

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE APPLICATION
FOR RENEWAL OF LICENSURE OF
BDO USA LLP

TO PRACTICE AS A CPA FIRM
IN THE STATE OF UTAH

. **FINDINGS OF FACT**
. **CONCLUSIONS OF LAW**
AND ORDER

.
. **CASE NO. DOPL-2013-102**
:

1 On or about September 19, 2012, BDO USA LLP filed an application for renewal of licensure BDO USA LLP's application for renewal of licensure is an informal adjudicative proceeding as provided in Utah Administrative Code § R156-46b-202(1)(a)

2 BDO USA LLP's application for renewal was reviewed by the Utah Board of Accountancy in an informal adjudicative proceeding on February 6, 2013. After that review, the Utah Board of Accountancy recommended to the Division that BDO USA LLP be reprimanded for unprofessional conduct in violation of Utah Code Ann § 58-1-501(2)(b) and (d), and, with such reprimand, the application for renewal of licensure be granted The Division of Occupational and Professional licensing concurred with this recommendation

FINDINGS OF FACT

3. BDO USA LLP was initially licensed as a CPA firm by the Division of Occupational and Professional Licensing on or about August 14, 2007

4. On or about September 19, 2012, BDO USA LLP filed an application for renewal of licensure

5 In connection with that application, BDO USA LLP provided a copy an agreement entered into between the U S Department of Justice and BDO USA LLP entitled BDO USA LLP – Deferred Prosecution Agreement, a copy of which is attached hereto as Exhibit A and referred to herein as the DOJ Agreement

6 Pursuant to paragraph 1 of the DOJ Agreement, BDO USA LLP consented to the following:

1 BDO will consent to the filing of a one-count Information (the "Information") in the United States District Court for the Southern District of New York (the "Court") charging BDO with participating in a conspiracy and scheme in violation of 18 U.S.C. § 371 to (i) defraud the United States and its agency, the Internal Revenue Service (hereinafter "IRS"), (ii) commit tax evasion, and assist clients in committing tax evasion, in violation of 26 U.S.C. § 7201; and (iii) make and subscribe false and fraudulent tax returns, and aid and assist in the preparation and filing of said tax returns, in violation of 26 U.S.C. § 7206. A copy of the Information is attached hereto as Exhibit B.

7 Pursuant to paragraph 2 of the DOJ Agreement, BDO USA LLP admitted and accepted the following:

2. BDO admits and accepts that, as set forth in detail in the Statement of Facts, attached hereto as Exhibit C, through the conduct of certain BDO partners and employees, during the period from 1997 through 2003, BDO assisted high net worth United States citizens in evading approximately \$1.3 billion in United States individual income taxes on over \$6.5 billion in capital gain and ordinary income by participating in and implementing fraudulent tax shelter transactions, including those sometimes referred to as the Short Option Strategy ("SOS") and Short Sale, as well as certain other tax shelter transactions. BDO personnel engaged in conduct that was unlawful and fraudulent, including (i) agreeing to participate in fraudulent tax shelter transactions, (ii) preparing and signing false and fraudulent factual recitations, representations, and documents as part of the documentation underlying the shelters, and (iii) preparing, signing and filing or aiding and assisting in the preparation and filing of false income tax returns.

8 Pursuant to paragraph 3 of the DOJ Agreement, BDO USA LLP agreed to the following:

3 BDO agrees that it will pay a total of \$50,000,000 to the United States as part of this Agreement, which amount is based upon BDO's financial representations and documentation provided in support thereof, and which payments comprise the following: \$15,568,273, which will be forfeited to the United States pursuant to a civil forfeiture complaint filed in the United States District Court for the Southern District of New York, and a penalty of \$34,431,727 (plus interest) to settle the IRS's civil promoter penalty examination of BDO pursuant to the terms and conditions of the closing agreement described below (the "Closing Agreement"). That Closing Agreement provides that BDO's promoter penalty principal payments shall be completed on April 1, 2018. BDO agrees that it will satisfy its obligation to forfeit the \$15,568,273 by making seven annual payments of \$2,000,000 starting on May 1, 2018, and an eighth, final

payment of \$1,568,273 on May 1, 2025 BDO agrees that, if it completes its payment obligations under the Closing Agreement prior to April 1, 2018, BDO will begin its forfeiture payment schedule on the first day of the month following the final payment under the Closing Agreement, or April 1, 2018, whichever is earlier BDO agrees that it will not file a claim with the court or otherwise contest this civil forfeiture action and will not assist a third party in asserting any claim It is further understood that BDO will not file or assist anyone in filing a petition for remission or mitigation with the Department of Justice or Treasury concerning this property

9 Pursuant to paragraph 5 of the DOJ Agreement, BDO USA LLP agreed to the following which included permanent restrictions and controls on BDO's Federal Income Tax Practice:

5. The Office recognizes that BDO had previously implemented certain restrictions on its business and changes in its accounting practices in order to improve its compliance with the tax laws Pursuant to this Agreement, BDO agrees to implement, throughout its U.S. operations and with respect to any BDO operations affecting United States income taxes, the following permanent restrictions: (i) BDO will not develop or assist in developing, market or assist in marketing, sell or assist in selling, or implement or assist in implementing, any "listed transaction" as defined to include any transaction described in 26 C.F.R. § 1.6011-4(b)(2), or any "transaction of interest" as defined in 26 C.F.R. § 1.6011-4(b)(6); (ii) BDO will not participate in marketing, implementing, or issuing any "covered opinion" as defined in 31 C.F.R. § 10.35(b)(2) with respect to any "listed transaction" as defined in 31 C.F.R. § 10.35(b)(2)(A), (iii) BDO will not defend on the merits any transaction that is or becomes a "listed transaction" prior to the date that BDO is engaged to defend the transaction, (iv) BDO will not provide any tax services under any conditions of confidentiality (as defined in 26 C.F.R. § 1.6011-4(b)(3)); (v) BDO will not charge or accept fees subject to contractual protection (as defined in 26 C.F.R. § 1.6011-4(b)(4)) other than as permitted by 31 C.F.R. § 10.27(b), and (vi) BDO will comply with the ethics and independence rules concerning independence, tax services, and contingent fees as adopted by the Public Company Accounting Oversight Board on July 26, 2005, or as thereafter amended, as of the effective date of those rules In addition, the United States reserves the right to request of BDO, until the date of the last payment under this Agreement, information regarding BDO's tax practices sufficient to demonstrate compliance with this paragraph If such a request is made, BDO shall promptly provide all requested information, including documents.

10. BDO USA LLP complied with the conditions of the DOJ Agreement relative to the Information and therefore the Information filed as part of the agreement was dismissed on December 20, 2012 The dismissal of the Information, did not relieve BDO USA LLP of its continuing obligations and sanctions under the DOJ agreement, including the civil forfeiture and penalty in the amount of \$50,000,000 and the permanent restrictions and controls on BDO's federal income tax practice.

11 As the result of the above conduct, BDO USA LLP has engaged in unprofessional conduct in violation of Utah Code Ann § 58-1-501(2)(b) and (d), and that said conduct justifies disciplinary action against BDO USA LLP pursuant to Utah Code Ann § 58-1-401(2)(a) and Administrative Code § R156-1-106(6)(a)

CONCLUSIONS OF LAW

12. Based upon BDO USA LLP's conduct as outlined above and as further outlined in the agreement with the U S. Department of Justice, BDO USA LLP has engaged in unprofessional conduct in violation of Utah Code Ann § 58-1-501(2)(b) and (d).

13 BDO USA LLP's conduct justifies disciplinary action pursuant to Utah Code Ann. § 58-1-401(2)(a), which provides adverse license action may be taken in response to an application for licensure, which may include a reprimand

14 The Division is authorized to reprimand BDO USA LLP in connection with its renewal application as provided by Utah Code Ann § 58-1-401(2)(a) and pursuant to Utah Administrative Code § R156-1-106(6)(a) which provides such adverse action is disciplinary action.

ORDER

WHEREFORE, IT IS ORDERED that BDO USA LLP is hereby reprimanded for unprofessional conduct in violation of Utah Code Ann § 58-1-501(2)(b) and (d), and, with such reprimand, the application for renewal of licensure is granted

Dated this 11th day of March 2013



Dan S Jones, Bureau Manager

Agency review of this order may be obtained by filing a request for agency review within thirty (30) days after the date of this order. If you choose to file a request for agency review, you must adhere to the attached procedures