





New England IRS Representation Conference

Thursday, November 21, 2019 – LITC Workshop, Quinnipiac University Law School, North Haven, CT

Friday November 22, 2019 – Full-Day program at Mohegan Sun Hotel & Casino



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Housekeeping Items


- CPE Certificates – will be handed out at the end of the program. Online Audience will receive a link if they do the online attendance checks
- Questions during the program? Please walk up to the Mic stands so the on-line audience can hear you. Online, please use the chat box
- Facilities are outside and down the hall on the left
- Our government speakers are here giving their own personal opinion and not the formal opinion of the IRS or Department of Justice, and you cannot cite them in any actual cases you currently have or have in the future.

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The Life Cycle of a Criminal Tax Case

Presented by:

Eric L. Green, Esq.
Sharon L. McCarthy, Esq.
Michael A. Villa, Jr., Esq.
Jeffrey Miller, IRS-CI
Melissa A. Conte, Esq., IRS



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How do criminal tax cases begin?

- Many begin as non-tax federal grand jury or other criminal investigations – tax fraud is the add-on and sometimes the easiest to prove
 - Examples: Department of Labor, State Revenue Cases, Mortgage Fraud, etc
- Structuring investigations - filing of CTRs and SARs triggers investigation; IRS is charged with investigating financial crimes under titles 26 and 31
- Civil Exams
- Civil Collections

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How do criminal tax cases begin?

- Fraud referrals from
 - Exams
 - Collection Cases
 - Whistleblowers/Ex-Spouses
 - Disgruntled ex-employees
- Bank Secrecy Act (BSA) Exams
 - IRM Section 4.26.6 – IRS is tasked with reviewing bank compliance with anti-money laundering laws
- Other Agencies

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Exams

- Civil Exam where examiner believes they have "firm indications of fraud"
- Examples include:
 - Significant unexplained differences in deposits vs. reported revenue
 - Significant, unexplained increases in net worth
 - Taxpayer is performing actions that would lead the examiner to believe there is criminal activity – check cashing, structuring deposits, 2nd set of book, dealing only in cash, etc.
 - Taxpayer and/or taxpayer's representative has made affirmative misrepresentations in the course of the audit
- Collection

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The Role of Chief Counsel

- Support the CI Special Agents in the field
- Review cases for criminal determination
- Review special agent reports, plea agreements, warrants, etc
- They DO NOT prosecute cases

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T-Account Analysis

T-Account	
CASH RECEIVED	CASH EXPENDED
Gross Receipts (per Return)	Business Expenses (less depts.)
Gross Rents	Rental Expenses (less depts.)
Wages/Miscellaneous Income	Personal Living Expenses
Interest/Dividend Income	Purchase of Assets
Cash on Hand (at beginning)	Cash on Hand (at year end)
Cash in Bank (at beginning)	Cash in Bank (at year end)
Loans Received	Loan Payments
Nontaxable Income	
Accounts Receivable (at beginning)	Accounts Receivable (at year end)
Accounts Payable (at year end)	Accounts Payable (at beginning)
Total Cash Received	Total Cash Expended

Therefore: Total Cash Expended less Total Cash Received = Unidentified Income.

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Collections

- False Collection Information Statements (433)
- False documentation (bogus paystubs)
- Dealing in cash to avoid collection activity (client structuring to avoid levy was affirmative act)

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Hell Hath No Fury – Ex-Spouses

- Innocent spouse claims
- Raising fraud charges in divorce court
- Whistleblowing (see next slide)

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Whistleblowing for Fun, Revenge & Profit!

- File 211 with IRS and Dept. of Justice
- Awards for whistleblowers
- IRS DOES review these very carefully
- In the IRS Memorandum Of Interview will note "Confidential Source" or "CS"

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Let the Government Know: Form 3949-A

Form 3949-A (April 2016)	Department of the Treasury - Internal Revenue Service Information Referral <small>(For individuals or business)</small>	OMB Number 1545-1960
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Use this form to report suspected tax law violations by a person or a business.

CAUTION: READ THE INSTRUCTIONS BEFORE COMPLETING THIS FORM. There may be other more appropriate forms specific to your complaint.
(For example, if you suspect your identity was stolen, use Form 14039.)

Section A – Information About the Person or Business You Are Reporting

Complete 1, if you are reporting an individual. Complete 2, if you are reporting a business only. Complete 1 and 2 if you are reporting a business and its owner.
(Leave blank any lines you do not know.)

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Whistleblowing for Fun & Profit: Form 211

Form 211 (March 2014)	Department of the Treasury - Internal Revenue Service Application for Award for Original Information	OMB Number 1545-0426 Date Claim received Claim number (completed by IRS)
1. Name of taxpayer (include aliases) and any related taxpayers who committed the violation		2. Last 4 digits of Taxpayer Identification Number(s) (e.g., SSN, ITIN, or EIN)
3. Taxpayer's address, including ZIP code		4. Taxpayer's date of birth or approximate age

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Currency Transaction Reports

Under 31 USC § 5313, "financial institutions" must file a FinCen Form 104 Currency Transaction Report ("CTR") with the IRS reporting any deposit or withdrawal that involves a "transaction in currency" in excess of \$10,000.



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Suspicious Activity Reports – FinCen Form 111



Department of the Treasury
Financial Crimes Enforcement Network

Section 2 - FinCEN Suspicious Activity Report (Form 111)

Exhibit 1: Filings by Year & Month by Depository Institutions*
March 1, 2012 through December 31, 2016

The statistics include Suspicious Activity Reports filed since March 1, 2012 on FinCEN Form 111 where the type of financial institution is depository institutions (i.e., banks, thrifts, savings and loans, and credit unions).

Month	2012	2013	2014	2015	2016
January	-	12,232	65,898	66,101	70,480
February	-	21,088	41,437	65,164	73,927
March	24	45,719	64,442	73,420	88,164
April	609	67,278	73,302	74,049	81,282
May	1,210	72,255	75,301	68,216	80,822
June	1,713	63,579	71,773	77,142	91,400
July	2,565	70,837	75,539	77,868	83,284
August	3,115	74,312	70,856	75,503	84,726
September	2,947	68,751	70,703	75,863	78,014
October	5,561	79,201	77,735	78,094	76,143
November	7,954	69,431	63,761	71,500	75,899
December	10,098	69,027	68,327	76,505	78,116
Total	68,794	718,190	848,214	879,907	958,697
Total (average)			3,437,214		

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Criminal Investigation Process

- IRS Criminal Investigation will investigate all Title 26 crimes
 - a. Administrative Investigation
 - b. Grand Jury Investigation
- IRS-CI will review returns and other financial records
- IRS-CI will interview potential witnesses
- Taxpayer Conference (critical)

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Administrative Summons



Summons

In the matter of _____
 Internal Revenue Service (Division): _____
 Industry/Area (name or number): _____
 Periods: _____

The Commissioner of Internal Revenue

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Grand Jury Subpoena

AO 110 (Rev. 06/05, MD 12/10) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT
 for the
 District of Maryland

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: [REDACTED] USAO [REDACTED]

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: United States Courthouse Date and Time: November 13, 2013

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Inside the Defense

- "Get out in front" of the case
- Meeting with CI, AUSA
- Identify where it is heading and what the issues are
- Calculating Tax Loss

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IRS-CI Target Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Criminal Investigation

January 13, 2016

Dear Mr. CLIENT:

This letter is being provided to inform you that I have expanded the scope of my criminal investigation to include additional targets. I am advising you at this time that additional targets include, but may not be limited to, the following: (1) you, (2)

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EFIN Suspension for Preparers - Automatic

Internal Revenue Service
Electronic Products & Services Support
310 Lowell Street, Stop 983
Andover, MA 01812

Department of the Treasury
Date: April 10, 2014
Phone: 1-866-255-0654
EFIN: xxxxxx and all
associated EFINs

This is to notify you that we have suspended you from participation in IRS e-file. We received information from the North Atlantic Area Scheme Development Center (NAASDC). Criminal Investigation has determined that fraudulent returns have been filed utilizing the EFIN noted above. Subsequently, the EFIN and related individual will be suspended from the IRS e-file program.

All further inquiries should be directed to Special Agent AGENT at [REDACTED]

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Interviews Conducted and MOIs Completed



DEPARTMENT OF THE TREASURY
Internal Revenue Service
Criminal Investigation

Memorandum of Interview

Investigation #: 1000xxxxx Location: ADDRESS Road
CITY, CT

Investigation Name: tax preparer name
Date: August __, 2016
Time: Approximately 9:28 -
10:47 AM

Participant(s): NAME OF PREPARER,
NAME, Special Agent
NAME, Witness
Other

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Preparers Say the Damnedest Things: Actual Quotes Found in MOIs

- "Target explained he only gets paid when they receive a refund. I pointed out that it benefits him to have his clients get refunds. He agreed."
- "Preparer stated its his goal for next year to require documentation."
- "Preparer stated after the return is filed he asks clients to bring documentation back but none ever do."
- "Preparer admitted he knew the information should not be on the return but put it on anyway."

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Preparers Say the Damnedest Things: Actual Quotes Found in MOIs

- "I showed preparer a copy of a tax return he prepared for a client for the 2015 tax year. The client name was TAXPAYER. He did not recall her personally. I showed him his cover sheet and he acknowledged that the return was prepared by him. I showed him the signature page and he identified his PTIN and EIN and name. I drew his attention to the Schedule A where there was a deduction for medical expenses in the amount of \$15,332. I asked him again if he put that number on the return on his own. He reiterated that everything comes from the client."
- I advised PREPARER that TAXPAYER was actually an undercover agent for the IRS and that her entire conversation with PREPARER was recorded and monitored. I further advised PREPARER that at no time during that conversation did TAXPAYER mention medical expenses, let alone a specific amount. **PREPARER answered that he was probably tired and put the figures on the return accidentally."**

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Good News – Case Closed without Referral

CLIENT NAME
CLIENT ADDRESS
CITY, STATE ZIP

CERTIFIED MAIL
Return Receipt Requested

Dear Mr. CLIENT :

You are no longer the subject of a criminal investigation by our office regarding your federal tax liabilities for the year(s) 2007 through 2011. However, this does not preclude re-entry by Criminal Investigation into this investigation.

The matter is presently in the appropriate Civil Operating Division for further consideration.

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Bad News – Referral for Prosecution

Dear Mr. CLIENT:

A report recommending you be prosecuted for filing a false tax return and preparing false tax returns for the years 2011 through 2012 and in violation of Title 18, United States Code, Sections 286 and 287, was forwarded to Department of Justice, Tax Division on this date.

Department of Justice, Tax Division will review this matter and make the final determination as to the disposition of this prosecution recommendation.

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Letter to DOJ requesting conference

Via Fedex

Larry J. Wszalek
Chief, Western Division
Department of Justice/Tax Division
601 D Street, NW, Room 7334
Washington, DC 20004

Re: CLIENT

Dear Mr. Wszalek:

This office represents CLIENT, SSN XXX-XX-XXXX. Our Power of Attorney (Form 2848) is enclosed. We have been advised by the Internal Revenue Service, Criminal Investigation Division, that it has recommended prosecution for tax offenses under Title 26 of the United States Code.

I am writing on behalf to request a conference with the Tax Division prior to any final determination by the Tax Division with respect to prosecution. Please contact me at your convenience to schedule this conference.

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Questions



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Coffee Break



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What's New in Criminal Tax

Panelists:

- Frank Agostino, Agostino & Associates, Hackensack, NJ
- Michael Sardar, Kostelanetz & Fink LLP, New York, NY
- Krisina O'Connell, Special Agent in Charge, Boston Field Office

Moderator: Lisa Perkins, Green & Sklarz LLC

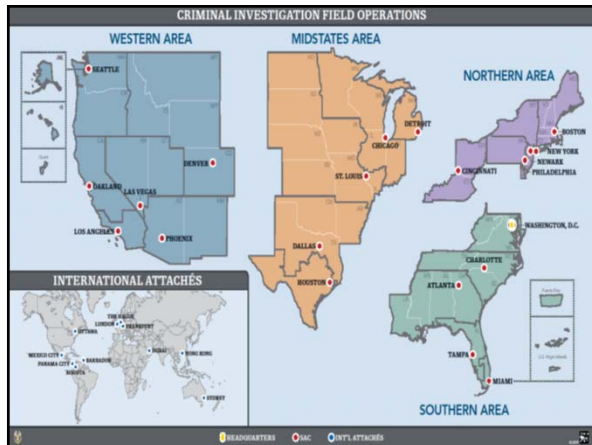
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IRS Criminal Investigation at a Glance

- 21 Field Offices over Four Geographic Regions
 - formerly 24 offices in three regions
- 11 International Posts in 10 Countries
- Approximately 2,900 employees worldwide
 - Approximately 2,100 Special Agents



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IRS CI Recent Overall Statistics

	FY 2017	FY 2018
Investigations Initiated	3019	2886
Prosecution Recommendations	2251	2130
Informations/Indictments	2294	2011
Conviction Rate	91.5%	91.7%
Total Sentenced	2549	2111
Percent to Prison	80.1%	80.9%
Average Months to Serve	42	45

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IRS CI Current and Trending Areas of Focus

- International Tax Fraud
- Refund Crimes – QRP, RPP and ID theft
- Abusive Tax Schemes
- Frivolous Arguments Program – Non-filers
- Money Laundering/Bank Secrecy Act (BSA)
- Organized Crime Drug Enforcement Task Force (OCDETF)
- Fraud Referral Program
- **Employment Tax – Trending!**
- **Political/Public Corruption – Trending!**
- **Shift from Identity Theft to Cyber Crimes (including Virtual Currency) – Trending!**

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IRS CI Trending Business Statistics – Political Corruption

	FY 2017	FY 2018
Investigations Initiated	75	107
Prosecution Recommendations	60	69
Informations/Indictments	63	51
Sentenced	54	64
Incarceration Rate	74.1%	85.9%
Average Months to Serve	34	40

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**IRS CI Trending Business Statistics –
Employment Tax**

	FY 2017	FY 2018
Investigations Initiated	162	207
Prosecution Recommendations	59	81
Informations/Indictments	60	64
Sentenced	77	48
Incarceration Rate	77.9%	77.1%
Average Months to Serve	21	21

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**IRS CI Trending Business Statistics –
Identity Theft**

	FY 2017	FY 2018
Investigations Initiated	374	164
Prosecution Recommendations	403	222
Informations/Indictments	484	217
Sentenced	550	387
Incarceration Rate	87.5%	86.3%
Average Months to Serve	34	40

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IRS-CI TRADITIONAL INVESTIGATIVE APPROACHES

- Internal Scheme Development
- Taxpayers/Whistleblowers
- Informants
- Collaboration with IRS Business Units
- Leads from other Law Enforcement Entities
- Powers of Observation

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IRS-CI TRADITIONAL INVESTIGATIVE TOOLS

- Subpoena/Summons
- Interviews
- Surveillance
- Search warrants/seizure warrants
- Informants
- Undercover Operations
- Mutual Legal Assistance Treaty (MLAT)
- Tax Treaties/Tax Info Exchange Agreements (TIEAs)

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IRS-CI NEW INVESTIGATIVE APPROACHES and TOOLS

- **Nationally Coordinated Investigations Unit**
 - Nationwide method of identifying investigations within Operational Priorities using DATA
 - Investigations have significant national impact on multiple field offices/geographical areas
 - Provides a better way to manage and leverage data
 - First projects – SEC Microcap Fraud, International tax enforcement, employment tax, virtual currency

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IRS Nationally Coordinated Investigation Unit

- Formed 5.1.2017 as part of the Future State initiative for IRS-CI
- Formed strong partnerships within IRS and external stakeholders
- Uses data driven case selection (with Research, Applied Analytics & Statistics (RAAS))
- Focuses on developing investigative strategy that impacts and proactively addresses nationwide key noncompliance areas and emerging threats
- Serves as a continual resource to Field Offices
- Provides training and oversight for large, complex investigations

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Nationally Coordinated Investigation Unit

- Current Priorities:
 - » Employment Tax
 - » International Tax and Significant Money Laundering
 - » Virtual Currency
- Future initiatives being evaluated by executive leadership team
- In its first 20 months, NCIU referred 55 cases (involving \$68M in criminal tax deficiencies) to all 25 CI field offices
 - Employment tax: 36 (22 elevated to Subject Criminal Investigation)
 - International tax: 5 (2 elevated to SCI)
 - Microcap stock: 12 (8 elevated to SCI)
 - Biofuels credit: 1

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IRS-CI NEW INVESTIGATIVE APPROACHES and TOOLS

- **Data Analytics**
 - Used to identify areas of non compliance and potential criminal cases
 - Introduce a new "Data Section" to CI structure by the end of FY19
 - Hiring data scientists to analyze voluminous internal and external data
 - Quickly analyzing large pools of data using tools such as Palantir, which integrates and conducts searches on more than 40 internal/external data sets in a matter of seconds
 - IRS cross business operating division and outside contractor collaboration to leverage existing data sets and create new data sets for analysis

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IRS-CI NEW INVESTIGATIVE APPROACHES and TOOLS

- **Focus on Cybercrimes**
 - Reorganizing our Refund Crimes Unit to include a Cybercrimes Section
 - Including Cybercrimes training in our basic investigative course
 - Creating specialized Cyber Crimes Unit (CCU)s to develop and expand in response to the ongoing threat of internet theft, refund fraud, and other virtual financial crimes.
 - Trace Virtual Currency transactions to ID movement of illegal monies through Block Chain analytics and collaboration with FinCEN and other federal law enforcement agencies
 - Join forces with other law enforcement agencies to work the financial angle on Data Intrusion, Data Breach and Business Email Compromise investigations

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Where do Criminal Tax Cases Start?

- IRS Civil – 7%
– (CI Referrals – 73% acceptance rate)
- U.S. Attorney Offices – 26%
- Other Federal Agencies – 29%
- IRS Criminal Investigation – 14%
- FinCEN – 13%
- Public – 6%
- State and Local Government – 5%

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IRS CI Employment Tax Statistics

	FY 2016	FY 2017	FY 2018
Investigations Initiated	137	162	207
Prosecution Recommendations	77	59	81
Informations/Indictments	71	60	64
Sentenced	87	77	48
Incarceration Rate	70.1%	77.9%	77.1%
Average Months to Serve	14	21	21
% Direct Investigative Time	4.2	5.4	7.4

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Recent Employment Tax Prosecutions

- *United States v. Scott Warner*, N.D. NY (temporary employment agency owner pled guilty on 12/19/18 to willfully failing to account for and pay over \$687,480 in employment tax)
- *United States v. Jerry R. Harper, Jr.*, W.D. VA (pharmacist sentenced on 11/16/18 to 41 months for failing to account for and pay over employment tax, resulting in liabilities of over \$5 million)
- *United States v. John Herzer*, W.D. TX (CFO of Staff Leasing company pled guilty on 10/22/18 to willfully failing to pay over employment tax, causing of tax loss of more than \$13 million)

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IRS CI International Tax Enforcement Group

- Multinational effort to address the increasingly global nature of criminal tax and financial crime.
- Data-driven target selection will identify and prioritize the best possible cases and ensure efficient use of resources.
- Influence the global regulatory and legislative framework to anticipate and address evolving criminal methodologies.

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Joint Chiefs of Global Tax Enforcement (J5)

- Australian Criminal Intelligence Commission (ACIC) and Australian Taxation Office (ATO)
- Canada Revenue Agency (CRA)
- The Netherlands - Fiscale Inlichtingen- en Opsporingsdienst (FIOD)
- The United Kingdom - HM Revenue & Customs (HMRC)
- Internal Revenue Service Criminal Investigation (IRS-CI)
- New international tax group dedicated to combatting transnational tax crime, committed to:
 - **Develop shared strategies to gather information and intelligence** that will strengthen operational cooperation in matters of mutual interest, and target those who seek to commit transnational tax crime, cybercrime and launder the proceeds of crime
 - **Drive strategies and procedures to conduct joint investigations** and disrupt the activity of those who commit transnational tax crime, cybercrime and enable money laundering
 - **Collaborate on effective communications** that reinforce that J5 is working together to tackle transnational tax crime, cybercrime and money laundering.

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Recent Offshore Account Holder Prosecutions

United States v. Hyatt (D.NJ) (2.8.2018) - \$1.5M unreported income from sales of duty-free alcohol/cigarettes hidden in Panamanian account; guilty plea w \$855K FBAR penalty; Probation, \$522K restitution, \$10K fine

United States v. Manafort (E.D.VA) (8.21.2018) – Political consultant convicted of failure to report foreign accounts in Cyprus, St. Vincent and the Grenadines (sentencing set for 3.7.2019)

United States v. Mani (C.D.CA) (9.17.2018) - Plastic surgeon concealing \$1.28M of unreported income in undeclared Dubai account; guilty plea; 1 year and a day

United States v. Waknine (C.D.CA) (10.30.2018) – Over \$4M in secret accounts in Israel and two other countries; guilty plea (sentencing set for 4.29.2019)

United States v. Doyle (S.D.NY) (11.5.2018) – NY art consultant with \$3.7M in unreported accounts in Switzerland; guilty plea; Probation

United States v. Khoubian (C.D.CA) (11.19.2018) - \$20M in unreported accounts in Germany & Israel; guilty plea (sentencing set for 5.9.2019)

United States v. Birman (C.D.CA) (2.6.2019) – Brothers; over \$1M in unreported accounts in Israel; guilty pleas; 6 months and probation

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U.S. v. Owens, et al, SDNY
18-CR- 693 (S.D.N.Y. 2018)
(Panama Papers Indictment)

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Defendants:

- Ramses Owens – Panamanian Attorney, Mossack Fonseca (arrested in Paris)
- Dirk Brauer – Investment Manager, Mossack Asset Management, S.A.
- Richard Gaffey – Accountant based in the U.S. (arrested in Massachusetts)
- Harold Joachim von der Goltz – Mossack Fonseca client, German citizen, and U.S. resident (arrested in London)

Allegation: From 2000 through 2017, Owens and Brauer conspired with others to help U.S. taxpayer clients of Mossack Fonseca conceal assets and investments, and the income generated by those assets and investments, from the IRS through fraudulent, deceitful, and dishonest means.

Charges: Conspiracy to Defraud the U.S., Conspiracy to Commit Tax Evasion, Wire Fraud, Conspiracy to Commit Wire Fraud, Money Laundering Conspiracy, Willful Failure to File FBAR, False Statements

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U.S. v. Baron, EDNY
1:18-cr-00102-KAM (E.D.N.Y. 2018)
(first FATCA-related conviction)

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- **Defendant:** Adrian Baron, CBO and CEO of Loyal Bank, Ltd (dual citizen of UK and St. Vincent and the Grenadines, Bank's Responsible Officer for FATCA)
- **June 2017:** UC agent claiming to be U.S. Citizen involved in stock manipulation schemes met with Baron to open corporate bank accounts at Loyal Bank. Agent informed Baron that he did not want to appear on any of the account opening documents, even though he would be owner of accounts. Baron said Loyal Bank could open such accounts and provide debit cards linked to them.
- **July 2017:** Agent met with Baron and described scheme, including need to circumvent FATCA reporting requirements. Baron said Loyal Bank would not submit a FATCA declaration to regulators unless the paperwork indicated "obvious" U.S. involvement.
- **July/August 2017:** Loyal Bank opened accounts and did not request or collect FATCA Information
- **Charges:** Conspiracy to Defraud U.S. by failing to comply with FATCA and Money Laundering Conspiracy

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- Indicted – March 20, 2018
- Arrested and held in Hungary (4 months) – July 2018
- Extradited to U.S. from Hungary
- **Guilty Plea** – September 11, 2018
- Sentenced to Time Served (11 months) – January 24, 2019
- Stipulated to Judicial Removal Order
- Entered ICE custody – January 25, 2019
- Removed to London (via commercial flight from JFK) - February 15, 2019

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Recent Return Preparer Prosecutions

- *United States v. Kenneth Mwase*, D. MN (sentenced on 1/28/19 to 121 months for conspiracy to defraud the IRS and aggravated identity theft, after fleeing to South Africa to avoid prosecution)
- *United States v. Geoffrey Rotich*, D. KS (pled guilty on 12/20/18 to aiding and assisting in the preparation of a false income tax return and making a false bankruptcy declaration)
- *United States v. Marc Howard Berger*, N.D. CA (sentenced on 12/14/18 to 8 months following conviction for willfully assisting in the filing of false corporate returns)

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Other Tax Prosecutions

- *United States v. John D. Petrig*, N.D. OK (pled guilty on 2/6/19 to tax evasion, sentencing on 5/7/19)
- *United States v. Marlene Seo*, D. CO (sentenced on 2/1/19 to a year and a day for filing a false corporate return, restitution ordered - \$238,350.70)
- *United States v. Albert Strong*, W.D. NC (sentenced on 1/31/19 to 36 months for wire fraud and filing a false return, restitution ordered - \$1,941,377.32)
- *United States v. Saleem Hakim*, N.D. GA (convicted on 12/12/18 for willfully failing to file tax returns, sentencing on 2/26/19)

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Michael Avenatti



- 36-count indictment outlines four areas of criminal conduct, all of which relate to the misappropriation and/or the illegal concealment of funds.
- Arrested in this case on March 25 pursuant to a criminal complaint that alleged the theft of money from one client and the use of bogus tax returns to obtain a series of loans.
- The criminal charges in the indictment address four areas of wrongdoing:
 - a. the embezzlement of millions of dollars that should have been paid to clients,
 - b. the failure to file income tax returns and failure to pay the IRS millions of dollars in taxes,
 - i. \$3.2 million in unpaid payroll taxes from Global Baristas, \$2.3 million of which is Trust Funds
 - ii. alleges that he lied to an IRS revenue officer, opened a new bank account to receive funds related to credit card transactions at Tully's coffee shops, and directed Tully's employees to deposit cash receipts into a bank account belonging to a car racing outfit that Avenatti also owned
 - c. the submission of fraudulent loan applications that included tax returns never filed with the IRS,
 - d. the concealment of assets from the Bankruptcy Court.

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Questions

KOSTELANETZ & FINK, LLP

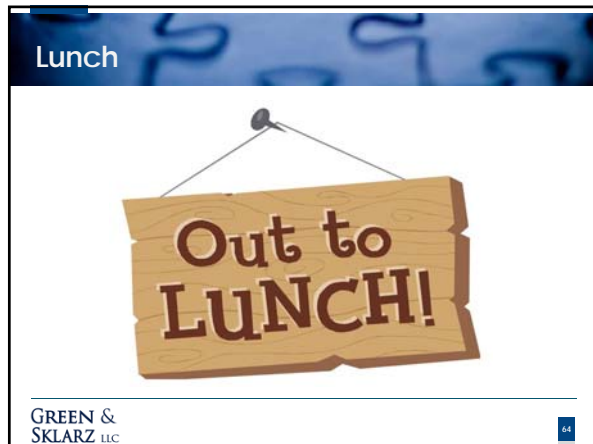


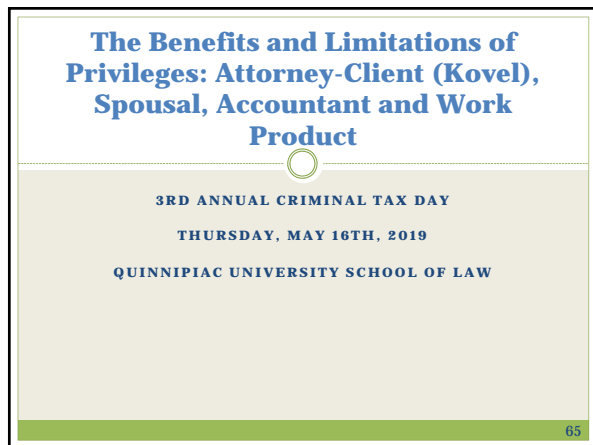
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AGOSTINO ASSOCIATES

Quinnipiac
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Law

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Attorney-Client Privilege

- The person asserting the privilege is either a client or seeks to become a client;
- The communication is made to an attorney acting in his or her role as an attorney;
- The communication is made to the attorney in confidence (i.e. not in the presence of others) for the purpose of securing a legal opinion, legal services, or assistance in a legal proceeding, but not for the purposes of committing a crime or a tort; and
- The client claims the privilege and does not waive the privilege.

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Issues to Consider

- When is a lawyer acting in his or her role as a lawyer?
- What type of communication is covered by privilege?
- What if a lawyer also provides business advice in the same conversation?
- While conversations must be confidential, what other parties can be present without waiving privilege?

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Corporate Clients

- As a corporation is an "artificial creature of the law," it must act through individuals to communicate and receive legal advice
- In the past, there were several tests to determine whether communication made between an employee and corporate counsel was privileged (i.e. the Control Group Test and the Subject Matter Test)
- The Supreme Court evaluated corporate privilege in *Upjohn Co. v. U.S.*, according privilege protection to a corporation (the *Upjohn* Test) where:
 - Communications were made to the corporation's counsel, acting as an attorney;
 - Communications were made at the direction of corporate superiors to secure legal advice from counsel;
 - The information communicated to the counsel was not available from upper-level management and concerned matters within the scope of the employees' corporate duties; and
 - The employees were aware that they were being questioned so that the corporation could obtain legal advice.

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Corporate Clients

- Post-*Upjohn*, courts generally consider these factors to determine whether communication between a corporation's employee and counsel is privileged:
 - Whether the employee is communicating with the company's attorney at the direction of a supervisor for the purpose of the company seeking legal advice;
 - Whether the information provided by an employee is necessary for the attorney to provide legal advice to the company;
 - Whether the communication centered on matters within the scope of the employee's duties;
 - Whether the employee is aware that the purpose of his or her conversation with counsel is to obtain legal advice; and
 - Whether the communication is not disseminated beyond those individuals who need to know its contents.

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Exceptions and Waivers to Attorney-Client Privilege

- The communication was not confidential (i.e. third parties present during the conversation).
- The client waives the privilege by disclosing the contents of the conversation.
- ABA Model Rule 1.6(b)(2), a lawyer may reveal information related to the representation of a client "to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services."
- ABA Model Rule 1.6(b)(5), a lawyer may reveal information related to the representation of a client "to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client."

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Kovel Agreements

- *Kovel* Agreements allow an attorney to retain a third party, such as accountants or expert witnesses, to assist in providing legal advice. The *Kovel* Agreement clearly states that the non-lawyer's role is to assist the lawyer.
 - *U.S. v. Kovel*, 269 F.2d 918, 921-24 (2d Cir. 1961).
- This allows communication with the third party to be protected under the umbrella of attorney-client privilege.
- In order to ensure attorney-client privilege, the attorney should:
 - directly hire the third party;
 - make clear that the third party is hired only for the purpose of assisting the attorney to provide legal advice; and
 - require the third party to sign a *Kovel* agreement.

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When Can a Party Pierce the Attorney-Client Privilege

- A third party attempting to pierce attorney-client privilege because of its belief that the attorney participated in the furtherance of a criminal or fraudulent transaction must show:
 1. a *prima facie* showing that the client was engaged in or planning criminal or fraudulent conduct when the client sought the advice of counsel, or that the client committed a fraud or crime subsequent to receiving the benefit of counsel's advice; and
 2. that the attorney's assistance was obtained in furtherance or closely related to a crime or fraud.

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Work Product

- The Work Product Doctrine protects from disclosure documents prepared in anticipation of litigation.
- There are two types of Work Product:
 - Factual Work Product
 - Includes correspondence, interview notes, and general fact memoranda.
 - Opinion Work Product
 - Reflect attorney's mental impressions with respect to legal issues that are the subject of actual or anticipated litigation.

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Prepared in Anticipation of Litigation

- "Primary Purpose" Test
 - "As long as the primary motivating purpose behind the creation of a document was to aid in possible future litigation." *U.S. v. El Paso Co.*, 682 F.2d 530, 542 (5th Cir. 1982).
- "Because Of" Test
 - A document is prepared "because of potential or anticipated litigation." *United States v. Adlman* 134 F.3d 1994, 1996 (2d Cir. 1998).

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Discoverability of Documents Protected By Work Product

- A third party can discover work product protected documents if they can show:
 1. a substantial need for the materials; and
 2. the inability, without undue hardship, to obtain their substantial equivalent elsewhere.
- The burden of establishing substantial need is greater for opinion work product than fact work product.

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Waiver of Work Product

- The purpose of work product doctrine is to make sure that adversaries do not gain an unfair advantage in litigation by obtaining documents prepared by opposing counsel in anticipation of litigation.
- There are two common ways in which a work product protection could be waived:
 1. Disclosure of work product to an adversary; and
 2. Disclosure of documents in a way that makes it more likely that an adversary will gain access to the work product.

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Tax Accrual Workpapers

- The discoverability of tax accrual workpapers is complex.
- Many accrual workpapers are not prepared in anticipation of litigation, and thus are not protected under the work product doctrine.
- However, if workpapers were prepared in anticipation of disputes or litigation they potentially could be protected work product, even if the workpapers' preparation had dual purpose.
- Workpapers prepared as part of an independent auditor's review may be discoverable by the IRS. However, the IRS is only supposed to request workpapers in limited cases.

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Accountant-Client Privilege

- IRC §7525
 - (a)(1): With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.
 - (a)(2): "Tax advice" is defined as advice given by an individual with respect to a matter that is within the scope of the individual's authority under federal law to practice before the Service.
 - Federally authorized tax practitioners includes CPAs and enrolled agents.
 - Applies only to non-criminal tax matters before the IRS and non-criminal tax proceedings in federal court.

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Exceptions to Accountant-Client Privilege

- Does not apply in state tax proceedings.
 - States may provide for their own version of accountant-client privilege.
- Does not apply in non-tax regulatory proceedings (i.e. SEC proceedings)
- Can be waived in the same manner as attorney client privilege
- Tax Shelter Exceptions
 - IRC §7525 does not apply to written communications between federally authorized tax practitioners and individuals in connection with the promotion of or participation in a tax shelter.

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Spousal Privilege

- Types of Spousal Privileges:
 - Testimonial Privilege
 - ✦ Allows a witness spouse to refuse to testify against a defendant spouse
 - ✦ Some states and federal common law allow a witness spouse to unilaterally waive it
 - ✦ Covers communication and observations
 - ✦ Can apply to communications prior to marriage, but can only be invoked if the spouses are still married at the time of the trial
 - Communications Privilege
 - ✦ Can apply in both civil and criminal cases.
 - ✦ Prevents the disclosure of private communication between spouses. This includes both words and acts.
 - ✦ Can be invoked by either spouse.
 - ✦ Does not apply to communications made before the marriage but survives dissolution of marriage.

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The Interplay Between IRS and State Criminal Tax Investigations

May 16, 2019

2019 Criminal Tax Day

Quinnipiac University School of Law

Panelists

Jeffrey M. Sklarz, Esq., Green & Sklarz, LLC, New Haven, CT
 Scot Anderson, Director, Special Investigations, Connecticut Dept. of Revenue Services, Hartford, CT
 Kristina O'Connell, Special Agent-in-Charge, IRS Criminal Investigations, Boston, MA
 Jay R. Nanavati, Esq., Kostelanetz & Fink, Washington, DC

Disclaimer

The government official speaking on this panel are providing general information in their individual capacities. Nothing they say can be used to suggest the government has taken a position with respect to the any matter discussed.

IRS Criminal Investigation Mission



In support of the overall IRS Mission, Criminal Investigation serves the American public by investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law.

IRS Criminal Investigation Authority

Authority to investigate, execute, and serve search warrants and arrest warrants, serve subpoenas and summonses, make arrests without warrant, carry firearms, make seizures of property subject to forfeiture and to require and receive information, as to all matters relating to such laws and regulations.

Authority Granted to Special Agents by the
Commissioner of Internal Revenue

IRS Criminal Investigation Footprint

- Approximately 3,100 employees worldwide
– 2,200 Special Agents
- The only agency with jurisdiction over Title 26 violations
- Also investigate violations of Title 18 and Title 31
- Organized into 4 Geographic Regions and 21 Field Offices
- Boston Field Office covers all of New England with over 100 employees divided into 10 work groups spread across 13 locations



IRS-CI Investigative Approach

- Internal Scheme Development
- Taxpayers and Informants
- Collaboration with other IRS Business Units
- Collaboration with other Taxing Authorities



Common Federal Tax Related Criminal Violations

- Title 26 USC Section 7201 – Tax Evasion
- Title 26 USC Section 7202 – Failure to Collect/Pay Over Taxes
- Title 26 USC Section 7206(1) – Filing a False Return
- Title 26 USC Section 7206(2) – Aiding or Assisting in the Preparation of a False Return
- Title 26 USC Section 7203 – Failure to File
- 18 USC 286 – Conspiracy to File False Claims
- 18 USC 287 – Filing False Claims
- 18 USC 641 - Theft of Government Funds
- 18 USC 1028 – Identity Theft

CT DRS Criminal Investigation Mission

Increase voluntary compliance through the effective, efficient, and equitable enforcement of the state's criminal tax statutes.

CT DRS Criminal Investigation Authority

Sec 29-18b Special Policeman...shall have all the powers conferred on the State policeman. Agents have full police powers with jurisdiction throughout the entire state of Connecticut.

CT DRS Criminal Investigation Footprint

- 2 Supervisory Special Agents
 - 7 Sworn Special Agents
 - 9 Support Staff

The only agency with jurisdiction over Title 12.



CT DRS Investigative Approach

- Fraud Unit- Analytics and scheme development
 - Fraud Tips from Taxpayers
 - Other DRS Divisions
 - IRS CI



Common CT Tax Related Criminal Violations

- § 12-428(1) Failure to File/Pay Sales Tax
- § 12-428(2) False Sales Tax Return
- § 12-737(a) Failure to File/Pay Income/Withholding Tax
- § 12-737(b) False Income Tax Return
- § 53a-48 Conspiracy
- § 53a-119(6) [Larceny]Defrauding of Public Community
- § 53a-129a-e Identity Theft

IRS CI and CT DRS Collaboration

- The Agreement – Memorandum of Understanding Executed in 2016
 - Information Sharing
 - Special Focus on Refund Crimes Data
 - Joint Training
 - Emerging areas include Cybercrimes, CryptoTax
 - Joint Compliance Efforts
 - Press Releases
 - Coordinated Outreach
 - Joint Criminal Investigations



The Mechanics of the Joint Investigation

- Casework Selected Based on Agency Priorities
 - Return Preparers
 - Employment Tax/Leasing Agencies
 - High Dollar Income Tax Evasion
 - Industry Initiatives
 - States Sales Tax



The Mechanics of the Joint Investigation

- Federal and State Agents Side by Side
 - IRS is lead agency for recordkeeping
 - State Investigators can be federally deputized
 - Federal Grand Jury Authority often utilized
- Federal Charges Typically Brought
 - State tax loss used for sentencing
 - State tax returns used for evidence
 - Restitution made payable to the state

Is It Successful? Cases in Point...



Micheal D. Mir – Return Preparer in Waterbury CT

- Sentenced in August 2018 to 20 months in prison for filing false income tax returns for himself and his clients from 2012 through 2015
- Plead Guilty to a Violation of 26 USC 7206(2)
- Ordered to pay back over \$400,000 in restitution



Gelin Sterling – Return Preparer in Hartford CT

<http://www.hartfordbusiness.com>

Feds: Berlin tax preparer cheated

By GREGORY SEAY
11/26/2018

A Berlin man has been charged with multiple counts of cheating the Internal Revenue Service and federal taxpayers out of what they were due, prosecutors say.

Gelin Sterling, 39, was indicted Tuesday by a Bridgeport federal grand jury on 18 counts of aiding in the preparation of false tax returns, Connecticut U.S. Attorney John H. Durham's office said.

Sterling was arrested Tuesday, Nov. 27, arraigned and afterwards released on a \$100,000 bond, authorities said. If convicted on all charges, he faces a maximum term of imprisonment of three years on each count.

According to investigators, Sterling owned and operated a tax preparation business, Sterling Tax Plus LLC.

For the 2014 through 2017 tax years, Sterling prepared returns for a number of clients that included false mileage expenses, false charitable donations, and other false income items submitted to the Internal Revenue Service. The amount of uncollected tax was not specified.

The case is being investigated by the IRS's Criminal Investigation Division and the Connecticut Department of Revenue Services. Assistant U.S. Attorney Jennifer R. Lanza is lead prosecutor.

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- Indicted by a federal grand jury in November 2018 for preparing false tax returns
- 18 Counts of 26 USC 7206(2)
- Allegedly falsified Forms 1040, 1040A and 1040EZ

Questions?

Director Scot Anderson

SAC Kristina O'Connell
IRS- CI Boston Field Office
kristina.oconnell@ci.irs.gov
617.316.2078

Coffee Break



A World of Lies

The Truth Behind the
Tax Protester
Arguments

Presented by:

Eric L. Green, Esq.
Lisa E. Perkins, Esq.
Jay R. Nanavati, Esq.
Anastasia King, Esq.

**GREEN &
SKLARZ** LLC

Jay Nanavati, Esq.

Jay R. Nanavati is an accomplished litigator and a founding partner of Kostelanetz & Fink's Washington, D.C., office. Mr. Nanavati spent more than a decade as both a federal and a state prosecutor. He supervised more than 30 federal tax prosecutors and oversaw criminal tax enforcement for a region covering 22 states. He is a veteran trial lawyer, having conducted dozens of jury trials and hundreds of bench trials.

Kostelanetz & Fink LLP, 601 New Jersey Avenue NW, Suite 620, Washington, DC 20001

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Email: jnanavati@kflaw.com



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Anastasia King

Anastasia E. King has been a federal prosecutor for more than 20 years. As an Assistant United States Attorney in Connecticut since 2002, she has litigated a variety of cases, including criminal tax offenses involving evasion, filing false returns, failure to file, obstruction of the I.R.S., and preparers of false returns, as well as other financial fraud offenses, money laundering, cyber crimes, civil rights violations, human trafficking and child exploitation offenses, interstate theft rings, as well as drug distribution conspiracies and violent crimes including extortion, arson, firearms and explosives offenses. As a Trial Attorney in the Tax Division, U.S. Department of Justice for six years, she tried several criminal tax cases to juries and handled grand jury investigations in multiple districts, including the Eastern District of Virginia, Southern District of Indiana, the District of Nevada, the District of Oregon, the Western District of Washington, and the District of Alaska. She teaches and works with the students in U.S. Attorney's Clinic at the UCONN School of Law routinely lectures to the Tax Clinic at the UCONN School of Law.

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Lisa Perkins, Esq.

Lisa Perkins joined Green & Sklarz after more than 17 years with the U.S. Department of Justice. She worked for five years as a trial attorney in the Western Criminal Enforcement Section of the Tax Division, prosecuting tax crimes in the western half of the United States, then moved to Connecticut. Until January 2015, she was an Assistant U.S. Attorney in Hartford, handling both civil and criminal litigation in federal court on behalf of the U.S. government. Attorney Perkins is also an Assistant Clinical Professor and Associate Director of the Tax Clinic at UConn School of Law, where she supervises law students who represent low-income taxpayers before the IRS and in Tax Court.



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Eric Green, Esq.

The focus of Attorney Eric L. Green's practice is civil and criminal taxpayer representation before the Dept. of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services. He is a frequent lecturer on tax topics and has served as adjunct faculty at the University of Connecticut School of Law. Eric can be heard on the weekly Tax Rep Network podcast.



He is a Past-Chair of the Executive Committee of the Connecticut Bar Association's Tax Section, and is a Fellow of the American College of Tax Counsel ("ACTC").

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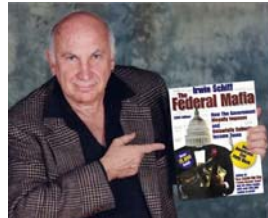
Tax Protesting...

- A Tax Protestor is defined as someone who refuses to pay a tax claiming that the tax laws are unconstitutional or otherwise invalid
- Tax protesting is and continues to be alive and kicking

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Recent Cases



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What You Will Learn in 'Cracking the Code':

- That the income tax didn't exist, wasn't Constitutional, or was ruled unconstitutional, before the Sixteenth Amendment (or isn't Constitutional now).
- That the Sixteenth Amendment, properly ratified or not, has anything to do with the income tax as it is administered in regard to most private-sector citizens.
- That income only means corporate profits.
- That "United States citizens and residents" can only get "taxable income" from certain listed "sources".

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What You Will Learn in 'Cracking the Code':

- That filing a 1040 automatically makes one a "taxpayer".
- That "wages" are not income under the revenue laws.
- That FICA and FUTA taxes are not just income taxes.
- That the "subject" of the income tax is never identified in the law.
- That the income tax is connected with the 'Uniform Commercial Code'.

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Government Weapons


- Under the Tax Equity and Fiscal Responsibility Act of 1982, Congress enacted IRC 6700 and IRC 6701 as penalties for the abuse of tax shelters.
- IRC 6700 imposes a penalty on anyone -- promoters, salesmen and their assistants -- for organizing and selling abusive tax shelters.
- IRC 6701 is the aiding and abetting provision, and it imposes a penalty on those who aid and assist in the preparation of false or fraudulent tax documents that would result in an understatement of tax liability.

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American Rights Litigators

Famous Members?



Standards for Permanent Injunction

To obtain a permanent injunction pursuant to 28 U.S.C. (District Revenue Code, U.R.C.) § 7408, the United States must show that defendants have engaged in conduct subject to penalty under §§ 6700 or 6701 and that injunctive relief is appropriate to prevent the recurrence of such conduct. For an injunction under § 7408(a), the Eleventh Circuit requires a showing that: (1) it is likely that the United States will suffer irreparable injury if the defendant's conduct continues; (2) it is unlikely that the defendant will be harmed by the injunction; and (3) an injunction will serve the public interest. *United States v. Ewert & Winnies*, 753 F.2d 1296, 1301 (11th Cir. 1985).

Findings of Fact

Based on the well-pleaded allegations, evidence presented, and the parties' arguments, the Court finds as follows:

1. Defendants Edwin Ray Kahn, Brian Molokawa, Kathleen Kahn, David Stephen Lottick, American Rights Litigators (ARL), Greeting Lights of Gold Ministries (GLGM), and Edwin Kahn & Associates represent and act, or participate in the representation and act of, several abusive tax schemes, including counterfeit checks and funds, UCC-filing schemes and related documents, corporations, and so forth (ARL) (collectively, the "schemes").
2. Defendants operate with the administration of the federal revenue laws through their abusive tax schemes and through fraudulent and harassing letters directed to the IRS and to third parties, have and continue to engage in the Treasury Inspector General for Tax Administration (TIGTA), sending customers in hiding from the IRS in corporate form, sending customers to abusive IRS examinations and collections, and advising customers to sue the federal tax returns to pay federal taxes.
3. Defendants promote their abusive tax schemes through seminars, web-based video shows, and the Internet, including the following websites: www.arlusa.com, www.kahnusa.com, www.greetinglights.com, www.edwin.com, and www.brian.com.

Michigan Resident Sentenced to Prison for Criminal Contempt Involving Federal Tax Obligations

A resident of Commerce Township, Michigan, was sentenced to serve 18 months in prison to be followed by one year of supervised release for criminal contempt, announced Acting Assistant Attorney General Caroline D. Ciruolo of the Justice Department's Tax Division.

In July 2014, Doreen Hendrickson was convicted of criminal contempt following a federal jury trial in Detroit. Hendrickson violated an injunction involving federal tax obligations issued by U.S. District Judge Nancy Edmunds of the Eastern District of Michigan in May 2007. Today's sentence was imposed by U.S. District Judge Victoria Roberts.

According to court filings and evidence presented at trial, Hendrickson and her husband, Peter Hendrickson, filed federal income tax returns for the years 2002 and 2003 on which they falsely claimed they earned zero wages. Based on these false returns, the Internal Revenue Service (IRS) issued the Hendricksons more than \$20,000 in income tax refunds that they were not entitled to receive. In 2006, the Tax Division sued the Hendricksons to recover these refunds. As part of that litigation, Judge Edmunds ordered the Hendricksons to file corrected amended tax returns for 2002 and 2003 that reported all of their income, and further ordered them to repay their fraudulently obtained refunds to the IRS. Judge Edmunds also barred the Hendricksons from filing additional false tax returns.

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Constitutional Argument: The 16th Amendment is Illegal

- The Sixteenth Amendment to the United States Constitution reads:

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration"
- Protestors Argue the 16th Amendment was never properly ratified and is therefore illegal, and that the amendment provides no power to tax income.

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Statutory Arguments:

1. The term "income" is not defined in the Internal Revenue Code or the Constitution, and that the tax law should therefore be invalid.
2. Without clear definitions, Chapter 1 of Title 26 of the Code of Federal Regulations suggests IRS agents must rely on voluntary compliance.

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The Infamous 861 Argument

- Internal Revenue Code section 861, entitled "Income from sources within the United States", is a provision of the Internal Revenue Code which delineates that some kinds of income shall be treated as income from sources within the United States
- It states income of nonresident alien individuals, and certain foreign corporations,
- It is not an exhaustive list of taxable income—the definitions in the section apply only to that section.

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The Infamous 861 Argument

- Under the tax protesters' section 861 argument, only income derived from "taxable activities" listed in that section becomes "taxable income"
- The argument is that since the domestic activities of residents of the United States (Americans and resident aliens) are not shown to be taxable in that section, the domestic income derived from such activities does not become taxable "gross income" through the rest of the tax code.

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The Court's Answer to the 861 Argument

- The income taxes imposed on U.S. citizens and resident aliens are generally imposed under Subchapter A (not Subchapter N) of Chapter 1 of the Code.
- The income tax is imposed on the "taxable income" of individuals.
- The federal courts have consistently ruled that the argument that Section 861 excludes income of U.S. citizens and resident aliens from taxation is without legal merit.

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Conspiracy Argument:

"In 1986, 99.5 million Americans were tricked into filing and paying federal income taxes when, legally, they didn't have to do either. If this statement shocks you, it is only because you and the rest of the nation have been thoroughly deceived by the federal government (with federal courts playing the key role), and an army of accountants, lawyers, and other tax preparers. All of these have a vested interest in keeping you ignorant concerning the real nature of federal income taxes. ... [N]o provision of the Internal Revenue Code requires anyone to file or pay income taxes. This tax, unlike other internal revenue taxes, is strictly voluntary."

~ Irwin Schiff

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Wesley Snipes

Snipes's correspondence with the IRS advanced several arguments justifying his failure to file his personal tax returns, including that:

1. he was a "non-resident alien to the United States," that earned income must come from "sources wholly outside the United States,"
2. that "a taxpayer is defined by law as one who operates a distilled spirit Plant,"



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Wesley Snipes

3. that the Internal Revenue Code's taxing authority "is limited to the District of Columbia and insular possessions of the United States, exclusive of the 50 States of the Union."

4. Snipes also claimed that as a "fiduciary of God, who is a "nontaxpayer," he was a "foreign diplomat" who was not obliged to pay taxes.

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Questions?



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3rd Annual Criminal Tax Day

Thursday, May 16th, 2019 - Quinnipiac University School of Law

SHOPPING THE PREPARER: TAX PREPARER INVESTIGATIONS & PROSECUTIONS

Frank Agostino, Agostino & Associates, Hackensack, NJ
 Jeffrey M. Sklarz, Green & Sklarz, New Haven, CT
 Amy Hosney, Special Agent, IRS-CI
 Christopher Schmeisser, Assistant U.S. Attorney, New Haven, CT

Special thanks to:
 Michael A. Villa, Jr., Partner, Meadows Collier, Dallas, TX
 Aaron Borden of Meadows Collier
 for their assistance with the materials

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What is tax fraud?

- Google search for "tax fraud"
 - Unfiled tax returns
 - Under reported income
 - Taking unearned deductions
 - Deliberately underpaying taxes



Meadows, Collier, Reed, Cousins, Crouch & Ungerman, LLP.

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What is tax planning?

- Google search for "tax planning vs. tax fraud"
 - Tax planning and tax avoidance is legal whereas tax evasion is illegal;
 - Tax planning is moral. Tax avoidance is immoral. Tax evasion is illegal and objectionable.

Meadows, Collier, Reed, Cousins, Crouch & Ungerman, LLP.

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What is tax fraud?

- Is assisting in a property transfer between spouses tax fraud?
- Is making the IRS's job more difficult tax fraud?
- Is working with an attorney to implement a complex transaction to minimize a client's tax liability tax fraud?
- Is reclassifying transfers to a business owner from taxable revenue to loans tax fraud?

Meadows, Collier, Reed, Cousins, Crouch & Ungerman, LLP.

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What is tax fraud?

Federal - Wednesday, November 28, 2018 5:01 p.m.
Plan
Federal - W

DOJ: Business Owner, CPA Found Guilty of Conspiracy, Tax Crimes

DATED NOV. 21, 2018

Meadows, Collier, Reed, Cousins, Crouch & Ungerman, L.L.P.
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What is tax fraud?

According to court documents and evidence presented at trial, Guirguis operated numerous engineering businesses. Higa, a certified public accountant, was the controller of these businesses. Higa also served as a nominee officer of another entity controlled by Guirguis. When the IRS determined Guirguis' businesses owed over \$800,000 in federal employment taxes and assessed a \$612,000 penalty, Guirguis and Higa took various steps to place income and assets out of the IRS' reach. For example, Guirguis and Higa used the nominee entity to fraudulently convey a condominium to Guirguis' wife. After an IRS revenue officer began questioning Mrs. Guirguis' sole ownership of this condominium, Guirguis and Higa instructed a bookkeeper to alter the books and records in an attempt to conceal this transaction from the IRS.

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What is tax fraud?

United States Department of Justice
Office of the United States Attorney

THE UNITED STATES ATTORNEY'S OFFICE
CENTRAL DISTRICT OF CALIFORNIA

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FOR IMMEDIATE RELEASE
Tuesday, October 17, 2017

Orange County CPA Pleads Guilty to Obstructing an IRS Investigation into Tax Returns Seeking Millions of Dollars in Tax Refunds

SANTA ANA, California – A certified public accountant who worked at a tax preparation firm in Irvine has pleaded guilty to federal charges resulting from her obstruction of a federal investigation into millions of dollars in tax refunds claimed on tax returns that were prepared by her firm.

Meadows, Collier, Reed, Cousins, Crouch & Ungerman, L.L.P.
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What is tax fraud?

Aggressive Tax Lawyer or Criminal? Jury to Decide re 2 Ex-Jenkins & Gilchrist Partners

BY MARTHA NEL, <http://www.dailycaller.com/contributors>

POSTED MAY 11, 2011, 12:11 AM CDT

Were Paul DeAngelis and Donna Guerin simply aggressive tax lawyers doing their job by doing their best for their clients?

Or, as the government contends, did the two former Jenkins & Gilchrist partners cross the line by advising extremely wealthy individuals, in opinion letters, to participate in fraudulent tax shelter activities? That is the question that a federal jury in Manhattan must soon decide, as closing arguments wrap up after a two-month trial, reports the Wall Street Journal Law Blog.

Meadows, Collier, Reed, Cousins, Crouch & Ungerman, L.L.P.
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What is tax fraud?

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Federal Tax Update

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November

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In Brief

Judicial and Other Proceedings: Tax crimes assisting in false returns preparation-motions for acquittal or new trial evidence, (11/29/2018)

Tax crimes-assisting in false returns preparation-motions for acquittal or new trial-evidence.

Accounting firm tax partnership preparer was denied motions for acquittal of or new trial on Code Sec. 7206(j) charges that he assisted in preparation of false returns for client-business owner, falsely reporting client's income as less than \$0 knowing certain funds transfers involving various capital fund were deferred revenue rather than loans as he claimed. Jury's conclusion that preparer acted willfully was sufficiently supported by overall evidence, including evidence that subject transfers were treated as loans only after preparer learned that client would own substantial tax on same and that entire capital fund's partnership agreement forbade loans. Also, various evidentiary rulings, including rulings that admitted evidence of client's fraud and testimony from revenue agent who opined on correct tax treatment of related transfers, were proper and didn't unfairly prejudice preparer. His arguments regarding above were rejected accordingly. Alternate arguments that govt. intentionally confused jury, by referring to other deferred revenue issues not at issue in this case, or that govt. constructively amended indictment, were also rejected. (U.S. v. Berger, 102 CA, 122 AFTR2d 18-1548)

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What is tax fraud?

Bloomberg Law

Husch Blackwell Must Face Claims It Aided Client's Fraud

By Bernie Pasanowski Jan. 28, 2019 2:09PM

- Firm allegedly drafted documents to maintain scheme
- May also be liable for negligently supervising attorney

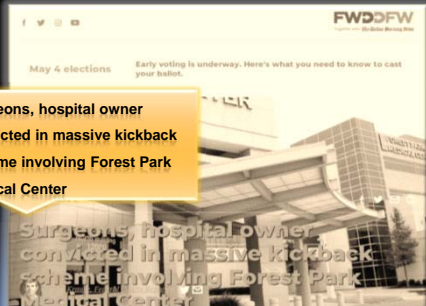
Husch Blackwell LLP failed to convince a New York appellate court that it shouldn't face claims alleging it aided and abetted a client's fraud scheme.

Kamran Nezami owns several medical companies. Investors accused Husch Blackwell of aiding and abetting him to embezzle their investments to fund an extravagant life style. The firm and its partner Diane T. Carter said the investors' complaint didn't adequately allege they had actual knowledge of the fraud.

But the complaint alleged Carter was the one who developed the idea to disguise Nezami's embezzlement as loans, the court said. It also alleged Carter or other lawyers at the firm drafted promissory notes and security agreements documenting the supposed loans, it said.

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I thought we had a good system, a fair system



Surgeons, hospital owner convicted in massive kickback scheme involving Forest Park Medical Center

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I thought we had a good system, a fair system

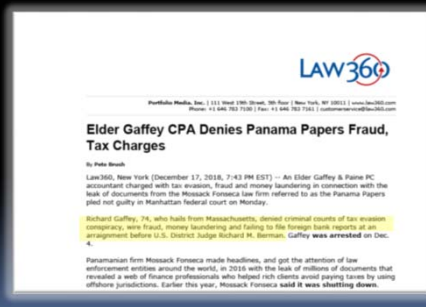
Some of those convicted were not typical defendants in healthcare prosecutions. They included Dr. Douglas Won and Dr. Michael Rimlaw, who both pioneered innovative surgical techniques that cut the risk of infection and sped up recovery.

"I'm in disbelief," Rimlaw told his supporters after the verdict, shock registering on his face. "I thought we had a good system, a fair system."

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CPA Denies Criminal Counts



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CPA has maintained his innocence

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Accountant Denied Retrial Over \$18M Biotech VC Fraud

By Carol Suberstone

Law360 (November 16, 2018, 7:34 PM EST) -- A California federal judge declined Thursday to order a retrial for an accountant found guilty of helping a venture capitalist siphon \$18 million from a fund using false tax returns.

Berger has maintained his innocence, and the charges went to trial in June. There, prosecutors depicted Berger as an experienced, big-time accountant who was aware Burnill was stealing money and hoped Burnill would pay it back before investors noticed. Berger even turned a blind eye when Burnill tore up a promissory note for the purported loan, prosecutors argued.

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I know it when I see it

The Tax Adviser

IRS Continues to Challenge Family Limited Partnerships

By Frances W. Schaffer, J.D.; Justin P. Ransome, J.D., MBA, CPA

November 30, 2018

As the IRS continues to litigate family limited partnership (FLP) cases, it has formulated two broad-based arguments—one argument rooted in estate tax and one in gift tax—that the courts now routinely recognize to negate the estate planning benefits of FLPs. Whether the IRS will be successful in challenging a particular FLP structure depends upon the facts of the case.

The estate argued that Shepherd does not apply because the trusts purchased the partnership interests from the decedent. The Tax Court dismissed this argument and concluded that the purported sale of these interests was a sham. About a week after signing the sales agreement, the decedent transferred cash to the trusts, which the trusts used two days later to pay the required down payment to the decedent. The trusts never paid any interest on the notes, the decedent died before the first payment became due, and the estate never made a demand for payments. In addition, the decedent gave his children the money to pay the interest on the FLP1 notes, so the court was not convinced that the decedent expected the trusts or his children to pay the notes for the purchase of the interests in FLP2. The court concluded that because the purported sale of the FLP2 interests to the trusts was a sham and Shepherd controls, the decedent made indirect gifts of the LLC interests, not interests in FLP2.

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I know it when I see it

IRS

Abusive tax shelters, trusts, conservation easements make IRS' 2019 "Dirty Dozen" list of tax scams to avoid

IRS YouTube Video:
 • Dirty Dozen - Digital (10/18/18)
 10/18/18, March 15, 2019

Abusive micro-captive insurance tax shelters

Micro-captives are on the Dirty Dozen list again, reflecting IRS's commitment to curbing abusive arrangements through audits, investigations, and litigation. The IRS has devoted substantial resources with more than 500 docketed cases in Tax Court and is conducting numerous income tax examinations of the participants in these arrangements, as well as promoter investigations.

Syndicated conservation easements

entity or tiered entities that own the real property, suggesting to prospective investors that they may be entitled to a share of a charitable contribution deduction that greatly exceeds the amount of an investor's investment. The promoters obtain an inflated appraisal of the conservation easement based on unreasonable factual assumptions and conclusions about the development potential of the real property.

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I know it when I see it

Taxation of ins. cos.—microcaptive cos.—what constitutes ins.—income and deductions—S corp. shareholders.

In case involving microcaptive ins. co., which made Code Sec. 831(b) election, and individuals who directly or indirectly owned family manufacturing S corps. that engaged in purported microcaptive ins. arrangement, Tax Court determined that amounts co. received as ins. didn't in fact qualify as same for tax purposes; and so, co.'s Code Sec. 831(b) election was invalid, premiums weren't excludible from its gross income, and S corp. officers weren't entitled to pass-through business deductions for same under Code Sec. 162. Key factors included that fronting carriers through which co. allegedly distributed risk weren't themselves bona fide ins. cos., and thus co. didn't accomplish sufficient risk distribution for tax purposes through them. Also, transactions didn't constitute ins. in commonly accepted sense when considering among other things that, although co. was organized as ins. co. and met minimum capitalization requirements, it wasn't operated as same, premiums weren't reasonable, and policies were issued late with conflicting and ambiguous terms. Taxpayers' arguments contesting above were rejected accordingly. Alternate arguments that shareholders could still deduct purported premium payments as indemnification payments were also rejected. (Syzggy Insurance Co., Inc., et al. v. Commissioner, (2019) TC Memo 2019-34, 2019 RIA TC Memo ¶2019-34)

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Fraud and False Statements §7206

Any person who—

(1) Declaration under penalties of perjury

Willfully makes and subscribes any return...which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance

Willfully aids or assists in, or...counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return...which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document...

shall be guilty of a felony...

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Fraud and False Statements §7206

Willfulness involves a voluntary, intentional violation of a known legal duty. Willfulness means you acted with knowledge that your conduct was unlawful—a voluntary, intentional, violation of a known legal duty. Willfulness may include the failure to learn of filing requirements, or efforts to conceal the facts.

- "Direct proof of wrongful intent is rarely available. *Specific intent may therefore be demonstrated by circumstantial evidence alone.*" U.S. District Judge Richard Seeborg

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Circumstantial Evidence

- In *United States v. Higa*, the government relied on:
 - CPA took various steps to place income and assets out of the IRS's reach, including
 - Concealing income using nominee entities;
 - Using a nominee entity to transfer condominium from taxpayer-husband to taxpayer-wife.

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Circumstantial Evidence

- In *United States v. Quick*, the government alleges that the following facts evidence obstruction:
 - Quick allegedly lied to the IRS via email and in person;
 - Quick allegedly attempted to influence witnesses;
 - Quick allegedly directed others to alter documents.

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Circumstantial Evidence

- In *United States v. Dagerdas*, the government relied on:
 - Misstated facts in opinion letters;
 - The manner in which mistakes were corrected;
 - Testimony that Dagerdas and others discussed how they would justify their actions.

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Circumstantial Evidence

- In *United States v. Armao*, the government relied on:
 - CPA classified union leaders disbursement of union funds to himself as loans;
 - CPA asserted that he warned the client that he had to pay back the money.

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Circumstantial Evidence

- In *United States v. Berger*, the government relied on:
 - Funds transferred to the client from his business exceeded the amount allowable under the governing agreements;
 - CPA classified the transfers as loans after learning that the client would owe a substantial amount of tax;
 - Client's testimony.

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Circumstantial Evidence

- In *United States v. Donaldson*, the government relied on:
 - The plan had no economic substance;
 - The defendants continued to operate plan after a positive opinion letter was withdrawn by the issuing law firm.

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Economic Substance

- The law does not permit a taxpayer to reap tax benefits from a transaction that lacks economic reality.
 - Has also been applied to transactions that had economic reality where the sole motivation is tax avoidance.
- Taxpayer has the burden of establishing that the form of the transaction accurately reflects its substance.

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Economic Substance

- The transaction must be viewed objectively in determining the economic reality.
- The analysis is focused on the transaction giving rise to the tax benefit.
- Arrangements with subsidiaries that do not affect the economic interest of third parties deserve particularly close scrutiny.

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Step Transaction

- A given result at the end of a straight path is not made a different result because reached by following a devious path.



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Step Transaction

- Courts will look to whether one step of the transaction creates a binding commitment to undertake future steps in the transaction; whether each step would make sense, given the purpose of the transaction, without the other steps; or whether each step was part of a calculated plan to reach a particular end result.

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IRS-CI Interviews Conducted and MOIs Completed



DEPARTMENT OF THE TREASURY Internal Revenue Service Criminal Investigation

Memorandum of Interview

Investigation #:	1000xxxxxx	Location:	ADDRESS Road CITY, CT
Investigation Name:	tax preparer name		
Date:	August __, 2016		
Time:	Approximately 9:28 - 10:47 AM		
Participant(s):	NAME OF PREPARER, NAME, Special Agent NAME, Witness Other		

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Preparers Say the Damnedest Things: Actual Quotes Found in MOIs

- "Target explained he only gets paid when they receive a refund. I pointed out that it benefits him to have his clients get refunds. He agreed."
- "Preparer stated its his goal for next year to require documentation."
- "Preparer stated after the return is filed he asks clients to bring documentation back but none ever do."
- "Preparer admitted he knew the information should not be on the return but put it on anyway."

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Preparers Say the Damnedest Things: Actual Quotes Found in MOIs

- "I showed preparer a copy of a tax return he prepared for a client for the 2015 tax year. The client name was TAXPAYER. He did not recall her personally. I showed him his cover sheet and he acknowledged that the return was prepared by him. I showed him the signature page and he identified his PTIN and EIN and name. I drew his attention to the Schedule A where there was a deduction for medical expenses in the amount of \$15,332. I asked him again if he put that number on the return on his own. He reiterated that everything comes from the client.
- I advised PREPARER that TAXPAYER was actually an undercover agent for the IRS and that her entire conversation with PREPARER was recorded and monitored. I further advised PREPARER that at no time during that conversation did TAXPAYER mention medical expenses, let alone a specific amount. **PREPARER answered that he was probably tired and put the figures on the return accidentally.**"

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How do we protect ourselves?

- Recordkeeping**

Rev. 2019-10-08 (7 pages)

IRS Official: Good Recordkeeping Protects Against Bad Clients

Posted on Apr. 29, 2019
By Kristen A. Parillo

Documentation can save practitioners whose clients ignore their advice and apply for tax-exempt status, even when they know they don't qualify, according to an IRS Office of Professional Responsibility official.

"Your clients won't hesitate to throw you under the bus," OPR acting Branch Chief Elizabeth C. Kaestenberg said April 26 at the Representing and Managing Tax-Exempt Organizations Conference, sponsored by the Georgetown University Law Center. "If they can get out of it by saying it's your fault, they're going to do it."

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How do we protect ourselves?

- Disclosure**

	Taxpayer	Tax Professional
return - in general	substantial authority IRC § 6662(d)(2)(B)(i)	substantial authority IRC § 6694(a)(2)(A) Cir. 230 § 10.34(a)(3)(i)(B)
return - with adequate disclosure	reasonable basis IRC § 6662(d)(2)(B)(ii)	reasonable basis IRC § 6694(a)(2)(B) Cir. 230 § 10.34(a)(3)(i)(A)
return - with reasonable cause	good faith IRC § 6664(c)(1)	good faith IRC § 6694(a)(3)
advice for return	-	same as for return Cir. 230 § 10.34(a)(3)(ii)
advice for other documents submitted to Service	-	frivolous Cir. 230 § 10.34(b)(1)
advice for penalties and opportunity for disclosure	-	reasonably likely to apply Cir. 230 § 10.34(c)
reliance on information from client	-	good faith Cir. 230 § 10.34(d)

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How do we protect ourselves?



Recognized Abusive and Listed Transactions

Listed Transactions in Chronological Order


12. Notice 2001-17 - §351 Contingent Liability

14. Notice 2002-21 - Inflated Basis "CARDS" Transactions

18. Revenue Ruling 2003-6 - Abuses Associated with S Corp ESOPs

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How do we protect ourselves?



Recognized Abusive and Listed Transactions

Listed Transactions in Chronological Order

25. Notice 2004-8 - Abusive Roth IRA Transactions


26. Revenue Ruling 2004-4 - S Corporations ESOP

29. Notice 2004-30 - S Corporation Tax Shelter Involving Shifting Income to Tax Exempt Organization

36. Notice 2017-10 - Syndicated Conservation Easement Transactions

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How do we protect ourselves?



Transactions of Interest

Transactions of Interest

1. Notice 2007-72
2. Notice 2007-73
3. Notice 2008-99
4. Notice 2009-7
5. Notice 2015-74
6. Notice 2016-66

The new reportable transaction category Transaction of Interest (TOI) is defined as a transaction that the IRS and the Treasury Department believe is a transaction that has the potential for tax avoidance or evasion, but lack sufficient information to determine whether the transaction should be identified specifically as a tax avoidance transaction. The TOI category of reportable transactions will apply to transactions entered into on or after November 2, 2006.

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How do we protect ourselves?



Transactions of Interest

Notice 2016-46 – Section 831(b) Micro-Captive Insurance. This notice describes transactions in which a taxpayer attempts to reduce the aggregate taxable income of the taxpayer, related persons, or both, using contracts that the parties treat as insurance contracts and a related company that the parties treat as a captive insurance company. Each entity that the parties treat as an insured entity under the contracts claims deductions for premiums for insurance coverage. The related company that the parties treat as a captive insurance company elects under § 831(b) of the Internal Revenue Code (the “Code”) to be taxed only on investment income and therefore excludes the payments directly or indirectly received under the contracts from its taxable income. **The manner in which the contracts are interpreted, administered, and applied is inconsistent with arm’s length transactions and sound business practices.**

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How do we protect ourselves?

Form 8886 **Reportable Transaction Disclosure Statement** (OMB No. 1545-0080)
(Rev. March 2012)
Department of the Treasury
Internal Revenue Service

▶ Attach to your tax return.
▶ See separate instructions.

Name(s) shown on return (individuals enter last name, first name, middle initial) _____ Identifying number _____

Number, street, and room or suite no. _____ City or town _____ State _____ ZIP code _____

A If you are filing more than one Form 8886 with your tax return, sequentially number each Form 8886 and enter the statement number for this Form 8886. Statement number _____ of _____

B Enter the form number of the tax return to which this form is attached or related. Form number _____

C Enter the year of the tax return identified above. Year _____

Is this Form 8886 being filed with an amended tax return? ☐ Yes ☐ No

C Check the boxes that apply (see instructions). ☐ Initial year filed ☐ Protective disclosure

1a Name of reportable transaction _____ 1b Initial year participated in transaction _____ 1c Reportable transaction or tax shelter registration number (see instructions) _____

2 Identify the type of reportable transaction. Check all boxes that apply (see instructions).
a ☐ Listed b ☐ Contractual protection c ☐ Transaction of interest
d ☐ Confidential e ☐ Loss

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How do we protect ourselves?

Form 8275 **Disclosure Statement** (OMB No. 1545-0080)
(Rev. August 2012)
Department of the Treasury
Internal Revenue Service

Do not use this form to disclose items or problems that are contrary to Treasury regulations. Instead, use Form 8275-A, Regulation Disclosure Statement.
▶ Information about Form 8275 and its separate instructions is at www.irs.gov/form8275.
▶ Attach to your tax return.

Name(s) shown on return _____ Identifying number shown on return _____

If Form 8275 relates to an information return for a foreign entity (for example, Form 5471), enter:
Name of foreign entity _____
Employer identification number, if any _____

Part I General information (see instructions)

1	2a Item No., title, description, etc.	2b Item or range of items	2c Detailed description of item	2d Form or schedule	2e Line No.	2f Amount
1						
2						
3						
4						
5						
6						

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How do we protect ourselves?

SCHEDULE C (Form 1040) Profit or Loss From Business (Sole Proprietorship)

OMB No. 1545-0047 **2018**

Department of the Treasury Internal Revenue Service (IRS) **Attachment**

▶ Go to www.irs.gov/ScheduleC for instructions and the latest information.
▶ Attach to Forms 1040, 1040-EZ, or 1041; partnerships generally must file Form 1065.

Name of proprietor _____ Social security number (SSN) _____

A Principal business or profession, including product or service (see instructions) **5** Enter code from instructions _____

C Business name, if no separate business name, leave blank **6** Employer identification number (EIN) _____

E Business address (including suite or room no.) _____
City, town or post office, state, and ZIP code _____

F Accounting method: (1) ☐ Cash (2) ☐ Accrual (3) ☐ Other (specify) _____

G Did you "materially participate" in the operation of this business during 2018? If "No," see instructions for limit on losses ☐ Yes ☐ No

H If you started or resumed this business during 2018, check here ☐ Yes ☐ No

I Did you make any payments in 2018 that would require you to file Form(s) 1099? (see instructions) ☐ Yes ☐ No

J If "Yes," did you or will you file required Form(s) 1099? ☐ Yes ☐ No

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The information included in these slides is for discussion purposes only and should not be relied on without seeking individual legal advice.

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The Last Word...

Always Listen to the great Jules Ritholz:

**"If Someone Needs to Go To Jail
Make Sure It's Your Client!"**

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SKLARZ LLC

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