TAX SHELTER LITIGATION

Proven Results Representing Taxpayers Against Promoters Of Illegal And Abusive Tax Shelters

Since 2003, the firm's tax shelter practice has been led by David R. Deary, W. Ralph Canada, Jr. and Jim Flegle. Their team of highly-skilled attorneys has aggressively represented hundreds of high-net-worth individuals and companies who participated in illegal and abusive tax shelters designed, marketed, sold, and implemented by a team of well-known accounting firms, law firms, and investment firms. The Firm has also been lead class counsel in class actions involving a variety of tax shelters.

The Firm has substantial experience representing individuals and/or companies in virtually every type of illegal and abusive tax shelter, including but not limited to:

- Spread Options
- Digital Options
- Binary Options
- Numerous Other Varieties of so-called Son of BOSS Strategies
- FLIPS
- BLIPS
- OPIS
- COINS
- SWAPS
- Foreign Currency Derivatives
- Distressed Asset Debt
- 419 Life Insurance
- HOMER
- BART
- Contingent Deferred SWAPS
- Syndicated Conservation Easements
- Captive Insurance Companies

The Firm has recovered hundreds of millions for its clients from the promoters and professional advisors of these tax shelters, including many high-profile national and international accounting firms, law firms, and investment firms.

Current Representations Relating To Captive Insurance and Syndicated Conservation Easements

The IRS continues to pursue taxpayers who have participated in captive insurance and syndicated conservation easement structures. Recently, the IRS placed micro-captive insurance and syndicated conservation easement structures on its list of "Dirty Dozen" tax scams.

As a result of our experience and success in representing over 600 individuals and companies against promoters and professional advisors of illegal and abusive tax shelters since 2003, LFDS is uniquely qualified to assist victimized taxpayers in efforts to recover against the promoters and professional advisors who designed, promoted, sold, and/or implemented syndicated conservation easement structures and captive insurance companies. We are nationally known as a "go-to" firm for individuals or companies whose captive insurance companies or syndicated conservation easements have been disallowed by the IRS and/or tax court. As a result, we represent a large number of individuals and companies who participated in syndicated conservation easement structures and captive insurance companies.

Among those clients are Benyamin Avrahami and Orna Avrahami, whose efforts to defend an IRS challenge to the § 831(b) captive insurance structure recently went to trial with the entire tax world watching to see the outcome. Unfortunately for the Avrahamis, the IRS prevailed at trial, resulting in substantial damages to the Avrahamis for which they have retained LFDS to recover from the promoters and professional advisors.

The Avrahami Tax court decision can be found here.

We have gone toe-to-toe against some of the biggest and most powerful accounting, investment, and law firms and have prevailed on behalf of our clients with substantial recoveries. We intend to do the same for our clients who participated in syndicated conservation easement structures and captive insurance companies that have been disallowed as illegal and abusive tax shelters. In that regard, we have recently filed lawsuits seeking class certification against some of the major promoters and professional advisors of micro-captive insurance structures:

Avrahami lawsuit against Celia Clark, ACR Solutions Group, et al.

Shivkov lawsuit against Artex, Tribeca, Arthur J. Gallagher & Co., et al.

REQUIRED DISCLOSURES AND AUDIT RISKS

Promoters are required to disclose to the IRS the identity of the taxpayer participating in the structures they promoted and sold, and taxpayers are required to disclose Transactions of Interest on Form 8886, which includes § 831(b) captive insurance structures and conservation easement structures. As a result, taxpayers that have participated in a syndicated conservation easement or a § 831(b) captive insurance company structure are likely already on the IRS investigation list and may very well be subject to an audit in the very near future.

If you have participated in one of these transactions, it is likely only a matter of time before the IRS will be contacting you.

For taxpayers that have participated in a captive insurance company or a syndicated conservation easement structure, time may be of the essence in making a decision to retain counsel to pursue their claims for damages against the promoters and other professional advisors, as the applicable statutes of limitations may have already started running or will soon begin to run on your claims against the promoters and other professional advisors.

CAPTIVE INSURANCE TAX SCHEMES

CAPTIVE INSURANCE AND THE RELATED TAX BENEFITS

A Captive Insurance Company ("CIC") is a corporation created to offer insurance to companies that are related parties to the CIC, either in a parent (CIC) – subsidiary (insured) relationship or where the CIC owners also own the insured company. The non-tax benefits of a CIC may include premium cost stabilization; elimination or reduction of brokerage commissions and marketing expenses; lower administrative costs; the ability to provide niche coverage for a unique or specific risk that would not otherwise be transferable in the commercial insurance market; and the potential to control certain CIC investment decisions and portfolio management.

The tax benefit of an IRC § 831(b) CIC can be extensive. Premiums paid to a CIC by its shareholder insured are generally deductible, similar to the deductibility of premiums paid on commercial insurance. IRC § 162(a) provides that there shall be allowed deductions on necessary and ordinary expenses incurred in carrying on a business and Treas. Reg. 1.162-1(a) states that business expenses include insurance premiums on policies covering certain business losses. IRC § 831(b) provides that certain electing insurance companies may receive tax-free annual premiums up to $2.2 million, although the CIC would still be liable for tax on its investment earnings. As such, the shareholder insured deducts the premium payments, the CIC receives the premium payments tax-free, and will not be taxed on the premiums until the CIC makes a dividend distribution or the CIC stock is sold – either of which would be at long-term capital gains rates (15%) instead of ordinary income rates (35%).

CAPTIVE INSURANCE COMPLIANCE ISSUES

To achieve the available tax benefits, a CIC must be considered an "insurance company" and the arrangement must be considered an "insurance contract." To meet these "insurance" requirements, each CIC with U.S. shareholders must use IRS safe harbors or otherwise to both show: (i) that it has properly shifted the risk of economic loss ("risk shifting") from the insured to the insurer; and (ii) that the insurer has adequately distributed the risk among several insurance companies (or other unrelated entities) so that no single insurance company (or entity) has too much of the risk for an economic loss.

The IRS is also aware of certain less-prevalent IRC § 831(b) CIC tax-motivated compliance problems, that include: (i) the use of life insurance on the CIC owner's life as a major investment of the CIC; (ii) engaging in tax-motivated loan back arrangements between the CIC and its owners; and (iii) structuring the CIC ownership in the name of a children's trust (or other entity) to avoid Federal Estate and Gift Taxes.

REQUIRED DISCLOSURES AND AUDIT RISKS

A CIC engaging in any of these compliance issues is likely to eventually come under significant IRS scrutiny and face serious consequences if done non-compliantly. The IRS designated IRC § 831(b) CIC transactions as "reportable transactions." As with all reportable transactions (a designation for transactions that IRS believes to be illegal and abusive tax shelters), the IRS will eventually require all CIC promoters to file a list with the IRS identifying all taxpayers who engaged in their CIC deals. In addition, as in all prior tax shelter transactions, the IRS has required each taxpayer who participated in an IRC § 831(b) CIC deal to file a Form 8886 Disclosure, which identifies the taxpayer's participation in the transaction to the IRS.

Ultimately, this will likely lead to numerous IRS audits. And if the past is any indication of the future, taxpayers who participated in a tax-motivated IRC § 831(b) CIC transaction will suffer substantial damages. Either way, the IRS knows the identity of taxpayers that participated in what the IRS believes to be an illegal and abusive tax shelter, and if you are such a participant, it is only a matter of time before the IRS will be contacting you, a tax dispute will proceed, and there is a significant chance your transaction will be disallowed, resulting in substantial damages to you.

If you have participated in an IRC § 831(b) CIC transaction, time is of the essence in making the decision as to whether to hire a firm to pursue your claims for damages against the promoters and other professional advisors, as the applicable statutes of limitations for these claims may have already started to run or will soon begin to run.

We have substantial experience, expertise, and success representing taxpayers, both individuals and companies, in litigation against national and international accounting firms, law firms, and investment firms who promoted and sold illegal and abusive tax shelters to our clients. We are very interested in talking with you about your case, your options, and having our team represent you.

SYNDICATED CONSERVATION EASEMENTS

WHAT ARE CONSERVATION EASEMENTS?

Holders of historically and environmentally significant property often wish to maintain such property in its present state. However, undeveloped or historically preserved use is rarely the most profitable land use, particularly where such land lies in a major urban area or contains valuable mining rights. Landowners with a genuine will to preserve their land may lack the means to maintain valuable land at less than optimal use. Due to these concerns, Congress enacted Internal Revenue Code ("I.R.C.") § 170(h)(2)(C) to provide tax deductions for taxpayers who donate an easement that is considered a "qualified conservation contribution."

The enactment of a federal income tax deduction for the donation of an easement considered to be a "qualified conservation contribution" was essentially a Congressional subsidy to preserve historically and environmentally unique land in its current state, rather than developing the land to a more profitable use. Although the term "qualified conservation contribution" also encompasses the donation of a donor's entire interest and a donor's remainder interest, our focus is limited to the donation of a conservation easement ("CE") interest.

To be considered a "qualified conservation contribution," the donation of an easement restricting use must be: of a perpetual term; made with charitable intent; to a qualified organization; exclusively for conservation purposes; and properly substantiated through appropriate appraisals and forms. The amount of a "qualified conservation contribution" is generally valued as the difference between the fair market value of the donor's property pre- and post- donation, reduced by the amount of any short-term built-in capital gain existing in the contributed property at the time of donation. The amount of a "qualified conservation contribution" is tax-deductible to the donor; however, the donor's ability to currently deduct a charitable contribution in any given tax year is generally limited to the applicable rate of the donor's contribution base for that year subject to deduction carry-forwards. "Qualified conservation contributions" enjoy an across-the-board preferential applicable rate of fifty percent (50%) and fifteen-year carry-forwards.

CONSERVATION EASEMENT SYNDICATION PROGRAMS

There is a difference between a straight forward donation of a conservation easement over the donor's own property held for more than one year, and the CE syndication programs that have proliferated nationwide. The latter is a method for promoters to sell membership interests in an LLC to investors who then get a pro-rata charitable tax deduction from the CE donation commensurate with their contribution to the limited liability company ("LLC") making the donation.

A typical syndication structure generally involves the following: (1) a “land-rich, cash-poor” contributing partner who holds greatly appreciated property that is historically or environmentally significant and wishes to monetize their property interest in a conservationist manner (for example, if the property has sentimental value to the contributing partner or if the contributing partner believes, contrary to market expectations, that contiguous property rights will drastically increase in value over time if the integrity of the overall tract is preserved); (2) an investment fund partner that is an investment entity with high-income investing partners of its own; and (3) a managing partner who is often the promoter of the CE syndication.

The syndication steps are generally as follows: (1) the contributing partner contributes significantly appreciated real property to a newly-created LLC in exchange for a 99% ownership interest in the LLC; (2) the managing partner contributes a nominal amount in exchange for a 1% ownership interest in the LLC and also manages the LLC; (3) the contributing partner sells the majority of its interest in the LLC to the investment fund partner (retaining only a nominal interest); (4) the investment fund partner compels the LLC (i.e. the managing partner) to grant a CE over the property to a charitable land trust (or other tax-exempt entity) that meets the tax-deductible requirements of a qualified conservation contribution; and (5) the CE deductions are allocated to the partners of the investment fund partner according to the relative partnership agreements (as well as to the managing partner on a pro-rata basis according to the managing partner’s nominal share).

The IRS recently designated these CE syndication programs as “listed transactions”, which is a rarely used disclosure and penalty regime that is reserved for the worst and most widespread tax shelters that the IRS encounters. The IRS has also raised several issues in litigation with taxpayers over CE syndication programs, including improper valuation by appraisers; improper structuring of the CE such that it does not meet the definition; poor documentation; and several other compliance issues.

REQUIRED DISCLOSURES AND AUDIT RISKS

As with all listed transactions (a designation for transactions that IRS believes to be illegal and abusive tax shelters), the IRS will eventually require all promoters of syndicated conservation easements companies to file a list with the IRS identifying all taxpayers who engaged in their syndicated conservation easement deals. In addition, as in all prior tax shelter transactions, the IRS has required each taxpayer who invested in a syndicated conservation easements deal to file a Form 8886 Disclosure, which identifies the taxpayer’s participation in the transaction to the IRS.

Ultimately, this will likely lead to numerous IRS audits. And if the past is any indication of the future, taxpayers who participated in a syndicated conservation easement transaction will suffer substantial damages. Either way, the IRS knows the identity of taxpayers that have participated in what the IRS believes to be an illegal and abusive tax shelter that will be disallowed, and if you are such a participant, you are likely to suffer substantial damages as a result.

If you have participated in a syndicated conservation easement, time may be of the essence in making the decision to retain counsel to pursue your claims for damages against the promoters and other professional advisors as the statute of limitations on your claims may have already started to run or will soon begin to run.

We have substantial experience, expertise, and success representing taxpayers in litigation against national and international accounting firms, law firms, and investment firms who promoted and sold illegal and abusive tax shelters to our clients. We are very interested in talking with you about your case, your options, and our team representing you.

CONTACT US

We are ready and willing to talk with you about your syndicated conservation easement or captive insurance company to determine if you have a claim against the promoters and other advisors and your options. If you have a claim, we would be honored to represent you in recovering your damages from the promoters and professional advisors.

If you would like to speak with David R. Deary, please call Janet Bailey, his assistant, at 214-572-1700, and she will schedule a call with Mr. Deary and the team.

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