

# THE COUNSELOR

## QUALIFIED SMALL BUSINESS STOCK AND THE MILLIONS IN TAX SAVINGS

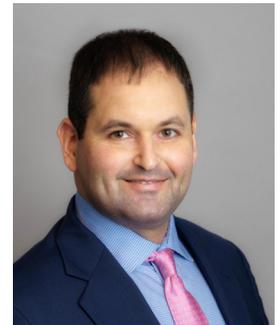
— Alexander Kerzhner, Esq.

Many entrepreneurs, founders, and investors devote significant time and effort to developing their ideas. Once the idea comes to fruition, the questions often asked are - should the business be formed as a limited liability company or a corporation? A C-corporation or an S-corporation? In making this decision, the Internal Revenue Code ("IRC") provides an often-overlooked, but important tax saving provision that should be considered.

Under certain circumstances, §1202 of the IRC provides qualified shareholders of a C-corporation an opportunity to exclude up to 100% of the gain realized from the sale or disposition of qualified small business stock ("QSBS"). There are several requirements that must be met in order for the shares to qualify as QSBS. For example, QSBS treatment will only be given to the shares of a C-corporation that are held for at least five years and whose gross assets did not exceed \$50 million when the shares were issued. Shares of S-corporations and interests in LLCs are not eligible. Shares of certain types of businesses qualify for QSBS treatment. Technology, wholesale, retail and manufacturing businesses generally qualify, while service-based businesses generally do not. Additionally, qualified shares must be held by the original owner. Shares purchased from, or issued by, anyone other than the corporation do not qualify. While too lengthy to review in detail here, there are several other requirements under §1202, which should be reviewed with your attorney or tax advisor.

The QSBS tax savings are significant. A seller of QSBS shares can qualify for tax free treatment on the gain of QSBS shares that is the greater of \$10 million or 10 times the tax basis in the shares. As an example, a qualifying seller who invests \$2 million in stock today, can sell the stock in 5 years for \$22 million without paying any federal tax.

QSBS rules were created to incentivize investment by allowing investors the opportunity to exclude federal taxes on the sale or disposition of QSBS. However, because of the §1202 requirements, it is important to take the potential tax savings into account at the entity formation stage, because otherwise it may just be too late! Our Corporate attorneys at FDT are here to assist you with all your business formation & IRC election needs. ■

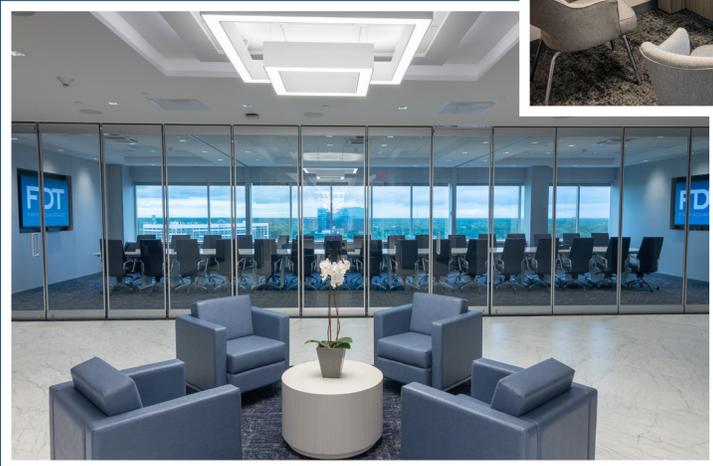


Alexander Kerzhner,  
Partner

# FDT<sup>®</sup>

# FORCHELLI DEEGAN TERRANA

• A SNEAK PEEK AT OUR UPDATED HOME •



• RENOVATED & EXPANDED SPACE •

Forchelli Deegan Terrana LLP renovated and expanded its office to occupy the entire 50,000-square-foot top floor of The OMNI in Uniondale.

The renovation includes cutting-edge technology, expanded meeting space, ergonomic features and enhanced employee dining facilities, giving both FDT staff and clients the Firm Advantage.

## EVENTS AND SPEAKING ENGAGEMENTS

**Landon C. Dais** was invited to speak at the NYC Cannabis Parade & Rally. This year's Rally/Press Conference included several distinguished speakers, including U.S. Senate Majority Leader Chuck Schumer, NYS Attorney General Letitia James and NYS Senator Brian A. Benjamin

**Lindsay Mesh Lotito** participated in Valley Bank's Valley Women in Business event, "Financial Wellness for Women."



FDT sponsored the Mortgage Bankers Association of NY's Strategic Real Estate & Lending Conference.

**John Bues** & **Lindsay Mesh Lotito** participated in the virtual Conference.

**Lisa Casa** & **Danielle E. Tricolla** spoke during the Melville Chamber of Commerce's NeXGen's virtual event, "Marijuana Legalization: Do's and Don'ts."

FDT's Long Island General Counsel Network hosted a CLE webinar on "How Current Societal Changes are Affecting Employers." Firm presenters: **Gregory S. Lisi**, **Lisa Casa**, **Peter B. Skelos** and **Landon C. Dais**.

**Robert L. Renda** presented a lecture and Q & A segment with Daniel Gale Sotheby's International Realty on the recent trends and developments in Nassau County real estate taxes.

**Peter B. Skelos** was a panelist on the NYS Academy of Trial Lawyers CLE webinar, "Mastering MedMal Mediations."

**Kathleen Deegan Dickson** & **Danielle E. Tricolla** presented at the Asian American Bar Association of New York's (AABANY) Real Estate Committee's CLE, "Cannabis Law & Real Estate." **Jane Chen** Co-Chairs this Committee.

**Gregory S. Lisi**, **Mary E. Mongioi** & 2021 Summer intern, Thomas Larounis, attended the Nassau County Bar Association's Annual Dinner Gala.

**Gerard R. Luckman** & **Gabriella E. Botticelli** attended the Turnaround

Management Association - Long Island's Summertime Reception.

**Brian R. Sahn** attended the U.S. Green Building Council—Long Island Chapter's Annual Building Green Dinner. He is a member of the USGBC-LI's Board of Directors.

**Mary E. Mongioi** attended VetPartners' Mid-Year Meeting, as well as the Veterinary Innovation Summit in Kansas City, MO.



**Jonah H. Blumenthal** rode the Breezy Point 25 Mile Loop, raising funds for Bike NCSY: Inspiring the Jewish Future Organization.

**Danielle E. Tricolla** & **Lisa Casa** were panelists on a NYCLA CLE webinar, "New York State's New Cannabis Law: What You Need to Know About the Business, Licensing, Regulatory, and Criminal Provisions of the New Law."



**Daniel P. Deegan** attended the Long Island Business Development Council's 51st Annual Conference and spoke on financing Long Island's real estate projects.

**Judy L. Simoncic**, **Andrea Tsoukalas Curto**, **Jessica A. Leis**, **Danielle B. Gatto** and **Gabriella E. Botticelli** attended and FDT sponsored Collaborate with Edge's Welcome Back reception.

**Raymond A. Castronovo** was a panelist, and FDT sponsored, the New England Real Estate Journal's virtual event, "Cannabis Facilities & Construction."

**Jane Chen** was a panelist at the AABANY CLE, "Diversity, Equity, Inclusion & Ethics in Real Estate." ■

## AWARDS AND RECOGNITION



FDT received multiple recognitions in LIBN's virtual Real Estate, Architecture & Engineering Awards:

*Top Commercial Redevelopment | Cornerstone at Yorkshire, Lynbrook:* FDT attorney team: **Daniel P. Deegan**; **Judy L. Simoncic**; **William F. Bonesso**; **Daniel S. Dornfeld**; **Louis H. Fiore** & **James C. Ricca**

*Top Multi-Family Redevelopment | Laurel Homes, Roslyn Heights:* FDT attorney team: **Kathleen Deegan Dickson** & **Jessica A. Leis**

*Top Multi-Family Projects | Village by the Bay, Amityville:* FDT attorney team: **Jeffrey D. Forchelli**; **Daniel P. Deegan**; **Louis H. Fiore**; **Jessica A. Leis** & **Erik W. Snipas**

*IDA Project of the Year – Nassau | Breeze and Islablue, Long Beach:* **Daniel P. Deegan**

*Top Industrial Renovation | Gold Coast Studios, Bethpage:* **Judy L. Simoncic**



Best Lawyers® in America 2022:

**Jeffrey D. Forchelli** was selected by his peers for inclusion in the 28th Edition for Land Use & Zoning Law. He has been recognized annually since 2018.

**Gregory S. Lisi** was recognized for a second consecutive year for his work in Litigation – Labor & Employment Law.

Best Lawyers: Ones to Watch in America - Three of the firm's attorneys were selected:

**Lindsay Mesh Lotito** (Banking & Finance Law)

**Robert L. Renda** (Tax Law)

**Danielle E. Tricolla** for the first time (Business Organizations, Closely Held Companies and Family Businesses Law, Commercial Litigation, Litigation – Labor & Employment and Litigation – Real Estate)

**Jane Chen** was a recipient of the Outstanding Women in Law Awards from the Maurice A. Deane School of Law at Hofstra University.

**Danielle E. Tricolla** was named the chair of the Licensing Committee for the New York City Cannabis Industry Association.



CORPORATE AND M&A

Firm Partners **Joseph V. Cuomo**, **Alexander Kerzhner**, and **Robert H. Groman** represented long-time client UTP Schools in a partnering transaction with Amerigo Education, in a bid to become the leader in international high school student services and recruitment across North America.



BANKING & FINANCE

On behalf of New York Community Bank, **Lindsay Mesh Lotito** and **Steven G. Gaebler** negotiated an SBA 504 financing secured by commercial property in Suffolk County, including a \$3,595,000 acquisition loan and a \$2,876,000 interim loan, with the latter to be paid off with an SBA loan.

**Steven G. Gaebler** closed a \$13,920,000 term loan on behalf of an institutional lender secured by the assets of the borrowers and corporate guarantors.

On behalf of a private lender, **Steven G. Gaebler** negotiated and closed a \$3,500,000 mortgage loan for the acquisition of property in Brooklyn with a collateral assignment of a note and mortgage held by borrower.

**Lindsay Mesh Lotito** and **James C. Ricca** negotiated and closed a series of five loans totaling \$68,143,000 on behalf of New York Community Bank secured by apartment complexes in Suffolk County, NY.

**James C. Ricca** negotiated and closed a \$6,800,000 mortgage loan on behalf of Republic Bank for the purchase of a commercial building on Northern Boulevard in

Manhasset, NY.

On behalf of BCB Community Bank, **James C. Ricca** and **Lindsay Mesh Lotito** negotiated and closed a line of credit mortgage loan secured by development property in NJ.

On behalf of Valley National Bank, **James C. Ricca** and **Lindsay Mesh Lotito** negotiated and closed a \$7,450,000 hybrid mortgage loan secured by a single condominium unit that was comprised of 204 residential coop apartments, located on East 69th Street in Manhattan.



IDA

The firm obtained financial assistance from the Nassau County Industrial Development Agency (IDA) for a client's acquisition and development of a 6-acre parcel of land in Long Beach, New York famously known as the "Super Block" which had been stalled for years. Working closely with community groups and the IDA, **Daniel P. Deegan** spearheaded the application and obtained approvals for approximately \$49 Million dollars in real estate, sales and mortgage tax exemptions. **Louis H. Fiore** assisted in the application process. The property has since closed and construction has begun.



Rendering of "Super Block"

In a multidisciplinary collaboration, the Firm represented clients in a joint venture to redevelop an 80-acre portion of the New York Institute of Technology's Central Islip Campus. The project consists of the renovation of 680,000 square feet of vacant dormitory and

school buildings and the construction of a 364-unit multifamily residential community. **Jeffrey D. Forchelli** and **Brian W. Kennedy** obtained zoning and land use approvals, while **Daniel P. Deegan**, **Louis H. Fiore** and **John P. Gordon** obtained approvals for financial assistance from the Town of Islip IDA including exemptions for real estate, sales and mortgage taxes. **John V. Terrana**, **Douglas W. Atkins** and **Nathan R. Jones** assisted with the tax exemption and valuation process.

**Daniel P. Deegan** and **Louis H. Fiore** obtained financial assistance from the Town of Islip IDA in connection with a client's acquisition of a 179,000 square-foot industrial building located in Central Islip, New York. Messrs. Deegan and Fiore preserved the existing Payment in Lieu of Taxes (PILOT) obtained by the seller and obtained new financial assistance for the client in the nature of a sales tax exemption and a mortgage tax benefit.

**Daniel P. Deegan**, **Louis H. Fiore**, **Jessica A. Leis** and **John P. Gordon** represented investors led by Metropolitan Development Group in obtaining approval for financial assistance from the Nassau County Local Economic Assistance Corporation (NCLEAC) and the Town of Hempstead IDA with respect to a major renovation of an aging affordable housing apartment community in the Village of Hempstead, New York. NCLEAC approved the issuance of \$63.5 Million in tax exempt and taxable revenue bonds for the project and the IDA approved the reformulation and extension of the existing payment in lieu of tax obligation and the granting of a sales and use and mortgage recording tax exemptions.

**Daniel P. Deegan** represented Livingston Development Corp. in securing financial assistance from the Glen Cove IDA for its 4.89-acre development site in the Glen Cove Avenue Redevelopment District in Glen Cove, New York. The

proposed project includes the construction of 176 residential apartments in 6 buildings, for which **Kathleen Deegan Dickson** obtained the zoning approvals. **Louis H. Fiore, Jessica A. Leis** and **John P. Gordon** also assisted.



TAX, TRUSTS & ESTATES

**Robert H. Groman, James P. Rosenzweig** and **Jonah H. Blumenthal** negotiated and closed a \$15,000,000 Revolving Line of Credit Loan and a \$2,000,000 Term Loan on behalf of long-time firm client, L.N.K. International Inc., based out of Hauppauge, and is one of the nation's largest manufacturers of solid and liquid dose, over-the-counter pharmaceuticals.



LAND USE & ZONING

**Andrea Tsoukalas Curto** obtained approvals:

- for a 300-unit self-storage facility in the Village of New Hyde Park. Ms. Curto worked closely with Village officials to secure the special permit and to address resident concerns in the immediate area. The Village welcomed the project's amenities which included streetscape features with new sidewalks, benches, and plantings and an enhanced building façade to lend a residential feel.



Rendering of self-storage facility

- for a three-lot subdivision in the Village of East Hills for a 2-acre estate involving a lengthy SEQOR process, triggered by an architecturally-significant historical house with historic ties to the Roslyn community and was architecturally significant. The approval allowed preservation of the house and the creation of two new lots after significant community input.
- from the Village of Garden City Planning Commission for a new For Five Coffee Roasters restaurant café with outdoor seating on Seventh Street.



- from the Town of North Hempstead Board of Zoning and Appeals for a new Dos Toros Mexican Restaurant in New Hyde Park.



REAL ESTATE

**Brian R. Sahn** represented a client in the acquisition of a tenanted medical building located in St. Louis, Missouri, as well as with an acquisition and construction loan for planned improvements to be made to the property. The transaction also included updating and extending tenant leases in the property contemporaneously with transfer of ownership.

**Brian R. Sahn** represented a client in the institutional

refinance of a 248-unit multifamily project located in San Antonio, Texas. The \$32,000,000 loan replaced a prior construction loan held by another lender made during the acquisition and construction of the multi-family project, for which Mr. Sahn had previously represented the client.

**Daniel S. Dornfeld** represented Integrated Structures on the purchase of an industrial building in Bellport and in connection with benefits from the Town of Brookhaven IDA. The benefits include a PILOT agreement, mortgage tax and sales tax abatement for the \$4 million acquisition and expansion of the property at 4 Pinehurst Drive. The fabrication firm plans to add up to 5,000 square feet to the existing 15,000-square-foot building on acreage it had been previously leasing.



4 Pinehurst Drive

**Judy L. Simoncic** and **Daniel S. Dornfeld** represented ACDS, Inc., a nonprofit organization, that serves families of individuals with disabilities, in connection with the subdivision and acquisition of the building and land from the Plainview-Old Bethpage Central School District, where they currently operate. Ms. Simoncic handled the subdivision of the school property and Mr. Dornfeld handled the purchase transaction for the parcel acquired.

**Kathleen Deegan Dickson, Jessica A. Leis** and **Daniel S. Dornfeld** represented Coleman Country Day Camp in connection with the subdivision and acquisition of parkland from Nassau County, where they currently operate. Ms. Deegan Dickson and Ms. Leis handled the subdivision of the

park property to separate the portion that our client acquired. Mr. Dornfeld handled the purchase transaction. **Nathan R. Jones** and Mr. Dornfeld secured the approval of the NYS Governor and Legislature for the sale of the property as it constituted an alienation of parkland.



#### TAX CERTIORARI

**Nicole S. Forchelli** resolved a property tax matter for a Fortune 500 company relating to a bundle of properties in Upstate New York. Ms. Forchelli obtained a real estate tax benefit for the client of approximately \$250,000, by using a unique and creative approach to valuation of the property.

**Douglas W. Atkins** and **Robert L. Renda** successfully prosecuted one of the first post-COVID commercial real estate tax cases in Suffolk County. The issue at hand was how COVID affected a restaurant which faced a mandatory closure and complete loss of revenue. The firm was able to demonstrate that the property was being overtaxed substantially and obtained a \$115,000 refund for the client.

**John V. Terrana** and **Douglas W. Atkins** represented a regional company who owned one of the largest parcels of redeveloped commercial properties on Long Island. The firm client was selling the former office and industrial plant to a developer, who would be demolishing the improvements and building a state-of-the-art distribution center. Messrs. Terrana and Atkins were able to demonstrate that the property was being inappropriately assessed for this redevelopment transition, and obtained a \$250,000 refund for the client. ■

#### NEWSDAY

- **John V. Terrana** was quoted in the front-page story, "Back in Business: Cuomo: NY Reopens More on May 19."
- **Daniel P. Deegan** was quoted in the articles, "\$23M apartment plan," "Bakery eyes expansion," and "Deal to stay in Suffolk."

#### LONG ISLAND BUSINESS NEWS

- **William F. Bonesso & Nicole S. Forchelli** were featured in the WHO's WHO in Real Property & Tax Certiorari Law's Special Section.
- **Gregory S. Lisi** was featured in the Law & Government section story, "Gregory Lisi to lead Nassau County Bar Association."

#### NEW YORK LAW JOURNAL

- **Rachel L. Partain's** welcome announcement was published in an In Brief column.

#### NEW YORK REAL ESTATE JOURNAL PUBLISHED:

- **Judy L. Simoncic & Nathan R. Jones'** article, "Flexibility and cost savings for commercial properties post-COVID-19."
- **Jeremy Musella's** article, "What Real Estate Practitioners Need to Know When Buying or Selling Veterinary Clinics."
- **Aaron Gershonowitz & Brian W. Kennedy's** article, "Land Use and the Takings Clause."

#### ASSOCIATION OF CORPORATE COUNSEL - NEW YORK CITY (NEWSLETTER)

- published **Danielle E. Tricolla & Landon C. Dais'** article, "Seeing Green: Opportunities for Your Business in the Cannabis Market."

#### AMERICAN BAR ASSOCIATION

- **Rachel L. Partain** was a co-author in "Chapter 9: Filing Claims and Suits for Refund of Overpayments," Effectively Representing Your Client Before the IRS, 8th Edition

#### BEST LAWYERS®

- **Lindsay Mesh Lotito** was featured in the Sixth Annual "Women in the

Law" Business Edition.

- **Gregory S. Lisi** was listed in the inaugural edition of the Employment Law Issue.

#### BROOKLYN LAW SCHOOL NEWS

- Professor Neil B. Cohen, the **Jeffrey D. Forchelli Professor of Law**, gave remarks at Brooklyn Law School's convocation. Cohen reinforced the vital importance of lawyers and legal education in rebuilding a post-pandemic economy and responding to political crises.

#### FLORIDA NEWS TIMES

- **Daniel P. Deegan** was quoted in the article, "Developer proposes 72-unit apartment near Westbury LIRR."

#### LONG ISLAND ADVANCE

- **Kathleen Deegan Dickson** was quoted in the article, "Residents protest outside of Village Hall for access to public hearing | Cornerstone application referred to Suffolk County."

#### LONG ISLAND PRESS

- **Gregory S. Lisi** was featured in the story, "Nassau Bar Association: New President Installed."

#### PITT MAGAZINE

- **Michael A. Berger's** appointment as Treasurer of the Theodore Roosevelt American Inn of Court was published in the Class Notes section.

#### NASSAU LAWYER

- **Gregory S. Lisi** was featured on the cover – "Meet the President."

#### SUFFOLK LAWYER

- **Peter B. Skelos** was pictured at the SCBA's 113th installation of the President, incoming Officers, Directors and Dean of the Suffolk Academy of Law.

#### ST. JOHN'S LAW MAGAZINE

- **Robert B. Moy** was quoted in the article, "Alumni Navigate the New Normal."

#### THE ISLAND NOW

- **Andrea Tsoukalas Curto** was pictured and quoted in the article, "Opposition to proposed 7-Eleven in Port still strong." ■

**GREGORY S. LISI INSTALLED AS NASSAU COUNTY BAR PRESIDENT**



**Gregory S. Lisi** was installed as the 119th President of the Nassau County Bar Association (NCBA). His one-year term started June 1, 2021. **Peter B. Skelos** had the honor of administering the oath of office to Mr. Lisi.

“I am so proud to be the current leader of this wonderful organization, which represents the attorneys of Nassau County, as well as supports the general public with many of their legal concerns, and also to expand my ability to assist my clients with their legal issues. I look forward to this opportunity to serve my fellow attorneys and the citizens of Nassau County.”

**MEET THE NEW MEMBERS OF THE FDT TEAM**



**Rachel L. Partain,**  
Partner

*Tax, Trusts & Estates and  
Corporate and Mergers &  
Acquisitions*



**John P. Gordon,**  
Associate

*Real Estate & IDA*



**Zachary J. Manasia,**  
Associate pending admission

*Banking & Finance and Real  
Estate*



**Kelan C. Sullivan,**  
Associate pending admission

*Corporate and Mergers &  
Acquisitions and Veterinary*

**PARTNERS' NIGHT OUT**

FDT Partners enjoyed a night out at CitField to celebrate the end of the summer and to watch the New York Mets take on the Miami Marlins. The FDT team was greeted by Mr. & Mrs. Met to make the evening extra special.

