

Taxpayer Joe (Eric) lives in New Jersey and runs a restaurant and bar in New York near the World Trade Center. Since early 2017, Joe has taken checks received from customers and written from his business accounts to local check-cashing services to obtain cash, which he uses to pay two undocumented workers under the table. He also gives some of the cash to his girlfriend, who doubles as a part-time bookkeeper. She uses the funds to pay her rent in midtown. On his corporate income tax returns (Forms 1120S), Joe deducts the cash paid to his workers and his girlfriend as payroll. He also deducts amounts paid for cell phones and leased vehicles used by himself, his wife, his children, and his girlfriend.

Joe and his girlfriend have a falling out. Joe terminates her employment and she vows revenge. Not long thereafter, the IRS Whistleblower Office receives a claim for an award under IRC 7623 alleging that Joe is evading his income and employment tax obligations. The IRS WBO refers the matter to IRS Criminal Investigation, which sends two special agents to surveil Joe and his business. The agents observe Joe traveling to the check cashing service and paying the workers with cash. The agents decide to visit Joe's accountant, who was willing to sit for an interview and who accepted service of an administrative summons. After the interview, the accountant calls Joe and advises him to get a lawyer.

**Meeting 1:** Joe [Eric] has engaged **Caroline and Frank** to represent him. They have the facts set forth above and are now discussing their plan of action with Joe.

1. Forensic Accountant: **Caroline and Frank** explain that it is your practice in most criminal tax investigations to engage a forensic accountant under a *Kovel* agreement to review the financial records, identify problems, and calculate accurate income, expenses, and tax due. Joe is pushing back. He wants to know why a forensic accountant is needed when the case appears so simple. Why can't he just provide the records to his defense counsel – **Caroline and Frank** are experienced tax attorneys and they have in-house paralegals and investigators – can they just put the information into Turbo Tax? He also suggests that **Caroline and Frank** ask his accountant, who is familiar with the records and prepared the original returns, to conduct the review and prepare draft amended returns. **Caroline and Frank have invited a forensic accountant [Sareena] to the meeting (under privilege) and ask Sareena to discuss her role as a forensic accountant and what benefit she can provide.**
2. Tax loss: Joe wants to understand worst case scenario. This leads to a discussion of tax loss. In calculating the potential loss, what are his ordinary and necessary business expenses? What can be claimed in calculating potential tax loss? **Sareena responds.**
3. Labor Expenses: The discussion of business expenses leads the issue of the undocumented workers. Joe is worried. Will they be interviewed? Does he need to fire them? Will the government charge him with immigration violations? **Frank responds.**
4. Shifting Blame: Joe wants to shift blame to his girlfriend, who told him that he could pay wages in cash and that because she was his girlfriend, the amounts he

paid her were not technically income. He shares text messages and emails that confirm their discussions regarding the check cashing and payroll violations.

**Caroline responds.**

- Options: What are Joe's options at this point?

Discussion:

**Sareena** convinced Joe to engage a forensic accountant to reconstruct the records, remove personal and fictitious expenses, and capture unreported income. She discusses her investigation, including documents reviewed and witnesses interviewed, and shares her conclusions. *[this is the opportunity for the forensic accountant to explain their role and value added to a criminal tax case]*

	2017	2018	2019	2020
Income (reported)	\$ 375,000.00	\$ 405,000.00	\$ 400,000.00	\$ 450,000.00
Cashed Checks (unreported)	\$ 42,000.00	\$ 55,000.00	\$ 60,000.00	\$ 60,000.00
Expenses for girlfriend	\$ 250,000.00	\$ 250,000.00	\$ 250,000.00	\$ 250,000.00
Corrected Income	\$ 667,000.00	\$ 710,000.00	\$ 710,000.00	\$ 760,000.00
Payments to undocumented workers	\$ 42,000.00	\$ 55,000.00	\$ 60,000.00	\$ 60,000.00
Tax Paid – Federal	\$ 93,750.00	\$ 101,250.00	\$ 100,000.00	\$ 112,500.00
Tax Paid – State	\$ 22,500.00	\$ 24,300.00	\$ 24,000.00	\$ 27,000.00
Corrected Tax - Federal	\$ 166,750.00	\$ 177,500.00	\$ 177,500.00	\$ 190,000.00
Corrected Tax – State	\$ 40,020.00	\$ 42,600.00	\$ 42,600.00	\$ 45,600.00
Tax Loss – Federal	\$ 73,000.00	\$ 76,250.00	\$ 77,500.00	\$ 77,500.00
Tax Loss – State	\$ 17,520.00	\$ 18,300.00	\$ 18,600.00	\$ 18,600.00
Tax Loss – Total	\$ 90,520.00	\$ 94,550.00	\$ 96,100.00	\$ 96,100.00
<b>Loss for Sentencing/Restitution</b>	\$ 377,270.00			
<b>Civil Assessment</b>				
Tax	\$ 377,270.00			
Interest	\$ 28,863.00			
Penalty (IRC 6663)	\$ 282,952.50			
	\$ 689,085.50			

Caroline and Frank ask the Government for a reverse proffer. The Government agrees.

Present: Anastasia King, AUSA, Jeffrey Miller, IRS Special Agent, Frank and Caroline

- Anastasia opens the meeting with the preliminaries
- Jeff walks through the slide deck and, during his presentation, shares some of what the Government's evidence will establish, including: unreported income (the checks from customers that never made it to the bank account), false deductions (payments to the girlfriend well in excess of services rendered), cash wages (to avoid employment tax obligations), false income and employment tax returns, and immigration violations.
- Anastasia explains that currently the tax loss is around \$375,000 (very close to what Sareena had calculated). The Government is willing to accept a plea to a single count of tax evasion with restitution.
- Anastasia explains the Government's options if no plea is reached.

Defense teams meets to discuss proffer:

Present: Joe, Sareena, Frank & Caroline:

- Update the client on the reverse proffer
- Discuss the proposed tax loss and Guideline calculations
- Discuss the advantages and disadvantages of the proposed plea
- Discuss 3553(a) factors
- Discuss advantages and disadvantages of a trial