

The Unfolding of a Criminal Tax Case

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Overview

- Criminal Tax Cases are not like criminal dramas seen on TV.
- These cases are fought over numbers in a conference room not in a courtroom, with the assistance of criminal tax attorneys and forensic accountants.
- Our panel will describe what happens in these meetings and the roles of prosecutor & agents vs. criminal tax attorney & forensic accountants.
- We will show you why most cases are resolved with pleas.

How do criminal tax cases begin?

- Fraud referrals from
 - Exams
 - Collection Cases
 - Exes: Whistleblowers/Ex-Spouses/Ex-employees
- Structuring investigations - filing of CTRs and SARs triggers investigation; IRS is charged with investigating financial crimes under titles 26 and 31
- AI & Other Agencies
- Expansions of Non-Tax Grand Jury investigations (narcotics, terrorism financing, money laundering, racketeering, etc.)

Two Type of CI Investigations

1. Administrative Investigation (Agency only without DOJ):

- CI Special Agent opens Subject Criminal Investigation, usually interviews subject early in investigation and separately and simultaneously, return preparer.
- CI uses summonses to obtain bank and other records and interviews witnesses
- SA will issue criminal summons to business, return preparer, financial institutions, etc.
- Subject receives notification of summonses issued

Two Type of CI Investigations

2. Grand Jury investigation:

- All tax grand jury investigations must first be authorized by DOJ Tax Division
- SA typically works with an AUSA
- CI serves GJ subpoenas (confidential) to obtain bank and other records, witness testimony, without notice to subject and with request for nondisclosure
- Government can grant witness immunity in exchange for testimony

Special Agent Report



Role of DOJ

- Both types of investigations culminate in Special Agent's Report (SAR)
- All tax prosecutions must be authorized by DOJ Tax Division
 - IRS CI Recommendation for prosecution undergoes multiple layers of review
- Have the opportunity for a conference
- Other crimes do not require DOJ authorization (ie. Title 31 FBAR Charges)

Role of the United States Attorney

- Grand Jury Investigation
- Prosecution (prosecute or not)
- Proffer and/or Reverse Proffer

Defense Attorney Initial Contact With Client

- Phone call from potential client;
- IRS CI Agents have knocked on the door; interviewed or tried to interview the client, and/or executed search warrant or arrest
- Criminal tax attorney runs a conflicts check/engages client
- Attorney engages forensic accountant under *United States v. Kovel*, 296 F.2d 918 (2d Cir. 1961)

Client- focused investigation

- Importance of confidentiality
- Payment issues
- Document preservation and collection

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A Tax Controversy and Tax Litigation Boutique

I unequivocally invoke my right to have my attorney present during any questioning. I unequivocally invoke my right to remain silent. I do not agree to speak with you without my attorney present.

My attorney can be reached at the information below. Contact her now.

Guinevere Moore

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Next steps

- Advise IRS/DOJ/AUSA of Representation
- Letter requesting conference
- Ask for reverse proffer from Government
 - Overview of the government's evidence and proposed charges
 - Govt will share the tax years, potential charge(s) and proposed tax loss
 - Govt will usually give a detailed overview of willfulness evidence
 - Willfulness = a voluntary and intentional violation of a known legal duty
 - Govt will provide this info because it usually results in a plea, saving time and resources. Over 90% of criminal tax cases are resolved by plea agreement.

Role of Forensic *Kovel* Accountant

- Review client financial information and documents
- Review information provided by Government
- Reconstruct income and expenses
- Provide detailed data and supporting documentation to criminal tax attorney
- Can result in lowered potential sentence and if low enough, may negate willfulness and provide opportunity for declination

Role of Criminal Tax Attorney

- Review information provided by Government, client and forensic accountant
- Proffer a more accurate picture of tax loss to the Government
- May result in reduced sentencing guidelines exposure
- If reconstructed tax loss is low enough (for instance, where Government had not considered basis in capital gains, etc.), may be able to argue for a decline of prosecution
 - Proffer to USAO
 - Conference at DOJ Tax

Tax Loss Table

§2T4.1. Tax Table

	<u>Tax Loss (Apply the Greatest)</u>	<u>Offense Level</u>
(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
(I)	More than \$1,500,000	22
(J)	More than \$3,500,000	24
(K)	More than \$9,500,000	26
(L)	More than \$25,000,000	28
(M)	More than \$65,000,000	30
(N)	More than \$150,000,000	32
(O)	More than \$250,000,000	34
(P)	More than \$550,000,000	36.

Sentencing Table

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
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

Tax Loss in Sentencing Advocacy

- Tax loss is only one factor
- 18 USC 3553 – 7 factors

next panel is going to cover sentencing advocacy

Civil Fallout

- Restitution if agreed/imposed cannot be compromised
- Fine
- Civil Assessment of Tax Loss
- 75% civil fraud penalty
- Interest

Questions?

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