



**FOS HANDLES CHINESE PURCHASE**



In December, 2009, FOS partner William Soderstrom represented Heaven Creation, LLC, a Chinese entertainment company, in its purchase of the White House Theater in Branson, Missouri.

Attendees at the closing included Branson's mayor, the Chinese Embassy's Minister of Cultural Affairs from Washington D.C., Li Dongwen, and representatives from many Chinese media outlets.

Heaven Creation develops and produces large scale entertainment shows with Chinese themes. Its flagship play, *The Legend of Kung Fu*, has played to audiences around the world and was the featured play of the 2008 Summer Olympics in Beijing. The company will now bring that and other original Chinese theatrical shows to the United States.

**LAST MINUTE TAX TIPS**



*By Eric Pagels*

While 2009 has been a bad year for many people, taking advantage of the deductions offered by the tax code can provide some help. The following few tips can lessen the tax preparation burden:

- Organize all of your tax documents and receipts. Make sure you have all the statements you need comparing this year's tax documents from your employer and financial institutions to last years' documents. This is a good way to double check whether you have received everything. You should have already received most 1099s, but it's not unusual for reports to be delayed or get lost in the mail.
- If you are an estate or trust beneficiary, or hold a partnership interest, you should receive a K-1 form detailing income or losses to put on your return. K-1 forms are fre-

quently late. If you know you should receive a K-1, you should check with the appropriate entity to confirm when it will arrive. This will make preparing your own income tax returns easier.

- Be sure to keep a record of your charitable donations. These usually come in the form of a letter or card from the organization you donated to. Maintaining records will help you keep track of donations and how much of each donation is tax deductible. Not all donations are fully deductible. For example (attention Wisconsin and Marquette fans), only 80% of the donation to a college or university for certain season ticket rights is deductible.
- If you know in advance that you will not be able to file your returns by the April 15th due date, make sure to obtain the automatic 6-month IRS extension by filing Form 4868. Filing that form

with the IRS automatically extends your Wisconsin return for 6 months. Be sure to attach copies of Form 4868 to your federal and Wisconsin returns when you file.

- If you file for an extension, remember that whatever tax you owe will still be due on April 15th. This means that you must calculate an estimate of your tax due, subtract any federal income tax paid or withheld during the year, and submit that payment along with your Form 4868 extension request. You must make a similar calculation for any Wisconsin income tax due. Interest will apply, for both the federal and Wisconsin returns, on all amounts not paid by April 15th.
- Remember that once April 15<sup>th</sup> has come and gone, it won't be back for another year.

**FOS WEBSITE REDESIGN A SUCCESS**

The redesign of the FOS website, [www.foslaw.com](http://www.foslaw.com), has been a resounding success. We thank you all for your many compliments and good wishes. We welcome all comments and suggestions.

## CORPORATE RECORD RETENTION: GROWING NEED FOR FORMAL POLICIES



By Francis  
Hughes

We have received many inquiries recently regarding document retention policies. For many companies, making well thought out written policies has become essential.

No one would dispute that contracts, leases, customer lists and financial data are valuable company assets. Other, less obvious, valuable records include electronic calendars, website content, expense records, instant messages, text messages and random emails.

The question is, must a company keep these records forever? The law requires the owner of such records to maintain them, usually for a specific period of time. Failure to do so could subject you and the company to penalties and fines, or seriously disadvantage the company in litigation.

For this reason, it has become increasingly important for companies to adopt a formal record retention policy. A written policy will ease the practical and cost issues related to document storage and retention. It may also help if the company is involved in litigation. It will always help the company comply with legal requirements.

A well drafted document re-

tion policy identifies different types of documents and the period of time that each type of document should be retained. When determining the length of time a document should be retained, consider both legal and practical requirements.

Certain documents, such as some types of insurance policies (liability and title insurance) and corporate minutes, should be retained forever. Contracts should be retained for the term of the contract plus the applicable statute of limitations for a breach of contract action. Many financial or tax related records should be maintained for at least seven years.

If your company has a history of litigation or audit, factor

that in carefully when discarding any corporate records, since they may be essential in defending the company.

If litigation is pending or imminent, you cannot destroy any documents that are related to the litigation or potential litigation.

To craft a workable policy appropriate for your company, seek input from all areas of the company, not just management.

IT people, people creating data, and people that are responsible for records storage can offer valuable input on effectively implementing the policy. Document management or assistive software may also be useful for

record retention, but should be properly configured to meet the company's needs. A policy that is too difficult to administer won't be used.

Once a policy is finalized, issue it to all employees and properly train them on its implementation.

A document retention policy is something that must be considered and implemented before you need the policy. If not, when you need it, it will be too late.

### QUESTIONS?

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## AL YOUNG AT FOREFRONT OF ROTH IRA CONVERSION PROVISIONS

FOS partner Al Young actively participated in the actions underlying the Wisconsin legislature's efforts to adopt the federal rules allowing all taxpayers to convert traditional IRAs to Roth IRAs.

Under current law, Wisconsin only allows IRA conversions by taxpayers whose gross income is under \$100,000. This subjects taxpayers with gross incomes over \$100,000 who converted traditional IRAs to Roth IRAs to signifi-

cant early distribution and excess contribution tax penalties.

Young, a CPA in addition to an FOS shareholder attorney, is Vice-Chair of the Board of Directors for the Wisconsin Bar Taxation Section. In that capacity, last November, Young prepared a report detailing the problem and advocating for Wisconsin's adoption of the federal rules. Young's report was cited twice in the [Milwaukee Journal/Sentinel](#) as

highlighting the need to bring Wisconsin in line with the federal rules and allow conversions by all taxpayers.

As of this writing, the Senate has approved a bill to adopt the federal rules. The bill now moves to the Assembly for approval.

FOS congratulates Al Young for stepping to the forefront of this important issue to obtain needed financial protections for Wisconsin's taxpayers.

## WHAT IF I HAVE TO GO TO TRIAL?



By Diane  
Slomowitz

Most cases settle before trial. But what if your case doesn't? What is a real trial like?

Forget "Law and Order" or "Boston Legal." A "smoking gun," or a crumbling witness, is as rare as a lawyer in an Armani suit.

A real trial is the result of months of pre-trial investigation, including depositions and document productions. By the first day of trial, the parties know who the witnesses will be, what exhibits will be introduced, and what legal and factual arguments will be made. What they don't know is who and what the jury will believe and how the jury will rule.

A trial's process is straightforward. First, the attorneys pick the jury. Once the jury is picked, the actual trial can be-

gin. After the judge explains the dispute to the jury, the parties' attorneys give opening arguments, summarizing their respective cases.

The plaintiff (the person making the claims) then presents its case through witnesses and documents. The defendant (the person against whom the case is brought) questions ("cross-examines") the plaintiff's witnesses, to poke holes in a witness' story or credibility. "Perry Mason" style dramatics are rare.

When the plaintiff is finished presenting its case, it "rests." At this point, the defendant usually asks the court to dismiss the plaintiff's case, arguing that the plaintiff has not met its "burden" to prove its case.

That motion is generally denied. The defendant will then present its case, through witnesses and documents, much

like the plaintiff has done. When the defendant is finished, it "rests," just like the plaintiff did. The attorneys will then make closing arguments to the jury, summarizing the good points of their cases and the bad points of their opponent's presentations.

After both sides have rested, the court instructs the jury on the law it must apply to the facts it finds (or doesn't find). The jury is given a verdict form with specific questions to answer, and goes to a private jury room to consider the evidence ("deliberate"). When the jury has answered these questions ("reached a verdict"), everyone returns to the courtroom, where the verdict is read. This customarily leads to a judgment for the winning party and the trial is concluded.

It may not be "The Good Wife," but it works.

## NEW WISCONSIN TAX PENALTY

The Wisconsin Department of Revenue has a new arrow in its tax audit quiver. If the Department asks you for records and you don't comply, that arrow may hit you in your pocket-book.

The Department may now penalize taxpayers for failing to produce records or documents requested by the Department. The Department may disallow deductions, credits, etc. to

which the unproduced records relate. The Department may also impose a fine equal to the greater of \$500.00 or 25% of the additional tax on any proposed adjustment to which the unproduced records relate.

A first record request will allow a minimum of 15 days for production. A second request, if necessary, will allow a minimum of 30 days.

The Department may allow the deduction, credit, etc. if records are late, but it can still impose a fine.

Especially in income tax and sales and use tax audits, taxpayers should always make every effort to timely produce appropriate records under a Department request. Compliance is a higher priority now that a fine may be at stake.

## FOS COMPLETES EXPANSION



Bill Fox cutting the ribbon to our new 6th floor

FOS recently expanded its Milwaukee Building offices to include not only the fifth, but sixth floor. The expansion added several attorney offices, a formal break room and additional space.

The additional space eases the firm's overcrowding, improves its efficiencies and prepares the firm for future growth.

FOS has operated out of the Milwaukee Building for 48 years. Its centralized downtown location is close to the courts, government offices, local businesses and other law firms. The huge ladybugs adorning the building's façade make it easily identifiable.

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Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you have any questions about these articles or any other legal topics, please call us at (414) 273-3939.

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**IN THIS ISSUE**

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**Page 1**

Last Minute Tax Tips  
FOS Handles Chinese Purchase

**Page 3**

What if I Have to Go to Trial?  
New Wisconsin Tax Penalty

**Page 2**

Corporate Record Retention

**Page 4**

Federal Estate Tax Repeal

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## UNEXPECTED PITFALL OF FEDERAL ESTATE TAX REPEAL

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*By Al Young*

Uncertainty regarding the estate tax continues. Congress allowed the federal estate tax to be repealed as of January 1<sup>st</sup> but will likely address the tax later this year. Whether the tax will be retroactive to January 1<sup>st</sup> or prospective only is an open question.

In the meantime, a provision tied to the federal estate tax repeal may have unforeseen consequences. When the tax was effective, a decedent's assets received a "step up"

in their income tax basis to their fair market value on the date of death. The repeal limits the "step up" in two ways. First, the basis of assets transferred to a non-spouse, such as a Family Trust, may only be increased up to \$1,300,000. Second, the basis of assets transferred to a spouse or to a trust for the spouse may be increased up to \$3,000,000.

With repeal of the federal estate tax, most existing estate plans will pass an individual's entire estate to a Family Trust. For those plans, if the difference between the fair market value

and the current basis of assets is less than \$1,300,000 (the maximum step up now allowed), no tax problem should arise. However, if the difference is more than \$1,300,000, heirs may pay extra capital gains taxes when the assets are sold.

In the latter case, it may be advisable to amend the estate plan so that assets with a basis difference of \$1,300,000 are transferred to the Family Trust, with the rest transferred to the spouse or to a trust for the spouse's benefit. That would allow the estate to take advantage of both the \$1,300,000 basis adjustment

and the \$3,000,000 basis adjustment. Even if Congress reenacts the federal estate tax, the tax might be prospective only, creating the potential for extra capital gains taxes for the heirs of anyone who happens to die before the tax's effective date.

It is good to periodically review one's estate plan with an estate planning attorney. Today, married individuals whose basis difference exceeds \$1,300,000 should consult with counsel to determine whether their estate plans should be modified to avoid unnecessary capital gains taxes.