

# THORPESHWER

## Disclaimer

### LEGAL DISCLAIMER PAGE

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Throughout our website, you may voluntarily submit information that personally identifies you ("Personally Identifiable Information"). Personally Identifiable Information may include, but is not limited to, your name, e-mail address, physical address, and phone number. In general, Thorpe Shwer only collects Personally Identifiable Information about you if you choose to share it with us. For example, you may choose to provide Personally Identifiable Information by contacting an individual Thorpe Shwer lawyer via an email address provided in a hyperlink.

#### **B. Anonymous Usage Data**

Like many other websites, ours may collect anonymous usage data ("Non-Personally Identifiable Information") about your activity at this website. This information is collected via computer code sent to your computer (commonly referred to as a "cookie"). Generally, the cookie may not expire, unless you manually delete it or set your browser to reject it. If you do not accept the cookie, however, you may have difficulty navigating our full website.

#### **C. Use of Information**

Thorpe Shwer uses Non-Personally Identifiable Information to manage this website. We may analyze aggregated anonymous information on the pages visited by our users to make our website more accessible and useful. We may share also this data with third parties, usually to provide services for the maintenance of the website.

Except as outlined in this Privacy Policy or on the website, Thorpe Shwer will not sell or share your Personally Identifiable Information to others without your consent. If you choose to submit Personally Identifiable Information to the website, we will use the information for the purpose you requested, including potentially sharing with third parties reasonably required to fulfill your request or to provide other services that we reasonably believe may be of interest to you. In addition, Thorpe Shwer may disclose Personally Identifiable Information about you if Thorpe Shwer believes in good faith that the law requires it (such as a subpoena, court order or a law enforcement request), or if we

reasonably believe it is necessary to protect our legal interests. The information collected from you may also be transferred to a third party in the unlikely event of a sale, acquisition, merger or bankruptcy involving Thorpe Shwer.

#### **D. Links to Other Websites**

For your convenience, our website contains links to other websites whose information and privacy practices may be different than ours. This Privacy Policy addresses the use and disclosure of information that we collect from you through this Site. Other sites follow different rules regarding the use or disclosure of the personal information you submit to them. We encourage you to read the privacy policies or statements of the other websites you visit. We do not control and are not responsible for any of their content or their privacy policies, if any. The fact that we link to a website is not an endorsement, authorization, or representation of our affiliation with that third party. These other websites may place their own cookies or other files on your computer, collect data or solicit personal information from you.

#### **E. Security**

We employ commercially reasonable security measures to reduce the risk of unauthorized access to your Personally Identifiable Information. However, we cannot and do not guarantee that these measures will be sufficient to protect against all efforts to gain unauthorized access to that information.

#### **F. Children's Privacy**

This Site is not directed to children under 18. If a parent or guardian becomes aware that his or her child has provided us with Personally Identifiable Information without their consent, he or she should contact us at 602-682-6100. If we become aware that a child under 13 has provided us with Personally Identifiable Information, we will remove such information from our files.

#### **G. California Privacy Rights**

Pursuant to California Civil Code Section 1798.83, California residents may request certain information regarding our disclosures in the prior calendar year, if any, of their Personally Identifiable Information to third parties for their own direct marketing purposes. To make such a request, please contact us at 602-682-6100.

#### **H. California "Do Not Track" Disclosures**

We do not track your on-line activity across other websites, nor do we knowingly permit any third parties to conduct online tracking of you while you are visiting our website. Consequently, we do not respond to your browser's Do Not Track signal.

#### **I. Application of United States Laws**

Our website is based on computers located in the United States. Your Personally Identifiable Information will be used and stored in the United States, where data protection and privacy regulations may differ from the level of protection as in other parts of the world, such as in Mexico, Canada and the European Union.

#### **J. How to contact us**

If you have any questions or concerns about this Privacy Policy or its implementation, you may contact us at 602-682-6100. If at any time you decide that we should no longer hold any of your personal data, or wish to change the use to which any such data can be put, please let us know.

#### **K. Consent and Revisions**

Thorpe Shwer may amend this Privacy Policy at any time without specific notice to you. Your use of our website constitutes your acceptance of the terms of the Privacy Policy as amended or revised by us, and you should review this Privacy Policy each time upon visiting the website to stay informed of its terms.

### **Circular 230 - Client Explanation**

On June 21, 2005, final regulations commonly known as "Circular 230" became effective. Circular 230 was issued by the United States Department of Treasury. It sets forth detailed rules that tax practitioners (including attorneys and accountants) must follow when providing written communications regarding certain Federal tax issues. A "Federal tax issue" is a question concerning the Federal tax treatment of an item of income, gain, loss, deduction or credit, the existence or absence of a taxable transfer of property (such as whether a transfer to another is subject to Federal gift tax) or the value of property for Federal tax purposes.

When it issued Circular 230, the Department of Treasury articulated its objective to "restore, promote and maintain the public's confidence in those individuals and firms" that provide tax advice. The failure by a tax practitioner to comply with the requirements of Circular 230 may result in severe penalties, including public censure, monetary fines and/or suspension or disbarment from practicing before the IRS. One nationally prominent tax practitioner and author makes the following observation regarding Circular 230:

[The Regulations] are any attempt by the Service to balance concerns about overly aggressive advice provided by some practitioners who were involved in the promotion of abusive tax shelters on the one hand, and the potential imposition of burdensome requirements on the great majority of tax practitioners who never issued such opinions. In that light, the final Regulations can be viewed as a compromise, but one that leans more towards enforcement. Once again, the many will pay for the sins of a few.

Circular 230 applies to not only formal legal opinions but also any writing relating to any Federal tax matter, including e-mail communications. In particular, tax practitioners must now comply with a number of detailed requirements when providing a "Covered Opinion," including the following:

- (i) the practitioner must make reasonable efforts to identify and ascertain all relevant facts and may not base the opinion on any "unreasonable factual assumption";
- (ii) the practitioner must relate the applicable law - including "any potentially applicable judicial doctrine" - to the relevant facts;
- (iii) with very limited exceptions, the opinion must consider all "significant" Federal tax issues and reach a conclusion as to the likelihood that the taxpayer will prevail on the merits on each such issue (or if a conclusion cannot be reached, the opinion must so state);
- (iv) the practitioner must reach an "overall conclusion" as to the likelihood that the stated Federal tax treatment of the arrangement or transaction is the proper treatment and set forth the reasons for that conclusion; and
- (v) if any one of a number of conditions apply to the opinion, the practitioner must "prominently disclose" those conditions.

There are several categories of "Covered Opinions" which are generally not applicable to the tax practice currently maintained by Thorpe Shwer. However, the definition of a Covered Opinion is very broad and generally includes any written communication (including e-mail) that (i) addresses a Federal tax issue, (ii) reaches a conclusion favorable to the taxpayer at any confidence level, and (iii) is intended to be relied upon by the taxpayer to avoid penalties.

Unfortunately, this firm (and many other firms and individual tax practitioners) anticipate that Circular 230 will increase the cost of delivering to clients written materials discussing tax issues. In most day-to-day correspondence - especially e-mail communications - the costs of complying with the requirements imposed by Circular 230 are likely to be prohibitive relative to the benefit of the written tax advice.

Tax practitioners can provide certain types of written communication on tax issues without complying with the extensive requirements of Circular 230 if the written communication includes a statement that the advice given may not be relied upon by the taxpayer to avoid penalties. Consequently, after June 20, 2005, clients of Thorpe Shwer will see certain "reliance disclaimers" in various communications from the firm, including e-mail messages. It is anticipated that most written communications from Thorpe Shwer attorneys that address Federal tax issues will also include the "reliance disclaimer" unless there is an agreement between the firm and the applicable client as to the need for an opinion that satisfies the requirements of Circular 230.

It is our intention to endeavor to continue providing the highest quality legal services to our clients in a cost-effective manner. Please call us if you have any question about how Circular 230 may affect our representation of you in connection with Federal tax matters.