

McLane News

JULY 2010

Dick Samuels Named Chairman of the Board of BIA



Richard A. Samuels

McLane is proud to congratulate **Dick Samuels** on being elected Chairman of the Board of Directors of the New Hampshire Business and Industry Association.

The BIA is New Hampshire's statewide chamber of commerce and leading business advocate. Working with the governor, legislators and state regulators to develop and shape pro-business public policy, the BIA's mission is to promote a healthy business climate and robust economic future for New Hampshire.

Dick is a Director in McLane's Corporate Department and, among other professional accolades, was recently singled out as the Best Lawyer in New Hampshire in Mergers and Acquisitions and Securities work by Business NH Magazine.

NH's 'LLC Tax' Repealed



Steven M. Burke

At the close of the 2010 legislative session on June 12, 2010, the so-called 'LLC tax' was repealed.

The term 'LLC tax' refers to New Hampshire's interest and dividends tax, a 5% tax payable by a New Hampshire resident on income received from interest and dividends, when that tax is payable on distributions by limited liability companies and partnerships to their owners.

In 2009, the New Hampshire legislature changed the state's tax law so that the I&D tax would be due from all New Hampshire recipients of distributions by all limited liability companies and partnerships. Prior to 2009, I&D tax had not been due from New



Beth L. Fowler

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What is the United Nations Convention on International Sales of Goods and Does it Matter for My Business?



Julia A. Schappals

The United Nations Convention on International Sales of Goods, commonly referred to as "CISG" or "the Convention," is a body of rules governing international sales of tangible goods. CISG does not apply to licenses, leases, real estate or services. Because the United States has signed CISG, the Convention will apply automatically to any arrangement for the sale of goods between a US-based business and a non-domestic counterparty, unless the parties specifically opt out of CISG or unless the non-domestic counterparty is from Ireland, Japan or the United Kingdom, none of which is a signatory to the Convention. CISG is increasingly becoming the preferred set of rules governing international sales of tangible goods, and a US business may be at a competitive disadvantage if it lacks familiarity with CISG or insists that US law governs its contracts.

The Convention is similar in many aspects to the Uniform Commercial Code, or "UCC," which governs most United States-based arrangements for the sale of tangible goods. But there are some profound differences. For example, oral contracts are valid under CISG, regardless of the price of the goods, which is different from the UCC's requirement that contracts for the sale of goods in excess of a specified amount be in writing to be valid. Also, although the UCC restricts a buyer's options to change a contract after acceptance of non-conforming goods without objection, CISG permits a buyer receiving non-conforming goods to keep the goods and unilaterally reduce the price, subject to compliance with notice requirements, even if the buyer has already paid for the goods. This CISG provision creates a particular risk when products being sold have long lead times and unstable pricing, or when currency fluctuation makes the value of delivered goods less than the purchase order price. A third major difference between CISG and the UCC is that, under CISG, INCOTERMS govern. INCOTERMS is a system of rules that specify the terms of shipment, delivery and transfer of risk of loss to the buyer, and INCOTERMS is more varied and comprehensive than the UCC's shipment and delivery provisions.

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John D. Colucci Named President of the YMCA of Beverly, Massachusetts

McLane is proud to congratulate **John D. Colucci** on being elected President of the Greater Beverly YMCA (serving Hamilton, Wenham, Manchester and Beverly).

The Beverly YMCA provides children, adults, families and seniors with life-enriching activities and programs.



John D. Colucci

John is a Director in McLane's Corporate Department and works out of the firm's TradeCenter office in Woburn, MA. With a dual background as both an attorney and CPA, John works with start-up companies to large multi-owner private and publicly traded corporations. John practices in the areas of business law, tax law, estate and business succession planning and real estate.



Upcoming Events

Wed., Sep. 22, 2010 - "**The Quirks, Secrets & Mysteries of New Hampshire Law – Part 2: How to navigate a criminal case through the New Hampshire state courts.**" sponsored by the McLane Law Firm will be held from 4:00 p.m. to 5:30 p.m. at the Beacon Grille Restaurant in Woburn, MA. McLane attorney [Neil Nicholson](#) will be among the presenters. For more information or to register, contact Heather Wolcott at (603) 628-1482 or heather.wolcott@mclane.com.

Thu., Sep. 23, 2010 - "**Top 5 Employment Law Trends It Pays to Know,**" sponsored by MCLE, Inc. will be held from 1:30 p.m. to 5:30 p.m. at the MCLE Conference Center in Boston, MA. McLane attorney [Tamsin Kaplan](#) will be among the presenters. For more information or to register, contact MCLE at 1-800-966-6253 or visit www.mcle.org.

Fri., Oct. 1, 2010 - "**Practical Ethics for Mental Health Clinicians: Learning to Navigate Common Ethical and Legal Challenges with a Panel of Experts,**" sponsored by the New Hampshire Association for Marriage and Family Therapy, will be held from 9:00 a.m. to 4:00 p.m. at the Concord Country Club in Concord, NH. McLane attorney [Andrea Daly](#) will be among the presenters. For more information or to register, contact Julie Farrell at (603) 534-5122 or visit www.NHAMFT.org.

Wed., Oct 6, 2010 - "**2010 Seacoast Employment Law Update**" sponsored by the McLane Law Firm, will be held from 8:00 a.m. to 4:00 p.m. at the Portsmouth Harbor Events and Conference Center in Portsmouth, NH. [McLane's Employment Law Practice Group](#) will be providing an update on a variety of employment law topics including. For more information or to register, contact Tarey Warnock at (603) 628-1467 or tarey.warnock@mclane.com.

Wed., Oct. 27, 2010 - "**The Quirks, Secrets & Mysteries of New Hampshire Law – Part 3: Probate Administration in New Hampshire, Distinctions from Massachusetts,**" sponsored by the McLane Law Firm will be held from 4:00 p.m. to 5:30 p.m. at the Beacon Grille Restaurant in Woburn, MA. McLane attorney [Craig Standish](#) will be among the presenters. For more information or to register, please contact Heather Wolcott at (603) 628-1482.

'LLC Tax' Repealed

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Hampshire taxpayers on LLC and partnership distributions if the ownership interests in the LLC or partnership making the distribution were 'freely transferable.' The outraged response of business owners throughout New Hampshire to the 2009 change in the I&D tax law was swift and significant.

After much wrangling during the recent legislative session, both inside and outside of the statehouse, the 2009 change in the I&D tax law was repealed, retroactive to January 1, 2010. In addition, New Hampshire legislators established a commission to study the state's business profits tax, the business enterprise tax, and the interest and dividends tax. A draft report on suggested tax changes is due by December 1, 2010, and a final report is due by November 1, 2012.

The New Hampshire Department of Revenue Administration has not yet published any information to guide those taxpayers who made estimated I&D tax payments for 2010 prior to the repeal. Those taxpayers may want to reclaim their estimated I&D tax payments for the 2010 year.

If you have made advance I&D tax payments in New Hampshire that you want to reclaim or if you have questions about the recent change to New Hampshire's I&D tax law, contact **Steve Burke** (603-628-1454; steven.burke@mclane.com) or **Beth Fowler** (603-628-1259; beth.fowler@mclane.com).

What is the United Nations Convention on International Sales of Goods and Does it Matter for My Business? (Continued from page 1)

While understanding how CISG works may make operating under the Convention easier for a US business, some US-based businesses may need to opt out of CISG. To successfully opt-out of CISG, parties to a contract for the international sale of goods must assure that the contract includes a provision that: (i) states that CISG will not apply, (ii) specifies the country whose law does apply and (iii) provides that the law of the selected country applies without regard to its conflicts of laws rules. Additionally, a US business must be able to show that the non-domestic counterparty agreed to the opt-out provision. As an alternative to opting out of CISG completely, the parties may, by clear language in an agreement, modify any of the particular terms of the Convention to suit their needs.

In many ways, CISG is more flexible than US law and its use can be advantageous. While it is important that a US business adapt to the international business pressures to utilize CISG, it is equally important that the business understand the scope of the terms and risks of the Convention.

Please contact **Julia Schappals** at 603-714-4349 or JSCounsel@comcast.net if you have questions about the UN Convention on International Sales of Goods, and how it may apply to your business.

For more information by telephone, call (603) 625-6464.