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## Accrual Date for Two-Year Statute of Limitations in Legal Malpractice Action Began When Plaintiff Received Notice of Deficiency From IRS

September 4, 2013

[\*Steinmetz v Wolgamot and Acton & Synder LLP\*, 2013 WL 4068459 \(1st Dist. 2013\)](#)

### **Brief Summary**

Plaintiff taxpayer enrolled in a program ("the Program") which was used to protect and shelter his assets and minimize his tax liabilities. While defendants, his attorneys and accountants, assured the taxpayer that the Program was legal, it was in fact illegal, and the taxpayer received a notice of deficiency from the IRS. The taxpayer's receipt of the notice of deficiency alerted him to the fact that he had suffered an injury by participation in the Program and that the injury was wrongfully caused, thereby putting him on inquiry to determine whether he had an actionable claim.

### **Complete Summary**

In 1997, the taxpayer owned a successful medical practice and was referred to the lawyer and law firm to see if there was a way to reduce the amount he paid in taxes. The lawyer told the taxpayer about the Program, which involved business trusts referred to as common law business organizations (CBOs), charitable foundations and an offshore trust system. The lawyer told the taxpayer that he had researched the Program for eight months before recommending it to his clients and assured the taxpayer that it was legal and worked well for the people who had been placed in the program.

At the lawyer's direction, the taxpayer met with two partners from a business (the Promoter) that promoted the Program, who assured him that the Program trust documents were well written and could not be legally challenged, but that if they were, the Program would come to his aid. However, the taxpayer also spoke to his accountant, who said that he did not approve of the Program and that the taxpayer was setting himself up for an audit if he entered the Program. The taxpayer ultimately enrolled in the Program. He was set up in five CBOs and a charitable foundation and obtained a credit card from a bank in Antigua.

In October 1999, the taxpayer received a letter from the IRS informing him it intended to audit his tax returns for 1997 and 1998, the first two years that he participated in the Program. The taxpayer met with one of the partners from the Promoter, who told him not to "meet with these people under any circumstances." As such, instead of meeting with the IRS, he sent a letter to the IRS which stated that if the IRS did not handle the matter pursuant to the Internal Revenue Code or the Internal Revenue



Regulations, he would file complaints against them with the District Director, the Tax Payer Advocate and the Treasury Inspector General in Washington, D.C.

Sometime later in 1999, the taxpayer received a notice of deficiency from the IRS relating to his participation in the Program for the tax years 1997 and 1998 that had been the subject of the earlier audit notice. According to the taxpayer, the IRS stated that the tax returns he had filed in connection with the Program trusts were "abusive trusts" and that he owed "large sums of money," and that the IRS was "disapproving" of the Program trusts. From 1999 until 2004, the taxpayer contacted multiple lawyers, law firms and people involved with the Program to receive guidance on the deficiency.

On May 7, 2001, the IRS sent the taxpayer a notice demanding that he pay the current balance of \$247,984.45 within 20 days to avoid additional penalties and interest. On August 23, 2002, the taxpayer received a notice of deficiency stating that he owed \$30,813 in taxes for 1997 and \$30,813 in taxes for 1998. In 2005, the taxpayer pleaded guilty to a misdemeanor charge of under reporting his income for the tax year 2000.

On December 22, 2005, the taxpayer filed a four-count complaint alleging fraud, conspiracy, breach of fiduciary duty, legal malpractice and accountant's malpractice against various defendants, including his former lawyer and that attorney's law firm. The taxpayer's allegations related to defendants' advice prompting him to enroll and stay enrolled in the Program, which was to have provided him with asset protection and tax savings. The taxpayer asserted that his enrollment in the Program caused him to incur significant tax penalties and interest obligations to the Internal Revenue Service (IRS) and the Illinois Department of Revenue.

On December 7, 2011, the trial court granted summary judgment in favor of the lawyer and law firm on the taxpayer's legal malpractice action, finding that the taxpayer failed to file his complaint against them within the applicable two-year statute of limitations. The taxpayer's motion to reconsider and his motion for leave to file a second amended complaint were denied.

On appeal, the court compared this legal malpractice action to malpractice actions against investment banks and accounting firms arising out of investment strategies. In those cases, receipt of the notice of deficiency put the plaintiffs on notice that they suffered an injury and that the injury was wrongfully caused. As such, the court here held that the two-year statute of limitations period set forth in section 735 ILCS 5/13-214.3(b) began to run when the taxpayer received the notice of deficiency which he admitted notified him that he owed the IRS "large sums of money" in back taxes for the years 1997 and 1998. The notice of deficiency alerted the taxpayer that he had suffered an injury by participation in the Program and that the injury was wrongfully caused, thereby putting him on inquiry to determine whether he had an actionable claim.

### **Significance of Opinion**

This is a significant case because the court held that the receipt of a notice of deficiency is sufficient to trigger the statute of limitations for a legal malpractice claim. Once the IRS notice is received, reliance



on the attorney's assertions is no longer reasonable, and the plaintiff must not rest on his rights, but must investigate.

For more information, please contact [Terrence P. McAvoy](#), [Patricia Lynch Franklin](#) or [Katherine G. Schnake](#).

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