

This issue of the Cole Schotz newsletter provides updates from the following departments:

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- Bankruptcy & Restructuring
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- Tax, Trusts & Estates

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**A State Nexus Study: Avoiding Imminent Audits by Revenue-Thirsty States**

We are seeing an uptick in audit activity by state tax authorities of closely held businesses, particularly in the area of sales and use tax, to generate much needed revenue for meeting budget shortfalls and funding services and entitlement programs. A go-to audit technique is to examine whether a company has "nexus" with its state.

The question of whether your company has "nexus" with other states can lurk in the background of its normal multi-state activities, until all of a sudden it explodes in an audit. A company that has failed to file returns and pay tax where there is nexus may face an audit for the past six to eight years generating substantial tax liability. In the case of a trust fund tax (such as sales tax) there is also personal liability to a company's owners and officers that is not a dischargeable debt in bankruptcy.

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Geoffery Weinstein



Juliya Ismailov

**Cole Schotz Named to The National Law Journal's 2016 Midsize Hot List**



The National Law Journal readers were asked to nominate law firms with between 51 and 150 attorneys that have used their creative strategies and skill to stay competitive across the U.S. Cole Schotz was one of 20 firms highlighted in *The 2016 Midsize Hot List*. The NLJ acknowledged Cole Schotz's ability to carve out a niche in bankruptcies involving health care providers and for the achievements of our Real Estate Department.

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**SEC Adopts Rules on Thresholds for Exchange Act Reporting**

Earlier this month, the Securities and Exchange Commission approved amendments to, among other things, revise the rules related to the thresholds for registration, termination of registration, and suspension of reporting under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act").

The amendments, include establishing:

- a higher threshold of (1) a minimum of \$10 million in assets; and (2) 2,000 holders of record or 500 holders of record that are not "accredited investors" for an issuer to be required to register a class of equity pursuant to Rules 12(g)(1);
- a higher threshold of 300 holders of record (or 500 holders of record which, if total assets have not exceeded \$10 million) below which an issuer may terminate registration under Rule 12g-4(a);

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Jennifer Horowitz



Marc Press

**Highlights from the WeiserMazars New York Commercial Real Estate Summit**



Leo Leyva

The international economic environment and commercial real estate markets here in the NY metropolitan area, as well as in other parts of the country, are facing some significant challenges in stark contrast to the last five years of fast-paced activity. Capital sources are rapidly changing underwriting standards and target investment criteria, creating an atmosphere of uncertainty.

Leo Leyva joined a group of industry leaders including Marty Burger, CEO of Silverstein Properties, MaryAnne Gilmartin, President & CEO of Forest City Ratner Companies, David Weinreb, CEO of The Howard Hughes Corporation, Steven Witkoff, Chairman & CEO of Witkoff, and Simon Ziff, President of Ackman Ziff for a frank discussion of the challenges of a market facing tighter financing at the WeiserMazars New York Commercial Real Estate Summit.

The event was held on May 10th at the New York Athletic Club.

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**Supreme Court Broadly Interprets "Actual Fraud" Exception to Bankruptcy Discharge**



Mark Tsukerman

On Monday, May 16, 2016, the Supreme Court issued its decision in the case of *Husky Int'l Elecs., Inc. v. Ritz*, — S. Ct. —, 2016 WL 2842452 (2016) resolving a split between the Fifth and Seventh Circuit Courts of Appeal regarding the scope of the "actual fraud" exception to an individual debtor's bankruptcy discharge. In relevant part, Section 523(a)(2)(A) of the Bankruptcy Code prohibits debtors from discharging "any debt . . . for money, property, [or] services . . . to the extent obtained, by . . . false pretenses, a false representation, or *actual fraud*." (Emphasis added). The question was whether the "actual fraud" contemplated by Section 523(a)(2)(A) required a false representation by the debtor to the creditor, or whether it also encompassed other forms of fraud, like fraudulent conveyance schemes, that can be accomplished without a false representation.

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