From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint
Helter Skelter Tax Shelter

Tax shelters have been around since the enactment of the Internal Revenue Code. It is a misconception to believe that all tax shelters are illegal. Even the IRS would have to acknowledge that there is a significant, if not overwhelming, number of tax shelters that are legitimate, creative and rightfully save the taxpayer money. However, those are not the ones that we read about.

For anyone who has been following these developments, the federal government, and the state governments, has generated significant revenue from taxpayers through *"voluntary"* tax shelter compliance programs. Furthermore, they have gotten significant amounts from companies for allegedly selling abusive tax shelters.

We all remember Arthur Andersen. Although the amount of money that Arthur Andersen had to pay (i.e., $500,000) may appear small, it actually cost the company its life. No value can be put on that.

Jenkins & Gilchrist paid $75 million to resolve issues concerning abusive tax shelter games. It also lost its life.

Then it seemed like the tide began to turn. KPMG has so far paid $456 million to the federal government. It has an incredible number of lawsuits against it by both class action and non-class action investors. The amount of money that it may have to pay to these investors is staggering. However, it does not appear that the federal government is going to seek to shut down KPMG. Probably this is a lesson learned from Arthur Andersen. Or, possibly could the civil action have the same effect?

More recently, we have Sidley & Austin. They have agreed to pay the federal government $39.4 million to resolve the dispute. Furthermore, apparently Sidley & Austin has implemented an anti-abusive program which even the federal government praises. However, it is interesting to note that neither party will divulge the agreements entered into between them. This is disheartening.

Just last week the DOJ unsealed a criminal indictment against four partners at Ernst & Young (two former and two current) alleging tax fraud conspiracy and related crimes, including destruction of documents to impede an investigation. It seems that the DOJ no longer names the Company as the defendant but now zooms in on the alleged wrongdoers specifically.

I think the lesson to be learned from all of this is how necessary it is to have an ***independent*** review of the procedures in place for making sure that all the professionals play by the rules and to investigate regularly to ensure that they are.

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