imbedded five-second Georgia promotion during each broadcast half hour worldwide for the life of the project;

Qualified music video which includes the Georgia logo at the end of each video and within online promotions; or

Qualified interactive game which includes a 15–second Georgia advertisement in units sold and imbedded in online promotions.

As a practical matter, although short form 30 second and 60 second advertising spots generally qualify as qualified productions under the Act, the practical limitations of including a qualified Georgia promotion in short form productions and the potential for consumer distribution would seem to limit advertising spots to the basic 20 percent credit.

Ultimately, any production company which seeks to include a Qualified Georgia promotion will need to secure the cooperation of the distributor. Early feedback from the distribution community suggests that a number of distributors are likely to be receptive to the inclusion of a Qualified Georgia promotion in exchange for the economic benefit of an additional 10 percent credit.

Use of the Tax Credit

The tax credit may be used to offset the production company’s Georgia tax liability in any particular taxable year. The amount of the tax credit may not exceed the production company’s taxable income in any year. Any unused portion of the tax credit may be carried forward for five years from the close of the taxable year in which the investment occurred, but no credit will be allowed against prior years’ tax liability. To the extent that the amount of the credit exceeds the production company’s tax liability, the excess may be taken as a credit against the production company's quarterly or monthly payment under Georgia Code Section 48-7-103 which provides for payroll withholding tax and a corresponding credit against tax liability under Georgia Code Section 48-7-20. The credit may be taken in the beginning of the taxable year in which the production company has met the investment requirement.

Transferability

Tax credits arising under the Act may be used by the production company itself or may be transferred by the production company to a third party for use by another Georgia taxpayer. The production company may make only a single transfer or sale of tax credits earned in the taxable year; however, the transfer or sale may involve one or more transferees. The Act provides a specific reporting requirement of the transfer to the Department of Revenue with certain specified information to be included in the filing.

For all transfers, the Act establishes 60 percent of the amount of the tax credits transferred as the minimum amount which may be paid by the transferee. The transferee may use the tax credits and shall have the same rights as the original production company, except that it does not have the right to apply the credit against payroll tax liability, nor does it have the right to subsequently transfer the credit to a subsequent transferee. The transfer does not extend the five year carry forward period.

Of significance, the Act provides that to the extent the original production company did not have rights to claim or use the tax credit at the time of transfer, the Department of Revenue shall either disallow the tax credit claim by the transferee or recapture the tax credit from the transferee with a further proviso that the transferee's recourse is against the original production company.

In the coming months, as the regulations contemplated by the Act are promulgated, and as the Georgia Department of Economic Development and the Department of Revenue gain further experience in implementing the 2008 Act, there will be further refinements on the applicability of various sections of the Act and their implementation. Regardless, the arrival of the 2008 Act promises to enhance Georgia's status as a primary market for the production of entertainment projects outside of Hollywood and New York.

Andrew Velcoff is a shareholder with the Atlanta Office of the firm of Greenberg Traurig, LLP, and focuses his practice on motion picture, television and interactive production and distribution, intellectual property and marketing. His email address is velcoffa@gtlaw.com. The author whishes to thank Marvin Kirshner, Greenber Traurig shareholder, for his assistance in connection with this article.

TAX CREDITS ARISING UNDER THE ACT MAY BE USED BY THE PRODUCTION COMPANY ITSELF OR MAY BE TRANSFERRED BY THE PRODUCTION COMPANY TO A THIRD PARTY FOR USE BY ANOTHER GEORGIA TAXPAYER.

PERSONAL INTERVIEW

JOEL KATZ ON THE STATE OF THE ENTERTAINMENT INDUSTRY

BY STEPHEN G. WEIZENECKER

Joel Katz is a well known and respected Entertainment Lawyer in Atlanta. He is the chairman of the Global Entertainment and Media Practice of Greenberg Traurig, LLP. For over thirty years, Katz has based his entertainment practice in Atlanta. His first clients include James Brown and Willie Nelson. Since his beginning, he has represented the who's who of the Entertainment Industry including Josh Groban, The Recording Academy and Kenny Chesney. Most recently, Katz was honored by the state of Georgia when they renamed part of Northside Drive as the Joel A. Katz Parkway.

I sat down with Joel Katz to discuss the current state of the Entertainment Industry.

What is your general opinion of the state of the entertainment industry at the current time?

Not terrific. In Georgia and elsewhere, many different factors are negatively influencing the Entertainment Industry, including piracy where technology has made it easier for consumers to by-pass traditional methods of acquisition of their entertainment. The recession has also greatly affected the ability of talent and others to acquire the necessary investment dollars to develop their products.

Do you think this downturn in the economy or recession has affected the entertainment legal industry?

Generally, the legal business does well in a recession. However, a recession can mean that the client cannot always pay the legal fees that are charged. Also, with a lack of capital in a recession, and other factors affecting the Entertainment Industry, the number of deals has greatly diminished. The legal industry has become extremely competitive as a smaller pool of the top clients are available with more lawyers trying to gain their representation.

Is there any industry that is performing better than others?

The entire industry has been affected. It starts with basic downturns like the bad real estate market which increases foreclosures. This, in turn, affects other parts of the industry. Television advertising is reaching an all-time low. As I mentioned before, record sales are down. Publishing is down but it is doing better and seems to be increasing. Concert sales and touring are down. However, ticket sales for superstars are up.

In this same vein is the touring and concert business really the hot place in the music industry?

It depends. As I said, the superstars are still continuing to sell tickets. In order for an act to make a living they have to be able to command the price that makes a tour viable. For the non-superstars, ticket sales are soft. Moreover, record labels are less interested in making the investment in a tour in this type of market.

Promoters are cutting staff. This is a sure sign that the touring industry is doing badly. They would not be getting rid of staff if they thought they would be profitable. Also the 360 deals are affecting the number of tours that are positively currently going on.

Do you think the "Madonna" 360 deal is an aberration?

This was truly an extraordinary deal. Madonna got this type of deal because of her ability to move tickets, merchandise and music. People do not seem to understand that this was not just a cash payment. This loan was cross-collateralized against all of her income streams. These type of deals are based upon an outside party like Live Nation coming in and taking control of the various income streams that an artist has. They attempt to monetize all of these revenue streams. Not all of the various parts of an artist products are able to be monetized in this way successfully. One thing that everyone must remember is that the 360 deal fit with Madonna. She is one of the biggest performing artists in the world. She is also multi-disciplined in that she has branched out into various other aspects including acting, directing, marketing and merchandising.

The real key to artist survival is having such a broad base of income streams. However, not every artist will be able to command the type of 360 deal that she received.

What should entertainment lawyers focus on for the future?

The days of being a single disciplined entertainment lawyer are quickly coming to an end. You cannot just be a music lawyer.

For example, our model at GT has changed dramatically. We are thriving; however, we have expanded into a variety of different areas of the Entertainment Industry. We now do work in the corporate, film and television and sponsorship business. As our clients have grown, we have moved with them into these different industries that include a vast array of different types of legal business.

For example, we represent Jimmy Buffett and his extremely successful restaurant business, Margaritaville. This area alone involves so many different aspects of the law, such as liquor industry regulation, sponsorship, restaurant/hospitality law, trademark and copyright law and many other things. In order to thrive, entertainment lawyers need to be flexible and broad in their practice.

Stephen Weizenecker is an attorney with Greenberg Traurig in the Entertainment Department. His practice focuses on the business transactions for the entertainment industry.

THE DAYS OF BEING A SINGLE DISCIPLINED ENTERTAINMENT LAWYER ARE QUICKLY COMING TO AN END. YOU CANNOT JUST BE A MUSIC LAWYER.

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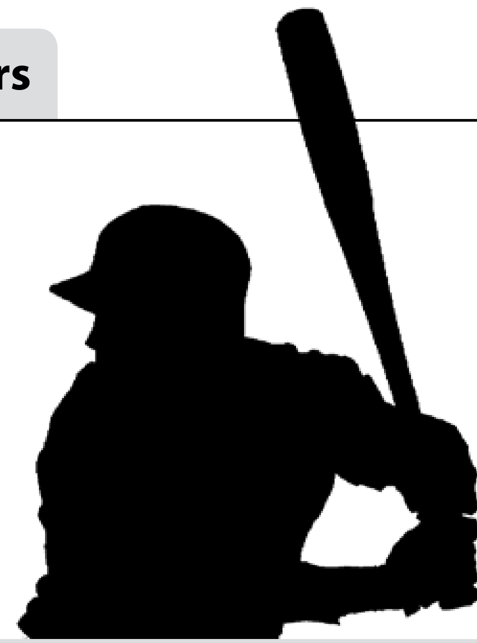
ANNUAL SPORTS LAW SEMINAR

3 CLE Hours



Co-sponsored by:

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ICLE

CANCELLATION POLICY

Cancellations reaching ICLE by 5:00 p.m. the day before the seminar date will receive a registration fee refund less a $15.00 administrative fee. Otherwise, the registrant will be considered a "no show" and will not receive a registration fee refund. Program materials will be shipped after the program to every "no show." Designated substitutes may take the place of registrants unable to attend.

SEMINAR REGISTRATION POLICY

Early registrations must be received 48 hours before the seminar. ICLE will accept on-site registrations as space allows. However, potential attendees should call ICLE the day before the seminar to verify that space is available. All attendees must check in upon arrival and are requested to wear name tags at all times during the seminar. ICLE makes every effort to have enough program materials at the seminar for all attendees. When demand is high, program materials must be shipped to some attendees.

TURNER FIELD

Front Office • Braves Main Conference Room
755 Hank Aaron Drive
Atlanta, Georgia • 404-577-9100

For driving directions please visit:
http://atlanta.braves.mlb.com/atl/components/ballpark/map/directions.html

Baseball Game Immediately After Seminar:

Atlanta Braves vs. Florida Marlins

AGENDA

Presiding: ***Charlie Henn,*** Program Chair, Kilpatrick Stockton LLP, Atlanta

8:30 **REGISTRATION** (All attendees must check in upon arrival. A jacket or sweater is recommended.)

8:55 **WELCOME AND PROGRAM OVERVIEW**
Charlie Henn

9:00 **RECENT DEVELOPMENTS IN SPORTS LAW**
Mark V. Spix, Adjunct Professor, Georgia State University College of Law; Law Offices of Spix & Krupp, LLC, Atlanta
James A. Trigg, Kilpatrick Stockton LLP, Atlanta

10:00 **DIGITAL RIGHTS IN THE AGE OF NEW MEDIA**
Gregg G. Brandon, VP and General Counsel, Collegiate Images LLC, Sunrise, FL
Kevin P. Glidewell, Counsel, Sports & Digital Entertainment, Turner Entertainment Networks, Inc., Atlanta
Emily M. Mooring, Associate Counsel, IMG College, Lexington, KY

11:00 **ADVISING TEAMS IN THIS ECONOMIC ENVIRONMENT**
Gregory J. Heller, VP and General Counsel, Atlanta Braves, Atlanta
T. Scott Wilkinson, VP and Chief Legal Officer, Atlanta Spirit LLC, and Assistant GM, Atlanta Hawks, Atlanta
Michael J. Egan, King & Spalding LLP; Counsel to Atlanta Falcons; Atlanta

12:00 **ADJOURN**

12:10 **ATLANTA BRAVES VS. FLORIDA MARLINS**

One Outfield Lower Level Ticket to the game is included in the registration fee!
Extra tickets are $11.00 each

THREE WAYS TO REGISTER: check the ICLE schedule on the web at www.iclega.org
Mail: ICLE • P.O. Box 1885 • Athens, GA 30603-1885 (make check payable to ICLE)
Fax: 706-354-4190 (credit card payment must accompany fax to be processed)
Online: iclega.org (credit card payment only)

Duplicate registrations may result in multiple charges to your account. A $15 administrative fee will apply to refunds required because of duplicate registrations.

Questions? Call ICLE Atlanta Area: 770-466-0886 • Athens Area: 706–369–5664 • Toll Free: 1–800–422–0893

ANNUAL SPORTS LAW SEMINAR • April 16, 2009 • 7091

EARLY REGISTRATION: $135
ON-SITE REGISTRATION: $155

❑ Guest(s) will attend the game.
I have enclosed $11.00 per guest.
Number of Guests attending the game: ________

❑ I am unable to attend. Please send program materials and bill me . (BOOK AND PRICE UNAVAILABLE UNTIL AFTER SEMINAR.)

❑ **I am sight impaired under the ADA and I will contact ICLE immediately to make arrangements.**

Early registrations must be received 48 hours before the seminar.

NAME ______________________ GEORGIA BAR # __________

FIRM/COMPANY ______________________ OFFICE PHONE __________

EMAIL ______________________

(for registration confirmation and email notification of seminars, no postcard or brochures will be sent)

MAILING ADDRESS ______________________ ZIP + 4 __________

STREET ADDRESS ______________________ ZIP + 4 __________

CITY ______________________ STATE __________

❑ I have enclosed a check in the amount of $________ (See fees at left).
❑ I authorize ICLE to charge the amount of $________ (See fees at left).
to my ❑ MASTERCARD ❑ VISA ❑ AMERICAN EXPRESS* ❑ DISCOVER

Credit Card Verification Number: A three-digit number usually located on the back of your credit card; *AmEx is four-digits on the front of the card.

Account #: ☐☐☐☐ ☐☐☐☐ ☐☐☐☐ ☐☐☐☐ / ☐☐☐☐

Expiration Date: Signature: