



Federal Tax ADVISORY ■

APRIL 1, 2014

Federal Tax Crimes

The Criminal Investigation Division

Few taxpayers are aware of the operations of the Criminal Investigation Division of the IRS, and rightly so. Out of hundreds of millions of tax returns filed, only 3311 persons were convicted of tax crimes in the government's FY 2013, according to the Report of the CI Division. Nevertheless, the small number masks the extreme seriousness of tax crimes to those involved.

The Report shows that once a person is selected for criminal investigation, the likelihood of indictment, conviction and imprisonment are all high. In FY 2013:

Criminal investigations commenced	5314
Indictments	3865
Convictions	3311
Imprisonment	2812

Most taxpayers think of criminal tax fraud as involving intentionally hiding reportable income or the like. While prosecuting those cases is the backbone of the CI's mission, there is a wide variety of other tax crimes, including:

- Identity theft
- Organized crime
- Corruption
- Specific fraudulent refund schemes

General Tax Fraud

General tax fraud includes actions such as deliberately under-reporting or omitting income ("skimming"); keeping two sets of books, or making false entries in books and records; claiming personal expenses as business expenses; claiming false deductions or credits against taxes; or hiding or transferring assets to avoid payment.

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The CI Division usually learns of such cases by referral from the civil tax examiners. At that point, a CI agent will “show up” in connection with an audit. Whenever this occurs, the taxpayer under audit should obtain counsel, if not already actively represented by a lawyer experienced in criminal tax matters in the audit.

Trust fund taxes are a prime source of criminal tax cases. For example, in FY 2013, a Chicago accountant was sentenced to 63 months for embezzling a client’s trust fund employment taxes. A roofing contractor was sentenced to 24 months for paying part of his employees in cash and thus not withholding any payroll taxes on the cash payments.

In another typical tax fraud case, a sole proprietor building contractor directed customers to make checks to him personally rather than to his business account. He was sentenced to 27 months. The total amount owed, including interest and penalty, was less than \$500,000.

Some taxpayers are still being taken in by schemes to avoid taxation on their compensation by passing it through offshore entities. A South Dakota surgeon was sentenced to 60 months after a jury trial verdict. He had avoided about \$1 million in taxes on income diverted to Ireland and Nevis.

Criminal charges are being brought against persons who attempted to hide their cash in offshore bank accounts. One businessman was sentenced to 12 months and another to 19 months for undeclared foreign bank accounts. Recent leniency initiatives provided by the IRS under FATCA should be followed by all affected taxpayers.

Recommendations

The vast majority of taxpayers have no concerns about criminal tax investigation. However, if the CI Division—for whatever reason—becomes interested in a taxpayer, the statistics above show that the results can be dire, and fairly certainly dire. Therefore, precautionary steps by taxpayers include:

- Be particularly careful with trust fund taxes, payroll taxes, FICA and FUTA. They should be deposited on a timely basis and never “borrowed.”
- “Overlooking” a category of income, such as income received in cash, income on which the payor makes no reporting to the IRS, or foreign income, can be a habit that taxpayers accidentally fall into. When that is realized, the taxpayer should contact a tax lawyer to consider how to rectify the problem.
- Civil tax examiners are not supposed to do criminal investigations, but they are supposed to keep their eyes and ears open for signs of tax fraud. Taxpayers are required to cooperate with the IRS in determining their tax liability, but are not required to incriminate themselves. If a civil tax audit seems to be turning into a criminal inquiry, the taxpayer should immediately obtain legal advice.

For additional information on criminal tax issues or any tax litigation, call George Abney at 404-881-7980 (Atlanta). George was a federal prosecutor with the Tax Division of the U.S. Department of Justice in Washington, D.C., and as an assistant U.S. attorney in the Northern District of Florida.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

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