



# ED SLOTT'S IRA ADVISOR

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## TAX & ESTATE PLANNING FOR YOUR RETIREMENT SAVINGS

### Personal Loan Guarantees Disqualify IRAs

Leads to Over \$500,000 in Taxes and Penalties!

**Lawrence F. Peek et ux. et al. v. Commissioner**  
140 T.C. No. 12, Nos. 5951-11, 6481-11  
May 9, 2013

In a recent Tax Court case, the Court ruled that two business partners' IRAs were disqualified under the prohibited transaction rules when they personally guaranteed loans to a company that was owned by their IRAs. As a result, when the stock of that company was later sold inside their disqualified Roth IRAs, they were liable for the taxes on the capital gain. The Court also upheld the accuracy-related penalties IRS assessed, finding that, as a result of the disqualification of their IRAs, the taxpayers were negligent for failing to report the sale of stock they now owned personally.

#### Facts of the Case

In 2001, Darrell Fleck was looking to buy Abbott Fire & Safety, Inc. (AFS), a company that specialized in providing

alarms and fire protection systems for businesses. Lawrence Peek, an attorney who previously provided legal services to Mr. Fleck in the past, was also interested in buying AFS.

Fleck was introduced to Christian Blees, CPA by the brokerage firm that was offering AFS for sale. Fleck and Peek hired Blees and his accounting firm to structure the purchase of AFS' assets and to perform due diligence on the transaction.

Blees presented Peek and Fleck with a strategy for using their IRAs to buy AFS assets. The strategy called for them to establish new self-directed IRAs and transfer existing IRA and retirement plan money into those self-directed accounts. They would then set up a new corporation, have their self-directed IRAs purchase the shares of that corporation and finally, use the money from the sale of the corporation's shares to have it purchase AFS.

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