



Duke Law Firm, P.C.-in the News

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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:

Course Dates and Locations:

Annapolis, MD - September

Boston, MA - October

Scottsdale, AZ - November

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

IRS is at the Beginning Stages of Attacking Targeted Offshore Tax Promoters

Richard Duke is quoted in today's Wall Street Journal, *How Tax Shelters Brought Trouble To Billionaire Clan* (By Glenn R. Simpson, July 31, 2006; Page A1):

J. Richard Duke, a tax lawyer in Birmingham, Ala., who doesn't do business with the Wyly family, says the structure promoted by Mr. Tedder appeals to investors who own a property that has greatly appreciated. "The purpose is to stretch the gain out over your life, and if you die prematurely, the gain is not included in your estate," says Mr. Duke. He adds that he doesn't recommend the [offshore] structure because it is subject to attack by the IRS.

The IRS requires that for a private annuity to be legal, an

investor has to truly surrender control over the asset to someone in a foreign country. But any attempt to add legal protections to ensure that the foreign holder doesn't simply pocket the money could lead the IRS to call the whole thing a sham. "You cannot legally control the structure if it is an offshore structure," says Mr. Duke. "But most Americans are control freaks."

The article continues with a discussion of the U.S. Senate Permanent Subcommittee on hearings that begin July 31, 2006, as follows:

The Wyly trusts will be examined [July 31, 2006] at a hearing by a U.S. Senate panel called the Permanent Subcommittee on Investigations. The panel's senior Democrat, Sen. Carl Levin of Michigan, has been probing offshore tax evasion and money laundering for several years. The panel is also looking into how the elite New York law firm Cravath, Swaine & Moore LLP provided legal advice on offshore tax shelters to wealthy individuals, people familiar with the probe say.

One comment in the article is not correct: "Trusts are commonly used to make charitable bequests, provide for heirs or even provide for one's own future. For tax purposes what matters is whether control of the assets is transferred to someone else. If so -- and if the trust is overseas -- then gains on the assets aren't subject to U.S. tax. (U.S. citizens do have to pay

tax on income earned overseas, including income from a foreign trust that they bring back to the U.S.)." Under Internal Revenue Code Section 679(a), a U.S. person who funds a foreign trust is treated as the "grantor" of that trust if it has a U.S. beneficiary and must report all income, gains, and losses, even if no income or gains are distributed from the foreign trust to the settlor or other U.S. beneficiaries. Furthermore, offshore trusts established before the Small Business Job Protection Act of 1996 are not "grand-fathered" under the law and, as of the effective date of the Small Business Job Protection Act, such trusts became subject to the filing requirements and reporting of income requirements of the Small Business Job Protector Act.

<http://online.wsj.com/article/SB115430855868921885-email.html>

(Link may not be available to non-subscribers of The Wall Street Journal Online).

Internal Revenue Code Sections 6700 and 6701 investigations have been initiated by the IRS for those on the list of offshore tax shelter promoters. The current investigations involve low-profile individuals, but they will soon move toward high-profile names that the IRS has included on this list. Many of these individuals have been engaged in promoting and selling structures that are listed in the "dirty dozen" of the IRS.

<http://www.irs.gov/newsroom/article/0,,id=136337,00.html>

<http://www.irs.gov/businesses/small/article/0,,id=106559,00.html>

The primary purposes of Internal Revenue Code Sections 6700 and 6701 promoter investigations is to assess penalties against the promoters and potentially obtain an injunction against further planning in the particular areas that are targeted by the IRS. The IRS also audits clients of the targeted promoter who entered into the plans or structures that are targets of the IRS. Some of the investigations will not be civil Internal Revenue Code Sections 6700 and 6701 promoter investigations but will be indictments of the promoters, followed by subpoenaing the records and auditing all or substantially all of the clients.

The primary focus of promoter investigations is to obtain massive amounts of information from the issuance of Form 4564—Individual Document Request ("IDR"). These IDRs ask for everything! See the following extremely comprehensive definition of the term "document" as it is used in an IDR with respect to a targeted promoter under Internal Revenue Code Sections 6700 and 6701:

Description of Documents Requested

PLEASE PROVIDE THE FOLLOWING REQUESTED INFORMATION BY THE DATE BELOW

The following protocols apply to this Information Document Request:

•The term "document" is used in a comprehensive, singular and plural sense, and refers to any means of preserving thought or expression. The term "document" means, without limitation, any written, typed, photocopied, photographed recorded, mechanical, or electronic, reproduction of communications or representations, whether comprised of letters, words, numbers, pictures, sounds, symbols, computer data, or any combination thereof. Where any of the foregoing items contains any marking

not appearing on the original, then such items shall be considered to be a separate original document. The term "document" also includes the following, without limitation and for purposes of illustration only:

a. Contracts, agreements, plans, term sheets, summaries, opinions, studies, reports, schedules, work papers, computations, appointment calendars, telegrams, communications memoranda, minutes, notes, comments, messages, telexes, telegrams, teletypes, cables, facsimiles or other written notes or communications, books, graphs, printed matter, outlines of oral presentations, and all financial records, and any other writings, bulletins, announcements, press releases, brochures, notices of meetings, agendas, attendance lists, manuals, and journal et al entries, and alterations or modifications of the foregoing.

b. Items designated as internal, confidential, private, or not to be disclosed;

c. All electronic mail (e-mail), whether in a computer disk and/or any other system or device which saves historical e-mails, attachments; and

d. Video and/or audiotapes, cassettes, films, microfilm, computer files in any format, computer disks, and computer and software programs.

After the description of documents requested, the specific requests are then made. The specific requests include:

1. All manuals, operations handbooks, prospectuses, offering literature, flow charts or other documents that describe and/or illustrate the plan, operation or structuring of any income and/or estate tax planning strategy(ies) or arrangement(s) promoted or offered to investors, clients, or purchasers utilizing domestic and/or offshore

components. The term "tax planning strategy(ies) or arrangement(s)" includes, but is not limited to, arrangements incorporating the use of employee leasing, annuities, deferred compensation, income stabilization, insurance, asset protection, private annuities, [specific states are listed that have favorable asset protection laws], etc.

The IDR then gets more specific, as follows:

2. Documents to show the specific tax planning strategy(ies) or arrangement(s) created or utilized by [name of targeted promoter] and/or the Organizations for the following individuals or their trust companies. This includes the name, address and business purpose of all individuals and entities involved in the strategy, for example, the name of loan or note holders, private annuity issuers, [specific state] Corporations, foreign trust companies, foreign or domestic insurance providers, International Business Companies and/or other entities. [Specific clients of the targeted promoter are then listed.]

After the foregoing, the IDR gets even more specific with respect to documents, names of domestic and foreign companies, entities, etc. We will not include this additional specific information requested by the IDR because it is too lengthy.

The following discussion from J. Richard Duke, *Offshore Lawyers Have "Trials" Too*, OFFSHORE INVESTMENT (December 2005/January 2006), reveals that Duke Law Firm has reviewed many tax scams and tax schemes that violate numerous tax laws, including being on the dirty dozen list of the IRS. The most appalling aspect with respect to reviewing these tax scams and schemes is that not a single one of them that contained discussion of the tax consequences, along with a

diagram of the planning structure, mentioned Circular 230. That alone shows that the practitioners who are "selling" these tax scams and schemes are violating the U.S. Treasury Regulations under which Circular 230 and under which tax practitioners must provide written tax advice.

Lawyers, accountants, financial planners and other professionals are often pressured by their clients to implement offshore structures to obtain tax deferrals. Many structures that are proposed and implemented by other lawyers and professionals violate specific provisions of the Internal Revenue Code, other legislation, court cases, or are targeted by the Internal Revenue Service. Lawyers are pressured by their clients to find offshore practitioners who will approve various structures; otherwise, those clients will move on to other professionals who will approve their illegal or improper structures. Professionals may fall prey to finding practitioners or promoters who approve certain structures without adequate knowledge of the relevant tax laws.

The open brazenness of tax scam and scheme promotions around the country whose promoters allege that legal U.S. tax deferrals are available is appalling. The key word here is "brazenness." Tax scams and schemes are proliferating on an exponential basis in the U.S., and tax scams and schemes give a bad name to offshore planning. Even more appalling are the substantial fees paid to lawyers and other professionals for structuring tax scams and schemes.

Tax scams and schemes come across our desks almost daily that are nothing but "gimmicks." These tax scams and schemes often blatantly violate

specific provisions of the Internal Revenue Code. Many tax scams and schemes appear to be sophisticated but violate simple tax law principles or specific Internal Revenue Code provisions and make no mention of the required tax compliance and tax reporting requirements. These tax scams or schemes can be compared with a fine architectural building whose foundation is built on quicksand. The difference between the building and tax scams and schemes is that the scams and schemes generally have not only a faulty foundation but also a faulty structure. The building crumbles; the structure providing the tax scam and tax scheme crumbles both because of the foundation and the structure itself.

The Wall Street Journal now reports that tax-haven abuse is under examination by the Senate Permanent Subcommittee on Investigations:

Tax-Haven Abuse Is Examined
By Robert Guy Matthews
July 26, 2006; Page D2

WASHINGTON – A Senate committee is turning the spotlight on abuse of offshore tax havens, particularly the use of trusts and corporate moves to circumvent U.S. tax, securities and anti-money laundering laws.

The Permanent Subcommittee on Investigations plans to explore how offshore tax abuses cheat the federal government out of billions of dollars in tax revenues at a Tuesday hearing. The committee has been examining how the tax schemes work and how to better enforce compliance or close loopholes. Officials from securities firms, banks and law firms as well as U.S. taxpayers

and tax and securities experts are expected to testify.

"For more than a year, the Senate Permanent Subcommittee on Investigations has conducted extensive investigations into potential abuses that occur with offshore tax shelters," said Chairman Norm Coleman (R., Minn.). "We must close those loopholes."

Legislators are focusing on how to close the \$290 billion tax gap -- the amount of tax assessed by the government but never collected. Much of the tax gap is due to tax abuses and loopholes in the law.

Both the Subcommittee on Investigations and the Senate Finance Committee have been investigating abusive tax schemes for a number of years. In February 2005, the Subcommittee on Investigations released a report on abusive tax shelters promoted by KPMG LLP, Ernst & Young LLP, and PricewaterhouseCoopers. In November 2003, the subcommittee released a report alleging how accounting firms, law firms, banks and security-advisory firms had joined forces to develop, market and carry out abusive or illegal tax shelters.

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UK/Offshore

Last chance for savers to avoid offshore tax penalties (Independent on Sunday)

Thousands of savers with offshore bank accounts are under extra pressure to declare the interest they earn to HM Revenue & Customs, after a court ruling this week against Barclays Bank.

http://money.independent.co.uk/personal_finance/tax/article362279_ece

Tax Court of Canada Unclear About Definition of Tax Shelter

Published by Tax AnalystsTM

Recent contradictory decisions by the Tax Court of Canada illustrate the difficulty of defining "tax shelter" based on the condition that there must be a "statement or representation" of tax benefits for the investor.

In *Maeghe v. The Queen*, (2006) TCC 117, Justice Gerald Rip surprised the tax community by ruling that in the context of the "tax shelter" definition, a "representation" need not be an explicit written or verbal assertion, but can also include a mental or intellectual element, and also that "representations" in that context can encompass representations made to oneself.

However, in *Baxter v. The Queen*, (2006) TCC 230, Justice Ronald D. Bell inferred that statements or representations must have a more strict legal meaning and must be made directly to the investor for there to be a tax shelter.

Document: (Doc 2006-8884)

Electronic Citation: See 2006 WTD 90-2

JERSEY—Agreement with U.S. on Tax Matters Comes Into Force

Jersey Evening Post

An agreement which enables the United States government to ask the Jersey authorities for information about civil tax matters has come into force this week.

<http://www.thisisjersey.com/business/business2.html>

JERSEY—GST Deal Offered to Island Firms

Jersey Evening Post

A goods and services tax deal is being offered to Island businesses to protect Jersey's finance industry and ensure that it is not tempted to relocate.

<http://www.thisisjersey.com/news/news10.html>

JERSEY—Seminar Looks at UK Real Estate Trust Rules

Jersey Evening Post

The new Real Estate Investment Trusts (REITs) being introduced in the UK later this year are unlikely to make much of a dent in Channel Island business, at least initially, specialists concluded last week.

<http://www.thisisjersey.com/business/business1.html>

Nevis Tightens Insurance Legislation

Tax-News.com

Lawmakers on the island of Nevis have approved an amendment to the jurisdiction's insurance law that will clarify and tighten up certain sections of the legislation to combat fraud. The twin island federation of St Kitts & Nevis has been keen to encourage "real investment" to its shores rather than "shell companies" after securing removal from the FATF and OECD 'blacklists' of non-cooperative tax havens in 2002.

<http://www.tax-news.com/asp/step/story.asp?storyname=23571>

Judge: Evidence Shows Government Influenced KPMG's Defense Fees Policy

New York Law Journal

New York federal Judge Lewis Kaplan had some strong words for a prosecutor on Wednesday as he wrapped up a hearing on whether the government coerced KPMG into threatening to cut off legal fees for employees and partners who refused to cooperate with an investigation into allegedly illegal tax shelters. Kaplan indicated that he did not believe that KPMG copped or cut off legal fees to non-cooperators on its own and that the evidence showed the government used a whiphand to influence policy at the firm.

<http://www.law.com/jsp/article.jsp?id=1147338329237>

Offshore Investments by U.K. Residents Under Scrutiny

Offshore Red, Campden Publishing, reports that U.K. residents who own holiday homes and other properties or assets overseas should prepare themselves from some serious attention from Revenue & Customs (HMRC) following a recent decision in HMRC's favor from the Special Commissioners of Income Tax. On February 13, 2006, the Commissioners ruled that a financial institution must provide to HMRC details of customers with U.K. addresses holding non-U.K. bank accounts and HMRC justified its request for this data by suggesting that £1.5 billion of tax is a risk because of undeclared income on such accounts.

This decision completes the application by HMRC in November 2005 with respect to the same financial institution where HMRC was successful in obtaining an order for the production of non-U.K. debit and credit cards held by customers with U.K. addresses.

This is the latest development in HMRC's scrutiny of U.K. banks and financial institutions over the last seven years where the inspectors are using the formidable powers to seek information about classes of taxpayers, whose identity is not known to them but where they believe they have identified a substantial risk of tax evasion. The banks fought hard to preserve privacy of their customers, but HMRC prevailed in the courts for the release of the information.

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