



Duke Law Firm, P.C.—in the News

400 Vestavia Parkway, Suite 100
Birmingham, Alabama 35216-3750 USA

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Seminars/Conferences

Chartered Wealth Manager and Certified Trust and Estate Practitioner Course: Register for the Chartered Wealth Manager (CWM) and Chartered Trust and Estate Planner (CTEP) Designation Courses: Next training courses to be held in Key Largo, FL, April 24-27. **Course Dates and Locations:**

<http://mfsfinancial.com/bsiexecutiveeducation/>

A Place in the Sun—A Special Report on Offshore Finance

The Economist: February 24-March 2, 2007

This publication contains a 14-page special report on offshore finance. The report discusses the various positive and negative aspects of tax havens. One of the articles is titled "Rich Pickings—How to Defeat Tax Cheats," beginning at page 11 of the report. Under a subheading, "Trustworthy," it states:

These days, users of trusts have more mundane motives. If a trust is set up in a tax haven, assets often accumulate in it free of tax as long as they remain offshore. Money can also be passed on the heirs through the trust, avoiding inheritance taxes. And trusts are a nifty way to protect assets from an angry spouse in the event of a divorce. Long popular in America and Britain, they have now caught on in Europe and, increasingly, Asia.

The use of trusts and companies offshore can minimize some taxes—such as inheritance tax—and defer others, such as income tax, until the money is brought home. Both are standard tools in tax planning for the affluent. What has made them controversial is their lack of transparency.

The article appears to include the use of foreign trusts by U.S. persons as a method to accumulate money tax-free until the income is repatriated. This is not correct if applied to U.S. persons because Internal Revenue Code section 679 taxes the settlor on all income, gains and losses of the foreign trust, whether the income is distributed or accumulated, if that trust has a U.S. beneficiary. And a U.S. trust has a U.S. beneficiary unless it specifically provides that no income can be distributed to or accumulated for the benefit of a U.S. person. If the trust were to be terminated in any year, no assets can pass to a U.S. person.

A U.S. person who establishes and funds, directly or indirectly, a foreign trust that has a U.S. beneficiary must file the following Internal Revenue Service Forms:

- Form SS-4—Application for a Tax Identification Number—in order to obtain a tax identification number for the foreign trust;
- Form 56—Notice Concerning Fiduciary Relationship—

advising the Internal Revenue Service of a trust relationship;

- Form 3520—Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts—with respect to the creation and/or funding of the foreign trust (a yearly tax return), required under I.R.C. section 6048;

- Form 3520-A—Annual Information Return of Foreign Trust With a U.S. Owner—with respect operations of the foreign trust (a yearly tax return), required under I.R.C. section 6048(b);

- Form 709—Gift Tax Return—and a completed gift is made for gift tax purposes unless the trust instrument reserves the right to the settlor to change the disposition of the foreign trust, after death, by his will or codicil;

- Form 1041—U.S. Income Tax Return for Estates and Trusts; and

- TD F 90-22.1—Report of Foreign Bank and Financial Accounts—must be filed by the settlor for having an interest in a foreign financial account.

- Schedule B, Part III of Form 1040—Federal Income Tax Return—for having an interest in a foreign financial account and for creating a foreign trust.

If the author of this special report includes the U.S. federal estate tax when referring to "inheritance tax" that is commonly used in the U.K. and other countries, it is not so easy to avoid U.S. estate taxes. U.S. persons (citizens or legal residents) are taxed on worldwide assets.

Levin, Coleman, Obama Introduce Stop Tax Haven Abuse Act
Bill targets \$100 billion in lost tax revenue each year from offshore tax dodges

WASHINGTON—[C]iting \$100 billion in revenue drained from the U.S. Treasury at the expense of honest, hardworking American families who pay their fair share, Sen. Carl Levin, D-Mich., Sen. Norm Coleman, R-Minn., and Sen. Barack Obama, D-Ill., introduced comprehensive legislation to stop offshore tax haven and tax shelter abuses.

For more than four years, Levin and Coleman, the Chairman and senior Republican of the Permanent Subcommittee on Investigations, have led an in-depth Subcommittee investigation into offshore tax havens, abusive tax shelters, and the professionals who design, market, and implement these tax dodges. Experts have estimated that the total loss to the Treasury from offshore tax evasion alone approaches \$100 billion per year, including \$40 to \$70 billion from individuals and another \$30 billion from corporations engaging in offshore tax evasion. Abusive tax shelters add tens of billions of dollars more.

"With a \$345 billion annual tax gap and a \$248 billion annual deficit," said Levin, "we cannot tolerate a \$100 billion drain on our Treasury each year from offshore tax abuses. We cannot tolerate tax cheats offloading their unpaid taxes onto the backs of honest taxpayers. Offshore tax havens have declared economic war on honest U.S. taxpayers by helping tax cheats hide income and assets that should be

taxed in the same way as other Americans. This bill provides a powerful set of new tools to clamp down on offshore tax and tax shelter abuses."

"It is simply unacceptable that some individuals are using offshore tax havens and secrecy jurisdictions to shelter trillions of dollars in assets from taxation," said Coleman. "These tax schemes cause a massive revenue shortfall and, sadly, it is the honest American taxpayer who must bear a disproportionate burden of investing in areas like education and healthcare. We are introducing this bill to close these loopholes, shut down offshore tax schemes, and ensure that every American pays their fair share of taxes."

"This is a basic issue of fairness and integrity," said Obama. "We need to crack down on individuals and businesses that abuse our tax laws so that those who work hard and play by the rules aren't disadvantaged."

The Stop Tax Haven Abuse Act is a strengthened version of a tax reform bill that Levin, Coleman, and Obama introduced in the last Congress. The legislation was strengthened as a result of a year-long Subcommittee investigation which resulted in a hearing and report on August 1, 2006, examining a series of case studies showing how U.S. taxpayers are using offshore secrecy jurisdictions to dodge U.S. taxes.

"None of these offshore schemes would work," said Levin, "without the secrecy that prevents U.S. agencies from enforcing our laws. Our bill offers innovative ways to combat offshore secrecy. We can't let the offshore tax havens hide \$100 billion in U.S. tax revenues which are needed to protect our troops, fund health care and education, and meet the other needs of American families."

Among other measures, the 68-page bill would:

Establish presumptions to combat offshore secrecy by allowing U.S. tax and securities law enforcement to presume that non-publicly traded, offshore corporations and trusts are controlled by the U.S. taxpayers who formed them or sent them assets, unless the taxpayer proves otherwise;

Impose tougher requirements on U.S. taxpayers using offshore secrecy jurisdictions by listing 34 jurisdictions which have already been named in IRS court filings as probable locations for U.S. tax evasion;

Authorize special measures to stop offshore tax abuses by giving Treasury authority to take special measures against foreign jurisdictions and financial institutions that impede U.S. tax enforcement;

Strengthen detection of offshore activities by requiring U.S. financial institutions that open accounts for foreign entities controlled by U.S. clients, open accounts in offshore secrecy jurisdictions for U.S. clients, or establish entities in offshore secrecy jurisdictions for U.S. clients, to report such actions to the IRS;

Close offshore trust loopholes by taxing offshore trust income used to buy real estate, artwork and jewelry for U.S. persons, and treating as trust beneficiaries those persons who actually receive offshore trust assets;

Strengthen penalties on tax shelter promoters by increasing the maximum fine to 150% of their ill-gotten gains, and on corporate insiders who hide offshore stock holdings by increasing the maximum fine on them to \$1 million per violation of U.S. securities laws;

Stop tax shelter patents by prohibiting the U.S. Patent and Trademark Office from issuing patents for "inventions designed to mini-

mize, avoid, defer, or otherwise affect liability for Federal, State, local, or foreign tax"; and

Require hedge funds and company formation agents to know their offshore clients by requiring them to establish anti-money laundering programs like other U.S. financial institutions, under regulations to be issued by the Treasury Department.

A summary of the Levin-Coleman-Obama bill, the bill text, and a floor statement by Levin explaining its provisions in more detail are available at:

www.levin.senate.gov

Fraudulent Telephone Tax Refunds, Abusive Roth IRAs Top Off 2007 "Dirty Dozen" Tax Scams

IR-2007-37, Feb. 20, 2007

<http://www.irs.gov/newsroom/article/0,,id=167983,00.html>

WASHINGTON—The Internal Revenue Service today identified 12 of the most blatant scams affecting American taxpayers and warned people not to fall for schemes peddled by scamsters.

This year the "Dirty Dozen" highlights five new scams that IRS auditors and criminal investigators have uncovered. Topping off the list are fraudulent refunds being claimed in connection with the special Telephone Excise Tax Refund available to most taxpayers this filing season. The IRS is actively investigating instances of this scam involving tax preparers who are preparing inflated refund requests.

Also new to the Dirty Dozen this year are abuses pertaining to Roth IRAs, the American Indian Employment Credit, domestic shell corporations and structured entities.

"Taxpayers shouldn't let their guard down," IRS Commissioner Mark W. Everson said. "Don't get taken by scam artists making outrageous promises. If you use a tax

professional, pick someone who is reputable. Taxpayers should remember they are ultimately responsible for what is on their tax return even if some unscrupulous preparers have steered them in the wrong direction."

Involvement in tax schemes leads to problems for scam artists and taxpayers. Tax return preparers and promoters risk significant penalties, interest and possible criminal prosecution.

The IRS urges taxpayers to avoid these common schemes:

1. Telephone Excise Tax Refund Abuses: Early filings show some individual taxpayers have requested large and apparently improper amounts for the special telephone tax refund. In some cases, taxpayers appear to be requesting a refund of the entire amount of their phone bills, rather than just the three-percent tax on long-distance and bundled service to which they are entitled. Some tax preparers are helping their clients file apparently improper requests. The IRS is investigating potential abuses in this area and will take prompt action against taxpayers who claim improper refund amounts and against the return preparers who help them.

2. Abusive Roth IRAs: Taxpayers should be wary of advisers who encourage them to shift undervalued property to Roth Individual Retirement Arrangements (IRAs). In one variation, a promoter has the taxpayer move undervalued common stock into a Roth IRA, circumventing the annual maximum contribution limit and allowing otherwise taxable income to go untaxed.

3. Phishing is a technique used by identity thieves to acquire personal financial data in order to gain access to the financial accounts of unsuspecting consumers, run up charges on their credit cards or apply for loans in their names. These Internet-based criminals

pose as representatives of a financial institution—or sometimes the IRS itself—and send out fictitious e-mail correspondence in an attempt to trick consumers into disclosing private information. A typical e-mail notifies a taxpayer of an outstanding refund and urges the taxpayer to click on a hyperlink and visit an official-looking Web site. The Web site then solicits a social security and credit card number. It is important to note the IRS does not use e-mail to initiate contact with taxpayers about issues related to their accounts. If a taxpayer has any doubt whether a contact from the IRS is authentic, the taxpayer should call 1-800-829-1040 to confirm it.

4. Disguised Corporate Ownership: Domestic shell corporations and other entities are being formed and operated in certain states for the purpose of disguising the ownership of the business or financial activity. Once formed, these anonymous entities can be, and are being, used to facilitate underreporting of income, non-filing of tax returns, listed transactions, money laundering, financial crimes and possibly terrorist financing. The IRS is working with state authorities to identify these entities and to bring their owners into compliance.

5. Zero Wages: In this scam, which first appeared in the Dirty Dozen in 2006, a Form 4852 (Substitute Form W-2) or a "corrected" Form 1099 showing zero or little income is submitted with a federal tax return. The taxpayer may include a statement rebutting wages and taxes reported by the payer to the IRS. An explanation on the Form 4852 may cite statutory language behind Internal Revenue Code sections 3401 and 3121 or may include some reference to the paying company refusing to issue a corrected Form W-2 for fear of IRS retaliation.

6. Return Preparer Fraud: Dishonest return preparers can cause many headaches for tax-

payers who fall victim to their schemes. Such preparers make their money by skimming a portion of their clients' refunds and charging inflated fees for return preparation services. They attract new clients by promising large refunds. Some preparers promote filing fraudulent claims for refunds on items such as fuel tax credits to recover taxes paid in prior years. Taxpayers should choose carefully when hiring a tax preparer. As the old saying goes, "If it sounds too good to be true, it probably is." Remember that no matter who prepares the return, the taxpayer is ultimately responsible for its accuracy. Since 2002, the courts have issued injunctions ordering dozens of individuals to cease preparing returns, and the Department of Justice has filed complaints against dozens of others. During fiscal year 2006, 109 tax return preparers were convicted of tax crimes and sentenced to an average of 18 months in prison.

7. American Indian Employment Credit: Taxpayers submit returns and claims reducing taxable income by substantial amounts citing an American Indian employment or treaty credit. Although there is an Indian Employment Credit available for businesses that employ Native Americans or their spouses, there is no provision for its use by employees. In a somewhat similar scam, unscrupulous promoters have informed Native Americans that they are not subject to federal income taxation. The promoters solicit individual Indians to file Form W-8 BEN seeking relief from all withholding of federal taxation. A recent "phishing" variation has promoters using false IRS letterheads to solicit personal financial information that they claim the IRS needs in order to process their "non-tax" status.

8. Trust Misuse: For years unscrupulous promoters have urged taxpayers to transfer assets into trusts. They promise reduction of income subject to tax, deductions for personal expenses and reduce-

ed estate or gift taxes. However, some trusts do not deliver the promised tax benefits. There are currently more than 150 active abusive trust investigations underway and 49 injunctions have been obtained against promoters since 2001. As with other arrangements, taxpayers should seek the advice of a trusted professional before entering into a trust.

9. Structured Entity Credits: Promoters of this newly identified scheme are setting up partnerships to own and sell state conservation easement credits, federal rehabilitation credits and other credits. The purported credits are the only assets owned by the partnership and once the credits are fully used, an investor receives a K-1 indicating the initial investment is a total loss, which is then deducted on the investor's individual tax return. Forming such an entity is not a viable business purpose. In other words, the investments are not valid, and the losses are not deductible.

10. Abuse of Charitable Organizations and Deductions: The IRS continues to observe the use of tax-exempt organizations to improperly shield income or assets from taxation. This can occur when a taxpayer moves assets or income to a tax-exempt supporting organization or donor-advised fund but maintains control over the assets or income. Contributions of non-cash assets continue to be an area of abuse, especially with regard to overvaluation of contributed property. In addition, the IRS is noticing the return of private tuition payments being disguised as charitable contributions to religious organizations.

11. Form 843 Tax Abatement: This scam rests on faulty interpretation of the Internal Revenue Code. It involves the filer requesting abatement of previously assessed tax using Form 843. Many using this scam have not previously filed tax returns and the tax they are trying to have abated has been assessed

by the IRS through the Substitute for Return Program. The filer uses the Form 843 to list reasons for the request. Often, one of the reasons is: "Failed to properly compute and/or calculate IRC Sec 83-Property Transferred in Connection with Performance of Service."

12. Frivolous Arguments: Promoters have been known to make the following outlandish claims: the Sixteenth Amendment concerning congressional power to lay and collect income taxes was never ratified; wages are not income; filing a return and paying taxes are merely voluntary; and being required to file Form 1040 violates the Fifth Amendment right against self-incrimination or the Fourth Amendment right to privacy. Don't believe these or other similar claims. These arguments are false and have been thrown out of court. While taxpayers have the right to contest their tax liabilities in court, no one has the right to disobey the law.

IRS Still Watches Scams That Fall Off the List

Five of last year's Dirty Dozen tax scams rotated off the list for 2007. While the IRS has seen a decline in the occurrence of some of these scams—abusive credit counseling agencies, for example—other problems, such as offshore abusive transactions continue to be an area of particular concern for the agency. The absence of a particular scheme from the Dirty Dozen should not be taken as an indication that the IRS is unaware of it or not taking steps to counter it.

How to Report Suspected Tax Fraud Activity

Suspected tax fraud can be reported to the IRS using IRS Form 3949-A, Information Referral. Form 3949-A is available for download from the IRS Web site at IRS.gov, or by mail by calling 1-800-829-3676. The completed form or a letter detailing the alleged fraudulent activity should be addressed to the Internal Revenue Service, Fresno, CA 93888. The mailing

should include specific information about who is being reported, the activity being reported, how the activity became known, when the alleged violation took place, the amount of money involved and any other information that might be helpful in an investigation. The person filing the report is not required to self-identify, although it is helpful to do so. The identity of the person filing the report can be kept confidential. The person may also be entitled to a reward.

Links:

- [Tax Scams Page on IRS.gov](#)
- [Telephone Excise Tax Refund](#)
- [Identity Theft and Your Tax Records](#)
- [Abusive Return Preparer Enforcement](#)
- [How to Report Suspected Tax Fraud Activity](#)
- [Form 3949-A, Information Referral](#)
- [Whistleblower Office News](#)

Fla. Bar Investigates Lawyers in Hamilton Bank Case Daily Business Review

The Florida Bar confirmed Tuesday that it will open ethics investigations against Hunton & Williams partner Carlos Loumiet and Greenberg Traurig shareholder Robert L. Grossman in connection with their work for Greenberg on behalf of now-defunct Hamilton Bank. Greenberg, while admitting no wrongdoing on its part or on Grossman's part, paid out more than \$8.5 million in settlements to two federal agencies in connection with the Hamilton matter.

<http://www.law.com/jsp/article.jsp?id=1170151363059>

U.S., Bulgaria Sign Income Tax Treaty, Strengthen Economic Relationship

This Department of Treasury press release may be viewed at:

<http://www.treas.gov/press/releases/hp277.htm>

Washington, DC –Treasury Deputy Secretary Robert M. Kimmitt and Bulgarian Finance Minister Plamen Oresharski signed an income tax treaty and protocol today, strength-

ening the two countries' economic relationship.

"This treaty is the first of its kind between the United States and Bulgaria," said Deputy Secretary Kimmitt. "It is designed to provide for a better exchange of information, to foster the continued growth of American businesses, and to encourage investment in the emerging Bulgarian marketplace."

The treaty is consistent with the U.S. model income tax treaty and with treaties that the United States has with other countries. The treaty generally reduces, but does not eliminate, the rates of taxation on cross-border dividend, interest and royalty payments.

However, the treaty generally eliminates withholding when cross-border dividends are paid to pension funds, and when cross-border interest is paid to the government of the other country or a financial institution resident in the other country.

In addition, the treaty contains provisions preventing so-called treaty shopping, which is the inappropriate use of a tax treaty by third-country residents. The treaty also contains provisions for the exchange of information between the two countries, including bank information.

Related Documents: U.S., Bulgarian Income Tax Treaty

<http://www.treas.gov/press/releases/reports/bulgar07.pdf>

U.S., Bulgarian Income Tax Protocol

<http://www.treas.gov/press/releases/reports/bulgar07protocol.pdf>

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Duke Law Firm, P.C.

(205) 823-3900

Facsimile: (205) 823-2630

400 Vestavia Parkway, Suite 100

Birmingham, AL 35216 USA

<http://www.assetlaw.com>