



Brucker & Morra

on Benefits

How pension and welfare benefits laws affect your clients today

July 2009

Congressional Leaders Ask IRS to Stand Down on 6707A Penalties

*Unintentionally Victimized Small Business Owners
To Get Relief*

Dear Readers:

I'd like to thank you for your positive response to "Brucker & Morra on Benefits." I appreciate hearing from so many of you personally with your support for my campaign through the Small Business Council of America to reverse an Internal Revenue Service law that threatens to bankrupt hundreds of American small business owners. Many of you in financial and investment fields told me you can use the information in this newsletter to save hundreds of thousands of dollars for your clients who may have inadvertently invested in so-called abusive or listed transactions when they established retirement or benefits plans.

In this issue of "Brucker & Morra On Benefits," I am proud to share the details of our effort to protect small business owners from bankruptcy by encouraging Congressmen to halt IRS collection on penalties. We are working with members of Congress to change the law and support two bills that were recently introduced. I'll keep you updated as events unfold. As always, you may opt out of email distribution by clicking on the unsubscribe link at the bottom of the page.

*Cordially,
Alex Brucker
Brucker & Morra, APC*

After considerable urging by the Small Business Council of America, four powerful Congressmen formally asked the IRS commissioner to cease collecting massive penalties from small business owners who unknowingly invested their companies' retirement and welfare benefit plans in alleged abusive tax shelters. Commissioner Douglas H. Shulman is expected to agree to the request. He had been seeking discretion in the area.

"The SBCA is deeply gratified that our voice of reason has been heard in Congress. Hundreds of businesses will be saved from bankruptcy, and thousands of employees will keep their jobs as a result," said Alex Brucker, ERISA and benefits attorney and the SBCA director who spearheaded a concerted effort to gain the relief. The SBCA first called for a moratorium on penalty collections last January.

Business owners throughout the nation faced potential bankruptcy over the penalties, which reached up to \$1.4 million and dwarfed the mere thousands they owed in taxes on investment gains. Nearly all taxpayers were unaware that their investments were deemed "listed transactions" under a 2004 law that was enacted to detect, deter and shut down tax shelters used by major corporations. The penalties were assessed under Internal Revenue Code section 6707A for taxpayers' failure to report the deemed listed transactions.

Commissioner Shulman recently told a Congressional hearing that he recognized the burden of the penalties and indicated that he was amenable to Congressional calls for him to use his discretion and stand down on the collections.

Sen. Max Baucus (D-Mont.), Chairman of the Senate Finance Committee, and Ranking Member Charles Grassley (R-Iowa) signed the June 12 letter, along with Rep. John Lewis (D-Ga.), Chairman of the House Committee on Ways & Means and the Subcommittee on Oversight, and Ranking Member Charles W. Boustany, Jr. (R-La.).

"Our thanks go out to this bipartisan group of senators and congressmen for recognizing and taking swift action to rectify an unintended injustice in an otherwise reasonable tax law," Brucker said. "Taxpayers now have breathing room to deal with their situations. Our next task at the SBCA is to work with Congressional leaders on legislation that puts the penalties in proportion to the taxes owed."

Brucker said the SBCA owes special thanks to Sen. Baucus. The SBCA, ASPPA and Brucker hosted an event honoring the Montana senator last month in Los Angeles. At the event, Sen. Baucus met privately with Brucker and eight business owners from around the country. They

detailed their financial plight caused by the IRC penalties.

In their June 12 letter to the Commissioner Shulman, the four lawmakers said they recognized the unintended consequences of the 2004 law and had reached a "bipartisan, bicameral commitment" to rectify it.

The SBCA intends to participate in writing the new law. "We agree that the American Jobs Creation Act is valid and that taxpayers should comply with the law," said Brucker. "The SBCA will call for the right of judicial review to remedy an adverse IRS determination. Our main focus will be on proportionality so that penalties are in line with the alleged tax benefits. The IRS penalties should not be so onerous that they destroy businesses and ruin lives."

The Power of Advocacy

How the SBCA Worked Capitol Hill

Soon after discovering the punishing effects of IRC section 6707A in January 2009, the Small Business Council of America urged Congress to place a moratorium on collection and levy of "listed transaction" penalties. In a position paper and press release, the SBCA called for a thorough review and recommendations to carry out the intention of Congress without the disproportionate and probable unconstitutional impact of current law on small businesses and their owners.

Since January, SBCA Director Alex Brucker, with the support and assistance of SBCA officers and board members, met on Capitol Hill with the tax staffs of Sen. Ben Nelson (D-Neb.), Sen. Olympia Snowe (R-Maine), Sen. Mary Landrieu (D-La.), Sen. Max Baucus (D-Mont.) and Sen. Charles Grassley (R-Iowa). SBCA also met with the tax staffs of Rep. Joe Donnelly (D-Ind.), Rep. Rob Andrews (D-NJ) and Rep. John Lewis (D-Ga).

In March and April, the SBCA submitted comments to Sen. Nelson and Rep. Donnelly and assisted them with the introduction of S765 and HR2143, two bills that would provide IRC Section 6707A relief to small business taxpayers caught up in the web of these unintended consequences.

In early May, SBCA Directors Brucker and Matt Kadish met with Sen. Grassley's tax staff and a businessman from Iowa who faced IRC section 6707A penalties of \$1.2 million. The business owner asked for the right to seek due process through judicial review of the IRS assessment. The law precluded judicial review unless the plaintiff first

paid the assessed penalties.

In late May, Brucker and SBCA Director Neil Carrey met with Senator Baucus and introduced him to several small business owners who had been threatened with bankruptcy due to the assessment of IRC section 6707A penalties ranging to amounts well in excess of \$1 million.

In early June, SBCA Chairman Paula Calimafde and Directors Brucker and Kadish worked with the staff of Rep. John Lewis on the House Ways and Means Oversight Subcommittee hearings on IRS fiscal year 2010 operations and budget. The SBCA submitted documentation and examples of business owners affected by the imposition of IRC section 6707A penalties. The text became part of the formal record. At the hearing, Rep. Lewis and IRS Commissioner Douglas H. Shulman discussed the need for legislative relief for taxpayers affected by the IRC section 6707A penalties.

The SBCA continues to pledge and dedicate its resources to enacting S765 and HR2143 or substantially similar legislation to provide needed tax justice and relief to small businesses. SBCA officials plan to meet soon with the tax writing committees and their staffs to enact a fair and rational relief bill this year.

JOIN THE SBCA!

The Small Business Council of America is your advocate.

The SBCA is the only national organization with the sole purpose of representing the interests of privately and family owned businesses in federal income and estate tax, health care, pension and other employee benefit areas.

The primary goal of the SBCA is to enact favorable federal tax and employee benefit laws for small

Small Businesses at Risk **The Devastating Effects Of the "Law of Unintended Consequences"**

Business owner, wife and children owe \$900,000 penalty

A Utah business owner sold his company when he turned 55 and launched a management consulting firm. He would be the sole employee in this new firm, which he would own with his wife and six children, ages 5 to 17. All eight owners were listed as beneficiaries in the pension plan. When the IRS determined that the plan invested

businesses and their owners. The SBCA supports legislation that creates important economic incentives, and opposes oppressive and burdensome laws and proposals.

For more information, visit the SBCA on the web at <http://www.sbca.net>

For information about the benefits of joining the SBCA and an application, click on "Membership" on the top menu of the SBCA home page.

Brucker & Morra is Southern California's largest firm exclusively practicing employee benefits law. We have expertise in every tax and labor aspect of ERISA.

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in a listed transaction, it assessed the firm and each owner, including the children, a \$100,000 penalty. The owner estimates his tax to be \$57,000.

Printing company owner can pay \$13,000 in taxes but not a \$1.4 million penalty

A California woman who owns a printing company established a pension plan for herself and her six employees. The IRS examined the pension plan and told the business owner that she invested in a listed transaction for four years. Her tax was \$13,000. Her penalty is \$1.4 million. She expects to close the business.

Car wash owner will go bankrupt over a \$900,000 penalty

In 2002, a 72-year-old owner of a coin-operated car wash finally generated enough revenue to start a retirement plan for his seven employees. He decreased his own pay to free additional revenues and, with the assistance of his CPA, established a tax-qualified retirement plan. He received an IRS Letter of Determination on the plan. Four years later, the IRS audited the plan and determined that it was a "listed transaction" beginning in 2004. The man owes the IRS \$900,000. That's more than the value of nearly every asset owned by the man and his 65-year-old wife. He's considering filing for bankruptcy protection.

Physicians who joined the Global Settlement Initiative received surprise tax bill

Two Idaho physicians set up a

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qualified pension plan for themselves and their 18 employees. Two years later the IRS declared that their plan was a tax avoidance transaction. They opted to join the IRS's "Global Settlement Initiative" (GSI) because the penalties were only 5 percent of the taxes owed. After disclosing the details of their pension plan and signing the GSI Closing Agreement, the physicians got an IRS notice that they owed \$600,000 in penalties under Code section 6707A.

If your clients are being penalized by 6707A...



Alex Brucker would like to hear from you about the severe effects of these penalties on their lives and livelihoods. Please call Alex directly or 310-954-2178 or by email at abrucker@pensionlawyers.com

Alex can advise you and your clients about the best way to deal with their own 6707A cases.

You will receive more news about this situation as events unfold. Please forward this newsletter to others who may benefit from the information.

 Forward to a Friend
