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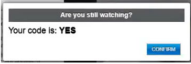
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Housekeeping


- Stick with our agenda
- Take your breaks when we take ours
- If you have any issues contact the help desk at **1-877-406-8636**
- At the end of the program you will receive a link from BeaconLive
- Claim your certificate that way

4

You **MUST** do the onscreen attendance checks!



You cannot watch on a cell



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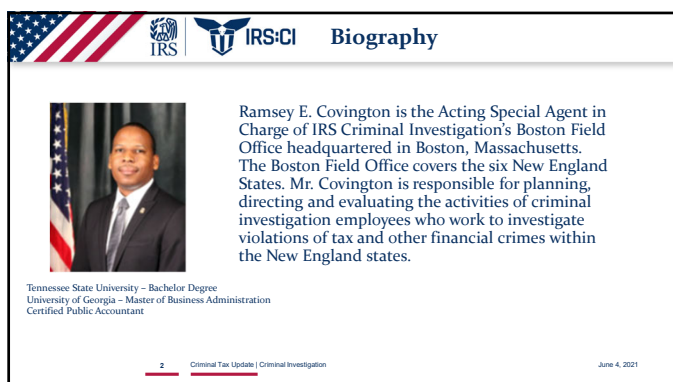
Agenda

Time	Topic
8:30 - 8:45	Welcome and Housekeeping
8:45 - 9:45	What's New in Criminal Tax
9:45 - 10:45	Parallel Civil & Criminal Investigations
10:45 - 11:00	Break
11:00 - 12:00	PPP Loan Fraud
12:00 - 12:30	Lunch
12:30 - 1:30	The IRS's Use of Artificial Intelligence in Criminal Tax Cases
1:30 - 2:30	Non-Filers
2:30 - 2:45	Break
2:45 - 5:00	The Criminal Investigation: Part 1 & 2

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  **New Logo - Same 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.

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  **Organizational Structure**



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  **Organizational Structure**

<u>Western Area Field Operations</u>	<u>Northern Area Field Operations</u>	<u>Southern Area Field Operations</u>
<ul style="list-style-type: none"> Denver Field Office Las Vegas Field Office Los Angeles Field Office Oakland Field Office Phoenix Field Office Seattle Field Office St. Louis Field Office 	<ul style="list-style-type: none"> Boston Field Office Cincinnati Field Office New York Field Office Newark Field Office Philadelphia Field Office Chicago Field Office Detroit Field Office 	<ul style="list-style-type: none"> Atlanta Field Office Charlotte Field Office Miami Field Office Tampa Field Office Washington DC Field Office Dallas Field Office Houston Field Office

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Nationally Coordinated Investigations Unit

- Focused on developing an investigative strategy that impacts and proactively addresses nationwide key non-compliance areas and emerging threats
- Modernizing IRS Criminal Investigative tools to make them more reliant on data analytics with a centrally led, team-based approach
- Successfully developed data models for multiple initiatives that lead to significant, impactful investigations in the field
- Demonstrated the power of data analytics and its benefit for law enforcement through the significant number of referrals it made, and through quantitative and qualitative controls

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Investigative Priorities

Core Mission Tax Crimes

- **Abusive Tax Schemes:** Tax scheme promoters and those who play an integral role in facilitating, aiding, or furthering abusive tax schemes
- **Corporate Fraud:** Criminal activities undertaken by business owners or companies that are designed to give an advantage to the perpetrating individual or company
- **Employment Tax:** Attempts to evade or circumvent the duty to withhold, account for, and pay over employment taxes
- **General Tax Fraud:** Legal income source tax investigations involving individuals contributing to the tax gap by intentionally underreporting income, underpaying taxes due and repeated failure to file tax returns

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Investigative Priorities

Core Mission Tax Crimes

- **International Tax Fraud:** Combat offshore tax crimes committed by individuals, corporations, and professional enablers
- **Joint Chiefs of Global Tax Enforcement (J5):** Alliance between the criminal tax authorities of the U.S., Australia, Canada, The Netherlands, and the United Kingdom, will continue to be a priority for CI and its Office of International Operations. The J5 is committed to combatting transnational tax crime through increased collaboration
- **Questionable Refund, Return Preparer Fraud and Stolen Identity Fraud:** Tax return preparers and others who promote schemes designed to obtain fraudulent refunds or to fraudulently reduce their clients' tax liabilities. Additional focus will remain on all refund fraud areas, including fictitious refundable credits and false filings. Field offices will also continue to investigate significant Stolen Identity Refund Fraud (SIRF) schemes to enhance compliance and reduce the risk of identity theft

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Investigative Priorities

Tax Related and Other Financial Crimes

- **Counterintelligence/Counterterrorism/Terrorist Financing:** Support national security efforts by providing financial expertise to the Joint Terrorism Task Forces, Counterintelligence Task Force, Bank Secrecy Act (BSA) Review Teams and Financial Crimes Task Forces, and the worldwide pursuit of national security threats
- **Cyber Crimes/Virtual Currency:** Expand Cyber Crimes Unit (CCU) capabilities in response to the ongoing threat of cyber enabled data theft, refund fraud, and other virtual financial crimes. CCUs will collaborate with field offices throughout the country to identify and pursue tax, identity theft, refund crimes, and money laundering in the cyber arena
- **Money Laundering (non-narcotics):** Investigate complex and significant money laundering activity outside of the narcotics arena

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Investigative Priorities

Tax Related and Other Financial Crimes

- **Public Corruption:** Pursue public corruption investigations, in collaboration with other law enforcement partners, where elected or government officials violate the public's trust
- **Professional Enablers:** Together with the J5 Enablers Group, identify and investigate those who enable and facilitate offshore tax crime and money laundering to include promoters, offshore service providers and the offshore financial industry
- **Emerging Threats:** In collaboration with our law enforcement partners, CI will focus our efforts to identify and pursue investigations on emerging threats of local, national or international significant impact against the most egregious offenders involved in the fraud.

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Investigative Priorities

Narcotics Related Financial Crimes

- **Organized Crime Drug Enforcement Task Forces (OCDETF); High Intensity Drug Trafficking Area (HIDTA); Transnational Organized Crime (TOC); Third Party Money Laundering (3PML); Trade Based Money Laundering (TBML):** IRS-CI is committed to provide investigative resources and financial expertise to OCDETF investigations focused on disrupting and dismantling significant transnational criminal organizations (TCOs). These TCOs exploit and corrupt commercial business networks, financial institutions, and modes of international transportation while protecting their activities through a pattern of corruption and violence.

12 Bank Secrecy Act Data | Criminal Investigation June 4, 2021

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COVID-19 Fraud



- The IRS will not send you a text message asking you to share bank account information. If you receive one, DELETE it immediately. It is a scam!
- The IRS does not send unsolicited texts or emails. The IRS does not call people with threats of jail or lawsuits, nor does it demand tax payments on gift cards.

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COVID-19 Fraud



Watch out for the selling of fake at-home COVID19 tests, cures, vaccines or pills. No such thing exists. It is most likely a scam!


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COVID-19 Fraud

If you receive a message asking for a donation for individuals, groups and/or areas heavily affected by COVID19, stay alert, it may be a scam!




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COVID-19 Fraud



- One of the most prevalent COVID-19 scams involves Paycheck Protection Payment (PPP) fraud.
- Some con artists have posed as bogus business owners and filed applications for the federal paycheck protection program, which is meant to help businesses retain employees during the pandemic.
- Often, their intent is to advance luxurious lifestyles with purchases of expensive cars and other items, even airplanes and helicopters.

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Cybercrime

A criminal investigation in which IRS CI has investigative authority and the subject is believed to be committing a tax or other financial crime while using the internet as an essential means to commit the crime, remain anonymous, elude law enforcement and/or to conceal financial transactions, ownership of assets, or other evidence.

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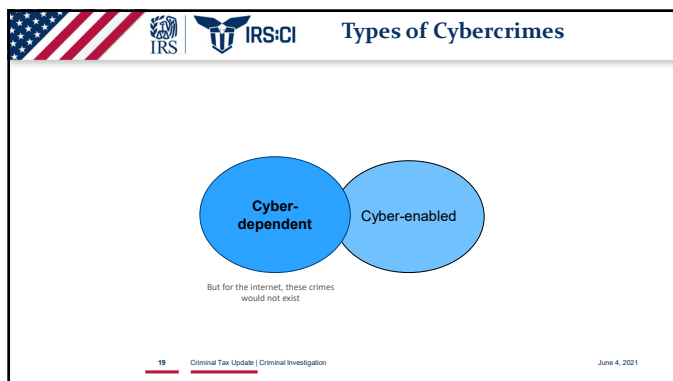


CI Cyber Presence

- In 2014, CI established two full investigative units located within the Washington DC and Los Angeles Field Offices (CCUs) – Operational Mission
- Headquarters Section in DC - Established in 2016 to coordinate the activities occurring on a national level (Cyber Crimes Section) – Program Leadership
- Cyber Crimes Coordinators within each Field Office - POCs
- HQ Cyber Support Unit (CSU) - established 2019 but constantly in flux until recent organizational change
- Other CI Personnel - CIS Agents, Electronic Crimes Analysts and Technical Support, Cyber Storefront – UCAs trained in Cyber Contacts
- Fraud Detection Analyst (FDA), Computer Scientists (hiring - TBD), Contractors, Outstanding Analysts/Agents - Crypto Tracing Experts
- Advanced Collaboration and Data Center (ACDC) – 2021 priority; establishment of the first CI led SCIF with a task force model to address cyber-related crimes and tax initiatives

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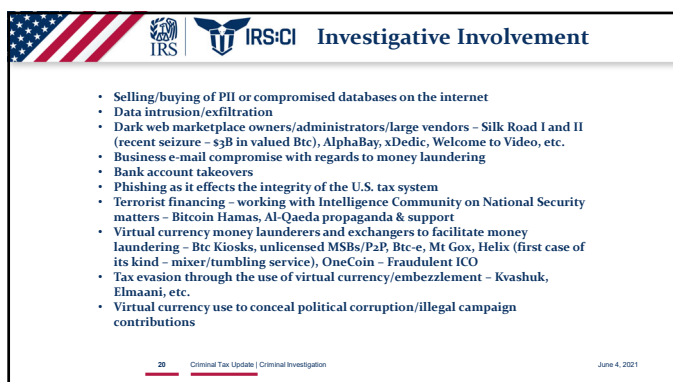
Types of Cybercrimes

Cyber-dependent Cyber-enabled

But for the internet, these crimes would not exist

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Investigative Involvement

- Selling/buying of PII or compromised databases on the internet
- Data intrusion/exfiltration
- Dark web marketplace owners/administrators/large vendors - Silk Road I and II (recent seizure - \$3B in valued Btc), AlphaBay, xDedic, Welcome to Video, etc.
- Business e-mail compromise with regards to money laundering
- Bank account takeovers
- Phishing as it effects the integrity of the U.S. tax system
- Terrorist financing - working with Intelligence Community on National Security matters - Bitcoin Hamas, Al-Qaeda propaganda & support
- Virtual currency money launderers and exchangers to facilitate money laundering - Btc Kiosks, unlicensed MSBs/P2P, Btc-e, Mt Gox, Helix (first case of its kind - mixer/tumbling service), OneCoin - Fraudulent ICO
- Tax evasion through the use of virtual currency/embezzlement - Kvashuk, Elmaani, etc.
- Virtual currency use to conceal political corruption/illegal campaign contributions

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Cyber Trends & Challenges

- Still seeing the same types of schemes - focus on crypto tax, illicit exchangers, unlicensed MSBs, ICOs, dark web marketplaces and vendors
- AEC - Anonymity Enhanced Coins/Privacy Coins (Monero, Zcash etc), Layer 2
- Obfuscation Technologies - Cross chain transactions, Coinjoin/Coinswap, Wallets with built in features
- DeFi - Decentralized markets and exchanges vs. Centralized model (CEX, Markets)
- OTC brokers - Peer to peer transacting (LocalBtc, Forums)
- Field Office - Case work expanding; complexity; CI is leading

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Global Efforts

- OECD/EATF/FinCEN – Regulatory developments around FBAR, Common Reporting Standards – 2021 NDAA Implications – inclusion of cryptocurrency into FinCEN definitions
- Europol - Cyber Attaché (JCAT)
- NCFIA – Public Private Partnership with Financial Industry
- Joint Chiefs of Tax Enforcement (J5) – combat global tax issues with a focus on cyber-related activities
- Investigative efforts with numerous countries – cybercrime is more global in reach than anything we've dealt with prior

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Voluntary Disclosure Practice

The Voluntary Disclosure Practice (VDP) is designed to encourage taxpayers to become compliant regarding outstanding tax liabilities. A voluntary disclosure will not automatically guarantee immunity from prosecution; however, a voluntary disclosure may result in prosecution not being recommended. The VDP does not contain provisions for reduced taxes, penalties, or interest.

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Basic Requirements

To qualify for treatment under the IRS voluntary disclosure practice, the taxpayer's submission must be:

1. Truthful
2. Timely
3. Complete
4. Cooperation

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Basic Requirements

A disclosure is timely if it is received before:

1. The IRS has initiated civil exam or criminal investigation or notified the taxpayer that it intends to do so.
2. The taxpayer is currently under investigation by any law enforcement agency
3. The IRS receives information from a third party (e.g., informant, other governmental agency, the media, etc.) alerting the IRS to the taxpayer's noncompliance.
4. The IRS has initiated a civil exam or criminal investigation which is directly related to the specific liability of the taxpayer (e.g. the taxpayer wants to make a disclosure concerning omitted gross receipts from a partnership and the IRS is already examining or investigating the taxpayer's partner for omitted income skimmed from the partnership); or
5. The IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action such as a search warrant or a grand jury subpoena.

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FY2020 Statistics

2020 Snapshot

\$2.3B TAX FRAUD IDENTIFIED BY IRS
\$8.4B OF TAX REVENUE SECURED
90.4% CONVICTION RATE

1226 WARRANTS EXECUTED
1.27 RETARIETES DIGITAL DATA BREACHES

U.S. IRSEY'S OFFICE INVESTIGATION: 26% (INTERNATIONAL TAX SERVICES), 14% (RECENT INVESTIGATION), 13% (BIG DATA), 7% (PUBLIC), 8% (STATE/LOCAL GOVERNMENT), 4% (OTHER FEDERAL AGENCIES)

IRS-CI STAFFING: 2020 2030 FTE, 2019 728 FTE, 2020 828 FTE

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FY2020 Statistics

Combined Results

	2020	2019	2018
Investigations Initiated	2596	2485	2886
Prosecution Recommendations	1859	1893	2130
Informations/Indictments	1512	1800	2011
Sentenced	1226	1726	2111
Incarceration Rate	80%	79%	82%
Average Months to Serve	44	43	45

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FY2020 Statistics

Abusive Tax Schemes

	2020	2019	2018
Investigations Initiated	109	69	80
Prosecution Recommendations	45	45	34
Informations/Indictments	26	25	37
Sentenced	26	34	36
Incarceration Rate	85%	76%	72%
Average Months to Serve	32	31	28

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FY2020 Statistics

Employment Tax

	2020	2019	2018
Investigations Initiated	298	250	207
Prosecution Recommendations	151	104	81
Informations/Indictments	67	73	64
Sentenced	52	50	48
Incarceration Rate	83%	84%	77%
Average Months to Serve	18	23	21

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FY2020 Statistics

International Operations

	2020	2019	2018
Investigations Initiated	242	214	233
Prosecution Recommendations	213	185	218
Informations/Indictments	180	190	210
Sentenced	138	149	148
Incarceration Rate	77%	85%	84%
Average Months to Serve	47	57	55

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Media

U.S. News and World Report

Bookkeeper Sentenced for Stealing \$600,000 From Employer

The former bookkeeper of a seafood company who embezzled almost \$600,000 from her employer to pay personal bills has been sentenced to 18 months behind bars.

By Associated Press
May 28, 2021, at 12:47 p.m.

BOSTON (AP) — The former bookkeeper of a seafood company who embezzled almost \$600,000 from her employer to pay personal bills has been sentenced to 18 months behind bars, federal prosecutors said in a statement Friday.

Kara Howard, 37, of New Bedford, was also sentenced in federal court in Boston on Thursday to two years of probation and was ordered to pay restitution of almost \$780,000.

Howard embezzled the money between January 2016 and December 2019 by writing checks from her employer's bank accounts to pay her credit card bills, according to the U.S. attorney's office in Boston.

She then altered the company's internal accounting records to make it appear as if the checks were paid to legitimate vendors, prosecutors said.

She also did not report or include the funds that she embezzled on her federal income tax filings, resulting in a tax loss of more than \$180,000, prosecutors said.

1420 WBSM
Woman Sentenced for Stealing \$1 Million from New Bedford Employer

Jim Phillips
Published May 26, 2021

A Portsmouth, Rhode Island woman has been sentenced after admitting to stealing more than \$1 million from her New Bedford-based employer and failing to pay taxes on those funds.

Fifty-year-old Barbara Levy was sentenced Tuesday in Boston Federal Court to 30 months in prison plus two years of supervised release. She was also ordered to pay \$1.3 million in restitution.

In January of this year, Levy pleaded guilty to one count of bank fraud and one count of filing a false tax return.

The U.S. Attorney's Office says Levy worked as an office manager at a New Bedford company and according to prosecutors, forged more than 11 hundred checks to herself from her employer's bank accounts and then deposited the funds into her own account or cashed them.

Levy hid her scheme by altering monthly bank statements, substituting the names of legitimate purported payees in place of her own name to make it appear as though the checks had been written for a valid purpose. Levy also failed to report the funds she embezzled on her federal income tax returns.

June 2021

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Media

The Painting Daily

Nantucket Painting Business Owner Sentenced for \$2 Million Income & Payroll Tax Fraud Scheme | USAO-MA

By Corann Lillard On May 12, 2021

BOSTON — The owner of a commercial and residential paint shop in Nantucket was convicted yesterday in connection with an income diversion and wage tax system that resulted in a tax loss of more than \$2 million.

Dawson C. Lewis, aged 51, of Nantucket, was sentenced to two years in prison, two years' custody release and a fine of US \$10,000 by District Court Chief Justice F. Dennis Saylor IV. Lewis was also directed to repay \$2,094,852 to the IRS. On February 10, 2021, Lewis pleaded guilty to tax evasion and non-payment of taxes.

Lewis owned and operated a painting business called DCL Painting. From 2014 to 2017, Lewis diverted over \$1.5 million of DCL Painting's gross earnings to his personal bank account and did not report the diverted earnings to his tax adviser. In addition, for the tax quarter ending March 31, 2013 through September 30, 2019, Lewis paid over \$5 million in cash "under the table" to DCL Painting employees. As a result of his conduct, Lewis failed to adequately report his personal income tax obligations and failed to report and pay the wage taxes owed on cash wages to the IRS. Overall, Lewis caused the IRS a loss of \$2,094,852.

The Press Herald

Posted May 7, 2021
Updated May 7, 2021

Former IRS employee in Massachusetts ordered to pay \$1 million in restitution


ASSOCIATED PRESS

BOSTON — A Massachusetts woman who was a former employee for the Internal Revenue Service has been sentenced to a year in prison and ordered to pay over \$1 million in restitution after she pleaded guilty to filing 70 false tax returns for herself and others.

Jennifer True, 45, who previously pleaded guilty to eight counts of wire fraud and identity theft, was sentenced Thursday in U.S. District Court in Boston, the Eagle-Tribune reported.

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Media

Law360

Disbarred Mass. Atty Gets 2 Years For Pilfering From Trust

By Brian Dowling · May 7, 2021, 5:23 PM EDT

A Massachusetts federal judge on Friday sentenced a disbarred attorney who admitted to embezzling nearly \$600,000 from a client's trust account to two years in prison, telling the defendant his personal troubles don't discount the seriousness of his crime.

Moments after U.S. District Judge Mark A. Wolf read the terms of the sentence to Kevin M. Brill, the judge said Brill was "no more privileged than almost all the people who appear before me."

Brill told the court in his sentencing papers that his 2009 divorce was one of the precipitating events that led to the theft, which started in 2012. But Judge Wolf explained that plenty of other people get divorced without resorting to stealing from trusting clients.

"You were trusted by somebody who didn't trust many people. You betrayed that trust," Judge Wolf told Brill, who appeared in court for the sentencing. "May be psychologically it is difficult to determine why you did it, but maybe it's very simple: You wanted more money, and the money was there."

Brill, a co-trustee of a family trust for Marilla van Borsen, embezzled \$389,896 into his personal account over six years until the crimes became apparent in February 2018. He has since repaid more than \$378,000 to the trust, according to the government.

He [pleaded guilty](#) in January to six counts of wire fraud and four counts of filing false tax returns.

Manchester drywall contractor sentenced on federal tax fraud charges

By Paul Feely

The New Hampshire Union Leader
Manchester, New Hampshire
April 14, 2021

A Manchester man was sentenced in federal court Wednesday to 18 months in prison for employment tax fraud, officials said.

According to court documents, from 2011 to 2013 Walter Rodriguez assisted several drywall companies avoiding paying employment taxes by maintaining off-the-books payrolls.

Rodriguez — who owned and operated his own drywall business, Walter Rodriguez Drywall and Finish (WR Drywall) — found workers for the companies for various construction jobs. The companies then issued checks in the names of fake or fraudulent identities, then gave those checks to Rodriguez, who converted the checks to cash at local check-cashing businesses and paid the workers off the books.

In total, court documents show Rodriguez had a hand in paying out \$1.7 million in unreported wages, resulting in \$415,000 in lost employment taxes.

In addition to his prison term, U.S. District Judge Stephen J. McHaffie ordered Rodriguez to serve one year of supervised release and pay approximately \$415,163 in restitution to the United States.

June 2021

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Parallel Civil & Criminal Investigations

Criminal Tax Day – June 4, 2021

The Panel

- Barbara Kaplan, Shareholder, Greenberg Traurig, LLP
- Carolyn Schenck, National Fraud Counsel and Assistant Division Counsel (International), SB/SE, Office of Chief Counsel, IRS
- Damon Rowe, Executive Director, IRS Office of Fraud Enforcement

- Sharon L. McCarthy, Partner, Kostelanetz & Fink, LLP
 - Moderator

Disclaimer

This presentation and the views expressed herein reflect the unofficial, individual views of the government speakers and do not necessarily represent IRS policy. The slides used in this presentation were prepared by the moderator.

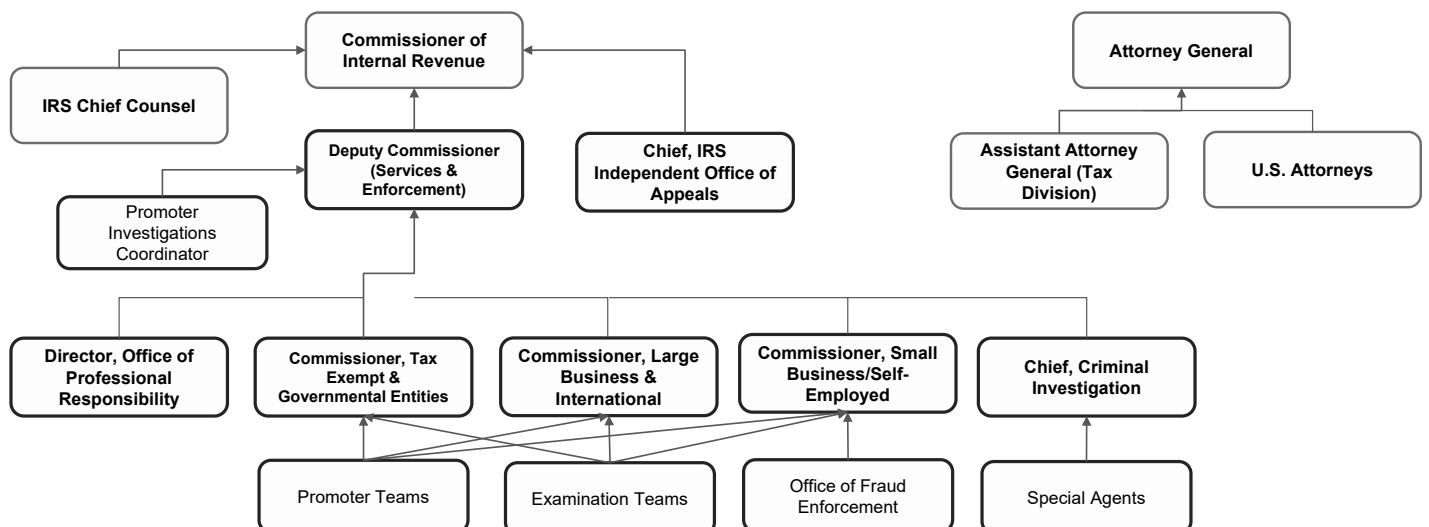
Objectives

- Understand the players in Federal tax enforcement
- Identify who investigates and takes enforcement action against taxpayers, including:
 - Similarities and differences in scope of authority, objectives and approach
 - Coordination or sharing of information among them
- Weigh the issues that arise when battling on multiple fronts
 - Juggling productions, priorities and privilege assertions in parallel proceedings
 - Anticipating criminal exposure during civil actions

Who's Who in IRS Tax Enforcement

- IRS
 - Exam teams
 - Office of Fraud Enforcement
 - Criminal Investigations
 - Chief Counsel

Simplified Overview of Federal Tax Enforcement



IRS Fraud Enforcement Efforts

Office of Fraud Enforcement

Direct report to SB/SE Deputy Commissioner,
Collection & Operations Support

Damon Rowe, Executive Director

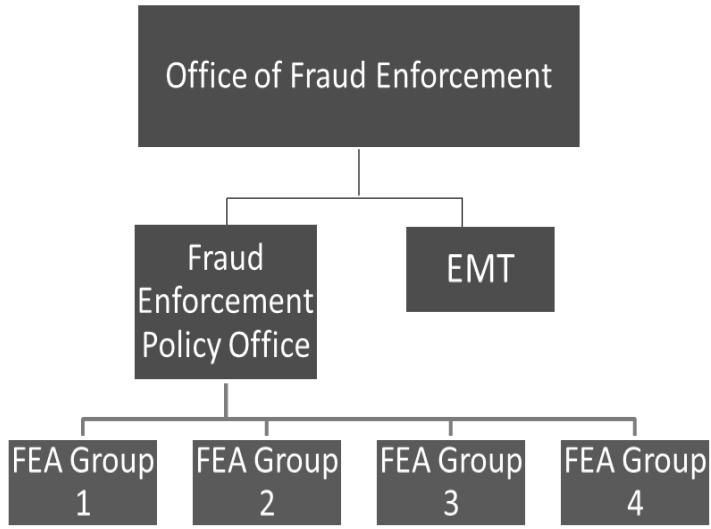
Carolyn Schenck, National Fraud Counsel

Team

- Headquarters
- Enforcement Policy Office
- Fraud Enforcement Advisors

Focus

- Enforcement initiatives
- Civil fraud cases
- Criminal referrals



IRS Fraud Enforcement Efforts

Office of Fraud Enforcement



Counsel Partnership

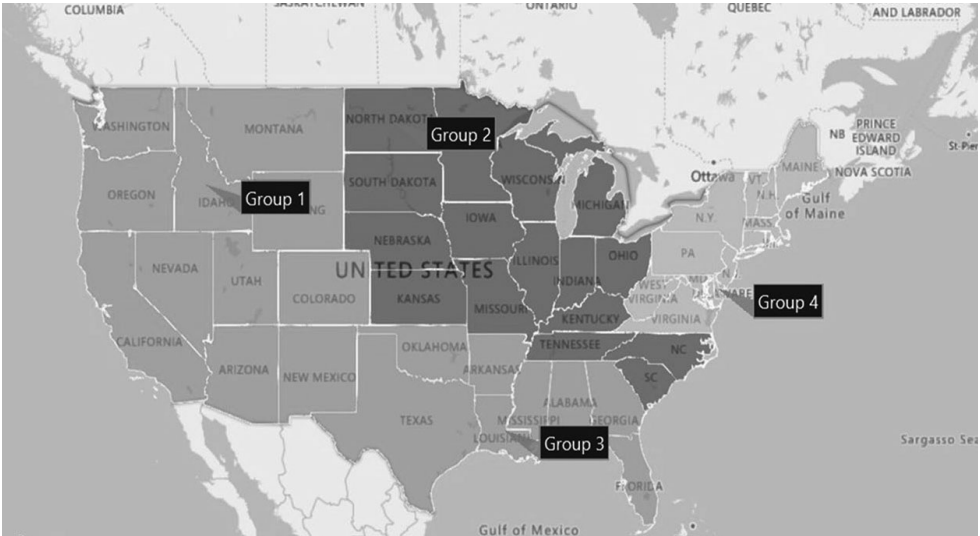
Assistance with investigative steps

- Summons, interviews, treaty requests
- Analyzing data
- Penalty development (fraud, FBAR, international information returns)

Element-based review of civil fraud cases and criminal referrals

Review of new legislation

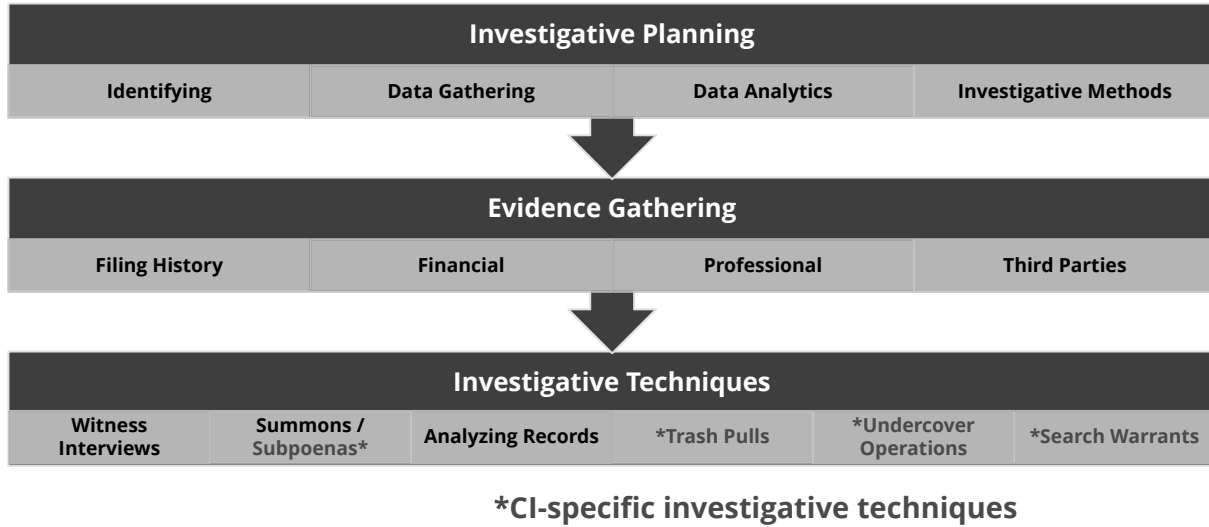
IRS Fraud Enforcement Efforts Office of Fraud Enforcement



Office of Fraud Enforcement Priorities and Areas of Focus

<i>High wealth related schemes</i>	• Syndicated conservation easements and micro-captive insurance arrangements
<i>High wealth taxpayers</i>	• High-wealth taxpayers who have other businesses, like a related S corporation
<i>Non-filers</i>	• Taxpayers deliberately not filing required returns
<i>International taxpayers</i>	• International taxpayers now face scrutiny and possible fraud investigations when they come back into the system or make a voluntary disclosure
<i>Virtual Currency</i>	• Taxpayers using virtual currency who are failing to report their transactions
<i>Questionable refunds</i>	• Tax preparers and taxpayers involved in fraudulent method to obtain refunds such as tax identity theft and earned income tax credit fraud
<i>Offer in compromise</i>	• Taxpayers and their representatives who make false financial disclosures in an attempt to fraudulently settle their tax liability
<i>Employment taxes</i>	• Taxpayers who repeatedly withhold from employees and evade payment of taxes to IRS as well as employers who do not file required payroll returns

Identifying Tax Fraud



Partnership Between IRS and Department of Justice



Investigation Options

Conduct Parallel Investigation



Temporarily delay any overt steps of the civil investigation

Commence only a civil investigation

Proceed only with a criminal investigation

What is a Parallel Proceeding?

- Multiple investigations or litigations arising out of the same set of facts or transactions
- Brought by combination of government agencies – civil, criminal, or administrative
- In tandem or in succession
- Addressing different public interests

Issues Raised by Parallel Proceedings

- Fifth Amendment right against self-incrimination
- Attorney-client and other privileges
- Cooperation between government agencies
- Juggling the demands of civil and criminal proceedings

How Parallel Investigations Occur

- Substantial Revisions to the Tax Whistleblower Statute
- Expansion of False Claims Act
- DOJ Invitations to Share Whistleblower Claims
- Data thefts and leaks have multiple jurisdictions pursuing simultaneous and often dissimilar investigations
- Increased global exchange of information – automatic and by request, formal and informal – results in new civil and/or criminal exposure
- Delegation of authority to issue Civil Investigative Demands

Six Way Conference - Participants



Criminal

- (1) Special Agent
- (2) Supervisory SA
- (3) Counsel Attorney (CT)

Civil

- (4) Revenue Agent/Officer,
- (5) Supervisory Revenue Agent/Officer
- (6) Counsel Attorney (SBSE/LBI/TEGE)

Optional

- Technical Specialists
- IRS Fraud Technical Advisor
- Criminal AUSA or DOJ Tax attorney

Six Way Conference – Quarterly Meetings

- Purpose of six-way conferences is to determine how to balance civil and criminal aspects of case
- Identify those instances where civil and criminal actions should be coordinated to stop abusive promoters and return preparers
- Conference should be held within 20 days of examiner receiving case
- Once a parallel investigation is started, six-way conference meetings are held quarterly
- Meetings are used to communicate developments and facilitate information sharing between examiners and special agents
- Quarterly meetings are held until civil proceedings are complete or civil investigation is placed in fraud suspense
- Grand Jury information is not shared with civil functions

History that Led to Parallel Proceedings

- Criminal and civil investigations proceeded *seriatim*
- Criminal investigations proceeded to conclusion, with referral to civil enforcement only if insufficient evidence to support an indictment
- Referral to civil enforcement often occurred many years after conduct ended
- Prior requests from the civil side suggested a dodged criminal proceeding
- Parallel proceedings were authorized but not frequently

U.S. v Kordel, 397 U.S. 1 (1970)

- FDA began investigating individual defendants for possible violations of Food, Drug, and Cosmetic Act
- USAO began *in rem* action against corporation's products, filed a libel action
- Corporation answered the libel action, appearing as claimant
- FDA issued interrogatories and notice of contemplated criminal proceeding
- Corporation moved to extend time to answer interrogatories until after criminal proceeding or alternatively to stay the civil proceeding
- Court denied the motion for failure to demonstrate substantial harm
- Defendants indicted and convicted on evidence and leads obtained from answers to interrogatories issued in civil case
- Supreme Court, reversing 6th Circuit, affirmed convictions on grounds that parallel proceedings are appropriate and necessary to effective law enforcement

U.S. v Tweel, 550 F.2d 297 (5th Cir. 1977)

- IRS CI Special Agent involved with civil audit of earlier years, but withdrew
- Accountant representing defendant at audit asked if special agent was involved
- Revenue agent said no, and “did not disclose ... that this audit was not a routine audit to which any taxpayer may be subjected from time to time,” but rather was conducted at DOJ’s request
- Defendant’s records were given to the revenue agent for copying
- “It is a well established rule that a consent search is unreasonable under the Fourth Amendment if the consent was induced by the deceit, trickery or misrepresentation of the Internal Revenue agent.”
- Revenue agent’s response, while the literal truth, “was a sneaky deliberate deception by the agent ... and a flagrant disregard” of the defendant’s rights
- Court suppressed the documents and reversed the conviction.

U.S. v LaSalle, 437 U.S. 298 (1978)

- IRS Special Agent received an assignment to investigate any possible tax violations and sought data from US Attorney’s Office and several other government agencies
- Taxpayer received rental income from trust held by LaSalle National Bank
- SA issued summons to Bank, which refused to produce arguing TP had exclusive power to produce or withhold items sought
- DOJ petitioned to enforce summons and SA testified that when petition was filed he had not determined whether charges were justified
- USDC and COA denied petition, finding that SA’s purpose from onset was to uncover evidence of criminal conduct
- Supreme Court reversed holding: *before IRS refers matter to DOJ, the civil and criminal elements of tax fraud cases are inseparable and thus within congressionally authorized purposes of the IRS’s civil summons authority.*

U.S. v Scrushy, 366 F.Supp.2d 1134 (N.D.Ala. 2005)

- Seiden, senior accountant with SEC Department of Enforcement scheduled deposition of Scrushy in Atlanta. Two days earlier, Seiden received call from US Attorney's Office and was advised of fraud at Health South, Scrushy's company, and that Scrushy allegedly knew about the fraud
- AUSAs asked SEC to move deposition to Birmingham, Scrushy's city of residence, and provided instructions on which subjects to ask about and which to avoid.
- Seiden did not advise Scrushy of existence of criminal investigation, asked questions based on information from prosecutors, and testified that but for conference call, questions would not have been asked
- Court held civil and criminal investigations improperly merged when US Attorney's Office called SEC office to instruct SEC investigators
 - *Proper parallel proceedings are "side-by-side train tracks that never intersect"*

U.S. v Stringer, 535 F.3d 929 (9th Cir. 2008)

- Investigations into Stringer and Samper for possible securities-law violations in connection with their company.
- SEC, USAO and FBI each opened investigations into Stringer's conduct
- Agencies worked closely together and in secret
 - SEC offered to conduct interview in certain jurisdictions
 - USAO instructed SEC attorneys how to best proceed
 - SEC instructed court reporter to conceal AUSA participation
 - SEC evaded direct questions regarding joint investigation
- USDC dismissed indictments based on abuse of investigative process
- 9th Circuit reversed, citing Standard Form 1662
- Held: *Agencies can run joint investigations without informing the defendant.*

Parallel Investigations

- IRM 4.32.2.7 - Simultaneous, but separate, civil and criminal investigations of a common individual or entity
- Policy Statement P-4-26 - While it may be necessary in the interest of criminal enforcement to identify those instances where criminal actions will take precedence over civil aspects, it is also necessary to identify those instances where civil and criminal actions should be coordinated to curtail abusing promoters and return preparers
- Parallel proceedings involve simultaneous investigation or litigation of separate civil and criminal aspects of case involving common set of facts
- Not “joint” investigations
- Coordination, cooperation and communication keys to success
- Criminal considerations typically take precedence in any parallel discussion

Policy Statement P-4-26

The purpose of criminal and civil tax investigations is to enforce the tax laws and to encourage voluntary compliance

Enter Policy Statement P-4-26

- While it may be necessary in the interest of criminal enforcement to identify those instances where criminal actions will take precedence over civil aspects, it is also necessary to identify those instances where civil and criminal actions should be coordinated to curtail abusing promoters and return preparers

Balancing Act

- The IRS should consider parallel proceedings in situations where a civil injunction could be an effective tool
- Civil and Criminal divisions must weigh the benefits and risks and make an informed decision on a case-by-case basis
- In some instances, parallel proceeding will serve the gov't interest best. In others, either the civil or criminal proceedings may take precedent

Department of Justice Policy

Justice Manual 6-4.400:

Consistent with the Department's policies for coordinating criminal, civil, and administrative actions, the Tax Division uses all available judicial remedies and procedures to enforce the tax laws. These actions include criminal prosecutions, civil injunction actions, summons enforcement actions, collection actions, and the defense of civil refund suits. The Government may take these actions simultaneously or sequentially.

Defense Strategy Issues

- Priorities
- Navigating parallel proceedings
- Privilege assertions
- Evaluating criminal exposure
- Avoiding civil litigation/staying civil case

Settling Parallel Proceedings

- Global Settlements
 - DOJ Policies
 - Bringing the Players to the Table
 - Criminal, Civil and Administrative
 - Domestic and International
 - Impact of Corporate Resolutions on Individuals
 - Closing Agreements

U.S. v. Zak, 18-CV-5774 (N.D. Ga 2021)

- In December, 2018, USA for Northern Va. filed a complaint to enjoin Zak, Clark, EcoVest Capital, Inc. and others from organizing, promoting or selling conservation easement syndications, alleging easements were grossly overvalued.
- In March, 2021, Zak entered into a settlement agreement with DOJ permanently barring her from engaging in any conservation easement transactions.
- Zak did not admit wrongdoing as part of the settlement nor was she required to pay any money.
- No criminal charges have been brought against Zak.

Questions?

All attendees can submit questions via the chat feature on the virtual meeting interface.

Paycheck Protection Program Loan Fraud

Presented by:

Eric L. Green, Esq.
Walter Pagano, CPA, CFE
Jay Nanavati, Esq.
Zhanna A. Ziering, Esq.

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- “My client used their PPP Loan money to pay for their kid's medical school...is this going to be an issue?”
- The Paycheck Protection Program has been something of a whirlwind as thousands of accountants found themselves drafted into service as loan agents - mostly unpaid agents.
- And, shocking, there was fraud. Quite a bit of fraud.

3

Cracking Down on Paycheck Protection Program (PPP) Loan Fraud

- What are the government's efforts to crack down on fraudsters who took advantage of the PPP Loan program?
- What is the IRS doing about it?
- Where are the government's enforcement efforts headed on this topic?

4

Essential Elements

1. Forgivable loans – All loan terms are the same for everyone including 1.00% fixed rate.
2. Forgivable, if loan proceeds are used to cover payroll costs;
3. Most mortgage interest, rent, and utility costs incurred before February 15, 2020 over the eight week period after the loan is made; and
4. Employee and compensation levels are maintained.
5. Payroll costs are capped at \$100,000 on an annualized basis for each employee and not more than 25% of the forgiven amount may be for non-payroll costs.

5

Essential Elements (continued)

6. No prepayment penalties or fees.
7. No collateral is required.
8. No personal guarantee requirement.
9. However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against the borrower.

6

Payroll Costs Include

1. Salary, wages, commissions, or tips capped at \$100,000 on an annualized basis for each employee.
2. Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit.
3. State and local taxes assessed on compensation.
4. For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

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Borrower's Certifications Made in Good Faith

- Current economic uncertainty makes the loan necessary to support the borrower's business.
- Borrower was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors reported on Form(s) 1099-MISC.
- The funds will be used to retain workers and maintain payroll, or to make mortgage, lease, and utility payments.
- Borrower understands that if the funds are knowingly used for unauthorized purposes, the federal government may hold the borrower legally liable, such as for charges of fraud.
- Borrower has not and will not receive another loan under this program (First Draw).

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Borrower's Certifications Made in Good Faith (cont'd)

- Borrower affirms that the tax documents are identical to those submitted to the IRS.
- Borrower will provide to the lender documentation that verifies applicable expenses.
- Borrower understands that not more than 40% of the forgiven amount may be for non-payroll costs.
- Borrower understands, acknowledges, and agrees that the lender can share the tax information with the SBA's authorized representatives, including authorized representatives of the SBA OIG, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.
- All the information provided in the borrower's application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.

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U.S. v. Hadi Isbaih – IRS CI, FBI and SBA OIG

- Isbaih, a tax return preparer, was indicted on April 6, 2021 on federal wire fraud charges for allegedly fraudulently assisting customers in obtaining millions of dollars in PPP loans under the CARES Act.
- According to the indictment, Isbaih submitted on behalf of hundreds of customers PPP and Economic Injury Disaster Loan (EIDL) applications that contained materially false statements and misrepresentations about customers' businesses, such as gross revenues, expenses, and number of employees.
- Isbaih's false statements and misrepresentations caused millions of dollars in fraudulently obtained PPP and EIDL funds to be disbursed to those customers.
- Isbaih charged customers an upfront fee of approximately several hundred dollars before he submitted the fraudulent applications on the customers' behalf.
- If the customers received the PPP or EIDL funds based on those applications, Isbaih charged the customers an additional fee of approximately \$1,000.

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U.S. v. Raymond Magana – IRS CI and SBA OIG

- Magana plead guilty on January 26, 2021 to a federal criminal charge that he fraudulently obtained more than \$1 million in PPP loans for his sham companies by submitting fake tax documents and fraudulent employee information.
- Magana submitted to banks applications for PPP loans that contained false statements about the number of employees and the amount of payroll expenses.
- Magana falsely listed that his company's average monthly payroll was \$376,167, and it employed 40 workers.
- Magana admitted to submitting fraudulent tax documents that reported \$4,402,000 in annual wages paid to 40 employees in 2019 and \$852,000 paid in employee wages during Q1 2020.
- Magana's company never reported paying any employees, and his loan application also did not include a list of employees or associates for the company

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U.S. v. David T. Hines – FDIC OIG, US Postal Inspection Service, SBA OIG, IRS CI and FRS OIG

- Hines plead guilty on February 10, 2021 for fraudulently obtaining approximately \$3.9 million in PPP loans and using those funds, in part, to purchase a \$318,000 Lamborghini for himself.
- Hines admitted that he caused his companies to submit fraudulent loan applications that made numerous false and misleading statements about the companies' respective payroll expenses.
- Hines admitted that he did not make payroll payments that he claimed on his loan applications; instead, Hines used the PPP proceeds for personal expenses.

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U.S. v. Steven R. Goldstein – IRS CI and SBA OIG

- Goldstein plead guilty on December 7, 2020 to a federal criminal charge that he fraudulently obtained \$655,000 in PPP loans for his companies by submitting fake tax documents and false employee information.
- Goldstein knowingly submitted applications for PPP loans to banks that contained false statements about the number of employees and the amount of employee payroll expenses.
- Goldstein listed false information to Bank of America that his companys' average monthly payroll was \$120,000 and it employed a total of 43 workers.
- Goldstein also submitted fabricated tax documents that falsely stated his companys' payments to its employees in 2019 totaled \$1,704,000, and that the company reported \$308,000 in wages paid to 13 employees during Q1 2020

U.S. v. Mukund Mohan – IRS CI, FHFA OIG, IRS TIGTA and FDIC OIG

- Mohan plead guilty on March 15, 2021 to wire fraud and money laundering in connection with is scheme to obtain over \$5.5 million in PPP loans and laundering the proceeds.
- Mohan submitted at least eight fraudulent PPP loan applications on behalf of six different companies to federally insured financial institutions.
- Mohan made numerous false and misleading statements about the companies' respective business operations and payroll expenses.

U.S. v. Mukund Mohan – IRS CI, FHFA OIG, IRS TIGTA and FDIC OIG

- Mohan submitted fake and altered documents, including fake federal tax filings and altered incorporation documents.
- Mohan, for example, misrepresented to a lender that, in 2019, one company had dozens of employees and paid millions of dollars in employee wages and payroll taxes.
- Mohan purchased the company on the Internet in May 2020 and it had no employees and no business activity

U.S. v. Hubert Ivan Ugarte – IRS CI, FBI and DOT OIG

- Ugarte plead guilty on April 6, 2021 for fraudulently obtaining a PPP loan for his trucking companies.
- Ugarte admitted submitting a fraudulent loan application to the SBA.
- Ugarte admitted that he fraudulently obtained \$210,000 in PPP loans after failing to disclose that he was under indictment for his role in a fraudulent trucking bribery scheme

U.S. v. Jae H. Choi – IRS CI, US Postal Inspection Service, SBA OIG and SSA OIG

- Choi was arrested on September 3, 2020 and charged with fraudulently obtaining approximately \$9 million in PPP loans.
- Choi was charged by complaint with three counts of bank fraud and one count of money laundering.
- Choi allegedly submitted three fraudulent PPP loan applications to three different lenders on behalf of three different companies that purportedly provided educational services.

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U.S. v. Jae H. Choi – IRS CI, US Postal Inspection Service, SBA OIG and SSA OIG

- Choi allegedly fabricated the existence of hundreds of employees, manipulated bank and tax records, and falsified a driver's license on the applications.
- Choi allegedly falsely represented to the lenders that the companies controlled by him had paid over \$3 million in monthly wages.
- Choi allegedly used the fraudulently obtained PPP loan proceeds to pay for numerous personal expenses, including to buy, among other things, a nearly \$1 million home, to fund \$30,000 in remodeling and other improvements, and to invest millions more in the stock market through an account held in the name of his spouse

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U.S. v. Nadine Consuelo Jackson – IRS CI and SBA OIG

- Jackson was sentenced to 24 months in prison on March 16, 2021 for fraudulently obtaining more than \$2.5 million PPP loans.
- Jackson was sentenced for committing wire fraud and making a false statement to a bank related to two PPP loans and one EIDL loan.
- Jackson fraudulently sought forgivable PPP loans in the amount of \$1.3 million and \$1.2 million from financial institutions by claiming to have more than 70 employees earning wages at her private investigation and security services business.

U.S. v. Nadine Consuelo Jackson – IRS CI and SBA OIG

- Jackson listed 73 employees with payroll wages totaling approximately \$500,000 on loan application.
- In actuality, there were few or no other employees working at her business.
- Jackson also applied for and received \$54,000 in EIDL funding from the SBA.
- Jackson stated in the EIDL application she had eight employees

U.S. v. Leonel Rivero – IRS CI and SBA OIG

- Rivero, a tax return preparer, was charged on March 17, 2021 by a criminal information with wire fraud in connection with a scheme to obtain over 100 PPP loans.
- Rivero submitted approximately 118 PPP loan applications on behalf of himself and his accomplices.
- Rivero sought more than \$2.3 million in PPP loans.
- On each PPP loan application, Rivero allegedly falsified the applicant's prior-year income and expenses and submitted fraudulent IRS tax forms.
- Rivero and his accomplices allegedly received approximately \$975,582 in PPP loans as a result of the fraud

U.S. v. Joshua J. Bellamy – IRS CI, FBI and FDIC OIG

- Bellamy was charged on September 10, 2020 in a federal criminal complaint with wire fraud, bank fraud, and conspiracy to commit wire fraud and bank fraud.
- The complaint alleges that Bellamy conspired with others to obtain millions of dollars in fraudulent PPP loans.
- Bellamy is alleged to have obtained a PPP loan of \$1,246,565 for his own company.
- Bellamy allegedly purchased over \$104,000 in luxury goods using proceeds of his PPP loan including purchases of Dior and Gucci jewelry.
- Bellamy is also alleged to have spent approximately \$62,774 in PPP loan proceeds at a casino, and to have withdrawn over \$302,000.
- Bellamy also allegedly sought PPP loans on behalf of his family members and close associates

U.S. v. Dinesh Sah – IRS CI, FDIC OIG and IRS TIGTA

- Sah was indicted on October 9, 2020 on three counts of wire fraud, three counts of bank fraud and one count of money laundering for spending more than \$17 million in PPP loans on lavish personal expenses and filing fraudulent loan applications.
- Sah allegedly submitted 15 fraudulent applications, filed under the names of various purported businesses that he owned or controlled, to eight different SBA-approved lenders seeking approximately \$24.8 million in PPP loans.

U.S. v. Dinesh Sah – IRS CI, FDIC OIG and IRS TIGTA

- Sah allegedly claimed that these businesses had numerous employees and hundreds of thousands of dollars in payroll expenses when, in fact, many of the businesses were created after the CARES Act was enacted and no business had employees or paid wages consistent with the amounts claimed in the PPP applications.
- Sah also submitted fraudulent documentation in support of his applications, including falsified federal tax filings and forged bank statements for the purported businesses.
- Sah ultimately received approximately \$17.7 million in PPP loan funds and allegedly used the proceeds primarily for personal expenses, spending them on multiple homes and luxury cars, including a 2020 Bentley convertible, and sending millions of dollars in international transfers

U.S. v. Bernard Lopez – U.S. Treasury OIG, HHS and FDIC OIG

- Lopez plead guilty on April 21, 2021 for fraudulently receiving PPP funds.
- Lopez caused to be submitted a fraudulent PPP loan application to a lender.
- Lopez falsely represented that his company employed 25 employees, had a monthly payroll expense of approximately \$192,000, and had mortgage/lease and utilities expenses.
- Lopez's misrepresentations and false statements made on his PPP loan application caused the lender to provide Lopez with \$481,502 in federal Covid-19 emergency funds and converted a portion of the proceeds for personal use

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Conclusion

- The government's efforts to crack down on fraudsters who took advantage of the PPP Loan and EIDL programs are bringing to bear the full multi-agency investigative resources of the United States.
- The IRS and its multi-agency partners are auditing and investigating information, documents, certifications and representations made by PPP loan and EIDL applicants and continuing to unabatedly and relentlessly prosecute the perpetrators to the fullest extent of the law.

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Questions?



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The IRS's Use of Data and Artificial Intelligence in Criminal Tax Cases

Presented by:

Eric L. Green, Esq.
Sarah E. Paul, Esq.
John D. (Don) Fort,
Gary L. Alford

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IRS-CI's New Logo

- IRS-CI Chief Lee announced the release of the new logo to mark IRS-CI's new focus on technology
- "This is the new IRS:CI. It is a futuristic, digital, data-driven law enforcement agency"



3

Data Analytics vs A.I.

- Artificial intelligence (AI) refers to the simulation of human intelligence in machines that are programmed to think like humans and mimic their actions. The term may also be applied to any machine that exhibits traits associated with a human mind such as learning and problem-solving.
- Data Analytics is the science of analyzing raw data in order to make conclusions about that information

4

A Word on Social Media

- Tell your clients to shut up on their social media
- Deleting the accounts would be even better
- Client's post everything about their life
- IRS is reading it
- Nothing is ever truly gone

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Impact of Data on Collections

- IRS is comparing 433 CIS Forms submitted with the data collected by FATCA and Virtual Currency John Doe Summonses
- Failure to disclose can be viewed as either a 7201 Evasion of Payment issue, a 7206 False Document Issue, or conspiracy if the practitioner is aware of it
- Its on the 433 and the 1040 – so make sure you ask and get an actual response!

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Payroll Tax Case

- IRS is utilizing algorithms and data points to identify payroll issues
- FTD Alert X Coded Pilot - Tests whether accelerating the timing of alerts increases impact and identifies which taxpayers benefit most from alerts
- EFTPS Early Alerts - near real-time system to identify variances in FTDs that will enable/expand treatment streams
- Datapoints might create the referral, but do not forget about

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Old fashioned sleuthing.....



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Interconnected Databases



- GAO criticizes IRS re matching K-1 data to 1040s (9/2004)
- IRS has no issue matching now!
- Postal Database, DMV records, Information Returns (1099, K-1), real estate listings by license number, owners of entities, real estate previously owned, etc
- Create some headaches for client

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IRS's Use of Data Continues to Grow

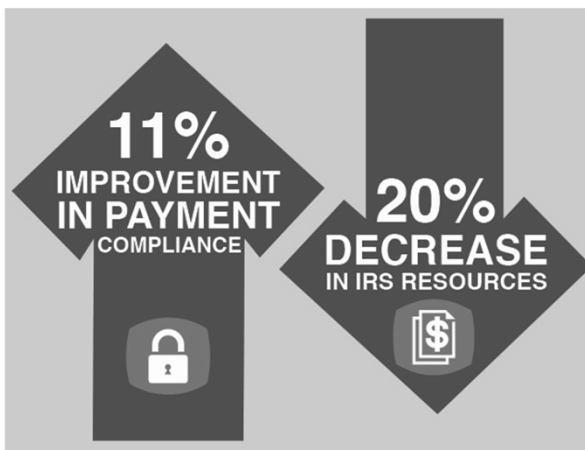
Data and Analytics

from 2007 to 2017

Data Volume **increased 100x** ↑ Number of Users **increased more than 23x**



This growth in data has driven innovation in tax administration research, increased the need for third party reporting and promoted better sharing of data across the IRS. New internal and external requests for data analytics to support new legislative mandates have, however, strained the IRS's capacity to support ongoing and new research.



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IRS CI 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 addresses nationwide key noncompliance areas and emerging threats
- Serves as a continual resource to Field Offices
- Provides training and oversight for large, complex investigations
- Initiatives: Employment Tax, Virtual Currency, FATCA, National Targeting Center

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Joint Chiefs of Global Tax Enforcement (J5)

- Australian Criminal Intelligence Commission (ACIC) & 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)

- International tax group dedicated to combatting transnational tax crime, committed to:
 - **Develop shared strategies to gather information and intelligence**
 - **Drive strategies and procedures to conduct joint investigations**
 - **Collaborate on effective communications**

- Four Working Groups:
 - **Professional Enablers (UK)**
 - **Cyber/Virtual Currency (US)**
 - **Platforms/Data (NL)**
 - **Media and Communications (US)**

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Joint Chiefs of Global Tax Enforcement (J5)

INTERNATIONAL ADVISER

Contact Register

REGIONS INDUSTRY INVESTMENT NRI IA BEST CP
ADVISER 100 PRACTICE CC

Five countries unite in global tax evasion crackdown

By Ruthie Landier, 23 Jan 20

Crash around the world "should be on notice that their days of non-compliance are over"



"Their days are over": Global tax sting implicates hundreds of Aussies

Lucy Owen
Yahoo Finance All 23 January 20

Facebook Twitter LinkedIn

Forbes

Billionaires Innovation Leadership Money Business Small Business L&L

EDITORS' PICK | 2,108 Views | Jan 23, 2020, 12:32pm EST

Tax Chiefs Combine Forces In Global Tax Evasion Fight

Kelly Phillips Erb Senior Contributor
Taxes



Aussies caught up in global tax sting images Getty

Hundreds of Australians have been caught up in a global tax sting targeting money laundering and tax evasion.

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Cares Act Fraud

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	Criminal No. 20cr10130
v.	)	Violations:
ELIJAH BUOL,	)	Counts One-Four: Wire Fraud
Defendant	)	(18 U.S.C. § 1343)
	)	Count Five: False Statements to a Financial
	)	Institution
	)	(18 U.S.C. § 1014)
	)	Wire Fraud Forfeiture Allegation:
	)	(18 U.S.C. § 981(a)(1)(C) and
	)	28 U.S.C. § 2461)
	)	False Statement Forfeiture Allegation:
	)	(18 U.S.C. § 982(a)(2)(A))

INDICTMENT

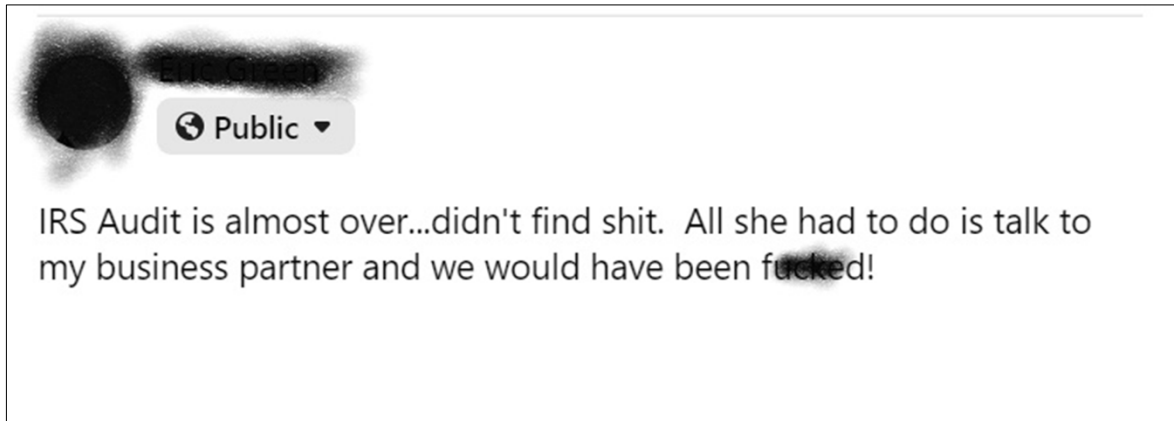
**Phoenix man
charged with fraud
after seeking over
\$450,000 in COVID
relief funds**

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And of course, you can't fix stupid....



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Or this kind of stupid...

- Scott: Eric, we would like to talk with your client about the music collection worth \$250,000. You know the one he didn't list on his 433.
- Eric: How do you know he has a music collection worth \$250,000?
- We watched the documentary online where he walked the film crew around his house showing everything and describing what the appraisals came back as.

{Client plead guilty to evasion and sentenced in 2020}

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Questions?



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Contact

- Eric L. Green, Esq.: egreen@gs-lawfirm.com
- Sarah E. Paul, Esq.: sarahpaul@eversheds-sutherland.com
- John D. (Don) Fort: dfort@kflaw.com
- Gary L. Alford: gary.alford@ci.irs.gov

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Taxpayers Who Fail to File

Criminal Tax Day
June 24, 2021

Hank Kea
Director, Field Collection Operations
Small Business/Self-Employed Division
Internal Revenue Service
Washington, D. C.

Sara G. Neill, Esq.
Capes Sokol
St. Louis, MO

Bryan C. Skarlatos, Esq.
Kostelanetz & Fink, LLP
New York, NY

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Criminal Failure to File or Pay - 26 U.S.C. § 7203

- Any person required . . . to pay any estimated tax or tax, or required . . . to make a return, keep any records, or supply any information, who **willfully** fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law . . . shall. . . be guilty of a misdemeanor. . .
- Willfulness is a “voluntary, intentional violation of a known legal duty.” *Cheek v. United States*, 498 U.S. 192, 200-01 (1991); *United States v. Pomponio*, 429 U.S. 10, 12 (1976).

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Examples From Which Willfulness May Be Inferred

- The failure to file returns in successive years.
- The taxpayer's filing of timely returns in earlier years.
- The taxpayer's receipt of Forms W-2 during the relevant period which may have reminded him of his duty to file.
- The taxpayer's accountant prepared the return(s) at issue.

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Spies Evasion

- Willful failure to file a return, in violation of 26 U.S.C. § 7203, may be elevated to willfully attempting to evade or defeat tax, in violation of 26 U.S.C. § 7201, a felony, by showing an affirmative act.
 - "Tax due and owing" is a required element of 26 U.S.C. § 7201.

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Examples of Affirmative Acts

- Keeping a double set of books.
- Making false or altered entries.
- Making false invoices.
- Destruction of records.
- Concealing sources of income.
- Handling transactions to avoid usual records.
- False statements to IRS agents.
- Holding property in nominee names.
- Structuring cash transactions to evade the filing of Bank Secrecy Act reports.
- Any other conduct likely to conceal or mislead.

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Fraudulent Failure to File Penalty—IRC § 6651(f)

- There must be clear and convincing evidence to prove that the failure to file was due to fraud.
- The courts focus on key badges of fraud such as:
 1. Accounting irregularities (e.g., two sets of books, false entries on documents).
 2. Obstructive actions of the taxpayer (e.g., false statements, destruction of records, transfer of assets, failure to cooperate with the examiner, concealment of assets).
 3. Implausible or inconsistent explanations of behavior.
 4. Engaging in illegal activities (e.g., drug dealing) or attempting to conceal illegal activities.
 5. Inadequate records.
 6. Dealing in cash.
 7. Failure to file returns.
 8. Education and experience.

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Voluntary Disclosures: Benefits and Consequences

- Benefits
 - Avoiding referral to IRS-CI and therefore, referral to U.S. Department of Justice Tax Division
 - Some degree of predictability
 - Some reduction in potential penalty exposure
 - Most beneficial for clients with high risk of prosecution
- Consequences
 - Civil fraud penalty, estimated tax penalties, and, where applicable, willful FBAR penalty are a given and may carry over to state tax liabilities
 - Failure to reach an agreement at the audit stage may result in increased look-back period and civil penalties
 - Failure to cooperate, including participation in and full disclosure during interviews, could result in loss of protection from criminal referral

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Procedures for Voluntary Disclosure

- Voluntary disclosure is centralized with IRS-CI in Philadelphia
- IRS-CI requires preclearance for all voluntary disclosures
- IRS Form 14457:
 - Part 1: Preclearance (Do Not Fill Out Part 2)
 - Part 2: Preliminary Acceptance
- After preliminary acceptance, CI sends cases to a civil compliance unit in Austin for distribution to the appropriate civil examination unit

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Procedures for Voluntary Disclosure (Con't)

- All cases will be assigned for examination
- All cases will follow standard examination procedures
 - 6-year disclosure period
 - All required returns and reports for the disclosure period
 - Full cooperation
 - Interim/IRM guidance in considering penalties
- IRS expects the majority of cases to be resolved by agreement

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Procedures for Voluntary Disclosure (Con't)

- Penalties:
 - Civil fraud penalty (75% of tax due) on one year with the highest tax deficiency
 - Estimated tax penalties for all years (time value of money)
 - Willful FBAR penalty will be asserted in accordance with existing IRS penalty guidelines under IRM 4.26.16 and 4.26.17 (50% of highest balance of accounts during disclosure period)
 - Penalties for failure to file information returns will be at examiner's discretion
 - Penalties related to excise taxes, employment taxes, estate and gift tax, etc. will be based on facts and circumstances, with examiners coordinating with subject matter experts

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Procedures for Voluntary Disclosure (Con't)

- Taxpayers may:
 - Request imposition of accuracy-related penalties instead of civil fraud penalties or non-willful FBAR penalties instead of willful penalties. Given the objective of the voluntary disclosure practice, granting requests for the imposition of lesser penalties is expected to be exceptional. Taxpayer must present convincing evidence to justify the reduction.
 - Request an appeal with the Office of Appeals.

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Procedures for Voluntary Disclosure (Con't)

- Revocation of Preliminary Acceptance:
 - “The Service will provide procedures for civil examiners to request revocation of preliminary acceptance when taxpayers fail to cooperate with civil disposition of cases.”
- Revocation = potential criminal prosecution

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Tax Loss Calculation

	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

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	2017	2018	2019	2020
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

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Tax Loss

Loss for Sentencing/Restitution	\$ 377,270.00
Civil Assessment	
Tax	\$ 377,270.00
Penalty (IRC 6663)	\$ 282,952.50

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Sentencing Guidelines

§2T4.1. Tax Table

	Tax Loss (Apply the Greatest)	Offense Level
(A)	\$2,500 or less	6
(B)	More than \$2,500	8
(C)	More than \$6,500	10
(D)	More than \$15,000	12
(E)	More than \$40,000	14
(F)	More than \$100,000	16
(G)	More than \$250,000	18
(H)	More than \$550,000	20

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Sentencing Guidelines

SENTENCING TABLE
(in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87

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Tax Loss: \$377,270

- Offense Level: 18
- Criminal History 0
- Range: 27-33 months
- Acceptance of responsibility – 3 levels
- Adjusted Offense Level: 15
- Range: 18-24

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