# strategies

## Planning Myths, Lies, Shams and Scams

When it comes to financial planning, there are many common misconceptions, misdirected schemes, and outright scams to be found. We endeavor to document some of the more common ones here.

### 1 Give It To Your Family And No One Can Get It

If a practitioner suggests that you "give it all away to your family" (usually to a spouse or child), it is usually too late to do legitimate planning and this type of transfer is not effective and may violate fraudulent transfer laws. In addition, amounts gifted to children in excess of $12,000 will be subject to a minimum gift tax rate of 41%, resulting in the loss of almost half of the value of the asset. Amounts gifted to a spouse could be entirely lost if the spouse should ever decide that the gifted assets or money looks more attractive than many years of marriage. In addition, the spouse could have a claim filed against them for an automobile accident, business claim, slip or fall, pool accident or from an injury sustained around the house and lose all of the "gifted" assets. Transfers to family members and transfers where you don't receive fair value are always suspect and usually viewed as sham transactions. Trying to give away your hard earned assets is always a bad idea unless you were already planning to make the gift anyway.

### 2 Sovereign, Pure, Patriot, Common Law & Constitutional Trusts

All of these types of trusts are known tax scams and pure fraud! They do not work and are typically advanced by con men (or women) who falsely claim or provide incorrect documentation and "opinions" that you won't have to pay income taxes and can avoid lawsuits with their trust documents. These trusts are ignored for tax purposes, but the person creating the trust still has the obligation to report the trust income on their personal income tax return. The use of any of these trusts will get you in trouble with the IRS. These trusts have been determined by the U.S. courts to be fraudulent as a matter of law. The Government is always trying to stop the promoters of these trusts, but they regularly change their names and web sites and continue to prey upon the innocent. See IRS Notice 97-24 on abusive trusts for further information.

### 3 Put Your Money Offshore & Don't Pay Any Taxes Until You Bring Your Money Back To The USA

This is not true. Any advisor who claims that income from offshore accounts doesn't have to be reported on your income tax returns is absolutely wrong. A U.S. citizen has an obligation to report their "worldwide" income on their personal income tax returns. Failure to do so is fraud and will result in criminal prosecution. Should an advisor suggest that the IRS can't find or tax the offshore account they are recommending, they are badly mistaken. The IRS currently has more than 400 people working in FinCEN (Financial Crimes Enforcement Network). Their purpose is to locate such accounts. While their time has recently been spent tracking down accounts belonging to known terrorists, they have extensive information from international financial institutions concerning accounts belonging to U.S. citizens. Not reporting income is a crime that the United States spends millions of taxpayer's dollars to prosecute. Remember, citizens or residents of the United States are taxed on their worldwide income "from whatever source derived."

> *"Never let yourself be put in a position where you are asked to lie to protect your assets."*

## 4 Nevada Is Tax Free And Has Great Secrecy Laws Implying That No Tax Liability Arises And That Greater Asset Protection Is Available

Many of the promoters of marginal schemes recommend using Nevada corporations, LLCs or partnerships and addresses frequently claiming that taxes don't have to be paid since Nevada won't report the income to other states or that bearer shares are used so no one knows that you own the stock. This doesn't work and it is a red flag. Whether your corporation earns money in Nevada, New York, New Mexico or in any other state or country in the world, this income must be reported on your personal tax return. Asset protection based on bearer shares is also ineffective as your ownership will be reflected on your tax returns, is discoverable in any court proceeding and failure to disclose your ownership will be prosecuted as perjury. Stay away from these type of advisors.

## 5 Alaskan, Delaware & Onshore Trusts

Alaska, Delaware, Nevada, Rhode Island, Utah and several other states have enacted "onshore" trust legislation that is being marketed as a great asset protection tool. These trusts have yet to be tested in the US legal system. The U.S. Constitution contains a "full faith and credit clause" that requires each of the states to recognize the judgments of the other states. Sister state judgments are enforceable under federal law in all 50 states. The "Supremacy Clause" of our constitution provides that the federal law is the supreme law of the land and will prevail over conflicting state laws. These trusts may be effective for those living in Alaska or Delaware if the person suing is also in the same state. When the best and most protective asset protection planning is desired we recommend that the tried and proven foreign situs asset protection trust be used to protect your hard earned assets.

## 6 Offshore Bank Accounts And Offshore Credit Cards

Legitimate offshore accounts are safe if done properly; however, they will not save you any income taxes because as a US citizen or resident all of your worldwide income is taxed in the US. Watch out for the scams with "offshore credit cards" which result in the loss of a couple hundred dollars of processing charges to the promoter who never forwards the cards. Another scam involves the promoter who claims that you can convert all of your "personal expenses" to "business expenses" by using their offshore credit card to pay all of your bills. These marketers are not legitimate and certainly don't know as much about your ability to deduct business expenses as you or your accountant. If it isn't a legitimate deduction onshore, it won't be a legitimate deduction offshore.

## 7 Just Don't Tell Them About It

Never let yourself be put in a position where you are asked to lie to protect your assets. Run away from this type of advisor as fast as you can! Asset protection works because it is done properly – not because of concealment, deception or mistruths. Should all of the details of your asset protection plan come to light, your plan should not be compromised.

## 8 Offshore Personal Banks

Another offshore scam. These won't work. They will cost you a quarter million dollars or more, will create a huge accounting and legal nightmare and will not accomplish any asset protection planning or legitimate planning goals.

## 9 Asset Protection Will Save You Income Taxes

If anybody advises that any asset protection plan will save you income taxes, don't believe them! Asset protection planning is intended to protect assets from future lawsuits and will not save you a penny on income tax. As mentioned earlier, your worldwide income must be voluntarily reported on your personal income tax returns. Proper asset protection planning is "tax neutral" in that it won't increase or decrease any income, estate or gift taxes, but will protect your assets from the claims of future creditors.


**For Further Information on Estate Planning or Asset Protection Strategies, Please Contact:**

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