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The Patented Tax Shelter

**Lawyers, Financial Advisers
Are Getting Exclusive Rights
To Estate-Planning Strategies**

By **RACHEL EMMA SILVERMAN**
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There's a patent for crustless peanut-butter-and-jelly sandwiches. There's a patent for a method of perfecting a golf swing. Now, some financial planners are patenting their tax, insurance and compensation strategies. This means financial advisers and their clients may have to pay fees to use these techniques -- or wind up in court.

Fueling this drive is the increased competition among financial advisers for the lucrative high-net-worth market. A recent Internal Revenue Service rule change also has helped popularize these kinds of patents.

In recent years, tax advisers often asked their clients to sign confidentiality agreements when implementing sophisticated tax-savings plans. As part of an intensified effort to curb abusive tax shelters, the IRS late last year said certain taxpayers signing such confidentiality agreements would have to disclose those transactions on their returns.

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With confidentiality agreements less viable, financial planners now are looking at patents as another way to keep their techniques from the hands of competitors.

Jonathan Blattmachr, a New York attorney who has developed estate-planning techniques involving life-insurance policies, has applied for six patents for wealth-transfer methods, along with co-applicant Michael D. Brown, of Irvine, Calif., according to the U.S. Patent & Trademark Office application database. *Trusts & Estates*, a journal for the estate-planning and wealth-management industry, recently featured an advice-filled article on patenting tax strategies.

Richard Richman and Craig Singer received patent No. 6,625,582 for a technique that enables Social Security recipients to convert a chunk of their future payments into current benefits. "Once we got the patent, the level of serious interest really went up," says Mr. Richman, chairman and founder of the Richman Group, a real-estate development and investment company in Greenwich, Conn. Since the patent was issued last year, Messrs. Richman and Singer have been talking with

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several financial-services companies that are interested in developing products around the idea.

Patenting financial-planning strategies falls under the rubric of so-called business-method patents, an intellectual-property category that became popular after a 1998 federal appeals court decision involving a dispute between two financial-services companies, Signature Financial Group Inc. and State Street Bank & Trust Co. The court ruled patents for methods of doing business could be just as legitimate as patents for gadgets, as long as an invention is new, useful and not obvious. That ruling, which coincided with the dot-com boom, led to a frenzy to obtain patents for processes ranging from Internet payment systems to quantitative ways to pick stocks to new ways to construct executive-compensation packages.

Last year, there were about 6,000 applications for business-method patents, down from a high of 8,700 in 2001, but more than the 1,340 of 1998, according to the U.S. Patent & Trademark Office. Some 495 business-method patents were issued in 2003.

Lawrence L. Bell, an attorney and principal of Advisors LLC in Kensington, Md., has received two patents (Nos. 6,609,111 and 6,161,096) for ways to set up and administer complicated deferred-compensation structures for executives that can be used to help curb income and estate taxes. Mr. Bell has two other financial-services patents pending and has trademarked the name of his latest patented invention as the Unique Solution.

LOOKING UP AN IDEA

Financial planners are patenting their newest ideas and strategies, among them techniques for:

- **Enabling charities to build endowments** with life-insurance policies on donors.
- Allowing Social Security recipients to convert a chunk of their future payments **into current benefits**.
- Transferring appreciated assets **to family members** while incurring minimal gift and estate taxes.
- **Donating art and collectibles** to charities while providing substantial benefits to heirs.

Meanwhile, Michael Mendelsohn, president of Bridgeway Strategies for Art, Heirs & Philanthropy in Purchase, N.Y., recently applied for a patent for a method of donating art and collectibles to charities, while providing substantial financial benefits for heirs.

Patenting a tax strategy is no guarantee that the IRS will continue to bless the technique. Indeed, patents can become irrelevant if the IRS changes course after one is issued. Mr. Bell's first patent, granted in 2000, involved "split-dollar" life insurance, in which an employer pays most of the costs of an executive's life-insurance premiums. After the patent was issued, the IRS passed stricter regulations on split-dollar policies, making parts

of the patented technique less attractive financially for now.

Getting a business-method patent isn't easy. Such patents can cost as much as \$20,000 in legal and filing costs, depending on complexity, and can take about four or five years to be approved.

Having a patent means that other financial advisers and their clients cannot legally use the method without the creators' permission -- and often without paying extra fees. Limiting the use of a financial-planning technique could make it more expensive for clients to use it, but patent holders say their techniques' potential tax savings and benefits make them worth any extra costs.

Robert Slane, who heads the Wealth Transfer Group, an Altamonte Springs, Fla., financial-services firm for very wealthy individuals and families, last year received patent No. 6,567,790 for a technique that involves transferring stock options to a kind of trust called a grantor-retained annuity trust, or GRAT. It is designed to transfer appreciated assets to family members while incurring minimal gift and estate taxes.

"The whole reason I decided to do this is to protect myself and to protect, if you will, the invention," Mr. Slane says. Still, in the hush-hush world of estate planning, it can be tough to know exactly what competitors and their clients are doing. Mr. Slane uses publicly available Securities and Exchange Commission filings to track whether executives are transferring large quantities of stock options, a signal that they may be using a technique similar to his.

Some pending patents are for ideas that border on the controversial. Patent application No. 20040019506, entitled "Method and system for generating endowment for a tax-exempt organization," involves lending money to a charity to buy life-insurance policies on a pool of donors, with the charity as the beneficiary and owner of the policies. The practice of charities insuring donors has grown increasingly popular in recent years, but some new variants, such as having unrelated outside investors purchase the policies, have recently come under fire by some insurance-industry watchdogs. "There have been a number of programs out there that are questionable," acknowledges Ralph Struchtemeyer, of Hartsburg, Mo., who applied for the patent along with his daughter and son. "We just want to do it right. We are working within the rules and the guidelines."

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