

Over 4,000 Doctors Assets, Totaling Excess of \$500 Million, Frozen By the IRS

The IRS and Department of Treasury have frozen \$500 million of doctors' invested assets in their preemptive strike against a company called Xélan. This action of freezing assets prior to an audit is the first of its kind by the government. It could be the beginning of a new trend of "preemptive" action by the IRS.

What is Xélan?

Xélan is a privately held group of companies, started by entrepreneurial dentist turned financial advisor, L. Donald Guess. The companies offer financial planning, investment, and insurance services to medical professionals.

Why is the IRS Upset?

The government's issue with Xélan and its officers are alleged as follows:

1. Xélan created a company in Barbados called Doctor's Benefit Insurance, Co. Approximately 4,000 doctors set up C Corporations and used it to purchase insurance through Doctor's Benefit Insurance, Co. The doctors deducted the insurance premiums paid as business expenses.
The IRS' complaint is that the businesses did not actually do business. The premiums paid were not relevant to any cost of insurance, but to how much the doctors could afford to save that year. The IRS believes that therefore, the premiums were improperly deducted.
2. Xélan created abusive welfare benefit plans under Code Section 419A. The IRS is arguing the deductions taken for these plans.
3. Xélan also created the Xélan Charitable Foundation, which the IRS alleges is a "fraudulent charitable foundation". 300-400 doctors were involved with this foundation. It is alleged that the doctors' contributions to the foundation were used to pay for their children's private school tuitions. The contributions were also used to pay the doctors for work that was supposed charitable pro bono.

The IRS' typical strategy is to deny the charitable deductions, then assess penalties and interest. In this case, the doctors could owe more than \$420 million.

What Does This Mean for Future IRS Attacks?

As interesting as the workings of Xélan is the IRS' actions in this matter. Their pre-audit action of freezing assets is the first of its kind in a tax shelter enforcement case. At this point, the government has no conviction that Xélan's

transactions were abusive tax avoidance schemes. The IRS froze the assets without an indictment or conviction with the reasoning of preserving the assets for payment of the taxes that will be due. If successful, this could start a trend of "preemptive" strikes and freezes.

Can the IRS Do This?

Counsel for some of the doctors claim that the IRS has overstepped their bounds to make an example of their clients. They are questioning the violation of the Fifth Amendment and due process rights of the doctors. They question if the freezing of the assets prohibits the doctors from defending themselves.

What About the Offshore Assets?

If the IRS wins this action, will the doctors be forced to repatriate their assets from Barbados? We have seen court cases where a judge will hold the defendant in contempt and put them in jail until they bring the assets back into the States to pay the judgment against them.

What Does This Mean For Us As Advisors?

Often clients and advisors ask us if they should be doing or advising offshore planning. While it has its uses and can be a powerful technique, it is often oversold and unnecessary. Offshore planning, if not done properly, can be undone by the courts. Often by maximizing those state exemptions and doing more conservative asset protection planning, you can become protected in a way that works and is consistent with your lifetime goals.