

# The “Daily Plan-It™”

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## IRS Freezes Half Billion Dollars of Doctors’ Assets: More Than 4,000 Affected

The IRS and Department of Treasury have frozen more than \$500 million of doctors’ invested assets in a preemptive strike against a company called Xélan. The government’s action of freezing assets prior to an audit is the first of its kind. It may signify the beginning of a new trend of “preemptive” action by the IRS.

### What is Xélan?

Xélan is a privately-held group of companies, started by entrepreneurial dentist-turned-financial-advisor, L. Donald Guess. The companies offer financial planning, investment, and insurance services to medical professionals.

### Why is the IRS Upset?

The government alleges the following:

1. Xélan created a company in Barbados called Doctor’s Benefit Insurance, Co.(DBI). Approximately 4,000 doctors set up C Corporations and used them to purchase insurance through DBI, then deducted the insurance premiums as business expenses. The IRS claims that the businesses did not actually do business. The premiums paid were based on how much the doctors could afford to save that year, and not relevant to any cost of insurance. The IRS believes, therefore, that the premiums were improperly deducted.
2. Xélan created abusive welfare benefit plans under Code Section 419A. The IRS is taking issue with the deductions taken for these plans.
3. Xélan also created the Xélan Charitable Foundation, which the IRS alleges is a “fraudulent charitable foundation.” Some 300 to 400 doctors were involved with this foundation. The IRS alleges that the doctors’ contributions to the foundation were used to pay for their children’s private school tuition and to reimburse the doctors for work that was supposedly pro bono.

The typical IRS strategy is to deny the charitable deductions, then assess penalties and interest. In this case, the doctors could be forced to pay more than \$420 million.

### What Does This Mean for Future IRS Attacks?

The IRS decision to freeze the assets *before* an audit is the first of its kind in a tax shelter enforcement case. Even though the government has no conviction or indictment against Xélan that states the transactions were abusive tax avoidance schemes, they froze the assets in order to preserve them for payment of taxes that may eventually be due. If successful, this could start a trend of “preemptive” strikes and freezes.

### Can the IRS Do This?

Counsel for some of the doctors assert that the IRS has overstepped its bounds to make an example of their clients. They claim that the IRS is violating the Fifth Amendment and due process rights of the doctors, and their freezing of the assets prohibits the doctors from defending themselves.

### What About the Offshore Assets?

If the IRS wins this action, will the doctors be forced to repatriate their assets from Barbados? There have been court cases where a judge held the defendants in contempt and put them in jail until they brought the assets back into the States to pay the judgments against them.

### What Does This Mean For Advisors?

Often clients and advisors ask us if they should be developing offshore planning strategies. While it can be a powerful technique, it’s often oversold and unnecessary. What’s more, if not done properly, the courts can undo offshore planning. Often, by maximizing those state exemptions and doing more conservative asset protection planning, you can become protected in a way that works and is consistent with your lifetime goals.

## Your Personalized Info Here!

This area of the Daily Plan-It newsletter is used by subscribers to provide information about their firm, upcoming workshops or any other information you would like to include.

### Upcoming Workshops

#### **Estate Planning Workshop**

❖ October 16, 2004 at 7:00 p.m.

#### **Medicaid Planning Workshop**

❖ October 24, 2004 at 2:00 p.m.

### Biographical Information

Robert Sample limits his practice to the areas of Estate Planning and Business Law. Our offices are conveniently located just minutes away from...

Perhaps you will include a photo or clip art!

