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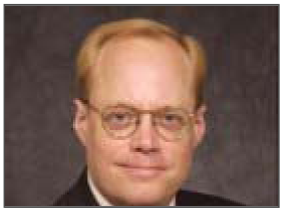

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Lawyers Giving Back, But Not the Way You Think

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Law firm failures have become common, but Big Law failures remain unusual and cataclysmic. When Dewey & LeBoeuf failed earlier this year, it was big news despite a stream of partner departures that foreshadowed it. After the firm closed and bankruptcy and asset recovery specialists emerged, the liabilities loomed large.

An innovative deal to streamline the mess is looking likely to come to fruition. It calls for former partners of the now defunct firm to inject at least $50 million into the firm's bankruptcy estate. See Dewey LeBoeuf Clawback Deal Showcases Disgorgement Pains. What do the former partners get in exchange for coughing up that considerable sum?

Immunity from lawsuits. That's worth alot considering how law firm failures drag on for years and consume significant fees. The deal is not yet approved but is one step closer now that enough former partners have signed on. It's being watched as a model clawback deal.

It seems a smart move for the firm's former partners. They face large claims from banks, bondholders and trade creditors. Total claims exceed $500 million. See Ex-Dewey Partners Agree to 'Clawback'.

Still, former partners will need tax lawyers and accountants to square their taxes. The tax code allows rescission–simply undoing the original pay–only if done in the ***same year***. See Sell Then Rescind? IRS Respects Some Do-Overs. Partners who received pay last year can't just undo it.

Claiming a Business Expense. Claiming tax deductions also isn't simple for giving back pay especially if payroll taxes have been paid. Besides, deductions may only be of the miscellaneous itemized variety subject to a 2% threshold and to alternative minimum tax (AMT). See Will Everyone Pay AMT Next Year?

Amending Prior Returns. Amending prior tax returns is possible only within three years of the original filing or within two years after the tax was paid, whichever is later. See Even The IRS Has Time Limits. Besides, amending prior returns is to address mistakes, not events occurring the next year. See 5 Simple Rules to Follow When Amending Your Tax Return.

Section 1341. If you reported income when you had an unrestricted right to it but learn ***later*** that you didn't have that right after all, you may be able to rely on Section 1341. It's one of the quirkiest sections in the tax code so be careful.

Giving back, it turns out, isn't so simple.

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