

## Charles Wern

PRESIDENT & SHAREHOLDER

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Charles' practice includes tax planning and business transactions. He has extensive tax planning expertise with respect to partnerships/LLCs, C and S corporations, and individual income tax rules, as well as dealing with complex transactional tax issues in connection with mergers/acquisitions and other business transactions. He has served as tax and transactional counsel to clients, law firms, and accountants in connection with business formations, operations, sales/purchases of assets and equity, mergers/reorganizations, incentive compensation matters, private equity and start-up financing transactions, joint ventures/strategic alliances, and business exit plans (including distributions, redemptions and liquidation transactions). Charles has represented public and private companies and high net worth individuals in a wide array of industries (including the oil and gas and cannabis industries).

As a consequence of his combined tax and transactional practice, Charles has developed valuable expertise assisting with the structuring of transactions to guide clients to achieving the best outcomes from a combined economic, legal and tax perspective, as well as generally assisting clients with creative solutions to complicated business problems. In addition, as a result of this combined expertise, Charles has accumulated extensive experience with the drafting of LLC operating agreements and LP agreements to effectuate new ventures/start-ups, private equity/investment transactions, real estate investments and other joint venture transactions, particularly with respect to structuring of cash distribution waterfall provisions and the issuance of incentive profits/carry interests.

Charles also has experience with international transactions and foreign tax planning matters, including inbound transactions (e.g., foreign businesses and individuals with U.S. operations or investing in U.S. businesses and/or real estate), outbound transactions (e.g., U.S. businesses with foreign operations, subsidiaries and/or investments), FIRPTA transactions and analysis, foreign joint ventures and income tax treaty planning.

### Background

Prior to joining Jones & Keller, Charles was a partner with Nadler, Nadler & Burdman Co. LPA, a boutique northeast Ohio law firm that represented companies, business owners and high net worth individuals, where he served as effective general counsel to individuals and private and public company clients, assisting them in structuring and effectuating business transactions and estate plans, and problem solving complicated business matters.

Prior to Nadler, Nadler & Burdman, Charles was an associate in the corporate and tax department of the international law firm Reed Smith LLP, in New York, NY, where his practice focused primarily on domestic and foreign tax planning and assisting the corporate department in structuring and effectuating M&A transactions, real

estate investments and foreign joint ventures.

Charles is a graduate of the New York University School of Law Graduate Tax Program where he received his LLM in Taxation. Charles is also a regular lecturer on LLC and tax planning matters.

## Expertise

Charles has advised clients in a broad range of business transactions, including:

- Start-up and choice of entity planning;
- Private equity placements/investments and start-up financing transactions (including SAFE instruments and 1202 qualified small business stock tax planning);
- M&A transactions (including “UP-C” transactions, tax-free mergers, reorganizations and spin-offs);
- Cannabis industry tax planning (including 280E planning/analysis);
- Tax review of proxy statements, registration statements, offering memorandum, etc.;
- Sales/purchases of business assets and equity (including distressed businesses);
- Real estate purchase and sale transactions (including 1031 tax-free exchanges and qualified opportunity zone funds);
- Joint ventures and strategic alliances;
- Public and private company executive compensation/long-term incentive equity plans, LLC/partnership profits interest awards, and S corporation and LLC/partnership phantom equity plans (including 409A deferred comp issues);
- Commercial lending/financing transactions;
- Commercial real estate/shopping center leasing;
- Business succession, asset protection and estate planning; and
- General corporate matters and contracts

## Significant Representations

- Assisted shareholders of S corporation in biotechnology industry in partial tax-free merger of target company into public company acquirer for mix of stock and cash consideration with an aggregate value of \$47 million.
- Advised public company in oil and gas industry on acquisition of well and lease assets from two separate sellers for cash and stock with an aggregate value of \$125 million.
- Advised multi-state retail cannabis dispensary business in structuring and implementation of multi-entity organizational and tax restructuring to maximize after-tax operating revenue and sale/liquidation proceeds along side convertible debt raise with an enterprise value of over \$450 million.
- Assisted retail cannabis operator in implementation of joint venture and acquisition of high-volume dispensary.
- Assisted artist in effectuating license agreement and equity kicker with Canadian cannabis company.
- Advised public company in oil and gas industry on acquisition of LLC units from private equity portfolio company for stock and target debt assumption with an aggregate value of \$185 million (including buyer-side reps and warranty insurance policy).

- Advised individual on sale of LLC membership interests in software business to private equity firm for cash and rollover equity with an enterprise value of \$33 million.
- Advised US and foreign individuals on sale of LLC membership interests in software and brokerage business to private equity firm for cash and rollover equity with an aggregate enterprise value of \$93.5 million.
- Advised company and shareholders (including charity) on sale of stock of S corporation engaged in technology business to foreign public company for cash and stock with an aggregate value of \$87 million, including effectuation of pre-closing F reorganization of S corporation seller.
- Advised public company in the oil and gas extraction sector on implementation of second Up-C partnership transaction to acquire portfolio company of a private equity firm for combination of cash and stock consideration with an aggregate value over \$950 million.
- Advised public company in oil and gas services/equipment sector on acquisition of LLC interests of private equity portfolio company for combination of cash and stock (including buyer-side reps and warranties insurance policy) with an aggregate value over \$200 million.
- Advised multiple cannabis related businesses on choice of entity planning, 280E analysis/planning, company restructurings, equity and debt raises, incentive equity issuances, and sales/exit plans.
- Advised multiple clients (issuers and investors) on structuring and effectuating qualified opportunity zone funds, which provide for capital gains exemptions for tax payers/investors who roll capital gains into long-term investments in certain low-income communities.
- Advised individual with respect to 1031 tax-free exchange regarding sale of commercial real estate in exchange for acquisition of multiple tenant-in-common real estate investments.
- Advised LLC seller on sale of minority interest in a minor league baseball club.
- Advised buyer group on acquisition of accounting firm.
- Advised individual sellers in software business on sale of LLC membership interests to public company for combination of cash and restricted stock units with an aggregate value over \$50 million.
- Advised family office/private equity fund in connection with structuring and implementation of multiple forward and reverse 1031 tax-free exchanges of apartment complexes with an aggregate value over \$500 million.
- Advised public company in the oil and gas extraction industry on implementation of Up-C partnership structure (to provide private equity fund an IPO alternative) in order to effectuate the acquisition of a portfolio company of the private equity fund with an aggregate value over \$800 million.
- Advised family office in connection with structuring and implementation of a multi-fund mineral interest acquisition joint venture deploying equity and convertible debt financing arrangements with an aggregate value over \$50 million, and subsequent JV parties exit and in-kind liquidation.
- Advised public and private companies on tax structuring and preparation of long-term incentive equity compensation plans for management, executives and directors, including structuring and implementation of phantom equity plans.
- Advised U.S. public company in oil and gas industry on cross-border acquisition of Canadian company, including FIRPTA analysis.
- Advised private company on tax structuring of stock acquisition with 336(e) tax election and seller roll-over equity
- Advised family in connection with sale of manufacturing business for over \$95 million in cash and roll-over equity; structuring of pre-closing "F" reorganization of S corporation seller entity.

- Advised shopping center group looking to transition out of active management concerning implementation of joint venture with drop-down of multiple developed and undeveloped properties valued at over \$25 million to new LLC for tiered preferred returns, with active management group receipt of incentive profits/carry interest.
- Advised public company on negotiation and closing of purchase of 144-room hotel and sports center complex.
- Advised multiple auto dealerships with respect to purchases of new franchises and dealership real estate/equipment; generally advise dealerships with respect to leases, bank financing matters, dealer sale/service agreements, dealer franchise laws, settlement/release agreements, tax planning and other general counsel matters.
- Served as mediator in divorce proceedings to guide parties and divorce counsel through complex business and tax issues relating to division of multiple manufacturing businesses worth over \$100 million plus various oil and gas rights and investment real estate assets.
- Advised family-owned manufacturing businesses on implementation of succession plans and voting trusts.
- Advised family in connection with contentious exit from oil and gas interests and injection well investments.
- Advised private investor on sale and 1031 tax-free exchange of an investment grade property for multiple triple-net replacement properties and subsequent sale and 1031 exchange one year later of one of the replacement properties.
- Advised public company in connection with private placement offering of investment capital for start-up injection well business.
- Represented family-owned manufacturing business on consignment agreement with major customer for supply of inventory to Texas warehouse facility for cross-border shipments.
- Advised manufacturing business on sale of assets of subsidiary while retaining proprietary lines and customer base, combined with post-closing transition services agreement, seller financing/ security components and purchaser's bank subordination arrangements.

## Speeches and Publications

- "Why LLCs? Fully Using Tax Advantages, and Advantageous Uses of LLCs", National Business Institute (2014)
- "LLC Workshop – Entity Taxation and Compare and Contrast", National Business Institute (2012)
- "LLC Taxation: An Introduction to Limited Liability Companies", Association of Enrolled Agents of Northeast Ohio (2009)
- "Formation and Operation of LLCs and Impact of State Law on LLC's", National Business Institute (2008)
- "The Tax Impact of Real Estate Debt Workouts and Restructurings", Association of Enrolled Agents of Northeast Ohio (2008)
- "1031 Tax-Free Exchanges and Real Estate Tax Trends", Realtors Association (2006)
- "Asset Protection Planning (Portfolio 810)", Bloomberg BNA Portfolios, assisted annual update (2001)
- "The Stapled REIT on Ice: Congress' 1998 Freeze of the Grandfather Exception for Stapled REITs", Capital University Law School published law review article (2000)

## Community Activity & Personal Interests

Charles has been involved in a variety of charitable organizations during his career, including:

- Member of Board of Directors, Loan Review Committee, Executive Committee, and Strategic Planning/Venture Capital Sub-Committee of the Mahoning Valley Economic Development Corporation, a non-profit lender and economic development corporation.
- Board Member of the Warren Commerce Park, a non-profit industrial park.
- Board Member and prior chapter Chairman of the American Red Cross of the Mahoning Valley, where he orchestrated the reorganization and merger of two separate county Red Cross chapters.
- Member of the Garden Club Angels, a venture capital/angel investor forum sponsored by the Youngstown State University and the Youngstown Business Incubator.

During his free time, Charles enjoys spending time with his wife and their three boys, especially skiing and other outdoor activities. In addition to skiing with his family, Charles enjoys dirt bike riding, mountain biking, hiking, camping, racquet sports (particularly tennis but also racquetball, squash, paddle tennis and table tennis), golf (although far less frequently of late) and “fire-side” chats about history and philosophy (directed in particular to Charles’ dear California friends).

## HONORS & DISTINCTIONS

- The Global Top 200 Cannabis Lawyers List, 2022/2023
- Mahoning Valley Professionals “40 under 40” award

## PROFESSIONAL & COMMUNITY AFFILIATIONS

- Member of Board of Directors, Loan Review Committee, Executive Committee, and Strategic Planning/Venture Capital Sub-Committee of the Mahoning Valley Economic Development Corporation, a non-profit lender and economic development corporation
- Board Member of the Warren Commerce Park, a non-profit industrial park
- Board Member and prior chapter Chairman of the American Red Cross of the Mahoning Valley, where he orchestrated the reorganization and merger of two separate county Red Cross chapters
- Garden Club Angels, a venture capital/angel investor forum sponsored by the Youngstown State University and the Youngstown Business Incubator

## ADMISSIONS

Colorado (2016)

New York (2002)

Ohio (1999)

## LICENSED IN

Colorado (2016), New York (2002), Ohio (1999)

## EDUCATION

LLM Taxation, New York University School of Law, 2000

Juris Doctor, *magna cum laude*, Capital University Law School, 1999

- Law Review Staff Member
- Elected to Order of the Curia and in top 5% of class

Legal Study Abroad, Oxford University, St. Anne's College, 1998

Bachelors of Arts, John Carroll University, 1995

## **PRACTICE AREAS**

Business & Corporate

International Business Transactions

Mergers and Acquisitions

Natural Resources

Real Estate

Sports and Entertainment

Taxation

Trusts & Estates