

### IRS Circular 230 Disclaimer

**The opinions set forth in this website are subject to the disclaimer pertaining to IRS Circular 230 set forth herein.**

Unless expressly stated otherwise on this website, (1) nothing contained in this website was intended or written to be used, can be used by any taxpayer, or may be relied upon or used by any taxpayer for the purposes of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended; (2) any written statement contained on this website relating to any federal tax transaction or matter may not be used by any person to support the promotion or marketing or to recommend any federal tax transaction or matter; and (3) any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor with respect to any federal tax transaction or matter contained in this website. No one, without our express written permission, may use any part of this website in promoting, marketing or recommending an arrangement relating to any federal tax matter to one or more taxpayers.

An explanation of the preceding disclaimer

The IRS has issued new rules (known as "Circular 230") that will affect how tax professionals communicate with clients. The rules, which took effect in June 2005, apply whenever a practitioner provides written advice, including e-mails, faxes and letters, on tax issues. While the rules are motivated by the government's well-founded concern with abusive tax shelters, they unfortunately also apply to many common and perfectly legitimate planning arrangements.

The rules grew out of the government's decision to attack the mechanisms used by tax shelter promoters to sell abusive tax shelters. The new rules address the practice of promoters to obtain boilerplate opinions for tax shelters. Taxpayers engaging in abusive transactions use these types of opinions to escape tax penalties of 20 percent or more, on top of what they owe in taxes, by claiming that they "reasonably" and "in good faith" relied on the tax opinion for their belief that the transaction was permissible.

Under the new IRS rules, clients cannot rely on a tax opinion for protection from penalties unless the practitioner provides a formal, comprehensive opinion that outlines and discusses at length:

- All relevant facts and applicable law,
- The relationship between the facts and the law,
- A conclusion as to the legal consequences of each tax issue, and
- The likelihood that the taxpayer will prevail if the IRS challenges the transaction.

The standards governing when such a formal, comprehensive opinion is required are vague and uncertain, in large part because the IRS did not want to create any loopholes. Consequently, the new rules may sweep in many routine, non-abusive planning arrangements and may cover many writings

that don't really constitute "tax advice." Unfortunately, the penalties to practitioners for providing written advice that does not meet the Circular 230 requirements can be severe, including disbarment from practice before the IRS.

Because of the new rules, the cost of securing a formal written opinion will be high. However, an alternative to writing an expensive, comprehensive opinion is to include a disclaimer on written advice, stating that the writing cannot be relied upon for protection from tax penalties. Accordingly, we now routinely include a Circular 230 Notice in written communications.

Please be assured that the use of a Circular 230 disclaimer will not in any way change the quality of the service or advice you receive from us.

If you have any questions about this important development, please don't hesitate to contact us.