

# Knock Knock: What To Do When Special Agents are at Your Door



Moderator: Sara Spodick, Esq., Quinnipiac Law School

Panelists: Craig Cafaro, Citrin Cooperman

Barbara T. Kaplan, Esq., Greenberg Traurig, LLP

R. Damon Rowe, Esq. Meadows Collier

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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

# 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

# Exams

- Civil Exam where examiner believes they have “firm indications of fraud”
- Examples would be 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, 2<sup>nd</sup> set of books, dealing only in cash, etc.

# 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)

# Hell Hath No Fury – Ex-Spouses

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

# 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”

# 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 which involves a “transaction” in “currency” in excess of \$10,000.





# Suspicious Activity Reports – FinCen Form 111



Financial Crimes Enforcement Network  
U.S. Department of the Treasury

## FinCEN Suspicious Activity Report (Form 111)

### Exhibit 1: Filings by Year & Month from Depository Institution Industry\* January 1, 2014 through December 31, 2022

MONTH	2014	2015	2016	2017	2018	2019	2020	2021	2022
January	65,898	66,101	70,460	75,234	75,619	88,130	100,171	97,471	131,949
February	61,637	65,984	73,927	73,806	71,908	86,497	90,721	98,318	134,587
March	64,462	73,420	83,964	88,071	87,326	97,933	101,588	116,790	165,396
April	73,302	74,049	81,282	77,383	78,763	91,088	102,478	114,397	157,832
May	75,301	68,216	80,822	77,500	84,790	95,166	88,941	109,821	149,970
June	71,773	77,162	91,400	77,568	79,736	85,967	97,906	120,479	156,862
July	75,559	77,508	83,284	69,150	79,409	92,161	103,108	123,991	149,802
August	70,856	75,503	84,726	82,948	90,955	97,649	101,907	126,849	170,933
September	70,703	75,863	78,014	72,517	76,220	90,842	108,496	128,338	159,841
October	77,735	78,096	76,943	76,284	89,545	104,884	110,047	123,265	150,988
November	63,761	71,500	75,599	75,756	84,271	91,112	95,903	124,985	148,013
December	68,327	76,505	78,116	70,066	79,161	94,971	110,079	142,037	151,745
<b>Subtotal</b>	<b>839,314</b>	<b>879,907</b>	<b>958,537</b>	<b>916,283</b>	<b>977,703</b>	<b>1,116,400</b>	<b>1,211,345</b>	<b>1,426,741</b>	<b>1,827,918</b>
<b>Total Filings</b>	<b>10,154,148</b>								

\*Depository institutions include banks, thrifts, savings and loans, and credit unions.

\*Statistics generated for this product were based on the Bank Secrecy Act Identification Number (BSA ID) of each record within the Suspicious Activity Report (SAR) system. The BSA ID is a unique number assigned to each SAR submitted. Numeric discrepancies between the total number of filings and the combined number of filings of states and/or territories are a result of multiple locations listed on one or more SARs.

Note: Statistical data for SARs is continuously updated as information is processed. For this reason, there may be minor discrepancies between the statistical figures contained in the various portions of this report.

# 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

# Responding to IRS-CI Visit

- Special Agents may visit return preparers, legal advisors, or any other person they believe knows something about or participated in criminal wrongdoing with regard to a tax return.
- Special Agents generally do not make random visits. A criminal investigation most often begins when an IRS civil agent suspects fraud and prepares a report referring the matter to CI for review.
- Long before a formal interview, your client may have been the subject of an IRS consensual monitoring or undercover investigation that has been both recorded and videotaped.

# Unannounced Interview of Subject

- Special Agents travel in pairs – one will take notes.
- They show up unannounced at the subject's home and catch the subject off guard and unprepared.
- They are generally friendly and “merely want to ask a few questions.”
- They build rapport to entice the subject to answer their questions.
- But they already believe that the subject has committed a tax crime.

# Special Agents are Highly Trained

- They learn investigative techniques at the Office of National Criminal Investigation Training Academy
- They are trained in investigative techniques (See Internal Revenue Manual 9.2.1.3.3 (8-22-2013))
- They know what they have to prove to make out a prima facie case of a tax crime
- They know the methods of proving the crime by:
  - Specific items
  - Net worth and expenditure
  - Bank deposits
- They know the answers to the questions they pose at the interview

# Purpose of the Interview

- To catch the taxpayer in making incriminating statements
- To catch the taxpayer in a lie
- To obtain information and supplement an indirect method of proof, such as cash on hand
- To obtain information to support their allegations

# Willfulness

- Previously reported income of same type/pattern of understanding
- Accountant or attorney advised defendant of accurate reporting
- Failure to supply accountant with accurate and complete information
- Defendant's background, education and experience
- False statements to agents; false exculpatory statements
- False documents, entries, invoices, or keeping a double set of books or hiding, destroying or "losing" books
- Other financial documents – i.e., loan applications
- Placing property, bank accounts or a business in nominee name
- A "deal too good to be true"

# What to do (and not do) When the Agents Show Up

- Do not invite them in
- Do not say a word
- Do not ask any questions
- Politely ask for their cards and say you will provide them to your attorney
- Close the door
- Do not immediately call your accountant/return preparer



# Interviews Conducted and MOIs Completed



**DEPARTMENT OF THE TREASURY**  
**Internal Revenue Service**  
**Criminal Investigation**

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**Memorandum of Interview**

**Investigation #:** 1000xxxxxx

**Location:** ADDRESS Road  
CITY, CT

**Investigation Name:**

tax preparer name

**Date:** August \_\_\_\_, 2023

**Time:** Approximately 9:28 –  
10:47 AM

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

# 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 the 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.”

# 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 coversheet 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.”**

# Kovel Doctrine 1961

- The *Kovel* Doctrine was born out of a case styled United States v. Kovel (2d Cir. 1961). “Accounting concepts are a foreign language to some lawyers in almost all cases, and to almost all lawyers in some cases. Hence, the presence of an accountant, whether hired by the lawyer or by the client, while the client is relating a complicated tax story to the lawyer, ought not destroy the privilege”.
- How to handle the CI interview of a Kovel accountant---claim the attorney-client and work product privilege!

# Questions

