



## Duke Law Firm, P.C.—in the News

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### **Seminars/Conferences**

#### **CFC Boot Camp:**

One-day “Boot Camp” workshop at Caesars Palace, Las Vegas, Friday, December 7, 2007, 8:00 am to 5:00 pm. The price is \$375 but **a discount of \$150 is available for the first ten advance Registrations.** The early-bird discount is on a first-come, first-served basis for the first ten to sign up. Further details are available at [Offshore Press Tax Workshop for Controlled Foreign Corporations](#). To reserve space at the early-bird discount rate, please call Vernon Jacobs at 913-362-9667 (mobile number is 913-481-3480), or send an email to [Jacobs@offshorepress.com](mailto:Jacobs@offshorepress.com) with CFC Boot Camp in the subject field.

#### **Controlled Foreign Corporation Tax Guide, Third Edition**

The updated Controlled Foreign Corporation Tax Guide, Third Edition, by Vernon K. Jacobs and J. Richard Duke, is now available for purchase by either hard copy or Internet:

<http://www.offshorepress.com/>

#### **Diamond and Diamond Graduate Law Program Moves**

On July 1, 2007, the Walter H. Diamond and Dorothy B. Diamond Graduate Law Program in International Tax and Financial Services moved from St. Thomas University School of Law (Miami, FL) to the Thomas Jefferson School of Law (San Diego, California).

<http://llmprogram.tjisl.edu/>

The Program was initially created for a Master of Laws (LL.M.) in

International Tax. The Diamond Program has grown to meet the wide range of career objectives and needs represented by individuals who are seeking the flexibility that only this on-line program offers. Today, a student can earn an LL.M. and also earn a J.S.M. (Master of Science of Laws) or a J.S.D. (Juris Scientiae Doctor).

The head of the program continues to be Professor William H. Byrnes, IV. He is a pioneer of the on-line format and assembled an international faculty of individuals whose scholarly publications and years of practical experience have made them widely recognized leaders in their areas of expertise.

Professor William H. Byrnes, IV, a U.S. Attorney, is the Founder of the Walter H. & Dorothy B. Diamond International Tax Program that was hosted at St. Thomas University School of Law (Miami, Florida). Professor Byrnes is a Visiting Professor of International Taxation to the Masters program of the Faculty of Commerce, Law, and Management at the University of the Witwatersrand (Johannesburg) and, before that, was the coordinator and lecturer of the International Tax Masters of Commerce program at RAU (Johannesburg). Professor Byrnes has partnered with Central Law Training and STEP to offer a complete Diploma Program to its members in the field of International Tax Planning.

<http://llmprogram.tjisl.edu/director>

Richard Duke taught from the inception at the St. Thomas University School of Law Program and

continues to teach in the Walter H. Diamond and Dorothy B. Diamond Graduate Law Program in International Tax and Financial Services Program, Thomas Jefferson School of Law.

Walter and Dorothy Diamond have authored over eighty tax and trade books and over one hundred investment booklets. A most interesting book about Walter Diamond’s life is titled “One of a Kind—Learning the Secrets of World Leaders,” by Walter H. Diamond. TAX HAVENS OF THE WORLD, published by LexisNexis Matthew Bender Co., is one of the most well-known books by Walter and Dorothy Diamond.

#### **Tax Havens of the World**

J. Richard Duke is now a contributing editor to the three-volume set of books, TAX HAVENS OF THE WORLD, published by Lexis Nexis, Matthew Bender & Co., authored by Walter H. Diamond and Dorothy B. Diamond.

<http://bookstore.lexis.com/bookstore/product/10494.html>

**Aristotle University College of Law** has become the first University in the State of California, and the first law school in the United States, to incorporate Scholar360 as a learning management system.

The Aristotle e-Learning Scholar360 learning management platform provides the ability to uniquely and effectively address not only the communication needs of on-site students, but also to address the specific needs of those students who cannot attend on-site programs, as well as

permitting Aristotle to actively engage its international student population from countries all around the world in the process of legal education. In this regard, the foundation of the Aristotle e-Learning and instructional methodologies are based on four pillars: Scholar360, The Center for Computer-Assisted Legal Instruction (CALI), LexisNexis, and Internet Business Law Services (IBLS) (see "Mode of Instruction and Aristotle e-Learning" on the Web site):

<http://www.aristotlelaw.com/>

Thomas A. Gionis, MD JD LLM MBA MHA FICS FCLM, is the President of Aristotle University and is the Dean and Professor of Law, Aristotle University College of Law (Carlsbad, California). His other designations include United States Fulbright Scholar in Law, United States Fulbright Senior Specialist Program, Fellow, International College of Surgeons, Fellow, American College of Legal Medicine, Chairman, American Board of Healthcare Law and Medicine. He is currently a graduate student in the MPH (Masters of Public Health) program at UCLA and will receive his MPH at the conclusion of next quarter.

Tom Gionis was an Adjunct Professor of Law in the Diamond Program at St. Thomas University School of Law and will continue to be an Adjunct Professor of Law at Thomas Jefferson School of Law Diamond Program.

Joseph and Gionis:

<http://www.josephandgionis.com/about-joseph-gionis.php>

Richard Duke has been named to the inaugural faculty as a Professor of Law at Aristotle University College of Law.

### **Panamanian to Repay \$5.6 Million to Scam Victims**

In an article titled "Man must repay \$5.6 million to scam victims," The Birmingham (Alabama) News, July 13, 2007:

A federal judge [July 12] sentenced a Panamanian man to five months in prison and ordered him to repay \$5.6 million to victims that included football coach Bobby Bowden [of Florida State University] who lost money in a securities scheme.

Richard E. Busch Jr. could have faced a prison term in the range of 30 to 37 months, but his substantial assistance to federal prosecutors earned him a sentencing break into a range of 10 to 16 months. He also was sentenced to five months of home detention.

Busch, 64, was prosecuted as part of a conspiracy to sell unregistered securities. The scheme caused investors to lose \$10 million. Among the victims were Florida State University's Bowden, whose son, Stephen, was among those prosecuted in the scheme that prosecutors said began in 1996.

Busch's attorney, Tommy Spina, sought to keep him from serving prison time. Busch already has served 100 days in federal custody at the Shelby County jail since his March arrest. That will be credited toward his five-month prison sentence.

The scheme was dubbed the Millennium Fund: Tax Free Guaranteed Rapid Capital Fund for the Privileged Few. Busch, along with Hoover businessman James Michael Hanks, former University of Alabama quarterback Brian Burgdorf, and Stephen Bowden were prosecuted in north Alabama's federal court. Hanks, Burgdorf and the

younger Bowden pleaded guilty to roles in the scam, receiving probation and an order to pay restitution.

Richard Duke and his former law partner met on several occasions with James Michael Hanks, and others referred to above, and advised these individuals that the structures they were recommending resulted in violating numerous tax laws and that various federal income tax returns were required to be filed. Richard Duke wrote a lengthy tax opinion for a client disclosing the numerous violations of the tax law and the tax compliance and tax reporting requirements with respect to the structure. The client did not invest in this scam.

### **The IRS Has A New Weapon: Your Tax Pro**

*Law 'Deputizes' Preparers To Police Their Clients; Higher Fees a Likely Result The Wall Street Journal July 11, 2007; Page D1*

A new law that puts the onus on tax preparers to head off tax dodging is expected to lead to more paperwork and higher fees for some taxpayers.

The law is intended to make preparers more cautious about signing tax returns that include questionable or aggressive tax items without disclosing the details to the Internal Revenue Service on a special form. Stiff penalties may be imposed not only on income-tax preparers, but also on those who prepare estate- and gift-tax returns, employment and excise-tax returns, and returns of tax-exempt organizations.

Individuals may now have to provide more documentation to accountants in order to support aggressive tax positions. Some accountants expect clients to shop around for tax preparers who will agree to what the client wants.

Tax preparers have long faced possible penalties for signing questionable returns without specifically disclosing the tax positions in question. But the new law raises the standards considerably, and sharply boosts penalties to \$1,000, or half the preparer's total fee, whichever is larger. Fines for preparers showing "willful or reckless conduct" are much higher still.

Tax preparers can sign returns with questionable tax positions if those positions are disclosed, typically using IRS Form 8275. But some clients may object to filing the form, fearing it could raise red flags at the IRS. "We will be using far more Form 8275 disclosures with returns, and I'm not sure how clients will react," says Claudia Hill, the owner of Tax Mam, a tax-services firm in Cupertino, Calif.

**Cunard to Sell Queen Elizabeth 2 To Dubai Firm for \$100 Million**  
*Associated Press, June 18, 2007 11:17 a.m.*

DUBAI, United Arab Emirates—A Dubai-owned company announced Monday that it bought the Queen Elizabeth 2, a giant ocean liner launched in 1967, for \$100 million.

State-owned Istithmar said it plans to turn the passenger ship into a first-class floating hotel, retail and entertainment destination, berthed off Dubai's manmade Palm Jumeirah island.

**Judge: Government 'deliberately or callously prevented many of these defendants from obtaining funds for their defense'**

*Mark Hamblett*  
[New York Law Journal](#)  
*July 17, 2007*

The other shoe dropped Monday in the government's crippled tax shelter prosecution against former KPMG employees as Southern District of New York Judge Lewis Kaplan dismissed charges against 13 of 16 defendants.

His decision leaves only three defendants—Robert Pfaff, John Larson and David Greenberg—facing trial on charges of selling what the government claims are illegal tax shelters.

The judge [July 16] again explored the government's use of the Thompson Memorandum, a U.S. Department of Justice guide for prosecutors on how to measure cooperation by a company under investigation.

"Indeed, the fact that KPMG has been paying the civil defense costs on condition that the defendants' lawyers in those matters be different than their lawyers in the criminal case -- a condition that is at war with any consideration of economy or efficiency -- demonstrates with astonishing clarity that the different treatment of the criminal case defense costs has been driven from the outset by the fear that the government would view any assistance in defending against the indictment as a black mark against KPMG."

He continued, "KPMG cut off payment of defense costs to anyone who was indicted for one reason and one reason alone -- the Thompson Memorandum and the related actions of the [U.S. Attorney's Office]. In their absence, KPMG would have paid every penny."

In a statement Monday, Southern District U.S. Attorney Michael Garcia said that the government "respectfully disagrees with Judge Kaplan as to whether there was any constitutional violation in this case. As is clear from Judge Kaplan's decision today, the Government has already appealed one ruling (the suppression of proffer statements of two defendants) arising from that finding. That appeal is pending. We will continue to pursue appellate review."

## **Anti-Money Laundering Activities**

The Florida International Bankers Association reports:

Bank executives say spending to combat money-laundering activities rose by 71 percent in North America over the past three years, mainly to pay for IT systems and training staff, according to a new survey by KPMG International. It was the highest spending rate increase among the regions surveyed, and well above the 58 percent global average.

**WSJ MARKET ALERT: Bear Funds Nearly Worthless, Investors Told**  
*from The Wall Street Journal.*  
*July 17, 2007*

Weeks after the meltdown of two prominent Bear Stearns Cos. hedge funds that bet heavily on the market for risky home loans, the brokerage has told the funds' investors that the portfolios' assets are almost worthless, according to people familiar with the matter.

For more information:  
<http://online.wsj.com/article/SB118470713201469384.html?mod=djemalert>

## **Tax Costs High for Expatriating Individuals Under Raiser for Private Debt Collection Bill**

Individuals expatriating from the United States will face a high tax price when attempting to take their assets with them under legislation (H.R. 3056) approved 23-18 by the House Ways and Means Committee July 18.

Although the bill's primary focus is to stop the private debt collection program at the Internal Revenue Service, its centerpiece revenue raiser will dramatically change the landscape for those who attempt to give up their U.S. citizenship to escape U.S. tax on their assets.

Expected to bring in \$764 million over 10 years, the complex provision would impose an immediate tax on individuals who renounce their U.S. citizenship and would mark to market gains on property of expatriating individuals.

The bill includes detailed, specific rules for the tax and how it would affect a wide range of assets, including deferred compensation, tax-deferred accounts such as retirement and pension plans, and nongrantor trusts.

In general, H.R. 3056 requires that all property of a covered expatriate be treated as sold on the day before the expatriation date for its fair market value for tax purposes. Gains and losses from the sales would have to be taken into account for the taxable year of the sale, according to the bill.

Expatriating taxpayers will be allowed to exclude up to \$600,000 in income from the sale treatment of the property, the legislation stipulated. However, the exclusion may not reduce taxable income below zero.

The bill imposes a 30 percent tax on eligible deferred compensation, to be deducted and withheld by the payor. This includes compensation from foreign pension plans or similar retirement arrangements or programs, according to the legislation.

H.R. 3056 also includes detailed rules on tax-deferred accounts, such as retirement and pension plans. For accounts held on the day before an expatriation date, an expatriate would be treated as having received a distribution of the entire interest in the account on that date.

Specific types of accounts that will fit in this area include individual retirement accounts, qualified tuition plans, Coverdell education savings accounts, health savings accounts, and Archer medical savings accounts.

Although comprehensive distributions would be treated as having been made prior to expatriating, no early distribution tax would apply and appropriate adjustments will be made to reflect that treatment, according to the legislation.

In addition to the changes for deferred compensation and tax-deferred accounts, the legislation will impose a 30 percent tax on taxable portions of distributions from nongrantor trusts.

If the fair market value of such property exceeds its adjusted basis in the hands of the trust, gain will be recognized to the trust as if such property were sold to the expatriate at its fair market value.

The bill also specifies that covered expatriates would be treated as having waived any right to claim withholding reductions under U.S. tax treaties for distributions from nongrantor trusts.

At the July 18 Ways and Means markup, Rep. John Tanner (D-Tenn.) was the one Democrat to switch sides and vote against the private debt collection bill with Republican committee members. Floor time has not yet been scheduled for the controversial legislation.

*Texts of the JCT description of the chairman's amendment to H.R. 3056 (JCX-52-07).*

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