



Brucker & Morra

on Benefits

How pension and welfare benefits laws affect your clients today

Brucker & Morra on Benefits

May 2009

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

On call at Brucker & Morra:

Alex M. Brucker
abrucker@pensionlawyers.com

Linda Russano Morra
morra@pensionlawyers.com

Michael L. Cotter
mlcotter@pensionlawyers.com

Meredith J. Sesser
msesser@pensionlawyers.com

Cathryn B. Sportsman
csportsman@pensionlawyers.com

Jeremy M. Pelphey
jmpelphey@pensionlawyers.com

Alex Brucker Honored for Activism

by Small Business Council of America

Alex Brucker was among eight honorees to receive the Small Business Council of America's 26th Annual Congressional Awards on Capitol Hill. Cited for his "outstanding leadership, dedication and achievements on behalf of the SBCA," Alex was honored with the Connie Murdoch Award. The tribute was created in memory of Murdoch, an SBCA founder and highly acclaimed Delaware tax attorney.

The Small Business Council of America is pushing its offensive to end the Internal Revenue Service's unjust pursuit of small business owners who inadvertently invested in so-called "listed transactions" or possible abusive tax shelters in their employee benefit plans.

Led by Alex Brucker, the SBCA is using the media to publicize its support for a Congressional moratorium on mandatory payment of IRS penalties for investors' failure to self-report their holdings. Penalties permitted by Internal Revenue Code 6707A are separate from actual taxes owed and can exceed those underpayments by hundreds of thousands of dollars. The SBCA has endorsed Congressional bills by Sen. Ben Nelson (D-Neb.) and Rep. Joe Donnelly (D-Ind.) to make the reporting penalties proportional and to waive them entirely if taxpayers can show reasonable cause for failing to report the holdings.

Alex Brucker explained the latest SBCA efforts in a feature story in the "Daily Tax Report," a BNA, Inc. publication, on April 30. The headline was "Small Business Council Seeks Moratorium On 6707A Penalties for Reporting Failures."

Reporter Florence Olsen interviewed Alex Brucker, an SBCA director. She quoted him as follows:

"If a small businessman has to pay \$300,000, or \$600,000, or whatever to get judicial review, it has a chilling effect on the right of due process," Brucker said, referring to the penalties for which SBCA is seeking a moratorium. SBCA has asked that the chairmen and ranking members of the congressional tax writing committees request the moratorium while Congress considers legislation to revise the penalties, he told BNA.

In the BNA feature, Alex gave the example of a client who was told to pay a penalty of \$1.2 million and taxes from the transaction of about \$6,000. The client was a Hawaiian business owner with a retirement plan that IRS has listed as an abusive tax shelter.

Olsen reported in her story that "Section 6707A penalties

The SBCA also honored four lawmakers with its SBCA Congressional Award for their dedication in protecting the nation's 20,000 privately held and family-owned organizations on Federal tax, employee benefit and health care matters. Alex Brucker had the privilege of presenting SBCA plaques to Senator Ben Nelson (D-Neb.) and Rep. Joe Donnelly (D-Ind.) for their work to change the unfair tax code 6707A. Senator Orrin Hatch (R-Utah) and Representative Mike Castle (R-Del.) also received awards.



Sen. Ben Nelson receives SBCA Award from Alex Brucker.

The Small Business Council of America is your advocate.

The SBCA is the only national organization whose sole purpose is to represent 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 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 membership information, click on this link: [Membership Information](#)

were added to the tax code with the enactment of the American Jobs Creation Act of 2004 (Pub. L. No. 108-357), sponsored by then-Chairman Charles Grassley (R-Iowa), following a series of Senate Finance Committee hearings on investments being sold by tax shelter promoters." Alex told her that those investments, "many of them with odd names such as Son of Boss, were costing the government tens of millions of dollars in lost taxes."

The story explained that the "IRS requires taxpayers to report transactions that it lists as potentially abusive tax shelters. Its Employee Plans Abusive Tax Transactions Web page lists more than a half dozen transactions involving employee benefit plans, including deductions for excessive life insurance policies used to fund Section 412(i) retirement plans for highly compensated employees. Those deductions are abusive when the insurance policies are written 'to artificially increase the deductible contributions to retirement plans while greatly reducing the amount taxable when the policies are distributed to the plan participant,' according to IRS."

As reported in a previous "Brucker & Morra on Benefits," the SBCA is seeking a moratorium on the collection of Section 6707A penalties and has endorsed Senate bill 765 from Sen. Ben Nelson (D-Neb.) to waive penalties if the taxpayer can show reasonable cause for delaying or failing to report a listed transaction. The bill would make the reporting penalties proportional to any underpayment of taxes resulting from the listed transaction.

Alex told the Daily Tax Report that if someone engaged in a transaction that led to a \$50,000 tax underpayment, the penalty for failure to report that transaction would be proportional to the \$50,000 "instead of being the upward of \$300,000 penalty there is now." He also pointed out that the Nelson bill would prevent the stacking of penalties. This occurs when the taxpayer and the business each pay penalties for the same failure to report a listed transaction.

The SBCA would like Congress to approve substantial changes under Section 6707A, Alex said. The story noted that

First, it would like to see the law changed to require notice of rulemaking and public comment before IRS adds to its list of potentially abusive tax shelters, he said. "What we're asking is that a listed transaction be treated like an [interim] regulation," which is proposed and in effect but is subject to public comment and revision before it is finalized, Brucker told BNA. "Obviously, it would be a controversial provision," he added.

Second, SBCA would like the law to be changed to allow taxpayers to go to court to challenge penalties under Section 6707A. The only judicial review available now requires the taxpayer to pay the penalties, file a claim for a refund, and then file a lawsuit against the government when

DISCLAIMER

Brucker & Morra On Benefits is provided as general information to clients and friends of Brucker & Morra, APC. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered ATTORNEY ADVERTISING in some states.

the refund is denied, Brucker said.

The SBCA has allies. The story revealed that the American Bar Association's Tax Section sent a letter to leaders of the tax writing committees in Congress that it would like tax laws that are clear, consistent, and fair. "Sections 6707 and 6707A demonstrate what we see as a trend toward using penalties merely to punish rather than to encourage compliance," the ABA Tax Section letter said.

Olsen contacted Sen. Charles Grassley (R-Iowa), a ranking member of the Finance Committee who held hearings resulting in 6707A when he was committee head in 2004. His press secretary, Jill Gerber, told the reporter that Sen. Grassley asked the Treasury Department and IRS for data to help him evaluate concerns from small business owners. Sen. Grassley's comment from January still stands," Gerber told BNA in an April 16 e-mail message:

"I sponsored this reform for tax fairness, and tax shelter participants shouldn't think they're free to evade their taxes. If there are issues with the way the law is working, then we ought to collect the data and consider reasonable responses. We need the facts of who is affected and what kind of transactions are involved to figure that out."

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

Brucker & Morra
10880 Wilshire Boulevard, Suite 2210
Los Angeles, California 90024

310.475.7540 - Main number
310-954-2178 - Alex Brucker direct
Email: abrucker@pensionlawyers.com
Website: www.pensionlawyers.com

Listed in the Bar Register of Preeminent Lawyers

[Forward email](#)

✉ **SafeUnsubscribe®**

This email was sent to pleven@pobox.com by abrucker@pensionlawyers.com.

[Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).

Brucker & Morra | 10880 Wilshire Blvd. | Suite 2210 | Los Angeles | CA | 90024

Email Marketing by

