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FOCUS

About Your ACC South/Central Texas Chapter

ACC South/Central Texas IS:

A professional organization of nearly 200 members who serve as in-house counsel for nearly 80 area companies, with approximately 40 members serving as General Counsel.

- The leading source of continuing legal education, legal and business ethics awareness, pro bono activities and networking opportunities for in-house counsel in San Antonio and South Texas.
- Focused on meeting the unique, professional needs of attorneys who practice in the legal departments of corporations.
- An award-winning chapter, having been awarded ACC's Chapter of the Year on numerous occasions and recently being recognized under ACC's new award system as a "Gold Level Chapter of Distinction" and being awarded ACC's distinguished "Innovative Programming" award for Ethics Follies®.

- Made up of members who represent the following diverse companies:

Acelity	Goodman Networks, Inc.	Koontz Corporation	PETCO Animal Supplies, Inc.	Southwest Research Institute
American Trucking & Transportation Insurance Company, RRG	Government Personnel Mutual Life Insurance Company	Lewis Energy Group	Propel Financial Services	TaskUs, Inc.
Andeavor	H- E- B Grocery Company	Liberty Oilfield Services	Rackspace Hosting, Inc.	TechRadium, Inc
Argo Group US	Harland Clarke Holdings Corp.	Life Healthcare Partners	Randolph-Brooks Federal Credit Union	Tower Life Insurance Company
BeiGene, Ltd.	HEB Grocery Company, LP	Lone Star Bakery Inc.	Rush Enterprises	Travelers
BP America Inc.	Howard Energy Partners	Lumin Health, LLC	San Antonio Board of REALTORS	Trinity University
C.H. Guenther & Son, Inc.	iHeartMedia, Inc.	Marathon Oil Company	San Antonio Housing Authority	United Allergy Services
CalTex Protective Coatings, Inc.	InGenesis, Inc.	Mesilla Valley Transportation	Scantron Corporation	United Services Automobile Association
CaptureRx	Innotech Services Company	Mission City Management, Inc.	Sea Island Development Company	University of the Incarnate Word
CeloNova Biosciences, Inc.	InterLinc Mortgage Services, LLC	Mission Pharmacal Company	Security Service Federal Credit Union	USAA
Chase Manhattan Bank	Investors Title Insurance Company	MUY Brands, LLC	Silotech Group, Inc.	USAA Real Estate Company
Chicago Title of Texas, LLC	James Avery Craftsman, Inc.	National Investors Title Insurance Company	South Texas Money Management, Ltd.	UTSA
CPS Energy	Jordan Foster Construction, LLC	NatureSweet	Southwest Business Corporation	Valero Energy Corporation
Diebold, Inc.	Kinetic Concepts, Inc., an Acelity Company	NuStar Energy L.P.		VP Racing Fuels, Inc.
DPT Laboratories, Ltd.		OCI Enterprises Inc.		Whataburger Restaurants, LLC
Frost Bank		Packers Sanitation Services, Inc.		Zachry Group
Frozen Beverage Dispensers				Zachry Industrial, Inc.
Genesis Networks				



The Modern Partnership: In-house and Outside Counsel

By Cathy Landman and Margo Wolf O'Donnell

As lawyers take on increasingly sophisticated business advisor roles in today's marketplace, the partnership between in-house and outside counsel has become more important than ever. And while every lawyer wants to provide the best possible service to the client, the practical steps for achieving outstanding service in this context are not always clear. Drawing on our shared experience, we have identified four key steps lawyers on both sides of this relationship can take to help them build their credibility and deliver solutions that advance their business.

1. Develop a commercial point of view, and base the legal strategy on business goals

So many skilled lawyers bring a nuanced understanding of the law to their work, but when it is time to apply that knowledge and counsel to the company's business strategy, they have difficulty bridging the divide between the worlds of law and business. The key to becoming a valued business advisor and in-house lawyer is understanding not just the legal risks for the company on a given matter, but also the interplay between those risks and the company's larger business goals.

In a legal practice, that means having a conversation early on to ensure an understanding of the desired result. And that conversation needs to continue as a matter unfolds and new information comes to light.

An understanding of what the company is trying to achieve — where they are now and where they want to be — should drive the legal strategy and lead you to the legal remedy that furthers those goals. That may mean litigating or not, finding a resolution outside of litigation, or coming at the problem from another angle, such as a new approach to a deal or contractual language.



2. Educate each other and constantly reflect on what you are learning

It is crucial for both sides of this partnership to make time to educate each other — for the outside counsel to educate the client on the most pressing legal issues they may face, and for the in-house team to educate the outside counsel on how their business works. To facilitate communication that extends beyond just the discovery phase, develop a work process that includes shared folders, files, timelines, and project plans, and encourage both teams to check in regularly.

Designate time for reflection at important milestones throughout the project so that the in-house and outside teams may ask of themselves and each other what they have learned and how it might alter the goals or process going forward. Finally, make sure both teams are speaking the same language by using the right tools and a shared vocabulary.

While written word is the order within law firms, the business community tends to rely on tools like PowerPoint for communication. Sometimes translating a lengthy document into a more visual mode can facilitate understanding and even yield creative, new solutions to the problem.

Always be thinking not just about communication between the inside and outside teams, but also how to enable the in-house team to present ideas to their internal clients, the business leaders.

3. Build a shared roadmap that can evolve, and demonstrate good judgment

The in-house counsel is continuously juggling big priorities with the day to day responsibilities of the job. The best outside counselors help their clients anticipate what is on the horizon and determine whether the current approach and practices will put the company on the right trajectory.

Timeliness is an important factor in building a workable roadmap. Good business advisors understand how to foreshadow what is to come so business leaders have time to digest information and then decide. The partnership also depends on crystal clear communication and a willingness to use technological tools to improve efficiency.

Because skillful navigation involves looking both at your feet and the path ahead, teams must constantly be asking what's coming next, what's the precedent if we do X, and what are the potential costs and benefits? This is where creative problem solvers can demonstrate significant value. Nothing beats good

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judgment, a great strategy, and a thoughtful plan to execute it.

4. Move beyond a transactional mindset and nurture the relationship

Good client service cannot be merely transactional, so outside counsel can truly demonstrate their worth by providing value outside the billable hours. That means making time to learn their client's business, conduct on-site visits, and make themselves available as a resource. It's also important for other members of the outside team beyond the billing partner — including associates and paralegals — to take ownership of the work.

The in-house counsel can create these connections by inviting everyone on the team to an on-site visit to learn the business and understand the goals of the project. This is an investment in the outside team, which is just an extension of the in-house team, and the work will be more efficient and effective if everyone works together as one entity. The complex legal matters businesses face today require that everyone is on board and invested in achieving the optimal outcome.

In-house and outside counsel see legal and business challenges through distinct lenses that are shaped by their respective training and approach to problems.

We need both perspectives to create innovative legal strategies. By embracing the key steps we have outlined above, lawyers can build a thriving, long-lasting inside-outside partnership that yields creative solutions for the company and its outside partners.

Authors:

Cathy Landman is the chief legal and human resources officer at Corelle Brands.

Margo Wolf O'Donnell is the partner and co-chair of the labor and employment practice group at Benesch.

ACC News

2019 ACC Annual Meeting: Rates Increase after September 25

Mark your calendars for October 27-30 in Phoenix, AZ for the 2019 world's largest event on in-house counsel. Earn up to a year's worth of CLEs, get the essential knowledge and insights you need to navigate today's increasingly complex business environment, and make meaningful connections with your in-house peers from around the globe. No other event delivers such a wealth of education and networking opportunities for corporate counsel all in one place at one time. Group discounts are available. Check out the full program schedule at am.acc.com.

Law Department Leadership: Strategic Decision Making for In-house Counsel

Making effective decisions is arguably your most critical responsibility as a professional manager. In uncertain and changing business situations, you need a practical framework to make effective decisions quickly. Attend the Law Department Leadership program (23 September, Toronto, ON) to gain influence and advance your career by learning how to make better business decisions. Register today at acc.com/LDL.

Drive Success with Business Education for In-house Counsel

To become a trusted advisor for business executives, it's imperative for in-house counsel to understand the business operations of your company. Attend business education courses offered by ACC and the Boston University Questrom School of Business to learn critical business disciplines and earn valuable CLE credits:

- Mini MBA for In-house Counsel, September 9-11, and November 4-6
- Finance and Accounting for In-house Counsel, September 23-25

Learn more and register at acc.com/BU.

Connect Your Circles... Expand Your Reach!

When your in-house peers join ACC, you create opportunities to engage with colleagues, expand your professional network, and share ideas and expertise. Now through 30 September, you are automatically entered into a us \$100 monthly drawing when you recruit a new member. As an added bonus, your new recruit is automatically entered into a separate drawing, too! Learn more at acc.com/MemberConnect.

In-house Counsel Certified (ICC) Designation

If you are an in-house lawyer seeking to become proficient in the essential skills identified as critical to an in-house legal career, the In-house Counsel Certified (ICC) designation is precisely what you need. To be eligible for the designation, you'll need to participate in the ACC In-house Counsel Certification Program, which includes live instruction, hands-on experience, and a final assessment. Those who successfully complete the program will earn the ICC credential. Attend one of these upcoming programs:

- **Amsterdam, Netherlands**, September 10-13, 2019
- **Berkeley Heights, New Jersey**, November 4-7, 2019

For more information visit acc.com/certification.

2019 ACC Board of Directors



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Carol Morrow (1999), Jerry King (1998), Stan McCormick (1997), Bruce Clements (1996), Merrie Cavanaugh (1995)

Notice to ACC Members Regarding 2020 Proposed Slate of Officers

Our chapter's membership will get a chance to vote on next year's ACC South/Central Texas chapter officers at our annual business meeting, which will take place on September 18, 2019 during our September luncheon.

Pursuant to the chapter's bylaws, the nominating committee proposes the following slate of officers for 2020:

Proposed 2020 ACC Board of Directors: Vice Presidents:

President: Rode Moore, Zachry Group

President-Elect: Javier Aranda, USAA

Treasurer: Scott Shreder, USAA

Assistant Treasurer/Treasurer-Elect:
Kelly Curl, Southwest Research Institute

Secretary: Monica Lerma, iHeartMedia

Immediate Past President: Zandra Pulis,
CPS Energy

Mike Dillinger, Nustar Energy

Jessica Lerma, Grunt Style

Christina Markell-Balleza, South Texas
Money Management

Courtney McKendrick-Green, Jordan Foster
Construction

[New] David Kilgore, Rackspace

[New] Shelayne Clemmer, Harland Clarke

SEEKING CHAPTER VOLUNTEERS FOR 2020!

Our 2019 ACC Board will be meeting in November to plan for next year. We will be looking for volunteers to help with our various committees and activities. Please let us know if you would be interested in volunteering a small amount of your time to help keep our chapter running strong. We will work with you to line you up with a project that interests you! Contact Amber Clark at southcentraltx@accglobal.com for more information.

Don't Miss!

Our 2019 our monthly luncheons will take place at **The Quarry Golf Course!**



444 East Basse Road, San Antonio, 78209

The cost to attend the luncheons is \$15.00 for members and \$25.00 for non-member guests. (In-house counsel and sponsoring firm only, please.) Check out our [Chapter web page](#) for our current calendar of events and registration information.

No other professional organization in San Antonio offers better CLE programs at a more affordable price that is specifically geared to meeting the needs and issues of in-house counsel.

2019 ACC Luncheon Dates

September 18

September Luncheon

October 9

October Luncheon

Labor & Employment Topic, sponsored by
Ogletree Deakins

November 13

November Luncheon

December 11

December Luncheon

For more information, or to register for any of these events, contact Amber Clark at southcentraltx@accglobal.com

More Upcoming Events:

ILLEGALLY BLONDE
OCTOBER 23 AT 3
OCTOBER 24 AT 7

CHARLINE MCCOMBS EMPIRE THEATRE
TICKETS ON SALE IN JUNE AT
ETHICSFOLLIES.COM

"OH MY GOD YOU GUYS!
SAVE THE DATE!"

SEPTEMBER 18, 2019

ACC MONTHLY CLE LUNCHEON

10 Family Law Questions Every In-House Lawyer Needs Answered

Please join us at our September CLE luncheon on September 18, 2019 where Kristal Thomson of Langley & Banack will be giving a presentation entitled "10 Family Law Questions Every In-House Lawyer Needs Answered."



Kristal C. Thomson

Shareholder

San Antonio
(210) 736-6600
(210) 735-6889 fax
kthomson@langleybanack.com

Presenter:

Ms. Thomson is a family law specialist, board certified in family law by the Texas Board of Legal Specialization. She focuses on divorces with complex or high net worth estates and complicated custody issues. Ms. Thomson has tried numerous cases, but is also highly experienced in negotiated settlements. Her expertise is recognized state-wide through her numerous writing and speaking engagements and involvement in various family law related leadership positions. Ms. Thomson is one of only ten lawyers in San Antonio elected as a fellow to the prestigious American Academy of Matrimonial Specialists.

Practice Areas

- Family Law

Education

- St. Mary's University School of Law, J.D., 2002
- University of Texas, B.A., 1995

Bar Admissions

- State of Texas, 2002
- United States District Court, Western District of Texas, 2003

Board Certifications

- Family Law, Texas Board of Legal Specialization, 2009

September 18, 2019

11:45-1pm

**Quarry Golf Club
444. E. Basse Road
San Antonio, Texas
78209**

1 Hour CLE

**\$15 Members &
Students
\$25 Non-Members
& Corporate Guests
*Free Parking!***

Sponsored by:



**Seating is Limited!
Reserve your spot
today!**

RSVP by email [here](#) or pay online with a credit card [here](#).

Your RSVP counts! While we understand that unexpected matters arise that prevent attendance, absences (no-shows) do have a financial impact on our chapter. If you have registered but cannot attend and cannot send someone in your place, please contact Amber Clark by email at southcentraltx@accglobal.com. Likewise, if you did not RSVP but decide to attend at the last minute, please try to let Amber know ahead of time so that we can arrange to have enough seating! Walk-ins who do not give advance notice cannot be guaranteed seating.

Feel free to invite individuals from your company who are not attorneys but may benefit from learning more about this subject!

Ethics Follies

By Lee Cusenbary, General Counsel of Mission Pharmacal



Ethics Follies® is in full production mode with backdrops ordered, set design in the works and a costumer on board to bring *Illegally Blonde* to the Empire stage October 23 and 24th. We need your help to invite your executives, middle managers, attorneys and accountants to attend this year's show which is packed with current ethics issues and some wonderful performances. I'd also like to ask your for help this year if you can spray paint a set piece on a Saturday in October, gather props from our prop list (ACC will pay for them of course), sing and dance, or help us with the craft table (setting out food for actors at rehearsals), we would really appreciate it. There is a place for everyone who wants to be part of ACC's ethics conference. Times available to participate range from an hour or half the day to every week night for four weeks (if you are in the show itself).

Ethics Follies also helps us fulfill our Chapter's pro bono mission since we donate net proceeds to the Community Justice Program.

The show will be a lot of fun and we hope to see you and your team there since "good ethics is good for business."



Attorney actors: Ingrid Etienne, Kyle Goetz and Rosa Cabezas-Gil

ACColades

Kelly Curll, formerly with Marathon Petroleum Corporation (f/k/a Andeavor), has joined Southwest Research Institute's Legal & Patent Office as Senior Attorney.

Mike Dillinger has been promoted to Executive Director at NuStar Energy. In this role, he will focus on and lead NuStar's regulatory permitting team.

In connection with the recent acquisition of a majority interest in Whataburger by BDT Capital, former Chapter President **Mike Gibbs**, General Counsel, has also been promoted to Executive Vice President at Whataburger.

Have you received a promotion lately? Changed jobs? Do you know of someone who is new to in-house or who deserves a little recognition for a job well done? Please email us at southcentraltx@accglobal.com with your "ACColades" tips.

Partnership/LLC Audit Rules – Considerations for Updating Your Operating Agreement

By Asel Lindsey and Robert Nelson, Dykema

On November 2, 2015, the U.S. Congress passed the Bipartisan Budget Act (“BBA”), which established new audit procedures for partnerships and limited liability companies taxed as partnerships (collectively referred to as “partnerships”), which fundamentally changed the procedures for how partnerships are audited and how the tax adjustments are implemented (the “BBA audit rules”).¹ Prior to 2018, audit examinations by the Internal Revenue Service (the “IRS”) were generally governed by the procedures set forth in the Tax Equity and Fiscal Responsibility Act of 1982 (“TEFRA”), which provided for the designation of one of the partners as a tax matters partner (“TMP”) who was charged with representing the partnership in dealings with the IRS and in any judicial proceedings. Under TEFRA, the IRS had to provide a notice of audit to all the partners and, once the IRS made audit adjustments to the partnership’s return, any resulting tax deficiency was assessed and collected from the individual partners who were partners in the year under audit. Under TEFRA, individual partners had the right to participate in the audit, challenge the IRS’s adjustments if not done so by the TMP and negotiate their own settlement with the IRS. This led to inconsistent tax reporting by the partners and created an administrative burden for the IRS. Thus, Congress enacted the BBA audit rules, which were designed to streamline the audit process.

The BBA audit rules, set forth in sections 6221 through 6241 of the Internal Revenue Code, which are generally applicable to partnerships beginning with tax year 2018 and thereafter, repealed TEFRA

and substantially overhauled partnership audit procedures by centralizing assessment and collection of tax at the partnership level. As the result of the new audit regime, certain provisions of existing partnership operating agreements may no longer be relevant and there may be substantial risks of adverse consequences to current and former partners and investors acquiring interests in partnerships in the case of an income tax audit by the IRS. Thus, it is important that businesses taxed as partnerships update their operating agreements by taking into consideration the BBA audit rules.² Since partnerships vary in size, operations, management, number and types of partners and have other unique characteristics, there is no standard approach to updating an operating agreement. However, in this article we highlight significant changes in the audit procedures and discuss how these changes should be addressed in the operating agreements.

Partnership Representative

Under the BBA audit rules, a TMP was replaced by a partnership representative (the “Partnership Representative”) who can be a person or an entity, including the partnership itself, and who is not required to be a partner of the partnership.³ The Partnership Representative is designated annually on the partnership’s tax return and if a partnership fails to designate a Partnership Representative, the IRS can select any person to serve in that role.⁴ Unlike a TMP, a Partnership Representative has the exclusive authority to act and bind the partnership and all the partners in an audit proceeding vis-à-vis the IRS,⁵

the IRS is not required to provide a notice of an audit to other partners and the partners have no legal right to participate in an audit and negotiate their own settlement with the IRS.

Given the broad binding authority of the Partnership Representative, partners should give serious considerations to the appointment of the Partnership Representative in the operating agreement. In the case of an individual acting as a Partnership Representative, the operating agreement should provide for procedures to revoke such designation or appoint a successor Partnership Representative. In the case of an entity acting as a Partnership Representative, which can be the Partnership itself, the operating agreement should name a designated individual, as required by regulations, through whom the Partnership Representative will act, and provide for the process of replacing such person. The operating agreement should also discuss the extent of control that the partners could exercise over the Partnership Representative and the limitations to be imposed on the Partnership Representative’s authority in dealings with the IRS.

In addition, since partners are not entitled to receive notices from the IRS, the operating agreement should include notice provisions, which could require that the Partnership Representative keep other partners reasonably informed of the audit and any material developments, consult with the partners prior to taking certain actions, and/or provide each partner with an opportunity to participate in discussions with the IRS.

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¹See BBA, P.L. 114-74, Section 1101 (Nov. 2, 2015). Following the passage of BBA, the BBA audit rules have been amended by the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113 (Dec. 18, 2015) and the Consolidated Appropriations Act, P.L. 115-141, Technical Corrections Related to Partnership Audit Rules (March 23, 2018). In addition, the IRS and the Treasury issued several sets of final regulations clarifying and providing additional guidance on application of the audit rules to partnerships.

²The operating agreements for partnerships in existence prior to 2018 should retain TMP provisions until the statute of limitations for such years expires and should also include provisions covering the BBA audit rules.

³Any individual will qualify as a Partnership Representative if this person has a U.S. tax I.D., address and phone number and has substantial presence in the United States by making themselves available to meet in person with the IRS. In the case of an entity acting as a Partnership Representative, it must have a designated individual through whom the Partnership Representative will act. See Code § 6223; Regulation § 301-6223-1.

⁴See Regulation § 301.6223-1(f).

⁵Code § 6223(a).

Partnership Level Assessment

Another fundamental change under the BBA audit rules involves assessment and collection of tax at the partnership level. Under TEFRA, once the IRS made determinations of the tax deficiency at the partnership level, it made corresponding adjustments and assessed the tax against individual partners who were partners in the year under audit. The BBA audit rules, however, provide for assessment and collection of any additional tax liability (the “imputed underpayment”) at the partnership level, calculated at the highest income tax rate, in the tax year the audit is finalized as opposed to the tax year under audit.⁶

Given this change, in the case of an assessment of imputed tax liability against the partnership, the partnership may not have sufficient funds to pay the tax and the partners may not be necessarily obligated to reimburse the partnership for the payment of imputed tax liability. In addition, since the assessment is made in the year the audit is finalized, current or incoming partners of a partnership, who may not have been partners in the year under audit or may have held a smaller ownership interest in the given year, may be indirectly liable for the taxes attributable to former partners, absent any protections under the operating agreement.

Also, the imputed underpayment is assessed at the highest individual or corporate income tax rate without taking into account any tax attributes of the individual partners, such as a tax-exempt status of a partner, unless the partnership seeks to modify the imputed underpayment amount. As the result, the tax assessed at the partnership level may be substantially higher than if such tax liability was properly included and reported by the partners in the audit year.

Election Out

While the BBA audit rules are applicable to all the partnerships, certain partnerships with eligible partners may elect out of the new audit regime, in which

case the IRS will audit, assess and collect the tax at the individual partner levels. In order to qualify for election out, (i) the partnership must have 100 or fewer partners, which is determined by the number of Schedules K-1 the partnership is required to furnish for the year, and (ii) the partnership’s partners may only consist of individuals, C corporations, S corporations, estate of deceased partners or foreign entities treated as C corporations if they were a domestic entity.⁷ Non-eligible partners include partnerships, disregarded entities, trusts (grantor and nongrantor, revocable and irrevocable), estates other than of deceased partner, certain foreign entities and nominees.

Such election must be made on a timely filed tax return for the taxable year to which the election applies and it must include all information about each partner requested by the IRS, including such partner’s name, U.S. taxpayer identification number (“TIN”), federal tax classification and an affirmative statement that such partner is an eligible partner. A partnership electing out of the BBA audit rules must notify each partner of the election within 30 days in a manner elected by the partnership.⁸

Push-Out Election

After an audit is finalized, a partnership may elect to push out the imputed underpayment to the reviewed year partners thus shifting the burden for any tax, penalties and interest to the partners.⁹ The push out election must be signed by the Partnership Representative, filed within 45 days of the final audit adjustment mailed by the IRS and it must include, among other things, the name and TIN of each reviewed year partner. It is important to note that the push-out election requires that the partners pay any tax deficiencies for all the years between the reviewed year and the year in which the adjustment is made. In addition, the interest imposed on any imputed tax liability of a partner is two percentage points higher than the interest rate imposed on the imputed liability of a partnership.¹⁰

Based on the foregoing, the operating agreement should be updated to address the following:

- (i) whether the Partnership Representative should cause the partnership to elect out of the BBA audit rules, push out the adjustments to the audit year partners, pay the imputed underpayment at the partnership level, or whether the managers, the board of directors, the partners or the Partnership Representative should have the authority to decide as to the elections and the payment of imputed underpayment on an annual basis;
- (ii) whether the partnership could seek payment and collection of imputed tax liability from the partners, including former partners, who were partners in the year under audit or the year in which final adjustments are made;
- (iii) whether the partnership may offset any portion of the tax liability against any distributions made to the partners;
- (iv) whether the partnership can require that partners file amended returns in order to seek modification of the imputed underpayment;
- (v) whether the partnership should establish a default threshold amount for imputed underpayment, which would determine whether the Partnership Representative should pay the tax at the partnership level or make a push out election;
- (vi) provide for a requirement that partners, including former partners, cooperate with the Partnership Representative in connection with any proceeding with the IRS, including providing any information reasonably requested by the Partnership Representative to comply with the BBA audit rules or to assist the partnership in reducing any imputed tax liability;
- (vii) provide for the timeframe for the partners to pay their share of imputed underpayment or respond to any other requests in connection with an audit procedure;
- (viii) establish the penalty, if any, for partners and former partners who fail to cooperate with the Partnership Representative in connection with BBA audit procedures.

⁶Code § 6225.

⁷Regulation § 301.6221(b)-1(b)(3).

⁸Regulation § 301.6221(b)-1(c)(3).

⁹Code § 6226.

¹⁰Code § 6226(c).

Other Provisions

Transfer Restrictions

Existing operating agreements may lack the required provisions to ensure that the partnership has eligible partners to be able to elect out of the BBA audit rules if such election is desired. In some cases, operating agreements may contain transfer restrictions that may potentially disqualify the partnership from electing out. For example, a permissible transfer of partnership interest from an individual to his or her trust, if implemented, would make the partner an ineligible partner under the BBA audit rules. Thus, partners and partnerships should carefully examine and, if necessary, update transfer provisions and put restrictions on the number and type of partners the partnership may have if they desire to elect out of the application of the BBA audit rules.

Indemnification Provisions

In light of the Partnership Representative's broad authority, there may be more resistance from individuals or entities to serve in that role due to concerns about legal liability for the decisions and actions taken vis-à-vis the IRS. Thus, a partnership agreement should include indemnification provisions with respect to the partnership, the Partnership Representative, or the designated individual, if any, to indemnify such persons against liabilities arising out of their service in their respective roles aside from actions committed in bad faith or gross negligence.

Conclusion

According to a statement by an IRS official, partnership audits under the new audit regime may begin this summer. Thus, it is important that partnership operating agreements are timely

revised to provide for the BBA audit rules in order to protect former, existing or incoming partners from unwanted surprises and adverse results of an audit. Likewise, when selling or investing in a business taxed as a partnership, former partners and incoming partners should review the respective audit provisions of the operating agreements of such partnerships to ensure that their interests are properly protected.

Authors:

Asel Lindsey and **Robert Nelson** are Members in Dykema's Taxation and Estates Group and are resident in the San Antonio office. They counsel their clients on business tax planning, partnership tax planning, estate planning, international tax planning, and federal and state tax controversy.



Welcome New Members!

Vivian Ethridge
USAA

Isaac Johnson
USAA

Tessa Somers
USAA

Louis Vetrano
TechRadium, Inc

Van Hoang
Security Service Federal
Credit Union

Robert Mason
Southwest Research
Institute

Monica Thompson
USAA

Daniel Wybenga
USAA

Don't Miss!

This year our monthly CLE luncheons will continue to take place at the Quarry Golf Club.

The cost to attend the luncheons is \$15.00 for members and \$25.00 for non-member guests. (In-house counsel and sponsoring firm only, please.) Check out our Chapter web page at <http://www.acc.com/chapters/sanant.php> for our current calendar of events and registration information.

No other professional organization in San Antonio offers better CLE programs at a more affordable price that is specifically geared to meeting the needs and issues of in-house counsel.

For more information, or to register for any of these events, contact Amber Clark at southcentraltx@accglobal.com

Is Your ACC Member Profile Up-To-Date?

You may edit/update your contact or personal information, etc. by logging into www.acc.com and selecting "My ACC." Then click on "My Contact or My Personal Info." Scroll to the bottom of your profile and click on "Edit My Info." It's that easy!

Job Openings?

Is your company looking to fill an in-house position? Do you know about a current in-house job opening? If so, please let us know so that we can advertise the position to our membership.

Send an email to our Chapter Executive Director at southcentraltx@accglobal.com.

Past Events

June Luncheon

Sustainable Compliance with Privacy & Data Security Regulations, sponsored by Jordan Lawrence



July Luncheon

sponsored and presented by Norton Rose Fulbright



Family Volunteer Event

at the Food Bank's Urban Farm



WIN Wine Tasting Event



ACC Running Club- "Team Accelerate" News

The ACC Running Club is in the process of planning some great runs for this year. If you would like to be included on the running club's email list and receive notices of events, please contact Amber Clark at southcentraltx@accglobal.com.



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Let Us Know...



- What CLE presentation topics interest you?
- How can we help you make the most out of your ACC membership?
- Would you like to serve on a committee?
- Are we meeting your needs?
- Do you know someone interested in joining?
- Do you have some Corporate Counsel related news you'd like to share?
- Do you know someone who would be interested in becoming a speaker and/or sponsor?
- Would you like to join or lead one of our shared interest groups (running, theatre, dinner, etc.)?

Email your comments to southcentraltx@accglobal.com.

ACC South/Central Texas!

Chapter Web Page: www.acc.com/chapters/sanant/

Ethics Follies Web Page: www.ethicsfollies.com

Look for us on Facebook and
https://twitter.com/#!/ACC_SCTX

