



TAX ADVISOR

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Providing accurate, innovative and timely tax and business advice since 1986.

ARE FAMILY LIMITED PARTNERSHIPS TAX SHELTERS?

We discussed in earlier newsletters the recent changes in Circular 230 regarding the characterization of written correspondence to clients as a "Tax Opinion". Under Circular 230, *"any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, a significant portion of which is to avoid or evade any taxes imposed under the Internal Revenue Code is a tax shelter"*. It would seem likely that

correspondence associated with the preparation and execution of a Family Limited Partnership may be properly characterized as a Tax Opinion under the proposed Regulations. This correspondence [aka Tax Opinion] must satisfy the proposed standards and requirements including the determination of the likelihood of the taxpayer's success on the merits where challenged and whether penalties can be

avoided where the taxpayer's reliance on this opinion is warranted. The proposed changes require the practitioner to *"be knowledgeable in all aspects of federal tax law relevant to the opinion rendered"*. In the absence of such knowledge, the practitioner may rely upon the opinion of another practitioner as long as the identity of the other practitioner is set out.

TAX FRAUD AND THE ATTORNEY, THE CPA AND THE CLIENT

If your client has knowingly under reported income or over reported deductions or tax credits, and has been contacted for a tax audit, or has been directly contacted by Criminal Investigation, it is crucial to you, as his or her attorney, to take immediate steps to interject yourself into the investigation.

This may help the client avoid making erroneous or self incriminating statements, therefore negating possible defenses. Further, it is necessary for the attorney to engage an accountant to assist the attorney in determining the proper characterization of taxable income or loss. The client's prior accountant

must not be used. This avoids their potential testimony regarding a change in tax method or tax accounting for the client. The accountant hired by the attorney in a potential criminal case is known as a Kovel Accountant.



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