

IRS Says Most 419 Plans Are Abusive Tax Shelters



by *Lance Wallach, CLU, ChFC, CIMC*
On October 17, 2007, the IRS, in Notice 2007-83, identified as listed transactions certain trust arrangements involving cash value life insurance policies. Revenue Ruling 2007-65, issued simultaneously, addressed situations wherein the tax deduction has been disallowed, in whole or in part, for premiums paid on such cash value life insurance policies. These arrangements claim to be welfare benefit plans.

Taxpayers participating in listed transactions must disclose such participation to the Internal Revenue Service. Failure to disclose can result in severe penalties, up to \$100,000 for individuals and \$200,000 for corporations. Penalties can also be assessed against the insurance agent who sold the plan or the accountant who recommended it. In Notice 2007-84, the IRS threatened to impose penalties under IRC Sections 6700 and 6701 against promoters and aiders and abettors (insurance agents) even if the plan is not a listed transaction.

Be skeptical of the plan promoter who says that all the other 419 plans are abusive, but that their plan is legal. It appears that almost every so called “419 plan” is abusive.

Revenue Ruling 2007-65 describes situations in which cash value life insurance is bought for owners or other employees. These are sold as 419(e), 419A(f)(6), and 419 plans. The 419A(f)(6) plan was pre-

viously categorized as a listed transaction. Other arrangements, described by the ruling, may also be listed transactions. All of the plans that we have studied except one are listed transactions. The IRS has threatened to impose significant penalties and alternative tax treatment on companies participating in such arrangements.

The advisor who is approached by a client about one of these arrangements must exercise utmost caution and not only on behalf of the client. Your client must do impeccable research on the promoter, who is likely to have once been in the 419A(f)(6) arena. If that is true, the IRS has his name and that, in turn, makes an audit far riskier and more likely. Be skeptical of the plan promoter who says that all the other 419 plans are abusive, but that their plan is legal. It appears that almost every so called “419 plan” is abusive. □

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