



EMPLOYEE BENEFITS PRACTICE

ALERT

IRS PROPOSES ASSESSMENT OF LISTED TRANSACTION PENALTIES UPON SMALL BUSINESSES

By Harvey M. Katz

Some of our clients have adopted certain welfare plan arrangements under section 419(e) of the Internal Revenue Code. In recent years, the IRS has attacked these arrangements as devices to funnel tax-deductible dollars to shareholders and has classified these arrangements as "listed transactions." Taxpayers who engage in a "listed transaction" must report such transaction on IRS Form 8886 every year that they "are engaged" in the transaction. Section 6707A of the Code imposes severe penalties (\$200,000 for a business and \$100,000 for an individual) for failure to file Form 8886 with respect to a listed transaction. The Tax Court does not have jurisdiction to abate or lower any penalties imposed by the IRS.

Many taxpayers adopted 419(e) plans based upon representations of insurance professionals that the plans were legitimate welfare benefit plans and had no idea they were engaging in a listed transaction. Vociiferous

complaints from these taxpayers caused Congress to impose a moratorium on assessment of section 6707A penalties. The moratorium expired on June 1, 2010, and the IRS immediately began sending out notices proposing imposition of 6707A penalties and requesting lengthy extensions of the statute of limitations for the purpose of assessing tax.

Clients who receive notices from the IRS regarding 6707A penalties should take these letters extremely seriously. The attorneys in our Employee Benefits & Compensation Planning Group are available to provide advice to those taxpayers who the IRS deems have participated in a listed transaction or any taxpayer who believes that he or she participated in such a transaction.

For more information, please contact Harvey Katz at 212.878.7976 or hkatz@foxrothschild.com or any member of Fox Rothschild's Employee Benefits & Compensation Planning Practice Group.

