Employee Leasing
Headliner

The Internal Revenue Service is cautioning medical professionals that promoters of abusive tax schemes are targeting them. This article is to make medical professionals aware of a potentially abusive tax scheme. .

A Typical Abusive Arrangement

Promoter's Pitch:
Gain asset protection by concealing assets and operating free from U.S. tax law using…

Offshore Entities

Employee Leasing Companies

Deferred Compensation

Actually in substance the professional:

- Retains the same employer
- Performs the same services
- Retains the same compensation

The typical arrangement may have a medical professional resign from his present employer or personal professional corporation to sign an employment contract with a foreign employee leasing company giving it exclusive rights to his services. The leasing company, through the use of one or more entities, indirectly leases the professional's services back to his original employer. The professional performs the same services before and after entering into the leasing arrangement.

The medical professional determines the amount of prior compensation to be received as current salary and elects to defer the remainder under a nonqualified deferred compensation plan maintained by the leasing company. The leasing company may or may not transfer the deferred amounts to an offshore trust. Because the original employer is told it is making a lease payment rather than paying wages, it pays no employment taxes. Consequently, the employer's portion of employment taxes on the professional's salary may not be paid.

The professional reports and pays taxes on the annual salary received, but income and employment taxes are generally not paid on the amounts transferred offshore. These arrangements are promoted as a legal way for medical professionals to "protect" their hard-earned assets.

Numerous cases have been litigated in which **substance rather than form determines tax treatment**. In the arrangement described above, the form of the transaction has changed, but the substance has not.

Notwithstanding promoters' claims that these arrangements are effective, they could give rise to current income and employment tax liabilities under the Internal Revenue Code and numerous tax law doctrines. Additionally, participation in such an arrangement could subject participants to civil and criminal penalties.

Moreover, if the original employer contributes to a qualified retirement plan on behalf of the professional after he begins participation in an arrangement such as the one described above, the special tax treatment afforded the qualified retirement plan and its participants could be jeopardized.

Be Aware

The Criminal Investigation Division of the Internal Revenue Service has been actively and successfully prosecuting participants in and promoters of abusive tax schemes. Audits involving arrangements like the one described above are increasing. Before becoming involved in one of these arrangements, the Internal Revenue Service recommends asking the following questions:

- <u>Is the arrangement designed to "hide" income?</u>

- <u>Is the arrangement designed to evade income or employment taxes?</u>

- <u>Is the arrangement just too good to be true?</u>

Be careful - answering "yes," or even "maybe" to any of these questions can lead to severe consequences. The Internal Revenue Service suggests that professionals considering involvement in an arrangement like the one described above obtain expert advice from a competent tax advisor not involved in selling the arrangement. Do not rely on legal opinions obtained or provided by the arrangement's promoter.

Countless variations of these arrangements are being marketed to medical professionals. Just because a promoter's arrangement is not identical to the one described above does not mean that it is outside the scope of this article.

For further information about recent court cases and tax law involving abusive trusts and employment tax fraud, visit the Criminal Investigation web site at: http://www.ustreas.gov/irs/ci/ or the IRS web site at: www.irs.gov.

If you have specific questions on a tax scheme or wish to report a possible scheme, call 1-866-775-7474 or send an e-mail to: irs.tax.shelter.hotline@irs.gov.