



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:

Scottsdale, AZ – November 2006
Richard Duke will be speaking on
Tuesday and Wednesday,
November 7 and 8

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

Proposed Regulations Regarding Private Annuities

The IRS and Treasury Department issued proposed regulations (REG-141901-05) on Tuesday, October 17, 2006 that will change the tax treatment of transactions in which sellers exchange property for an annuity contract. The effective date for the rule change is October 18, 2006, pending final approval. Tax Notes Today reports that Katherine Hughes, an attorney with the Treasury's Office of Tax Legislative Counsel, advised attendees at the American Bar Association Section of Taxation meeting in Denver, CO, October 20, that the proposals will overrule Rev. Rul. 69-74, 1969-1 CB 43. She also stated that the only exception is "plain vanilla, family style annuities," which are annuity exchanges that took place before April 17, 2006.

In a private annuity transaction, the seller receives fixed annuity pay-

ments in exchange for appreciated property from the purchaser. These annuity payments are based on the life expectancy of the seller and, prior to these proposed regulations, a portion of the return of basis and capital gains plus interest are reported over a period of time based on the seller's life expectancy. In the event the seller dies prematurely, the payments end. If the seller lives past his life expectancy, he continues to make payments and the buyer reports the income as ordinary income. Installment sales, which are based on a stated number of years, continue to viable, according to the IRS and the Treasury. In the event the seller dies prematurely (before his life expectancy), the remaining payments are not included in his estate for estate tax purposes.

Under the proposed regulations, gains will be recognized immediately at the time of the exchange under a private annuity contract based on the fair market value of the property exchanged. The proposed regulations do not change the estate tax treatment.

Rachel Emma Silverman, "IRS Aims to Limit a Deferral Strategy," The Wall Street Journal, p. D3 (Oct. 19, 2006).

2006 TNT 204-11. OCTOBER 20, 2006.

Glaxo SmithKline Settles Tax Dispute for \$3.4 Billion

Glaxo SmithKline PLC settled an almost 20-year dispute with the Internal Revenue Service for \$3.4 billion. This dispute relates to Internal Revenue Code Section 482, commonly referred to as "transfer

pricing," which involves the art of determining the monetary value with respect to trademarks, patents, research and other intangibles that one of a multinational company transfers to another (or one company transfers to a related company). IRC Section 482 reads as follows:

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses. In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible.

The position of the Internal Revenue Service was that Glaxo SmithKline PLC in the U.S. overpaid its

British parent for drugs, primarily the anti-ulcer Zantac.

The IRS announced on September 11, 2006 that it had successfully resolved the transfer pricing dispute with Glaxo SmithKline Holdings (Americus) Inc. & Subsidiaries. The IRS stated this is the largest IRS settlement in the history of the U.S.

Robert Guy Matthews and Jeanne Whalen, "Glaxo to Settle Tax Dispute With IRS Over U.S. Unit for \$3.4 Billion," The Wall Street Journal, p. A3 (Sept. 12, 2006).

"Text of IRS, Glaxo Statements On Tax Settlement: IRS Accepts Settlement Offer in Largest Transfer Pricing Dispute," The Wall Street Journal, IR-2006-142 (Sept. 11, 2006).

Amendments to Jersey Trust Law

The Trusts (Amendment No. 4) (Jersey) Law 2006 (the "Law") was registered in the Royal Court this morning and will come into force October 27, 2006.

FOREIGN LAWS: Article 9-minimizes the impact of any rules of foreign law upon the creation or operation of a Jersey trust.

FOREIGN JUDGMENTS: Article 9(4)-no foreign judgment may be enforced by the Jersey courts if it is inconsistent with Article 9.

SETTLOR RESERVED POWERS: Article 9A-provides statutory authority for the creation of Jersey trusts with settlor reserved powers.

DISCLAIMING INTERESTS: Article 10-enables the beneficiaries of a Jersey trust to disclaim a whole or part interest in the trust, either permanently or for any temporary period, regardless of the terms of the trust.

TRUST PERIOD: Article 15-provides that Jersey trusts may continue for an unlimited period and

confirms that no rules of perpetuity apply to Jersey trusts.

NUMBER OF TRUSTEES: Article 16-permits a sole trustee of a Jersey trust unless its terms require a higher minimum number.

APPOINTMENT OF TRUSTEES: Article 17-the statutory power of appointment of new trustees of a Jersey trust is extended to apply to cases where trustee appointment provisions in the trust have lapsed, failed or cannot be exercised.

RESIGNATION OF TRUSTEES: Article 19-simultaneous resignations of trustees of a Jersey trust resulting in there being no remaining trustees are ineffective. However, a resignation made to facilitate a breach of trust will no longer be ineffective; instead, by Article 30, the resigning trustee will remain liable for the breach so facilitated.

DELEGATION: Article 25-enables a trustee of a Jersey trust to delegate the execution or exercise of any of his trusts and powers, including dispositive powers, and for further sub-delegation to be made.

THIRD PARTY DEALINGS: Article 32-clarifies the position where a third party is aware that he is transacting with a trustee, but has not been specifically informed of this by the trustee.

SPENDTHRIFT TRUSTS: Article 35-confirms that any beneficiary's interest can be made subject to diminution or termination.

CHARITABLE/NONCHARITABLE PURPOSE TRUSTS: Article 47A-enables the courts to apply trust assets in specified circumstances where the original charitable or non-charitable purpose of a Jersey trust has become incapable of being practically achieved. As a result, Article 42(2) is repealed.

DIRECTORS AS GUARANTORS: Article 56-of the 1984 Law is repealed. This is the Article which

made directors of any corporate trustee automatically liable as guarantors of any liability for breach of trust committed by that corporate trustee.

LIMITATION PERIOD: Article 57(3A)-imposes a three year limitation period upon actions brought by a current trustee against a former trustee, the time running from the date when the former trustee ceased to be a trustee. This period is consistent with the statutory period already existing for other actions for breach of trust.

Source: Society of Trust and Estate Practitioners (STEP)
<http://www.step.org>

Trusts & Estates Magazine November 2006 Special Report: Asset Protection

Included in this special Asset Protection edition will be the following articles:

"Offshore, Legitimately" By J. Richard Duke:

"Offshore" has gotten a lot of bad press lately, mostly because it's seen as a way to avoid U.S. taxes. It is not. It's a viable option for law-abiding Americans, and there are a number of valid, tax-neutral, reasons for going offshore. The top two are to protect assets from potential future creditors and to purchase life insurance.

"Ninth Circuit Treads on an Established Right" By Gideon Rothschild and Daniel S. Rubin:

The U.S. Court of Appeals for the Ninth Circuit recently overreacted to two taxpayers and produced a decision in a case called Townley that declared it fraudulent to protect assets against any creditor, even a future unknown and unknowable one. That ruling flies in the face of all established law. Authors Gideon Rothschild and Daniel S. Rubin explain.

Gideon Rothschild is a partner at Moses Singer LLP in New York. He also serves on the editorial

advisory board of Trusts & Estates and is the magazine's chief consultant on asset protection planning.

Daniel S. Rubin is a partner at Moses Singer LLP in New York.

"Rules of Engagement" By Denis A. Kleinfeld:

Advisors should know how to navigate the asset protection battlefield. That means having a solid understanding of creditor/debtor law, contempt of court, and the defense of impossibility. Problem is, there are conflicting legal decisions and commentary that muddy the waters. Denis Kleinfeld articulates the basic principles underlying asset protection law and identifies the legal framework for contempt-of-law actions.

Denis Kleinfeld is a principal of both The Kleinfeld Law Firm, LLP based in Miami and Kleinfeld Global Services, LLC in the U. S. Virgin Islands. He's also general counsel of Four Points Family Office LLC in the Virgin Islands.

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

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 annotated 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 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/>

The Two Emotions That Can Cost You Everything!

Vernon K. Jacobs

Con artists are rarely able to cheat someone is free of greed or fear.

Greed is the emotion that leads us to want something for nothing or to seek high returns on investments with claims of little risk. Greed gives us the motive to be willing to take advantage of another person. Someone once said that "You can't con an honest man". The word "honest" could be substituted for "someone who isn't greedy".

Your single best defense against any potential scam or scheme is to be willing to walk away from the perceived "opportunity". When you know that professional investment managers rarely make more than the returns achieved by the various market averages, you should be instantly suspicious of any offer that alleges to give you the opportunity to get results far greater than those obtained by professional investors. When the rate of return for a home mortgage is at 7% per year, it doesn't make sense that you can make 10% a month on any kind of investment.

The second emotion that causes many people to lose money is fear.

Nearly every con game or scam tries to encourage a sense of urgency or you lose the opportunity. You have to move fast, to be decisive, say the hustlers and promoters. The fear of losing an opportunity to get something for nothing causes people to invest without investigating first.

Greed causes investors to buy at the top of a rising market and fear causes them to sell at the bottom.

Greed causes otherwise sane people to give their life savings to a total stranger who is offering the allure of a "special opportunity" to get high returns without risk or effort. Fear often prevents them

from even seeking help to recover their money.

Greed causes people to buy trust packages that allege they can magically move money between a number of trusts (like the carnival shell game) and end up not owing taxes on their income.

People who are inherently honest don't expect something for nothing. They are immediately suspicious of anyone who offers them an "opportunity" that seeks to take advantage of others. Such people are very hard to trick into some kind of scam or con game.

Do yourself a favor. Develop a private system of ranking various opportunities on the "Scam Scale". The greater the potential opportunity in relation to the amount at risk, the greater the potential for a scam and the more time should be taken to check it out. And, the more urgent the "opportunity" is, the greater the potential for it's being a scam of some kind.

There are real opportunities available in this world, but they usually require a lot of hard work and patience. The promise of easy money is like the odds of winning the lottery. It's o.k. to bet a few bucks that you can afford to lose, but it's really foolish to bet the farm on a million to one gamble.

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

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

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