BURR · FORMAN LLP
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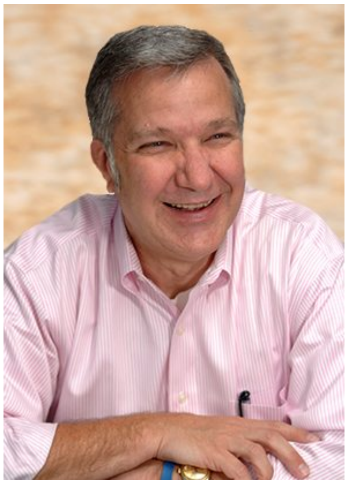

James M. McCarten

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Services
Business & Succession Planning, Tax Law, Trusts & Estates Planning, Corporate, Executive Compensation,

Jim is a Partner in the Firm's Tax, Trusts and Estates and Corporate practice groups, where his practice is best described as a general tax practice. Jim works with a broad spectrum of clients, including start-up businesses, mid-market family businesses, publicly traded entities, retired corporate executives and business owners looking to transfer or sell their business.

His practice encompasses the entire range of tax planning, including, mergers and acquisitions, structuring and forming start-up businesses, asset protection, family business planning and estates, trusts and wealth preservation. In addition to his transactional and tax planning practices, Jim is active in representing clients during audits by or in litigation with the IRS and/or state Departments of Revenue. Finally, as the parent of a young adult on the autism spectrum, Jim is very involved in special needs planning, especially for client families with loved ones who have a disability.Jim's experience specifically includes: representing clients in front of the IRS and/or Georgia or Tennessee Departments of Revenue during examinations, through appeals and, when necessary, into litigation, crafting tax structures for new business ventures, counseling clients on the tax aspects of business exit strategies and business succession issues, designing tax-effective executive compensation packages, creating appropriate estate plans, and counseling families on wealth planning.Jim began his professional tax career with the "Big 8" public accounting firm of Coopers & Lybrand. Following law school, he litigated tax cases for the federal government as a member of the Tax Division of the U.S. Department of Justice.A Fellow of the American College of Trust and Estate Counsel (ACTEC), Jim was honored for his work in special needs planning when inducted into the Special Needs Alliance in 2007, and was honored again when Best Lawyers of America named him the *2017 Lawyer of the Year – Litigation and Controversy – Tax* for Metropolitan Atlanta.With his wife, Diane, Jim has been active with numerous disability advocacy and support organizations in both Tennessee and Georgia. Jim currently serves on the Board of Advisors for The Arc Georgia.

Selected Publications

"What the Federal Tax Overhaul Means for Families with Special Needs," *Parenting Special Needs Magazine* (January 2019)

“Beer, Wine, Alcohol and Taxes: A Most Excellent Recipe,” Law360 (July 2018)
Burr Alert: Georgia Poised to Require Out-of-State Online Retailers to Collect Georgia Sales Tax (April 2018)
“The Impact of Tax Reform on Special Needs Planning,” Special Needs Alliance (March 2018)
“Patent(ly) Unfair: Tax Reform’s Treatment of Self-Created IP,” Intellectual Property & Technology Law Journal (July 2018)
“Building the Best Strategies for Real Estate After Tax Reform,” The Real Estate Finance Journal (Spring, 2018) (July 13, 2018 Thomson Reuters)
Burr Alert: Patent Turmoil: Self-Created IP After Tax Reform (January 23, 2018)
Burr Alert: The “Real Dirt” Tax Reform and the Real Estate Industry (January 11, 2018)
Burr Alert: Toasting Tax Reform’s Impact on Brewers, Vintners, Distillers and Distributors (January 2018)
Burr Alert: 2017 Year-End Tax Planning in Light of Tax Reform (December 2017)
“A Place of Her Own (Part II): The 2014 CMS Home and Community-Based Settings Rule,” Special Needs Alliance (January 2017)
“A Place of Her Own,” Special Needs Alliance (November 2016)
“Strategies for Funding a Special Needs Trust,” Special Needs Alliance (March 2016)
“Daily Tax Report,” Bloomberg BNA (April 23, 2015)
“Q&A with Burr & Forman’s Jim McCarten,” Law360 (December 21, 2013)
Burr Alert: Physicians, Surgery Centers and Taxes (October 2016)
Burr Alert: It’s Time For Your Buy-Sell Checkup! (September 2016)
Burr Alert: An Update on Mrs. Clinton’s Estate Tax Proposals (September 2016)
Burr Alert: Family-Controlled Businesses Tax Targets Again (August 2016)
Burr Alert: Is Tennessee “Retiring” Its Hall Income Tax? (April 2016)
Burr Alert: New Tennessee Reporting Requirements for Banks and Online Payment Networks (January 2016)
Burr Alert: Our Military and Special Needs Trusts for Dependents (January 2016)
Burr Alert: 2015 Year End Tax Changes: What You Need to Know Before Your Bowl (Game) (December 2015)
Burr Alert: “Tax Changes Included in the Trade Preferences Extension Act of 2015,” (August 2015)
Burr Alert: “New Tennessee Tax Laws,” (June 22, 2015)
Burr Alert: “5 Ways to Reduce Your Business’s Year-End Tax Bill,” (December 2013)
Burr Alert: Hall v. United States -Postpetition Capital Gains Not Dischargeable in Chapter 12 Cases (June 2012)

Selected Speaking Engagements

“Where Will My Next Home Be?,” Atlanta Special Needs Forum, Atlanta, Georgia (December 2018)
“Leaving On That Midnight Train from Georgia: Tax Issues When Clients Start Crossing State Lines,” Kennesaw State CPEs for CPA, Kennesaw, Georgia (November 2018)
“Providing A Continuum of Care: Helping Your Client Families When A Family Member Has A Disability,” Kennesaw State CPEs for CPAs, Kennesaw, Georgia (November 2018)
“The Taxation of Lawyers and Their Practice Post-Tax Reform,” 2018 Stetson Special Needs Trust Conference, St. Petersburg, Florida (October 2018)
“Staying Alive, Staying Exempt and Staying Solvent: Taxes and Nonprofits,” 2018 Stetson Special Needs Trust Conference, St. Petersburg, Florida (October 2018)
“Beyond the Special Needs Trust Essential New Developments in Special Needs Planning,” State Bar of Georgia ICLE, Atlanta, Georgia (February 2018)
“The Tax Cut and Jobs Act of 2017 (with a focus on its provisions affecting those with disabilities) and

A Non-Tax Update on Special Needs Planning, Exceptional Ops, Fayetteville, Georgia (January,2018)
“Beyond the Special Needs Trust: Essential New Developments in Special Needs Planning,” 52nd Annual Heckerling Institute on Estate Planning, Orlando, Florida (January 2018)
“Beyond the Special Needs Trust: Essential New Developments in Special Needs Planning,” State Bar of Georgia ICLE, Atlanta, Georgia (January 2018)
“Income, Which Income? Longing for Simpler Days,” 2017 Stetson Law Special Needs Trusts Program, St. Petersburg, Florida (October 2017)
“Trusts and Taxpayer Identification Numbers: Which Trusts, Why, When and How,” 2017 Stetson Law Special Needs Trusts Program, St. Petersburg, Florida (October 2017)
“Financial and Legal Planning for Adulthood,” Nalls Sherbakoff and VIBES, a support organization, Knoxville, Tennessee (September 2017)
“Special Children, Special Lives, Special Needs, Special Planning,” Atlanta Alumni of Revenue Agents, Atlanta, Georgia (August 2017)
“Post Morten Planning: Our Client Just Died, Now What Do We Do?,” Georgia Society of CPAs, Greensboro, Georgia (July 2017)
“Special Children, Special Lives, Special Needs, Special Planning,” LBMC CPAs In House CPE, Nashville, Tennessee (May 2017)
“Mom, Dad, What Happens When I Turn 18?,” Southside Support Transition Day Program, Fayetteville, Georgia (March 2017)
“A Place of My Own: Exploring Housing Options for Individuals with Disabilities,” State Bar of Georgia ICLE, Atlanta, Georgia (February 2017)
“Employment SALT: Tax Issues When Workers Cross State Borders,” Singleton B. Wolfe Memorial Tax Conference, University of Tennessee, Knoxville, TN (October 28, 2016)
“Valuation Vexation: The Proposed 2704 Regulations And Transferring Interests in Family-Controlled Businesses,” The Estate Planning Council of Chattanooga, TN (October 27, 2016)
“ABLE Accounts: What Are They and What Do They Add?,” Special Needs Trusts, ICLE in Georgia, State Bar of Georgia, Atlanta, GA (February 10, 2016)
“Handling Employment Tax Controversies: Where the Functions of the Tax Department, Human Resources and Payroll Should Intersect,” IRS Solutions Conference Sponsored by the Georgia Society of CPAs, Atlanta, GA (December 17, 2015)
“S Corporation Challenges: What Can Go Wrong and How to Fix It,” 2015 Tennessee Federal Tax Conference, Franklin, TN (November 19, 2015)
“Tennessee’s New Nonprofit Business Corporate Act and A New FASB,” Singleton B. Wolfe Memorial Federal Tax Conference, University of Tennessee, Knoxville, TN (October 30, 2015)
“Business Law Update,” Dixon Hughes Goodman LLP Annual Executive Briefing Series (October 20, 2015)
“Business Law Update,” 2015 Southeastern Accounting Show, Sponsored by Georgia Society of CPAs (August 27-28, 2015)
“New Rules For Nonprofit Corporations: Re-Learning the Corporate Law and Accounting and Auditing Rules and Guidelines,” Upper Cumberland Chapter of the Tennessee Society of CPA (August 19, 2015)
“Navigating the Financial Reporting Enhancements of FASB’s Exposure Draft: ,” Presentation of Financial Statements of Not-For-Profit Entities,” BNA Webinar (July 28, 2015)
“New Rules For Nonprofit Corporations: Re-Learning the Corporate Law and Accounting and Auditing Rules and Guidelines,” Knoxville Chapter of the Tennessee Society of CPA (June 9, 2015)
“Not-for-Profit Accounting Changes,” No Name Tax Club, Nashville, TN (May 13, 2015)
“Special Children, Special Lives, Special Needs, Special Planning,” The Chattahoochee Flint

Transition Alliance, Columbus, GA (March 12, 2015)
“Administering Special Needs Trusts: Special Trusts for Special People Require Special Consideration,” Synovus Trust Company, N.A. 2015 Fiduciary Conference, Columbus, GA (March 11, 2015)
“Special Children, Special Lives, Special Needs, Special Planning,” VIBES Sponsored by Nalls-Sherbakoff Group, LLC, Knoxville, TN (December 11, 2014)
“Independent Contractors And Other Tax Reporting Targets,” IRS For 1099 Reporting: What You Need to Know Sponsored by Lorman Ed. Services, Knoxville, TN (December 12, 2014)
“Final Section 1411 Regulations, Passive Activity Rules and the Grouping Election,” Tennessee Society of CPA’s Tennessee Federal Tax Conference, Franklin, TN (November 19-21, 2014)
“What’s On My Desk: Current Issues In An Everyday Practice,” Knoxville Chapter of the Tennessee Society of CPAs (November 12, 2014)
“Current IRS Issues In An Everyday Practice,” University of Tennessee, Singleton B. Wolfe Memorial Tax Conference (October 31, 2014)
“What Is This Net Investment Income (NII) Tax And Why Do I Care?,” Singleton B. Wolfe Memorial Federal Tax Conference, University of Tennessee, Knoxville, TN (October 31, 2014)
“What’s On My Desk: Current Issues In An Everyday Practice,” Cookeville Chapter of the Tennessee Society of CPAs (September 17, 2014)
“Special Children, Special Lives, Special Needs, Special Planning,” Exceptional Family Member Program, Ft. Benning, Georgia (September 12, 2014)
“What’s On My Desk: Current Issues In An Everyday Practice,” Knoxville Chapter of the Tennessee Society of CPAs (May 13, 2014)
“Special Children, Special Lives, Special Needs, Special Planning,” Chattanooga Estate Planning Council, Chattanooga, TN (March 27, 2014)
“Special Children, Special Lives, Special Needs, Special Planning,” Mitchell’s Place, Army Community Service Exceptional Family Member Program, (February 21, 2014)
“Important Tax Planning Considerations for 2014,” Capital Financial Group Annual Planning Seminar, Franklin, TN (February 13, 2014)
“What Was Old Is New Again and Again and Again! : Lessons to Learn from the IRS National Employment Tax Research Project,” Dealing with the IRS State Bar of Georgia Tax Section, Atlanta, GA (December 19, 2013)
“The Basics of the Net Investment Income (NII) Tax,” Tennessee Society of CPAs, Tennessee Federal Tax Conference, Franklin, TN (November 20-22, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” Oak Ridge National Lab Employee’s Conference Hosted by Hallman Walters Wealth Management (November 13, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” The Fort Campbell Army Community Service Exceptional Family Member Program (November 5, 2013)
“What Is This Net Investment Income (NII) Tax and Why Do I Care?,” Singleton B. Wolfe Memorial Federal Tax Conference, University of Tennessee, Knoxville, TN (October 31, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” Muscular Dystrophy Association, Atlanta, GA (October 24-26, 2013)
“Where The Net Investment Income Tax Regulations and Special Needs Planning Collide,” Special Needs Alliance, St. Pete Beach, FL (October 19, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” Harris-Hillman 5th Annual Resource Fair, Nashville, TN (September 18, 2013)
“Tax News You Can Use: Recent Tax Developments of Interest,” Breakfast With Burr, Nashville, TN (September 17, 2013)

“The New Medicaid Surtax: Legacy Unfriendly,” Financial Planning Association, Knoxville, Tennessee (September 11, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” The Fort Benning Army Community Service Exceptional Family Member Program (June 3, 2013)
“Choice of Entity 2013: What Impact Does The New Medicare Tax Have on Our Planning?,” Knoxville Chapter of the Tennessee Society of CPAs, Knoxville, TN (May 14, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” National Alliance on Mental Illness, Murfreesboro, TN (May 9, 2013)
“Choice of Entity 2013: What Impact Does The New Medicare Tax Have on Our Planning?,” Wells Fargo Advisors, LLC, Brentwood, TN (May 8, 2013)
“Choice of Entity 2013: What Impact Does The New Medicare Tax Have on Our Planning?,” State Bar of Georgia, New Tax Laws Program, Atlanta, Georgia (April 25, 2013)
“A Bike Ride for Bobby, A Concert for Cathy: Unintended Consequences of Fundraisers for Promoters and for Beneficiaries,” 2013 ACTEC Southern Regional Meeting, Jackson, MS (April 19-21, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” Mitchell’s Place, Birmingham, Alabama (April 19, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” Muscular Dystrophy Association, Vanderbilt University (April 4-6, 2013)
“Special Children, Special Lives, Special Needs, Special Planning,” Northeast Georgia Disability Expo & Transition Conference (March 20, 2013)

Publications

- *Parenting Special Needs*: What the Federal Tax Overhaul Means for Families with Special Needs
- *The Real Estate Finance Journal*: Building the Best Strategies for Real Estate After Tax Reform
- *Law360*: Beer, Wine, Alcohol And Taxes: A Most Excellent Recipe
- Burr Alert: Georgia Poised to Require Out-of-State Online Retailers to Collect Georgia Sales Tax
- *Special Needs Alliance*: The Impact of Tax Reform on Special Needs Planning

Education

L.L.M., Taxation, Emory University, (1991)
J.D., University of Missouri-Kansas City, (1984)
B.S., Accounting, University of Kansas, (1979)

Licensed In

Georgia, Missouri, Tennessee

Honors & Awards

- American College of Trust and Estate Counsel, Fellow
- *Best Lawyers in America*, Litigation & Controversy-Tax (2011-2020), Non-Profit/Charities Law (2007-2020), Tax Law (2007-2020), Trusts and Estates (2003-2020)
- *Mid-South Super Lawyers*, Estate Planning & Probate (2006-2013)
- Special Needs Alliance

- Tennessee Bar Association, President's Award
- Department of Justice Outstanding Attorney Award (1986)
- *Best Lawyers in America*, "Lawyer of the Year," Litigation and Controversy - Tax (2017), Non-Profit/ Charities Law (2018 & 2020) Atlanta, Georgia
- Tennessee Supreme Court, "2018 Attorney for Justice"

Professional Associations

American Bar Association; Taxation, Business Law, Litigation and Real Property, Probate and Trust Law Sections; Subcommittee on Practice and Procedure, Chair (1996); Tax Litigation Committee of the Litigation Section
Special Needs Alliance
American College of Trust and Estate Counsel, Fellow
The Conservatorship Association of Tennessee, Director (2009)
Tennessee Bar Association; Tax Section, Chair (2006-2007); Estate Planning & Probate Section; Business Entities Study Committee
Middle Tennessee Estate Planning Council (2007-2018)
Missouri State Bar, Tax Section
State Bar of Georgia, Tax Section

Community Involvement

Board of Advisors, The Arc Georgia
Exceptional Ops, Member (2014 - Present)
Georgia Department of Behavioral Health and Developmental Disabilities Advisory Council for Region 6 Member (2018 - Present)

Experience

- Working closely with IP counsel, formalized several unique business and manufacturing enhancements developed by the business owner followed by a tax-free reorganization of the underlying business to minimize the business owner's income taxes, but maximize the family's cash-flow when the business was acquired by a national enterprise.
- Represented ex-spouse of "Final 4" accounting firm partner in a successful "innocent spouse" defense against assessment of taxes, penalties and interest exceeding $3 million.
- Represented one of two shareholders of a substantial rehabilitation facility during a business divorce eventually resolved by a sale to a white knight and negotiated the put-call arrangement with the venture firm to increase capital gains, minimize ordinary income and maximize the client's total return.
- Represented a for-profit enterprise in the design of a joint venture with a non-profit hospital and several local physicians.
- *Eli Lilly & Company v. Commissioner*, Tennessee Department of Revenue. Represented pharmaceutical company in significant refund litigation over Tennessee franchise and excise tax liabilities. Successfully settled.
- Assisted several publicly-traded financial institutions with the design and documentation of their non-qualified deferred compensation programs for directors and key executives under Section

409A and other tax statutes.

- Main author of the Tennessee Revised Non-Profit Limited Liability Company Act Section 48-101-801, et. seq. (2006).
- Through a combination of family partnerships, Tennessee Investment Services (Dynasty) Trusts, charitable and defined-value gifting, and sales to grantor trusts, Mr. McCarten assisted in the transfer of a Tennessee service business and other family business assets worth more than $50M to the second generation at a minimal Federal transfer tax cost.
- Has successfully represented business owners and taxpayers in investigations and recommendations for prosecution by IRS Criminal Investigation Divisions, several times convincing the Department of Justice to decline IRS recommendations for prosecution.
- Structured the legal documents creating a museum for a community in Tennessee and worked with the client throughout the IRS exemption application process.
- Has organized several charitable cooperatives for health care organizations.
- Worked on reorganizations of and acquisitions and mergers of various professional practices in the medical, accounting, architecture, engineering and legal communities.
- Counsel for a number of community foundations throughout Tennessee.
- Subsequently obtained a six figure award of attorneys fees under code Section 7430 for that same taxpayer. *Smokey Mountain Secrets, Inc. v. U.S.*, 78 AFTR 2d 96-7603 (D.C. Tn. 1996).
- Reorganized a single charitable organization into two charities and three for-profit enterprises owned by the charities which now generate significant taxable income.
- Represented an East Tennessee economic development organization in resolving a seven figure sales and use tax dispute with the State of Tennessee.
- Has successfully represented certified public accountants in administrative proceedings brought by the government to disbar them from practice before the IRS (under Circular 230).
- Transferred ownership of a closely-held Tennessee manufacturing concern to the owner's children and trusts for the grandchildren using self-cancelling installment notes ("SCINs") saving the family roughly $15M in transfer taxes.
- Represented a major Tennessee non-profit in exempting significant portions of its real property from property tax.
- *Brunswick Corp. v. Commissioner*, Tennessee Department of Revenue. Successfully represented national company in settling separate franchise and excise tax and sales tax disputes with the Tennessee Department of Revenue.
- Worked with plaintiff's counsel to structure the settlement of a $10M medical malpractice case by having the award paid to a special needs trust ("SNT"), thereby protecting the child's access to Medicaid/TennCare coverage. This representation also included the joint purchase of a home for the family by the SNT and the parents and utilized insurance trusts to protect the value of the award for the remainder of the family.
- Represented one of two shareholders of a substantial rehabilitation facility during a business divorce eventually resolved by a sale to a white knight and negotiated the put-call arrangement with the venture firm to maximize capital gains, minimize ordinary income and increase the client's total return.

- Lead counsel for the taxpayer in a multimillion dollar employment tax case involving whether certain workers were employees or independent contractors. *Smokey Mountain Secrets, Inc. v. U.S.*, 76 AFTR 2d 95-6974 (D.C. Tn. 1995).
- Organized and structured the Community Reuse Organization East Tennessee and its various single-member LLCs.
- Active in structuring the planned gift of $25M for a community foundation.

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