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What is a Lien and Encumbrance Search?

By Linda Gilbert

When considering purchasing a dental practice, it is important to determine whether or not you want to conduct a lien and encumbrance search. The first step in making this determination is understanding what a lien and encumbrance search is and how it may impact the purchase of a dental practice. Liens and encumbrances commonly impact a dental practice purchase if the selling doctor fails to satisfy a debt, a creditor, or a taxing authority, all of which may attach a lien or encumbrance to the dental practice assets. This can prevent the transfer of the assets and greatly affect your ability to operate a dental practice if you purchase those assets subject to those liens and encumbrances. While liens and encumbrances are closely related, it is imperative to understand the different between the two.

Definition of Lien. A lien gives a creditor the right to seize or take your personal property if you are unable to keep up with payments or pay off debts. Liens often occur after a creditor, such as a credit card company or a taxing authority, files a lawsuit and wins a credit judgment. They also include mortgages or car loans. To acquire funds due, the creditor may request additional action and receive a court order lien. Liens take many forms, and creditors may take possession of your bank account or obtain a legal hold on your home to satisfy the debt.

Definition of Encumbrance. An encumbrance refers to any charge or claim against the property. This legal term is commonly used in regards to real estate, but encumbrances can affect personal property, such as dental equipment. The person or entity that issues the encumbrances acquires a legal right to the property. This encumbrance remains in effect until the actual owner satisfies the debt or resolves the issue with the other party. Because encumbrances create an unclear title, issues can arise upon selling or transferring ownership of the property.

Thus, failure to identify a lien or encumbrance, or the failure of the seller to disclose a lien or encumbrance, creates a financial burden for any buyer because that buyer inherits the lien or encumbrance upon acquiring the property.

Inside This Issue

What is a Lien and Encumbrance Search? By: Linda Gilbert	1
Ten Facts about Capital Gains and Losses By: Vince Nardone, Esq., LL.M	2
The Statute of Limitations on Dental Malpractice Suits A Primer	3
From Virginia to Nicaragua Highlights from Dr. Rebecca Angus	3
Medicare Tax on Net Investment Income By: Pilar Puerto, Esq., LL.M	4
IRS Tax Tip	4
FBAR Deadline Approaching By: Pilar Puerto, Esq., LL.M	5

We strongly encourage all of our clients purchasing a dental practice, whether that practice is being purchased for \$250,000 or \$1,250,000, to conduct a lien and encumbrance search.

A full lien and encumbrance search would include a search for the following:

1. UCC (state level);
2. Federal Litigation;
3. Local Litigation;
4. Bankruptcy;
5. Fixture Filings;
6. Federal Tax Liens;
7. State Tax Liens; and
8. Judgment Liens.

The cost of the lien and encumbrance search would depend on: (i) the number of individuals and/or entities searched; and (ii) the number of Ohio county records that are searched.

If you are considering purchasing a dental practice, it is best to fully understand what it is that you are purchasing. Thus, a lien and encumbrance search would be a valuable tool in determining whether you should purchase a particular dental practice.

Ten Facts about Capital Gains and Losses

By Vince Nardone, Esq. LL.M

When you sell a 'capital asset,' the sale usually results in a capital gain or loss. A 'capital asset' includes most property you own and use for personal or investment purposes. Here are 10 facts from the IRS on capital gains and losses.

1. Capital assets include property such as your home or car. They also include investment property such as stocks and bonds.
2. A capital gain or loss is the difference between your basis and the amount you get when you sell an asset. Your basis is usually what you paid for the asset.
3. You must include all capital gains in your income. Beginning in 2013, you may be subject to the Net Investment Income Tax. The NIIT applies at a rate of 3.8% to certain net investment income of individuals, estates, and trusts that have income above statutory threshold amounts. For details, see IRS.gov/aca.
4. You can deduct capital losses on the sale of investment property. You cannot deduct losses on the sale of personal use property.
5. Capital gains and losses are either long-term or short-term, depending on how long you held the property. If you held the property for more than one year, your gain or loss is long-term. If you held it for one year or less, the gain or loss is short-term.
6. If your long-term gains are more than your long-term losses, the difference between the two is a net long-term capital gain. If your net long-term capital gain is more than your net short-term capital loss, you have a 'net capital gain.'
7. The tax rates that apply to net capital gains will usually depend on your income. For lower-income individuals, the rate may be zero percent on some or all of their net capital gains. In 2013, the maximum net capital gain tax rate increased from 15 to 20 percent. A 25 or 28 percent tax rate can also apply to special types of net capital gains.

8. If your capital losses are more than your capital gains, you can deduct the difference as a loss on your tax return. This loss is limited to \$3,000 per year, or \$1,500 if you are married and file a separate return.
9. If your total net capital loss is more than the limit you can deduct, you can carry over the losses you are not able to deduct to next year's tax return. You will treat those losses as if they happened that year.
10. You must file Form 8949, Sales and Other Dispositions of Capital Assets, with your federal tax return to report your gains and losses. You also need to file Schedule D, Capital Gains and Losses, with your return.

For more information about this topic, please see the Schedule D Instructions and Publication 550, Investment Income and Expenses. They're both available on IRS.gov or by calling 800-TAX-FORM (800-829-3676).



The Statute of Limitations on Dental Malpractice Suits

In Ohio, a patient generally must file a dental malpractice claim within one year after the alleged cause of action occurs. The cause of action for dental malpractice occurs – and the one year period begins to run – at the later date of either: (i) when the patient discovers or should have discovered the alleged injury (known as the “discovery rule”); or (ii) when the dentist-patient relationship for that condition terminates (known as the “termination rule”).

Discovery Rule

The discovery rule focuses on a “cognizable event” which puts the patient on notice of the injury. The statute of limitations starts to run upon the occurrence of a cognizable event, which is defined by Ohio courts as facts and circumstances that lead, or should lead, the patient to believe that the alleged physical injury is related to a medical diagnosis, treatment, or procedure. Moreover, the statute of limitations begins to run when a patient has constructive knowledge, as opposed to actual knowledge, of an injury. This means that the one year period starts when a patient realizes he or she is injured, although the patient did not become aware of the full extent of the injuries until a later date.

Termination Rule

Under the termination rule, the statute of limitations begins on the date when the dentist-patient relationship terminates. This date is the last time the patient saw the dentist for treatment.

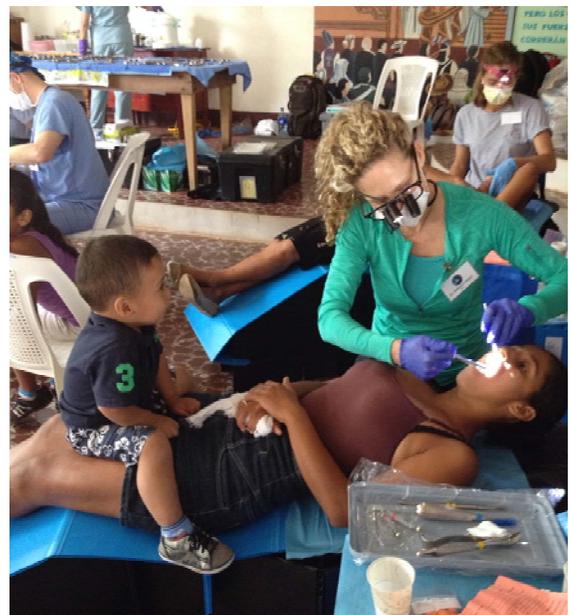
Extension of the One Year Rule

A patient may extend the one year statute of limitations by simply giving written notice to the treating dentist indicating that a potential claim exists. Written notice will provide a potential malpractice claimant with a 180-day extension to bring the claim.

Finally, a dental malpractice claimant cannot bring a claim later than four years after the alleged act or omission giving rise to the claim occurs. The exceptions to this rule are as follows: (i) if the claimant was a minor when the injury occurred, the claimant may bring suit within one year after reaching the age of majority; (ii) if the claimant is of unsound mind when the injury occurred, the claimant may bring a claim within one year after the disability is removed; (iii) if the claimant could not have discovered the injury in the exercise of reasonable care and diligence within three years after the occurrence of the act or omission giving rise to the claim, but discovers the alleged injury before the expiration of the four year time bar period, the claimant may bring the claim no later than one year after discovering the injury; or (iv) a claimant whose claim involves a foreign object left in the claimant’s body may bring a claim no later than one year after the claimant discovered the foreign object.

From Virginia to Nicaragua

Dr. Rebecca Angus, dentist out of the Richmond, VA area, has reported that her mission trip to Nicaragua was an absolute success. Accompanying Dr. Angus on the trip were two other dentists, a general surgeon, a general practitioner, several nurses, two optometrists, a pharmacist, and many other helping hands. The combined dental, medical, and optometric team treated a total of nearly 1,800 people in just over two days; while Dr. Angus personally extracted teeth on 90 people during her stay in the largest country in the Central American isthmus.



Medicare Tax on Net Investment Income: Dentists Should Be Aware of Their Investments

By Pilar Puerto, Esq., LL.M

As of January 1, 2013, Section 1411 imposes a 3.8% Medicare Tax on Net Investment Income. Prior to Section 1411, Medicare Tax was imposed on only earned income, such as wages. With Section 1411, Medicare Tax is imposed on passive income as well. Furthermore, income from a trade or business (*e.g.*, a dental practice) is Net Investment Income if the business activity is a passive activity with respect to the taxpayer under I.R.C. § 469. For C corporations, Medicare Tax is imposed on dividends regardless of the shareholder's participation. But, with respect to flow through entities (*i.e.*, partnerships and S corporations), the taxpayer's participation matters.

Many dental practices currently operate as flow through entities. Thus, a dentist's participation matters in determining whether or not certain dental practice income is Net Investment Income. In particular, when a dentist owns multiple dental practices but has an associate run these dental practices, the dentist's income from these dental practices may qualify as Net Investment Income. In our next newsletters, we will explore how a dentist's activity in each dental practice may qualify as active income, what planning opportunities are available with respect to avoiding the Section 1411 Medicare Tax, and what steps a dentist should take to ensure that her position passes muster should she ever be audited by the IRS.



Tax Tip – The Feds Tripling Investigations Regarding I-9s

In March of 2013, a new version of the Employment Eligibility Verification (I-9) Form was issued. You need to ensure that you are using the new I-9 Form when verifying employment eligibility. (Please see www.uscis.gov/i-9 for the revised version of the I-9 Form.) This is especially important because the federal government is tripling its workplace investigations related to I-9s. If your practice records were investigated, your practice could be fined for failure to: (i) use the new version of the I-9 Form, or (ii) properly complete I-9 Forms for all employees.

Upcoming Events/Deadlines

June 13th, 2014

Paragon's "Excelleration with Ken Runkle" located at the Sheraton Hotel in Columbus, OH.

June 15th, 2014

Tax deadline for Americans abroad. If you have a financial interest in or signature authority over a foreign financial account, you must electronically file a Financial Crimes Enforcement Network (FinCEN) Form 114, Report of Foreign Bank and Financial Accounts (FBAR). Please reference article on the following page (pg. 5) for more information.

Quote of the Month

What happens is not as important as how you react to what happens.

–Thaddeus Golas

FBAR Deadline Approaching: Do You Need To File?

By Pilar Puerto, Esq., LL.M

The tax professionals at Nardone Law Group, LLC want to remind taxpayers of the upcoming June 30, 2013 deadline to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, commonly known as the FBAR. If you are a United States person and you either had a financial interest in or signature authority over any foreign financial account(s) at any time in 2012 (for as little as one day), you must file the FBAR by June 30 if the aggregate value of the account(s) exceeds \$10,000. This year, June 30 falls on a Sunday. As a result, if you paper file, you should plan ahead to ensure the FBAR is received by the Department of Treasury by Friday, June 28, 2013. If you have registered to e-file your FBAR, you may be able to timely file your FBAR through the BSA E-Filing System through Sunday, June 30, 2013.

FBAR Information and Requirements

The FBAR is not filed with your federal income tax return. Rather, the FBAR is due by June 30 following the calendar year you are reporting. It is important to note that there are no extensions granted for filing the FBAR. If you have requested an extension to file your federal income tax return, you must still file the FBAR by June 30. Further, the “mailbox” rule does not apply to FBARs as it does for other federal tax returns. Thus, the FBAR must reach the Department of Treasury on or before the deadline—which, again, falls on a Sunday—or you will be subject to penalties.

Filing FBAR Electronically Will Soon Be Mandatory

Effective July 1, 2013, the FBAR must be filed electronically. To register for e-filing, visit the BSA E-Filing System and follow the registration instructions. The IRS reports that the average burden associated with information collection for the FBAR is 20 minutes. Obviously the time required depends largely on the number of foreign accounts held by the US person, the values of those accounts, the type of accounts, and type of authority the taxpayer has over those accounts.

Form 1040 Reporting: Schedule B and Form 8938

In addition to filing the FBAR, a US person who holds a foreign financial account must also check the appropriate box on FBAR-related federal returns, such as Schedule B of the Form 1040 U.S. Individual Income Tax Return. If you have an interest in foreign financial assets, you may need to file Form 8938, which must be filed if your foreign assets have an aggregate value of \$50,000 for individuals, and \$75,000 if you are married filing jointly. The Form 8938, Statement of Specified Foreign Financial Assets is required to be attached to your annual income tax return and must be filed by the due date of that return. The Form 8938 is specific to foreign assets whereas the FBAR is specific to foreign financial accounts.

Have You Failed to File Past FBARs?

If you were required to file the FBAR in the past but have failed to do so, you may be eligible for the Offshore Voluntary Disclosure Program (OVDP). The OVDP is a way for taxpayers to come into voluntary compliance with US tax laws and forgo the risk of criminal prosecution for past noncompliance. Nardone Law Group can assist if you have questions about the OVDP.

Contact Nardone Law Group

If you are unsure as to whether or not you are required to file the FBAR or the Form 8938, you should contact an experienced tax lawyer today. The tax lawyers at Nardone Law Group have vast experience representing clients with international tax issues such as filing FBARs. Our experienced tax lawyers will thoroughly review your case to determine whether you are required to file the FBAR or the Form 8938, and will also assist in determining whether you should participate in the IRS's Offshore Voluntary Disclosure Program, which allows non-compliant taxpayers to come forward and file past-due FBARs. Contact us today for a consultation to discuss your case.



Nardone Dental Practice Advisor



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