



IRS and Asset Protection Do's and Don'ts

Prepared by:
Gary S. Wolfe
THE WOLFE LAW GROUP



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THE WOLFE LAW GROUP

Gary S. Wolfe has over 34 years of experience, specializing in IRS Tax Audits and International Tax Matters including: International Tax Planning/Tax Compliance, and International Asset Protection.

As of July 2016, Gary Wolfe has internationally published 15 books and 28 articles. Gary has received 14 international tax awards from five different Global expert societies in LONDON/UK including being voted one of the 100 leading world's law firms with votes from over 150,000 voters in over 160 countries with the following award: Global 100 (2016) (KMH Media Group) - CA/US International Tax Planning Law Firm of the Year.

For more information please visit our website: gswlaw.com

Gary S. Wolfe, A Professional Law Corporation
6303 Wilshire Blvd., Suite 201
Los Angeles, CA, 90048
Tel: 323-782-9139
Email: gsw@gswlaw.com

IRS & Asset Protection: DOs & DON'Ts

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The IRS has assessed a tax, filed tax lien(s) and the tax, penalty and interest accumulates (with compounding the balance may double & then triple). Is the taxpayer helpless? NO.

Time to plan to resolve the matter. In tandem with the below suggestions consider submitting an IRS offer in compromise for the balance due based on either doubt as to collectability or liability. If the offer is accepted by the IRS for processing then the IRS tax collection is suspended pending review and processing of the offer.

Keep in mind that federal tax liens (IRS) expire after 10 years after the date of assessment. If any tax liens are identified on lien searches for the taxpayer and the tax liens are over 10 years old then they have expired, are no longer subject to IRS tax collection and the IRS should be contacted and request the tax liens be removed from the public record (so as not to give wrong tax lien information to 3rd parties who may inquire as to taxpayer financial circumstances, credit or other asset issues).

In California, the offer in compromise is a separate program administered by the California Franchise Tax Board (it is independent of the IRS) and needs to be addressed as a separate, independent tax matter. In addition in California, the tax liens are effective for 10 years from the date of assessment of tax due, and may be extended for an additional 10 years prior to their expiration so the total tax collection period may be up to 20 years (not 10 years as in the case of the IRS).

Rule #1: Do not transfer assets to an irrevocable trust, to an offshore company or to a "straw person" (i.e. a nominee). Why? Since the tax liens attach to the transferred assets such a transfer creates multiple tax problems: civil and/or criminal fraudulent convenience issues (under state law), obstruction of tax collection (a 3 year federal felony), conspiracy to commit tax evasion (a 5 year IRS felony for all co-conspirators).

Rule #2: Do not hold assets in your name (or family members) and do not use your social security # for accounts;

Rule #3: DO NOT transfer any assets to an IRREVOCABLE TRUST which assets are subject to any prior tax liens filed (i.e. the tax liens attach to the assets) and may constitute a fraudulent conveyance. Instead, any asset transfers should be to a REVOCABLE TRUST ONLY(i.e. a transfer to a revocable trust is not a completed transfer since the settlor may revoke the trust under the trust document).

Based on a case by case review, assets may be "upstreamed" to a California Limited Liability Company (wholly owned by the revocable trust) For tax purposes, the CA LLC may be treated as a disregarded entity whose income/expense is reported on Form 1040/Schedule E with no separate tax return required for the revocable trust (under the grantor trust rules). For those assets ultimately "upstreamed to then CA LLC" they may be creditor protected (under the CA "charging order rules") from 3rd party creditor attachment while the Offer in Compromise is pending before the IRS (or other taxing authority). As stated previously, while an IRS offer in compromise is pending (after acceptance for submission) both IRS collection is frozen, and under the Taxpayer Bill of Rights 1,2,3 a taxpayer may appeal

a rejection of the IRS Offer in Compromise, under a Collection Due Process Hearing, which further freezes IRS collection pending the outcome of the Offer submission.

The above Rules #1-3 are not for "do it yourself" tax planning (i.e. just because you can read a manual does not qualify you to fly a plane). So seek a tax expert immediately and get a written tax recommendation from an expert so you do not run afoul of laws, and make the initial problem (i.e. unpaid tax) into a major disaster (i.e. jail time).

