



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

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### **Announcing!!!**

J. Richard Duke again was named one of the "Top 100 Attorneys in the U.S." in the December 2006 issue of "Worth" magazine that hit newsstands November 14th.

### **American International Depository & Trust**

American International Depository & Trust (AIDT) is a banking institution, chartered and regulated under the Colorado Foreign Capital Depository Act and the Colorado Banking Board.

Pursuant to the Act, only non-U.S. citizens and non-U.S. legal residents are permitted to make deposits with AIDT. The legislation is set forth under the Capital Depository Act, Section 11-37.5-101 C.R.S. et. seq. The main provisions that are of interest to professionals and their foreign depositor clients are as follows:

- Part 2, Privacy Protection, Section 11-37.5-201 C.R.S.; and
- Part 3, Asset Protection, Section 11-37.5-301 C.R.S.

The first two paragraphs of Part 3, Asset Protection, Section 11-37.5-301(1) and (2), read as follows:

(1) The general assembly understands that asset protection includes the ability to minimize or avoid both the potential financial impact and loss of privacy resulting from lawsuits. The general assembly also recognizes that asset pro-

tection is a vital component of a foreign capital depository, which is designed to serve the interests of individuals with high net worth who are not United States citizens and do not reside in the United States.

(2) The general assembly further acknowledges that foreign judgments rendered in a foreign state, unlike judgments rendered in other states of the union under the United States constitution, are not entitled by Colorado courts to conclusive full faith and credit under common law and that the principle of comity that encourages one country to extend legal recognition to the judicial acts of another country does not apply to the relations between Colorado and a foreign country.

Section 11-37.5-307, Contingency fee arrangements prohibited, states:

A person seeking recognition of a foreign judgment against a customer of a foreign capital depository shall not engage legal counsel on a contingency fee basis for the purpose of attaining recognition of the foreign judgment.

The Web site for American International Depository & Trust is:  
<http://www.aidtprivatebank.com>

E. Jerry James is the Founder and Chairman of the Board of AIDT and the President of The Offshore Institute. The November issue of Worth magazine includes an article about AIDT, titled "Rocky Mountain Hide," interviewing Mr. James.

<http://www.worth.com>

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

One of the statements by an attorney in this article is that the same asset protection goals that can be achieved through AIDT and the Colorado legislation can be accomplished through a Delaware trust, as well as a single-member limited liability company. The use of a Delaware trust can cause problems because one of the trustees of a Delaware trust is required to be located in Delaware, and a significant portion of the trust assets must also be located in Delaware. This can cause an otherwise non-taxable investment by a non-U.S. citizen or non-U.S. legal resident to become subject to U.S. taxation under tax rules regarding taxation of domestic trusts.

The position of the lawyer in this article that a one-member limited liability company provides asset protection fails to mention a Colorado bankruptcy court that construed a limited liability company statute (Colorado). In re Ashley Albright, No. 01-11367 (Bkrptc. D. Col. 04/04/2003). The Colorado statute, like others, provides that the charging order applies to a one-member limited liability company. The bankruptcy court in Colorado held that the "charging order" protection was not available to a one-member limited liability

company because the charging order involves two concepts:

(1) avoid disruption to the other member or members when one of the members has a levy against him for an action that is unrelated to the limited liability company; and

(2) provide a remedy to the creditor of the member, which is a right to receive the income distributed to that member. The bankruptcy court stated that no other member was disrupted in a one-member limited liability company so the charging order protection did not apply, meaning that the creditor could get to the assets owned by the limited liability company.

The Colorado legislation is specific and, so long as AIDT complies with the due diligence requirements of the USA Patriot Act and the Financial Action Task Force, the state law should be respected and provide the desired asset protection to qualified depositors.

### **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:**

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

Next training course to be held in Miami, FL, March 2007.

### **Assuredly Offshore**

*International Bar News, October 2006*

The global importance of regions such as India, China and the Middle East is now, however, leading offshore firms to expand into markets not traditionally regarded as "offshore."

While a number of Caribbean and Channel Islands firms have long had offices in London, for example, many utilized them merely as shop windows for their offshore services, although several are now acquiring local expertise and establishing permanent onshore operations.

[Grant Stein, Global Managing Partner of Cayman Islands-based Walkers] agrees that "offshore is an increasingly loose term. "When people talk about it they now include markets such as Dubai, Ireland, Switzerland, Delaware, Singapore and Hong Kong."

"New markets continue to offer opportunities," [Stein] says, "and certain offshore centers have connections with growing economies. Hong Kong is a key conduit for China, while Dubai is increasingly regarded as a key entry point for the Middle East."

### **Canada-Flaherty Shifts its Sights Towards Offshore Trusts** *The Vancouver Sun*

The Conservative government, having just shut down one costly tax avoidance scheme, income trusts, now has another in its sights: offshore tax havens.

Flaherty has introduced a motion in the Commons to amend the Income Tax Act to prevent "non-resident trusts and foreign investment entities" from using offshore tax havens to avoid tax.

<http://www.canada.com/vancouversun/new/story.html?id=91ee3be4-4f09-44fc-9e4c-208aeee3abd1>

### **Ex-Greenberg Tax Chief Resigns Over Kickbacks**

*New York Law Journal*

In the latest ethical embarrassment for Greenberg Traurig, the former chairman of the tax practice at the 1,600-lawyer firm has resigned from the bar for taking over \$1.2 million in kickbacks on tax shelters he recommended to wealthy clients. Between 1999 and 2002,

Jay I. Gordon steered a number of clients to tax shelter sponsors who in turn directly paid Gordon "referral fees." Gordon admitted in his affidavit of resignation that he had informed neither his client nor his firm of the referral fees.

<http://www.law.com/jsp/article.jsp?id=1163498730123>

**Offshore Tax Strategies** by Vernon Jacobs and Richard Duke is an abbreviated primer on the U.S. tax rules for offshore investments, foreign trusts, foreign corporations, foreign partnerships and other foreign entities. And it is written with a minimum of tax jargon. An extensive plain English glossary is included with the book.

*Offshore Tax Strategies* is not a technical reference manual for those who are already experts in the subject. It is written for the layman, the non-lawyer, the non-accountant, and for their various domestic advisors who are not familiar with the often-convoluted tax rules for international transactions.

The book provides a plain English explanation of the complicated U.S. tax laws that apply to U.S. persons with offshore investments, foreign trusts and global business interests.

*Offshore Tax Strategies* is a summary description of all the basic elements of international taxation. Printed copies are available for \$67. An E-book edition is available for just \$37.

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

<http://offshorepress.stores.yahoo.net/semreg.html>

### **Legal Ways to Save Taxes Offshore and Onshore Second Edition: An Annotated Checklist of Tax Reduction Methods Sanctioned by the Tax Law**

*By Vernon K. Jacobs & J. Richard Duke*

*Legal Ways to Save Taxes Offshore and Onshore* is an anno-

tated checklist of more than 100 tax deferral and tax reduction methods that are sanctioned by the U.S. Congress, will work in the U.S. and outside the U.S. and most of which are not affected by the alternative minimum tax.

The book is organized in the sequence of the income items and deductions that are listed on Form 1040 that will help readers to quickly identify which of the various tax reduction methods may be suitable for different kinds of income. It includes a discussion of ways to reduce the income tax, self-employment taxes, estimated taxes and estate and gift taxes. It does not include a discussion of tax strategies that are deemed to be abusive by the IRS.

*Legal Ways to Save Taxes Offshore and Onshore* is written as a plain English guide by Vernon Jacobs, a CPA and by J. Richard Duke, JD, LLM.

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

### **IRS Considering 'Mass Audits' of Nonfilers Hiding Behind Shell Companies**

*Published by Tax AnalystsTM*

The IRS is contemplating using mass audits of nonfilers, promoter investigations, and John Doe summonses to find the tax cheats hiding behind shell companies, according to K. Steven Burgess, director of examination for the IRS Small Business/Self-Employed Division.

At a November 14 hearing held by the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, Burgess warned that gaps in the state laws that govern company formation offer owners secrecy equivalent to "the most attractive tax havens."

Subcommittee Chair Norm Coleman, R-Minn., said the competition between states to attract com-

panies is a "race to the bottom" that results in bad law.

"The absence of ownership disclosure requirements and lax regulatory regimes in many of our states make U.S. shell companies attractive vehicles for those seeking to launder money, evade taxes, finance terrorism, or conduct other illicit activity anonymously," he said.

According to Coleman, government regulators literally have no idea who owns millions of private companies because states just don't collect the data. The subcommittee's ranking minority member, Carl Levin, D-Mich., called it "an open invitation to criminal abuse."

Burgess said the lack of ownership data creates huge compliance headaches for the IRS because an owner can hide noncompliance behind a legitimate entity. Burgess said Wyoming, Delaware, and particularly Nevada offer companies "cloaking features" and minimal oversight. Nevada and Wyoming offer "bearer shares," which give possession of a company to whoever is in physical possession of the share, he said. And, both Nevada and Wyoming allow owners to establish corporations completely anonymously using nominee officers, he added.

The IRS has begun several investigations into Nevada nominee officers, who Burgess said act as promoters. Although the promoters themselves are acting appropriately under state law, section 6700 allows the IRS to obtain client lists because many of their clients are engaged in fraudulent activity.

Robert A. Northcutt, acting director of the SB/SE abusive transactions office, said the IRS is currently working with one cooperative promoter and one uncooperative one. An initial sampling of their client lists showed that between 50 percent and 90 percent of the

listed companies are not compliant. Burgess pointed out that there are more than 650,000 active and nonactive entities in Nevada.

"It is important to remember this is only one state," he said.

According to Northcutt, companies can hide a wide range of non-compliance behind shell companies, such as schemes involving employee stock options, Roth IRAs, offshore credit cards, warehouse banking, and offshore brokerage accounts.

Burgess said the IRS has formed an issue management team to combat the problem and is considering building on the Nevada audits. "We are contemplating mass audits of nonfilers that would produce a list of nonfiler and noncompliant participants," he said.

The IRS is also considering additional promoter investigations and John Doe summonses to resident agents.

*Document: (Doc 2006-23172)*

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