

## CIRCULAR 230 DISCLOSURE STATEMENT

To curtail the practice of professionals writing letters to support questionable taxmotivated transactions, the United States Treasury has issued new professional responsibility rules, which took effect June 21, 2005, that have a significant effect on how attorneys and other tax professionals communicate with clients.

The scope of the new rules is extremely broad. The rules apply whenever attorneys and other tax professionals provide written advice about a transaction that has a material degree of tax motivation. Effective June 21, 2005, taxpayers can rely on such advice for protection from Internal Revenue Service penalties only if the advice is provided in the form of a "covered opinion," which must comply with complex requirements. For instance, attorneys and other tax professionals must use high standards of detail and thoroughness in making factual and legal assumptions underlying the transaction or arrangement, including assumptions about future events and financial projections. Generally, this could be an unnecessary and time consuming undertaking.

An alternative to providing advice in the form of a covered opinion is to include a disclaimer that states that the taxpayer cannot rely on the opinion for protection from tax penalties. Such disclaimer must be included whether or not there is an actual risk of penalties being imposed on the taxpayer.

Our firm is mindful of our clients' need to control their legal expenses. Consequently, rather than have all of our communications satisfy the requirements of a covered opinion which could result in unnecessary expense to our clients, our firm is adding a disclaimer, in the following or similar language, to many letters, memoranda, faxes, and e-mails that we send to our clients:

**IRS CIRCULAR 230 DISCLOSURE:** To comply with requirements imposed by the Department of the Treasury, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written by the practitioner to be used, and that it cannot be used by any taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer, and (ii) supporting the promotion or marketing of any transactions or matters addressed herein.

Our use of a disclaimer does not change the high degree of care and attention that we devote to our tax advice. Moreover, the inclusion of the disclaimer does not indicate that penalties could be imposed on the transaction at issue, but rather merely indicates that the advice we have provided you in such communication does not preclude the IRS from asserting penalties. Finally, please be assured that the use of such a disclaimer to avoid unnecessary legal expenses is similar to the approach adopted by most other tax practitioners.

If you have questions about the new U.S. Treasury rules, please do not hesitate to contact Jeffrey Mannisto, Don Fitzgerald or Michael Lehmann in our Tax, Employee Benefits & Global Compensation group.