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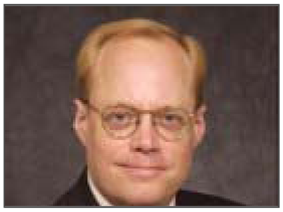

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THE TAX LAWYER

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“DAD” Tax Shelter Is A Deadbeat

Image via investmentkit.com

Tax shelter promoters are not well liked by the IRS. Investors like them only if they deliver. While no one (save perhaps Warren Buffett) likes paying taxes, you won’t be happy if you are slapped down in a tax dispute after your “shelter” turns out not to work. You might even want to sue. See Rothschild Executives Sue UBS Over Failed U.K. Tax Shelter.

Tax shelters are defined by the tax code to include any plan or arrangement having a significant purpose of avoiding or evading federal income tax. Of course, a huge number of transactions have tax ramifications as a significant purpose! A key question is whether the tax ramifications are the reason the person is entering into the transaction. Often it is the ***manner*** of accomplishing the business goal that is designed to be tax efficient, but economics and business goals are usually more important than tax goals.

Q.E.D. Why did the tax shelter industry become so enamored with slick acronyms? Tax shelters have carried names such as: Foreign Leveraged Investment Program (“FLIP”); Offshore Portfolio Investment Strategy (“OPIS”); Bond Linked Issue Premium Structure (“BLIPS”); Custom Adjustable Rate Debt Structure (“CARDS”); Currency Options Bring Reward Alternatives (“COBRA”); Currency Option Investment Strategy

("COINS"); and Family Office Customized Partnerships ("FOCUS"). See Tax Shelters Not Über Alles.

The latest case to reaffirm my anti-acronym mentality was *Superior Trading LLC v. Commissioner*. There, the U.S. Tax Court considered the Distressed Asset Debt (cleverly called "DAD") and Distressed Asset Trust ("DAT") shelters. The court ruled the deal invalid.

According to the government, these deals involve Brazilian consumer debt and investments by U.S. taxpayers that are purely artificial. A Brazilian retail company sells low value, distressed debt—say payments made with bad checks—to a U.S. entity created by the shelter promoter. The U.S. entity allegedly pays the foreign company 1 to 2% of the face value of the distressed debt. The U.S. entity contributes the distressed debt to trusts created and controlled by the promoter, thereafter selling the trusts to taxpayers for a price pegged to tax losses the deal is supposed to generate.

The Justice Department thinks these deals stink so badly that it has sued trying to prevent Chicago tax lawyer John E. Rogers from promoting them. The government alleges the transactions generate losses related to Brazilian debt that don't cost taxpayers any money and that produce only artificial losses. The government said in its statement that Rogers generated more than $370 million in improper tax deductions for more than 100 clients.

For more see:

How Bad Is Your Tax Shelter?

How Can Companies Skirt U.S. Tax?

When Too Good Tax Deals Become Fraud

Seeking Shelter In Tax Shelters?

Tax Court Rules Against Chicago Lawyer's Distressed Debt Deals

Court Rejects $1.1b Tax Losses Claimed by Andrew Beal in DAD Tax Shelter

Andrew Beal Appeals Denial of $1.1b DAD Tax Shelter Losses

5th Circuit to Hear Andrew Beal's Appeal of $1.1b DAD Tax Shelter Loss

DOJ Sues Former Seyfarth Shaw Partner Over DAT/DAD Tax Shelters

Tax Me If You Can

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