



EMPLOYMENT TAXES AND CRIMINAL PROSECUTIONS

Moderator: Joseph Perera, Strasburger & Price

Panelists:

Karen E. Kelly, Department of Justice

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Travis A. Greaves, Caplin & Drysdale

“HIGHEST PRIORITIES”



The screenshot shows the official website of the U.S. Department of Justice, specifically the Tax Division. The header features the Department of Justice seal and the text "THE UNITED STATES DEPARTMENT of JUSTICE". A navigation bar includes links for HOME, ABOUT, AGENCIES, BUSINESS, and RESOURCES. The main content area is titled "EMPLOYMENT TAX ENFORCEMENT" and contains two paragraphs of text. A sidebar on the left lists various links related to the Tax Division.

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EMPLOYMENT TAX ENFORCEMENT

Civil and criminal employment tax enforcement is among the Tax Division's highest priorities. Employers have a **legal responsibility** to collect and pay over to the Internal Revenue Service (IRS) taxes withheld from their employees' wages. **These employment taxes** include withheld federal income tax, as well as the employees' share of social security and Medicare taxes (collectively known as FICA taxes). Employers also have an independent responsibility to pay the employer's share of FICA taxes.

When employers willfully fail to collect, account for and deposit with the IRS employment tax due, they are stealing from their employees and ultimately, the United States Treasury. In addition, employers who willfully fail to comply with their obligations and unlawfully line their own pockets with amounts withheld are gaining an unfair advantage over their honest competitors.

“HIGHEST PRIORITIES”

IRS - CRIMINAL INVESTIGATION					
Employment Tax Fraud (FY-End)	FY 2013	FY 2014	FY 2015		
Initiations – Subject Criminal Investigations (SCI)	140	120	102		
Open SCIs in Field Office Inventory	197	190	163		
Completions	154	131	133		
Prosecution Recommendations	97	92	80		
Pipeline Inventory (in Judicial Process)	131	140	133		
Indictments	78	78	87		
Convictions	86	72	76		
Conviction Rate	95.6%	97.3%	100.0%		
Sentenced	84	88	62		
Incarceration Rate	79.8%	73.9%	77.4%		
Average Months Served	24	17	24		
Direct Investigative Time (DIT)	3.6%	3.8%	3.7%		
Publicity Rate	94.0%	87.5%	90.3%		
CIMIS-INV002 CI Summary by Program Area					
FY 2016 to June 30, 2016					

REVENUE GENERATOR

- **68.6%** of the total U.S. revenues collected by IRS are Employment taxes.
- **31% = FICA and FUTA**
- **37.6% = Withholdings**

SOURCES OF CRIMINAL TAX CASES

- Informants/Whistleblowers
- IRS CI Projects and Task Forces/Scheme Development Center
- IRS CI Special Agent Observations/Media
- Other Law Enforcement Agencies
- **Criminal Fraud Referrals from IRS compliance functions (e.g., examinations and collections)**

EGGSHELL AUDITS

- An eggshell exam is a civil exam with underlying criminal issues.
 - In employment tax cases, the taxpayer may have failed to pay/deposit employment taxes or misclassified employees.
 - If there are “firm indications” of fraud, then a Revenue Agent could refer the case to IRS CI.
 - Notable warning signs:
 - A civil exam is terminated before completion
 - The Revenue Agent becomes unreachable/does not return calls
 - The Revenue Agent begins focusing on the taxpayer’s intent and/or knowledge and refers to this as a “pattern” over several filing periods
 - Two IRS Special Agents with badges and guns visit your client

REFERRAL PROCESS:

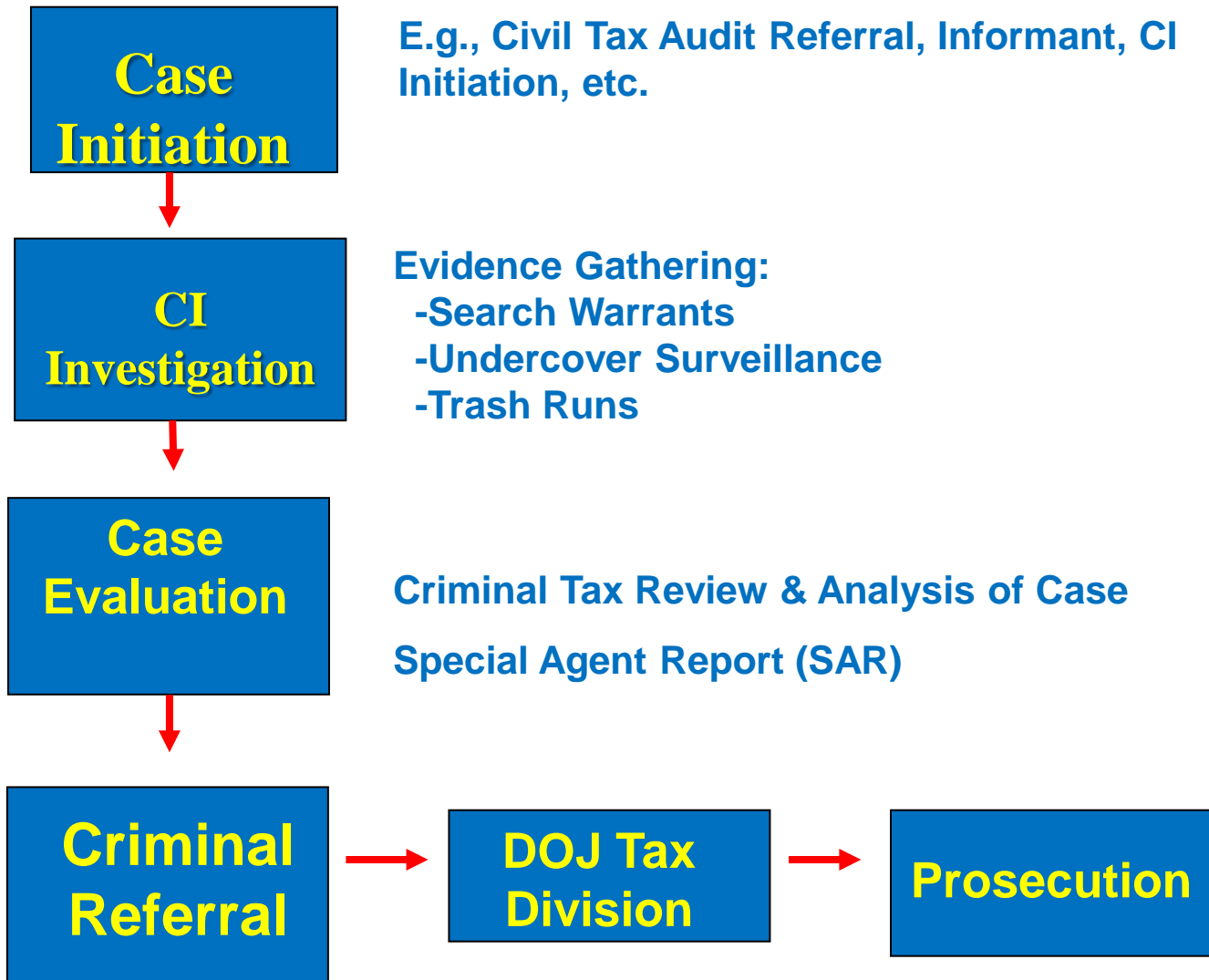
IRS CRIMINAL FRAUD REFERRALS

- Referral of Potential Criminal Fraud Cases (IRM 25.1.3)
 - When affirmative acts (firm indications) of fraud/willfulness exist and criminal criteria are met, the compliance employee (e.g., Revenue Agent, Revenue Officer, etc.) will refer the case through the Fraud Technical Advisor (FTA) to Criminal Investigation via Form 2797, Referral Report of Potential Criminal Fraud Cases.
 - FTA assists in determining if firm indications of fraud/willfulness are present, criminal criteria has been met, etc.
 - The compliance employee will suspend the examination/collection activity without disclosing to the taxpayer or representative the reason for suspension. However, if asked, the IRS **must not** give a false or deceitful response.

REFERRAL PROCESS: IRS CRIMINAL FRAUD REFERRALS

- Case is assigned to an IRS CI Special Agent (SA) to evaluate the referral.
- If CI accepts the referral, then a criminal investigation commences.
- There are 2 types of investigations:
 - Administrative Investigations, IRM 9.5.1.2
 - Grand Jury Investigations, IRM 9.5.2

ADMINISTRATIVE INVESTIGATIONS



GRAND JURY INVESTIGATIONS

Grand Jury Request

- The IRS or US Attorney's office may initiate a request for a Grand Jury investigation.
- The Grand Jury Request must be authorized by the DOJ Tax Division.

Grand Jury Investigation

Evidence Gathering:

- Subpoena power
- Forced Witness Testimony
- Grand Jury Secrecy provisions

Case Evaluation

Grand Jury Evaluation
Special Agent Report

Criminal Referral

DOJ Tax Division

Prosecution

IRS CI SPECIAL AGENT REPORT

- SAR is used for all tax-related investigations (both administrative and grand jury). IRM 9.5.8, Investigative Reports. It includes the following:
 - Recommended charges and prosecution years
 - Returns filed and statute of limitations
 - Venue
 - Investigative contact(s) with Subject(s) and/or representative(s)
 - Theory of the investigation
 - Books and records and preparation of tax return(s)
 - Elements of the offense
 - List of Appendices (List of Witnesses, etc.)
 - Disposition of proceeds
 - Relevant conduct
 - Current lifestyle / recent and post-offense factors
 - Explanations and / or defenses of Subject
 - Conclusions and recommendations.

REFERRAL TO DOJ TAX DIVISION

- CT Counsel reviews the SAR and prepares a Criminal Evaluation Memorandum (CEM).
- The SAR and CEM are provided to the DOJ Tax Division for review.
- If a Grand Jury Investigation was utilized, then the USAO will provide a recommendation to DOJ Tax Division.

WILLFUL FAILURE TO COLLECT, ACCOUNT FOR OR PAY OVER TAX - 26 U.S.C. § 7202

Elements

1. Duty to collect, and to truthfully account for, and pay over a tax;
 - Must be the responsible person.
2. Failure to collect, truthfully account for, and pay over the tax; and
3. Willfulness.

WILLFUL FAILURE TO COLLECT, ACCOUNT FOR OR PAY OVER TAX - 26 U.S.C. § 7202

- Designed primarily to assure compliance by parties obligated to collect taxes or to deduct from wages paid to an employee that employee's share of Federal Insurance Contribution Act taxes and federal income tax withheld from wages.

WILLFUL FAILURE TO COLLECT, ACCOUNT FOR OR PAY OVER TAX - 26 U.S.C. § 7202

Three ways the statute is violated:

1. willful failure to collect;
2. willful failure to truthfully report; and
3. willful failure to pay over.

WILLFUL FAILURE TO COLLECT, ACCOUNT FOR OR PAY OVER TAX - 26 U.S.C. § 7202

- Each Quarterly Return (Form 941) and each Quarter constitutes a separate count in the indictment

Form 941 for 2014: Employer's QUARTERLY Federal Tax Return
OMB No. 1545-0047

Employer identification number (EIN) -
Name (not your trade name)
Trade name (if any)
Address
City State ZIP code
Foreign country name Foreign province/county Foreign postal code

Report for this Quarter of 2014
(Check one)
☐ 1: January, February, March
☐ 2: April, May, June
☐ 3: July, August, September
☐ 4: October, November, December
Instructions and prior year forms are available at www.irs.gov/form941.

Read the separate instructions before you complete Form 941. Type or print within the boxes.

Part 1: Answer these questions for this quarter.

1 Number of employees who received wages, tips, or other compensation for the pay period including: Mar. 12 (Quarter 1), June 12 (Quarter 2), Sept. 12 (Quarter 3), or Dec. 12 (Quarter 4) 1

2 Wages, tips, and other compensation 2

3 Federal income tax withheld from wages, tips, and other compensation 3

4 If no wages, tips, and other compensation are subject to social security or Medicare tax ☐ Check and go to line 6.

	Column 1	Column 2
5a Taxable social security wages	<input type="text"/>	<input type="text"/>
5b Taxable social security tips	<input type="text"/>	<input type="text"/>
5c Taxable Medicare wages & tips	<input type="text"/>	<input type="text"/>
5d Taxable wages & tips subject to Additional Medicare Tax withholding	<input type="text"/>	<input type="text"/>
5e Add Column 2 from lines 5a, 5b, 5c, and 5d	<input type="text"/>	<input type="text"/>
5f Section 3121(g) Notice and Demand—Tax due on unreported tips (see instructions)	<input type="text"/>	<input type="text"/>
6 Total taxes before adjustments. Add lines 3, 5e, and 5f	<input type="text"/>	<input type="text"/>
7 Current quarter's adjustment for fractions of cents	<input type="text"/>	<input type="text"/>
8 Current quarter's adjustment for sick pay	<input type="text"/>	<input type="text"/>
9 Current quarter's adjustments for tips and group-term life insurance	<input type="text"/>	<input type="text"/>
10 Total taxes after adjustments. Combine lines 6 through 9	<input type="text"/>	<input type="text"/>
11 Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, 944-X (PR), or 944-X (SP) filed in the current quarter	<input type="text"/>	<input type="text"/>
12 Balance due. If line 10 is more than line 11, enter the difference and see instructions	<input type="text"/>	<input type="text"/>
13 Overpayment. If line 11 is more than line 10, enter the difference <input type="text"/> Check one: <input type="checkbox"/> Apply to next return. <input type="checkbox"/> Send a refund.		

You MUST complete both pages of Form 941 and SIGN IT.
For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher. Cat. No. 17001-2 Form 941 (Rev. 1-2014)

WILLFUL FAILURE TO COLLECT, ACCOUNT FOR OR PAY OVER TAX - 26 U.S.C. § 7202

- What's the Worst That Can Happen?
 - Up to five years in prison
 - \$250,000 fine
 - Restitution

ATTEMPTED TAX EVASION - 26 U.S.C. § 7201

Elements

1. Affirmative Act of Evasion
2. Tax Due and Owing
3. Willfulness

TWO TYPES OF TAX EVASION

1. Evading the employer's portion of FICA taxes; and
2. Evading the TFRP owed by the “responsible persons” and assessed against the person

ATTEMPTED TAX EVASION - 26 U.S.C. § 7201

What's The Worst That Can Happen?

- Up to five years in prison
- \$250,000 fine
- Restitution

FILING/ CAUSING THE FILING OF FALSE DOCUMENTS - 26 U.S.C. § 7206(1) OR (2)

Elements

1. Made and subscribed a return, statement, or other document which was false as to a material matter;
2. Under the penalties of perjury;
3. The defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and
4. Willfulness.

FILING/ CAUSING THE FILING OF FALSE DOCUMENTS - 26 U.S.C. § 7206(1) OR (2)

Examples of Offenses

- Filing a false Form 941, Form 1040 (e.g., responsible party claims false withholdings), or Form 1120 (e.g., payroll is reported improperly)
- Causing the filing of a false Form 941
- Aiding and assisting in the filing of a false Form 941

FILING/ CAUSING THE FILING OF FALSE DOCUMENTS - 26 U.S.C. § 7206(1) OR (2)

- Doesn't require the responsible person analysis
- Doesn't require proof of a specific tax loss

FILING/ CAUSING THE FILING OF FALSE DOCUMENTS - 26 U.S.C. § 7206(1) OR (2)

What's the Worst That Can Happen?

- Up to 3 years in prison
- \$250,000 fine
- Restitution

CORRUPTLY ENDEAVORING TO IMPEDE THE ADMINISTRATION OF THE REVENUE LAWS - 26 U.S.C. § 7212(A)

Elements

1. Corrupt
2. Endeavor
3. To obstruct and impede the due administration of the internal revenue laws.

CORRUPTLY ENDEAVORING TO IMPEDE THE ADMINISTRATION OF THE REVENUE LAWS - 26 U.S.C. § 7212(A)

What's the Worst That Can Happen?

- Up to 3 years in prison
- \$250,000 fine

CONSPIRACY TO DEFRAUD THE U.S.

18 U.S.C. § 371

Elements

1. Agreement between two or more individuals to defraud the U.S.
2. Defendant's knowing and voluntary participation in the conspiracy, and
3. The commission of an overt act in furtherance of the conspiracy

CONSPIRACY TO DEFRAUD THE U.S.

18 U.S.C. § 371

What's The Worst That Can Happen?

- Up to 5 years in prison
- \$250,000 fine
- Restitution

WILLFULNESS

- Intentional violation of a known legal duty
- A person willfully fails to pay over tax under Section 7202 when, instead of paying the employment taxes, he voluntarily and intentionally uses the money to pay the claims of other creditors, including wages to employees, with knowledge that the collected funds and the employer's portion are due to be paid over to the United States.

UNITED STATES V. EASTERDAY, 593 F.3D 1176 (9TH CIR. 2008)

- To prove a willful failure to pay over, all the government need show is that payments were voluntarily and intentionally made to **creditors other than the United States with knowledge that the withheld funds were due to the United States**, and that there is no separate requirement that the government prove that the payments were without justification.

WILLFULNESS

- Admissions (written and oral)
- Letters and Warnings from the IRS
- Interaction with Civil
 - Includes :
 - Case History
 - Collection activity (ICS)
 - Revenue Officer interactions and Notes

- Letter 903 – “You Haven’t Deposited Federal Employment Taxes”
- Explains the employer’s obligation to remit payroll taxes on a timely basis and warns that continued non-compliance can lead to criminal charges.
- Demonstrates knowledge of the unpaid taxes and the requirements in a later criminal proceeding.



Department of the Treasury
Internal Revenue Service

Date:

Person to contact:

Employee ID number:

Contact telephone number:

Contact fax number:

Taxpayer ID number:

Section 31.6302). If you do not bring your account current with the required deposits within 30 days of the date of this letter, we will consider stricter civil or criminal enforcement procedures.

Section 31.6302). If you do not bring your account current with the required deposits within 30 days of the date of this letter, we will consider stricter civil or criminal enforcement procedures.

We may:

- **File a Notice of Federal Tax Lien (NFTL) to protect the government's interest**

By filing this notice, we are making a legal claim to your property as security for the payment of your tax debt. An NFTL is a public notice to your creditors that we have a claim against all your property, including property you acquire after we file the lien. An NFTL can have a negative effect on your credit rating. We may also seize (levy) your property. A levy is a legal seizure of property to satisfy a tax debt.

- **Assess a trust fund recovery penalty under Internal Revenue Code Section 6672 for the unpaid trust fund taxes**

We can assess a trust fund recovery penalty against anyone who is responsible for, and willfully fails to, collect, account for, or pay to the IRS income and employment taxes the law requires to be withheld. Willfulness exists if a person allows payment of net wages when the employer has insufficient funds to pay the taxes or uses withheld taxes for other purposes. Willfulness also exists if a person who knows of a previous failure to pay taxes allows payments to others (including payment of additional wages) rather than using available funds to pay the tax delinquency.

- **Refer the matter to the Department of Justice (DOJ) to institute a civil suit or to seek criminal prosecution**

In a civil suit, the DOJ can seek an injunction that requires the employer to comply with the federal employment tax laws and prohibits the employer from paying any amounts until the employer pays the correct amounts to the IRS. The DOJ may also ask the court to appoint a receiver to take control of the business to ensure tax compliance.

The DOJ can also pursue criminal charges based on the willful failure to report and pay over withheld taxes (Section 7202 of the Internal Revenue Code). Willfulness is evident if an employer paid net wages and

The DOJ can also pursue criminal charges based on the willful failure to report and pay over withheld taxes (Section 7202 of the Internal Revenue Code). Willfulness is evident if an employer paid net wages and didn't leave enough funds to make the required tax payments or used withheld trust fund taxes for other purposes. **Convictions may result in imprisonment and other penalties. Other criminal statutes may also apply.**

Sincerely,

[Name]

[Title]

Enclosure:
Notice 931

WILLFULNESS

- **IRS Form 4180** – Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes
 - Used for conducting TFRP interviews. Used as a record of a **personal interview** with a potentially responsible person.

Form **4180**
(August 2012)

Department of the Treasury - Internal Revenue Service
**Report of Interview with Individual Relative to Trust Fund Recovery
Penalty or Personal Liability for Excise Taxes**

Instructions: The interviewer **must** prepare this form either in person or via telephone.
Do not leave any information blank. Enter "N/A" if an item is not applicable.

Section I - Person Interviewed

1. Name	2. Social Security Number (SSN)
3. Address (street, city, state, ZIP code)	4. Home telephone number

Section II - Responsibilities

1. State whether you performed any of the duties / functions listed below for the business and the time periods during which you performed these duties.

Did you...	Yes	No	Dates	
			From	To
a. Determine financial policy for the business?	<input type="checkbox"/>	<input type="checkbox"/>		
b. Direct or authorize payments of bills/creditors?	<input type="checkbox"/>	<input type="checkbox"/>		
c. Prepare, review, sign, or authorize transmit payroll tax returns?	<input type="checkbox"/>	<input type="checkbox"/>		
d. Have knowledge withheld taxes were not paid?	<input type="checkbox"/>	<input type="checkbox"/>		
e. Authorize payroll?	<input type="checkbox"/>	<input type="checkbox"/>		
f. Authorize or make Federal Tax Deposits?	<input type="checkbox"/>	<input type="checkbox"/>		
g. Authorize the assignment of any EFTPS or electronic banking PINS/passwords?	<input type="checkbox"/>	<input type="checkbox"/>		
h. Could other individuals do any of the above? (Complete Section IV and V)				
Name	Contact Number	<input type="checkbox"/>	<input type="checkbox"/>	
i. Have signature authority or PIN assignment on business bank accounts?				
Bank Name(s)	Account Number(s)			

Signature of person interviewed

Date

Signature of Interviewer

Date

Date copy of completed interview form given to person interviewed

Taxpayer Statement on Page 4: ☐ Yes ☐ No

Interview Continued on subsequent pages? ☐ Yes ☐ No

Interview Handouts ("X" if given or explain why not in case history.)

☐ Notice 609, Privacy Act Notice

☐ Notice 784, Could You be Personally Liable for Certain Unpaid Federal Taxes?

Section IV - Business Information

1. List corporate positions below, identifying the persons who occupied them and their dates of service.

Position (e.g. president, director)	Name	Address	Dates

Section V - Knowledge / Willfulness1. During the time the delinquent taxes were increasing, or at any time thereafter, were any financial obligations of the business paid?
(such as rent, mortgage, utilities, vehicle or equipment loans, or payments to vendors)☐ No☐ Yes Which obligations were paid?

Who authorized them to be paid?

2. Were all or a portion of the payrolls met?

☐ No☐ Yes

Who authorized

3. Did any person or organization provide funds to pay net corporate payroll?

☐ No☐ Yes (explain in detail and provide name)

4. When and how did you first become aware of the unpaid taxes?

5. What actions did you attempt to see that the taxes were paid?

6. Were discussions ever held by stockholders, officers, or other interested parties regarding nonpayment of the taxes?

☐ No☐ Yes

Identify who attended, dates, any decisions reached, and whether any documentation is available.

7. Who handled IRS contacts such as phone calls, correspondence, or visits by IRS personnel?

When did these contacts take place, and what were the results of these contacts?

WILLFULNESS

- **IRS Form 2751** - Proposed Assessment of Trust Fund Recovery Penalty
 - Can include admissions that defendant accepts personal responsibility for unpaid tax liability and civil penalties.

PYRAMIDING

Business withholds taxes from its employees but intentionally fails to remit.

Accrues liability and then start a new business under a new name and begin accruing new liabilities. Often in response to civil activity or bankruptcy.

- Often after the initiation of IRS Collection activity:
 - Obtain new EINs and rename/operate the business in new name; use nominee to “own/run” business
 - Open new business bank accounts, file tax returns under new business name
 - Cease using the prior business name-but nothing really changes-employees are the same, clients are the same, services are the same

ABILITY TO PAY “DEFENSE”

- Government is *not required* to prove that the defendant had any ability to pay the tax on the date the tax. offense.
- Defendant not entitled to a jury instruction requiring the government to prove an ability to pay on the date the tax is due.
- Responsible person is obligated to use after-acquired unencumbered funds to pay the delinquent trust fund tax, even as to the taxes which accrued prior to his knowing of the delinquency.

RECENT CRIMINAL CASES INVOLVING EMPLOYMENT TAXES



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FOR IMMEDIATE RELEASE

Thursday, September 8, 2016

Pittsburgh Tax Attorney and Owner of Iceoplex Convicted of Employment Tax Fraud

Defendant convicted of failing to pay over more than \$790,000 in payroll taxes

A Pittsburgh, Pennsylvania, man was convicted today by a federal jury in the U.S. District Court for the Western District of Pennsylvania of 16 counts of failing to collect, account for and pay over employment taxes, announced Principal Deputy Assistant Attorney General Caroline D. Ciraolo, head of the Justice Department's Tax Division.

According to the evidence presented at trial, between 2004 and 2015, Steven Lynch, a tax attorney, co-owned and operated the Iceoplex at Southpointe, a recreational sports facility located in Washington County, Pennsylvania. The Iceoplex included a fitness center, ice rink, soccer court, restaurant and bar. Lynch controlled the finances for these businesses and was responsible for collecting income and employment taxes withheld from employee wages, accounting for these taxes and filing Forms 941, payroll tax returns, and paying these taxes over to the Internal Revenue Service (IRS). The jury found that between 2012 through 2015, Lynch failed to timely pay over to the IRS more than \$790,000 in taxes withheld from the wages of the employees for these businesses.

"Employers are entrusted with collecting the taxes withheld from their employees' wages, and they have an absolute legal obligation to pay that money over to the IRS," said Principal Deputy Assistant Attorney General Ciraolo. "The conviction of Steven Lynch serves as a strong reminder to all employers that failure to comply with employment tax obligations has significant consequences, including prosecution and incarceration. The department, together with its partners within the IRS, will continue to vigorously pursue those who violate our nation's tax laws and threaten the integrity of our tax system."

"The jury's verdict is a clear signal that the criminal tax laws of our country are being enforced and upheld for the benefit of all citizens," said Chief Richard Weber of IRS-Criminal Investigation (CI). "Those who attempt to skirt the law will be held accountable."

Sentencing is scheduled for Jan. 11, 2017. Lynch faces a statutory maximum sentence of up to five years in prison for each count of willfully failing to collect, account for and pay over employment tax, as well as a period of supervised release and monetary penalties.

Principal Deputy Assistant Attorney General Ciraolo commended the special agents of IRS-CI, who conducted the investigation, and Trial Attorneys Jeffrey Bender and Brittney Campbell of the Tax Division, who prosecuted the case. Principal Deputy Assistant Attorney General Ciraolo also thanked the U.S. Attorney's Office in the Western District of Pennsylvania for their substantial assistance.

RECENT CRIMINAL CASES INVOLVING EMPLOYMENT TAXES

FOR IMMEDIATE RELEASE

Tuesday, May 31, 2016

Virginia Business Owner Sentenced to Prison for Employment Tax Fraud

An Ashland, Virginia, man was sentenced to prison today in the U.S. District Court for the Eastern District of Virginia for failing to collect, account for and pay over employment taxes to the Internal Revenue Service (IRS), announced Acting Assistant Attorney General Caroline D. Ciraolo of the Justice Department's Tax Division and U.S. Attorney Dana J. Boente of the Eastern District of Virginia.

Michael Manning, 52, was sentenced to serve 18 months in prison, followed by two years of supervised release. Manning pleaded guilty on Feb. 23, to failing to collect, account for and pay over employment taxes for his masonry contractor construction companies. Manning was ordered to pay restitution to the IRS in the amount of \$677,350.39.

"Mr. Manning chose to withhold employment tax from his employees, and use those funds for his personal benefit, inflicting substantial harm on the U.S. Treasury and gaining a competitive advantage over his law-abiding competitors," said Acting Assistant Attorney General Ciraolo. "The Tax Division has made it clear that employers like Mr. Manning, who willfully fail to collect, account for, and pay over employment taxes to the IRS, are engaged in criminal conduct and will be held accountable. Today's sentence reflects this priority and the seriousness of such crimes."

"Investigating employment tax crimes remains one of IRS Criminal Investigation's (IRS-CI) highest priorities and today's sentencing of Michael Manning reflects the serious nature of that crime," said Chief Richard Weber of IRS-CI. "Failure to collect, account for and pay employment taxes is a crime and it hurts not only federal, state, and local governments, but also employees. We expect all taxpayers to follow the law—whether you are a business owner or an individual—we all must play by the same rules."

According to court documents, Manning was the President of Manning Construction and Manning-Carhen Construction. Manning controlled the businesses' finances and was responsible for collecting, accounting and paying over employment taxes for both businesses. For the third and fourth quarters of 2014, Manning willfully failed to comply with his legal obligation to pay over more than \$700,000 in employment taxes to the IRS. In addition to failing to pay over the withheld taxes, Manning instructed his bookkeeper to create false financial statements for submission to financial institutions in order to comply with existing loan covenants, to encourage banks to lend new funds to the company, or to enable the renewal of existing loans. Manning and his bookkeeper openly referred to these false accounting entries as "Bernie entries," in reference to the accounting techniques of Bernie Madoff and "ghost entries," when reallocating negative financial results within the companies' QuickBooks files so that these negative results would not be discovered by third parties. Moreover, Manning used these same accounting techniques to conceal his use of over \$500,000 in corporate funds for various personal expenses, including paying off a lien on his lake property.

Acting Assistant Attorney General Ciraolo and U.S. Attorney Boente commended special agents of IRS-CI, who investigated the case and Trial Attorney Melanie Smith of the Tax Division and Assistant U.S. Attorney Thomas Garnett of the Eastern District of Virginia, who are prosecuting the case.

RECENT CRIMINAL CASES INVOLVING EMPLOYMENT TAXES

FOR IMMEDIATE RELEASE

Wednesday, May 25, 2016

West Virginia Business Owners Indicted for Failing to Pay Employment Taxes

A federal grand jury sitting in Charleston, West Virginia returned an indictment on May 25, charging two West Virginia business owners with federal employment tax violations, Acting Assistant Attorney General Caroline D. Ciraolo of the Justice Department's Tax Division and Acting U.S. Attorney Carol A. Casto for the Southern District of West Virginia announced today.

The indictment charges Michael Taylor and Jeanette Taylor, a married couple who reside in Wayne, West Virginia, with one count of conspiracy to defraud the United States by impeding the Internal Revenue Service (IRS) in the collection of employment taxes withheld from the wages of the employees of their businesses, Taylor Contracting/Taylor Ready-Mix LLC and Bluegrass Aggregates LLC, which were in the business of transporting steel and the sale of gravel and concrete. The couple is also charged with one count of willfully failing to truthfully account for and pay over employment tax withheld for their employees at Taylor Contracting/Taylor Ready-Mix LLC.

According to the indictment, both Michael Taylor and Jeanette Taylor had the responsibility to collect, truthfully account for and pay over to the IRS federal income, social security and Medicare taxes withheld from the wages of their employees. From the quarter ending Sept. 30, 2007, through the quarter ending Dec. 31, 2009, the Taylors withheld approximately \$1,002,392 in payroll taxes from employees' paychecks at Taylor Contracting/Taylor Ready-Mix LLC and during the 2010 calendar year, they withheld approximately \$161,218 in payroll taxes from employees' paychecks at Bluegrass Aggregates LLC. However, the Taylors failed to fully pay over these taxes to the IRS and instead used the money to make expenditures for their personal benefit, such as making payments towards their personal credit cards and a horse farm.

If convicted, the Taylors face a statutory maximum sentence of five years in prison and a maximum fine of \$250,000 for each count. They also face a term of supervised release and an order of restitution.

An indictment merely alleges that crimes have been committed. The defendants are presumed innocent until proven guilty beyond a reasonable doubt.

Acting Assistant Attorney General Ciraolo and Acting U.S. Attorney Casto commended special agents of IRS-Criminal Investigation, who investigated the case and Trial Attorneys Mara Strier and Alexander Effendi of the Tax Division, who are prosecuting this case.

RECENT CRIMINAL CASES INVOLVING EMPLOYMENT TAXES

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, August 19, 2016

Tennessee Business Owner Sentenced to Prison for Failing to Pay More Than \$8 Million in Employment Taxes

Spent \$6.2 million on Personal Expenses from Business Accounts while Failing to Pay U.S. Treasury

A Germantown, Tennessee, resident and business owner was sentenced today to one year in prison and ordered to pay more than \$10 million in restitution for failing to pay over employment taxes to the Internal Revenue Service (IRS), announced Principal Deputy Assistant Attorney General Caroline D. Ciralo, head of the Justice Department's Tax Division and U.S. Attorney Edward L. Stanton III of the Western District of Tennessee.

"Payment of employment taxes is not optional," said Principal Deputy Assistant Attorney General Ciralo. "Nor are such withholdings an interest-free source of money to be tapped to make payments on lavish personal expenses. The sentence that Mr. Thornton received today reflects not just the harm that his actions caused to the U.S. Treasury but also the financial risks he placed on his employees by deliberately not filing their W-2 forms with Social Security on a timely basis."

According to court documents, Larry Thornton, 67, was the majority owner, president and chief executive officer (CEO) of Software Earnings, Inc. (SEI), a Memphis company that produced and installed check processing. Thornton was also the 100 percent owner, CEO and president of First Touch Payment Solutions, LLC (First Touch), a Memphis company that provided merchant services for credit card processing. Thornton, as CEO and president of SEI and First Touch, had ultimate and final decision-making authority regarding SEI's and First Touch's business activities and had authority to exercise significant control over SEI's financial affairs. Thornton admitted that he was responsible for collecting, accounting for, and paying over to the IRS federal income taxes and Federal Insurance Contributions Act (FICA) taxes that were withheld from the wages of SEI and First Touch's employees.

Beginning in the second quarter of 2007, Thornton caused SEI to stop paying over the taxes required to be withheld from SEI's employees' paychecks and caused SEI to stop timely filing Employer's Quarterly Federal Tax Returns, Forms 941, with the IRS. Beginning in the first quarter of 2010, Thornton caused First Touch to stop paying over the taxes required to be withheld from First Touch's employees' paychecks and caused First Touch to fail to timely file Forms 941 with the IRS. Between 2007 and 2011, Thornton collected more than \$6.8 million in employment taxes from SEI and First Touch employees' paychecks, but failed to pay those collected taxes over to the IRS. Thornton also failed to pay his companies' matching share of FICA taxes during those years. During that time period, two of Thornton's full-time accountants – both of whom were certified public accountants (CPAs) – warned Thornton about his failure to pay over employment taxes. Both CPAs resigned their positions due to Thornton's unwillingness to comply with his employment tax obligations.

During the same years in which Thornton failed to comply with his employment tax obligations, Thornton spent more than \$6.2 million from the business bank accounts on personal expenses, including house and condominium payments; vehicle, yacht and motorcycle loan payments; personal travel; and start-up funding for his wife's beauty boutique. According to court documents, Thornton also failed to file personal and corporate income tax returns. As part of the guilty plea, Thornton admitted that his illegal conduct caused a tax loss of more than \$8.9 million to the IRS.

"Larry Thornton's efforts to conceal from IRS millions of dollars generated by his businesses afforded him a plush lifestyle for several years," said U.S. Attorney Stanton. "But his illegal and illicit acts also have earned him a stint in federal prison and a multimillion-dollar restitution fee. We will continue to work with our law enforcement partners to pursue and bring to justice anyone who violates the nation's tax laws."

QUESTIONS?