

Small Business Notes

Minnesota Department of Employment and
Economic Development (DEED)

U.S. Tax Court Rebuffs IRS Effort to Narrow Scope of “Reasonable Reliance” on Advice of Tax Professional

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In July the Tax Court handed down its decision in *Grecian Magnesite Mining v. Commissioner*, 149 T.C. No. 3. In that case a privately owned foreign corporation failed to report income realized on redemption of interests in an LLC holding U.S. real property. The IRS imposed penalties for late filing and payment after the IRS prepared a substitute return covering the redemption.

At the Tax Court trial Grecian acknowledged that the gain associated with the redemption was taxable but argued that it failed to report the gain on the advice of the CPA who prepared the returns and who was himself recommended by Grecian’s legal counsel in the United States.

The IRS argued that Grecian should not have relied exclusively on the lawyer’s recommendation but should have hired a CPA with experience in international tax law.

The Tax Court found that Grecian, as a foreign company unfamiliar with U.S. tax laws, was not in a position to independently investigate CPA credentials and was justified in relying on its U.S. counsel’s recommendation. Regarding the need for specialized expertise the Tax Court further stated that a CPA of forty years experience in the preparation of returns was a “competent professional” on which Grecian could rely and that the bar for what constitutes a “competent professional” was not so high as to require specialized international experience and that Grecian could have “reasonable reliance” on the CPA’s advice.

SEC Advisory Committee on Small and Emerging Companies Asks Full Commission to Act Soon on Issue of Finders and Financial Intermediaries

In its report finalized on July 14, the Advisory Committee noted that only thirteen percent of Regulation D offerings between 2009 and 2012 utilized a financial intermediary such as a finder or broker-dealer. In advising the SEC to act soon on the issues of intermediaries the report noted “There is significant uncertainty in the marketplace about what activities require broker dealer registration...Companies seeking to comply with the rules often find it hard to determine under what circumstances they can engage a “finder” or online platform that is not a registered broker-dealer.”

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The report noted four considerations that could incent the Commission to action:

- Capital formation for small companies is impeded by failure to address regulatory issues around finders and other private placement intermediaries;
- The current broker-dealer registration system and the required FINRA membership process is a deterrent to meaningful oversight;
- New, appropriate regulation would enhance economic growth and job creation; Commission leadership on the issue and coordination with the states and FINRA can achieve a solution.

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