



Growth and Developments at BrownWinick

by Chris Sackett, Managing Member



At Brown Winick we are always excited to let our clients and friends know about growth and new developments at our firm. With that in mind, we are pleased to announce that several new attorneys have joined our firm, including Brian McCormac who comes to us from Pioneer, David Breiner who joins us from an east coast intellectual property firm, and Lou Ebinger and Jonathan Gallagher, both of whom join us after completing judicial clerkships. We are also pleased to announce that Marc Beltrame, Chris Nuss, and Leanna Whipple have all recently been admitted as partners of BrownWinick. We are confident that all of these attorneys will enhance our ability to provide the best and most complete legal services to you and your businesses.

In addition to adding attorneys, we have also taken on additional space, as we recently completed our build-out of the 21st floor of the Ruan Center. This expansion will accommodate our present and future growth.

We are excited about our growth in terms of people and space, and we look forward to growing our relationship with you – our clients. Please let us know what we can do to better serve you and add additional value to your businesses.

The I-9 Audit: Why You Should Care and How You Can Prepare

By Elizabeth A. Coonan



United States Immigration and Customs Enforcement (“ICE”), the investigative arm of the Department of Homeland Security, has shifted its focus from targeting individual unauthorized workers in favor of a strategy that targets the businesses that employ them. ICE has significant resources available to accomplish this objective, but the current mechanism of choice is the Form I-9 audit. The purpose of a Form I-9 audit is to confirm that the employer is verifying employment eligibility of each employee and properly completing and maintaining the Form I-9. An I-9 audit is initiated upon service of a Notice of Inspection.

In 2011, ICE issued 2,393 Notices of Inspection. This represents an increase of more than 375% over those issued in 2008. ICE also recently issued a statement that it expects to conduct more than 3,000 I-9 audits in 2012, indicating that audits will be carried out in concentrated surges and will focus on employers who use the hiring of unauthorized aliens as an integral part of their business model.

The Immigration Reform and Control Act, passed in 1986, requires all United States employers to verify the identity and employment eligibility of employees. Subsequently, the Immigration and Nationality Act designated the Form I-9 as the requisite tool for documenting the verification process. When executing the Form I-9, the employer certifies that it has taken the required steps to confirm that the subject employee is who they purport to be and that they are authorized to work in the United States. Failure to properly verify the employment of each new hire can result in civil and criminal sanctions. Given ICE’s new policy regarding audits, never before has I-9 compliance been so important.

Once completed, the Form I-9 is not deposited with the Department of Homeland Security (“DHS”). Instead, it is retained by the employer and must be able to be produced for inspection upon inquiry by ICE or another authorized governmental agency or official. The Notice of Inspection typically provides the employer only three days to respond and extensions of time are rarely given. The larger the workforce, the more arduous it can be to respond within the three day period, especially if the employer’s forms are not in order.

Federal regulations require employers to retain the Form I-9 for three years after the date of hire of the employee or one year after the date that employment is terminated, whichever is later. The scope of the Notice of Inspection typically requires the production of Form I-9s for all current employees and a subset of former employees. The Notice may also command the company to provide its tax returns, payroll information and organizational documents. Because an inspection typically requires the company to produce documents for both current and former employees, it is crucial that the forms be completed correctly initially as the opportunity to correct the forms following an employee’s departure is substantially diminished.

ICE has an arsenal of penalties, sanctions and criminal charges it can impose upon violators. These include sanctions for paperwork violations, hiring violations and pattern and practice violations. A paperwork violation involves an employer’s failure to properly execute or retain the Form I-9. A paperwork violation can be technical or substantive in nature. A substantive paperwork violation includes, but is not limited to, failing to ensure that the

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employee completes Form I-9. A technical violation includes, but is not limited to, failure of the employee to date Section 1 of the Form I-9 at the time of hire, failure of the employer to date Section 2 of the Form I-9 within three business days or less of the hire date or failure to include the hire date. A paperwork violation carries a penalty of \$110 to \$1,100 per violation. In determining the amount of the penalty, DHS will consider the size of the business, whether the employer acted in good faith, the seriousness of the violation, whether or not any of the individuals were unauthorized aliens and whether there is a history of prior violations. An employer accused of a paperwork violation or a hiring violation may have a defense if it can show it exercised good faith in attempting to comply with the law. However, the defense is limited to technical or procedural discrepancies only, and a failure to correct the discrepancies within 10 days after they have been identified by the agency will eliminate the employer's ability to assert the defense.

A hiring violation occurs when the employer knowingly hires an unauthorized individual. If it is determined that an employer has hired or continues to employ an unauthorized worker, the employer may be enjoined from continuing to engage in the activity and may be required to pay a penalty. The law imposes a three-tiered civil penalty structure: \$375 to \$3,200 for each unauthorized worker for the first offense; \$3,200 to \$6,500 for each unauthorized worker for the second offense; and \$4,300 to \$16,000 for each unauthorized worker for the third or subsequent offense. The amount of the penalty assessed is based upon whether the employer knew that an individual was unauthorized to work in the United States, yet employed or continued to employ that person.

If ICE determines that an employer has engaged in a pattern or practice of illegal hiring it may impose a penalty of up to \$3,000 for each unauthorized employee and imprisonment up to six months. An employer accused of engaging in a pattern or practice of illegal hiring is not permitted to take advantage of the good faith compliance defense.

If an employer is required to produce 150 I-9 forms through the course of an audit and substantive violations are found for half of those forms, an employer can expect to be assessed with a penalty in excess of \$80,000. In the most egregious cases, personal liability, including criminal and civil liability, may be imposed upon the company's officers and hiring managers.

By implementing a few controls, you can substantially limit your potential liability. First, we recommend that an employer provide all hiring supervisors with training on proper Form I-9 completion. Consideration should also be given to developing an internal immigration compliance policy. Finally, we recommend that you consider working with counsel to conduct an internal audit of all Form I-9s to determine whether technical deficiencies exist. Some deficiencies may be corrected, saving the company a significant amount in fines and penalties. Developing a plan for an internal audit requires careful planning. For additional information regarding Form I-9 audits and immigration compliance, contact the author at coonan@brownwinick.com or (515) 242-2408 or contact the BrownWinick attorney with whom you regularly work with.

Elizabeth A. Coonan is a member at BrownWinick and assists clients in the areas of employment, workers' compensation and business immigration law. Beth can be reached at 515-242-2408 or coonan@brownwinick.com. 

Iowa Angel Tax Credits

By Drew D. Larson



During the 2011 legislative session, the Iowa General Assembly approved an annual \$2,000,000 allocation of state tax credits for investments in qualifying businesses, often referred to as "angel tax credits." The purpose of the legislation, including the angel tax credits, was to "[e]nsure economic growth and development throughout the state." The legislation notes that "priority shall be placed on recruiting new businesses, business expansion, and retaining existing Iowa businesses" and "[e]mphasis shall be placed on entrepreneurial development through helping entrepreneurs secure capital, and [on] developing networks and a business climate conducive to entrepreneurs and small businesses." 2011 S.F. 517, Div. I, § 2. The rules for the program are found in Iowa Code §§ 15E.41-15E.44. As of the date of this article, the Economic Development Authority has also submitted proposed rules for implementing the angel tax credits at proposed Iowa Administrative Code Chapter 261-115. This article assumes that the final rules will be implemented in substantially the form proposed.

The angel tax credit provides that a "taxpayer may claim a tax credit ... for a portion of the taxpayer's equity investment in a qualifying business" made in 2011 or after. The tax credit equals 20% of the equity investment in a qualifying business, up to \$50,000. A person can claim credits for up to five different investments in five different qualifying businesses each year. The credits cannot be claimed until the third tax year following the investment and may be carried forward for up to five years if not completely used.

To qualify for the credit, the investment must be in cash, must be for equity, and must be in a qualifying business. To meet the definition of qualifying business, the company must meet all of the following criteria:

- The principal operations of the business must be located in Iowa.
- The business must be no more than six years old.
- The business must have an owner that has completed (i) an entrepreneurial venture development curriculum, (ii) three years of relevant experience, (iii) a four year degree in business management, administration, or a related field, or (iv) other training or experience sufficient to increase the business's probability of success.
- The business is not for retail, real estate, or professional services.
- The company does not have a net worth over \$5,000,000 as of the date of the investment.

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- Within 24 months of the first qualifying investment, the company shall secure total equity financing or near equity financing (convertible debt and royalty agreements) of at least \$250,000.

While not completely clear, it also appears that the taxpayer must be an “investor” to receive the tax credits. This means that the taxpayer may not own 70% or more of the qualifying business’s total equity. It should also be noted that an investor or qualifying business may be any type of business entity, including corporations (C and S Corporation), limited liability companies, and partnerships.

There are a number of administrative requirements necessary to claim an angel tax credit. First, within 120 days of the first qualifying investment (or by March 31, 2012 if later for investments made in 2011) the business must submit various signed statements regarding the nature of the business, its balance sheet, statements showing it meets the definition of “qualifying business,” a list of equity and qualifying investments, and a statement regarding the existence of a business plan. The list of equity must be updated as additional equity contributions are received. The economic development authority will then notify the business and investors whether it qualifies as a qualifying business and place the business on a registry of qualifying businesses. Before an angel tax credit can be claimed for a particular investment, and within 24 months of the qualifying investment, the qualifying business must show that it has secured the \$250,000 of equity or near equity financing required under the definition of “qualifying business.”

The investor must also submit an application for the angel tax credits, which must be submitted by March 31 of the year following the investment. These applications are date and time stamped. Credits are granted on a first-come, first-served basis. Once the credits are exhausted for a particular fiscal year, applications are carried over to the following fiscal year. Once approved, the economic development authority will send the investor a tax credit certificate. The tax credit certificate shall be rescinded if the qualifying business does not make the required certifications, does not raise the required equity, or otherwise fails to meet the requirements of the tax credit rules.

The angel tax credits will be a valuable tool for companies seeking capital investment, and it appears there will be significant demand for the angel tax credits. It is highly recommended that investors and qualifying businesses file their applications as soon as possible. If you believe that your business may have qualifying investments and desire assistance in making all the required filings, please do not hesitate to contact your BrownWinick attorney or Drew Larson at larson@brownwinick.com.

Drew D. Larson is an associate attorney at BrownWinick, practicing primarily in the areas of corporate transactions, health law, estate planning, tax and general litigation. Drew has a particular passion for working with technology startups and other entrepreneurs, helping startups take their business to the next level. Drew can be reached at 515-242-2485 or larson@brownwinick.com. 

Our Firm Continues To Grow To Serve Your Needs

In our continuing effort to provide clients with the best possible legal services, BrownWinick continues to grow by hiring outstanding attorneys. Our most recent hires are no exception.



Brian McCormac joined BrownWinick as a member in August 2011. Brian received his B.A., *cum laude*, from Coe College in 1997 and his J.D., *with distinction*, from the University of Iowa College of Law in 2000. Brian assists clients with a wide range of legal concerns, including litigation, business transactions, compliance, and advertising and promotions. Prior to joining BrownWinick, Brian was employed as Corporate Counsel and Antitrust Compliance Manager at Pioneer Hi-Bred International, Inc. and at Xenia Rural Water District, Bouton, Iowa as Interim Co-Executive Director and General Counsel.

David Breiner joined BrownWinick as a patent associate in August 2011. David received his B.S. in Biology in 1989, B.S. in Mechanical Engineering in 1994 and Master of Science in Engineering Mechanics in 1997 from the University of Nebraska. He received his J.D. in 2006 from Washburn University School of Law in Topeka, Kansas. David’s practice at BrownWinick includes patent application preparation and prosecution. Prior to law school, David worked as an engineer in the power industry where he gained extensive experience in both structural and mechanical engineering. Before joining BrownWinick, David worked as a patent attorney at Harness, Dickey & Pierce, P.L.C. in Reston, Virginia and Roberts Mlotkowski Safran & Cole, P.C. in McLean, Virginia.



Jonathan Gallagher joined BrownWinick as an associate in September 2011. Jonathan received his B.A. in both the Law, Societies and Justice Program and Political Science from the University of Washington, *summa cum laude*, in 2005. He received his J.D., *with highest honors and Order of the Coif*, in 2008 from the University of Iowa College of Law. Jonathan provides legal services primarily in the area of litigation. Before joining BrownWinick, Jonathan served as a law clerk for Judge Michael Melloy of the United States Eighth Circuit Court of Appeals and as a law clerk and courtroom deputy for Chief Judge Robert Pratt of the United States District Court for the Southern District of Iowa.

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Louis Ebinger joined BrownWinick as an associate in November 2011. Lou graduated from Georgetown University in 1998, receiving his B.A. in History and Government, with a Physics minor. He received his J.D. in 2008, *with distinction*, from the University of Iowa College of Law, as well as an MBA from the Tippie School of Management. Lou focuses his practice primarily in the areas of bankruptcy and debtor/creditor matters. Prior to joining BrownWinick, Lou was a Judicial Law Clerk to the Honorable Thad J. Collins, Bankruptcy Judge for the Northern District of Iowa and an associate attorney at Simmons Perrine Moyer Bergman, PLC.

We are extremely pleased that these highly qualified and talented individuals have joined BrownWinick. 

Outstanding Achievements

Christopher L. Nuss was named a partner at BrownWinick as of January 1, 2012. Chris joined BrownWinick on April 1, 2009. He primarily assists clients in the areas of federal, state and local tax planning, compliance and controversies and advises clients, including nonprofit organizations, on a variety of business transactional issues.



Marc T. Beltrame was named a partner at BrownWinick as of January 1, 2012. Marc joined BrownWinick on October 6, 2008. He heads up the firm's lobbying team with a full-time presence in the Iowa Capitol during the legislative session, representing multiple businesses and interests. Marc's lobbying focus is on insurance, gaming and technology sectors.

Leanna D. Whipple was named a partner at BrownWinick as of January 1, 2012. Leanna joined BrownWinick on December 1, 2005. She assists clients in the areas of securities and corporate transactions, as well as environmental and public utilities law. 



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BrownWinick Celebrates 60th Anniversary By Giving Back to the Community in Sixties

BrownWinick first opened its doors on October 1, 1951 under the name "Dykstra and Brown." To celebrate its 60th anniversary, BrownWinick gave back to the community which helped it become the firm it is today.

BrownWinick donated "in sixties" to the following organizations, each of which serve various populations in the Greater Des Moines community:

Bethany Christian Services, a non-profit organization, received 60 boxes of diapers, which they provide to parents in need. Bethany provides services related to adoptions, foster care, and pregnancy counseling, among others.



Backpack Buddies is a Food Bank of Iowa program that directly provides a sack of food to children to take home each week, so that the child will have healthy food to eat over the weekend. BrownWinick helped prepare and pay for 60 backpacks for the Backpack Buddies program.

John R. Grubb Community YMCA began holding a financial management/wellness class in the fall of 2011, and each participant needed a book called "Good Sense". BrownWinick purchased the 60 books needed for the attendees.



Youth Homes of Mid-America is a private, non-profit children and family social service agency and assists persons aging out of the system by providing household items needed for their first apartment. BrownWinick contributed to Youth Homes by donating 60 sets of dishes for these individuals. 