The New Wave of Fraud Referrals - Fact or Fiction

2018 Annual Tax Controversy Institute
UCLA Extension

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Panelists

Darren J. Guillot  
Director, Field Collection Operations  
Internal Revenue Service  
Washington, D.C.

Luis Tejeda  
Fraud Technical Advisor Supervisor  
Internal Revenue Service  
Los Angeles, CA

Dawn Harris  
Director, Southwest Area Field Collection  
Internal Revenue Service  
Meza, AZ

A. Lavar Taylor  
Law Offices of A. Lavar Taylor  
Santa Ana, CA

Moderator  
Caroline D. Ciraolo  
Kostelanetz & Fink, LLP  
Washington, D.C.
DISCLAIMER

This presentation and the views expressed therein reflect the unofficial, individual views of the government participants, and do not necessarily represent Department of Justice or IRS policy.
What is a Criminal Fraud Referral?

Information acquired during a civil examination or a collection proceeding that is provided to IRS Criminal Investigation (CI) from another IRS business operating division (BOD) after affirmative acts (firm indications) of fraud are established and criminal criteria is met.

Firm indications are defined in Internal Revenue Manual (IRM) 25.1.1 (see IRM 25.1.1.3(2), Indicators of Fraud vs. Affirmative Acts of Fraud).
Domestic v International Fraud Referrals

• International fraud referrals:
  • US taxpayer who resides in a foreign jurisdiction, or is physically present in a foreign country or countries for at least 330 full days during any 12-mth consecutive period
  • US taxpayer whose business affairs or financial transactions substantially occur offshore
  • Any taxpayer who claims a foreign tax credit (FTC) directly attributable to suspected tax fraud
  • A foreign taxpayer engaged in a trade or business in the US
  • Abusive offshore tax transactions in which promoter or client resides in foreign jurisdiction (i.e., unreported income skimmed from closely held entities or other income streams placed offshore or domestically in nominees domiciled offshore)

• All other fraud referrals are domestic criminal fraud referrals.
Lifecycle of a Criminal Referral

- Revenue Agent/Revenue Officer identifies affirmative acts of fraud/willfulness
- Consultation with Fraud Technical Advisor (FTA)
- Confirmation of firm indicia of fraud and criminal criteria
- Suspension of examination/collection activity
- BOD refers case through FTA to CI via Form 2797, Referral Report to Potential Criminal Fraud Cases
- CI considers and either accepts or declines the referral
Form 2797

• Detailed presentation of the facts that establish firm indicia of fraud:
  • A description of the firm indications/willfulness
  • Taxpayer’s explanation of the firm indications/willfulness
  • Estimated criminal tax liability
  • Method of proof used for income verification

• Compliance employee submits to Group Manager

• Group Manager submits to FTA

• FTA reviews the referral and if in agreement, approves, prepares a one-page narrative, and submits to FTA Group Manager

• FTA Group Manager reviews the referral and if in agreement, approves, and forwards it to appropriate CI field office
Fraud Referral Processing in CI

Domestic Fraud Referrals:
• FTA Group Managers send Domestic Fraud Referrals via email to the appropriate CI field office for evaluation. Upon receipt, the special agent (SA) will immediately initiate a Preliminary Investigation (PI)

International Fraud Referrals:
• International fraud referrals conversely are sent to CI, International Operations (IO). Upon receipt, IO will initiate a PI and review for criminal potential prior to assigning and disseminating the referral to a field office for evaluation
• IO is responsible for preliminary analysis and research to assist field offices in their evaluation of international fraud referrals
• Within 5 business days of receipt from the referring BOD, IO will forward international fraud referrals with criminal potential to the appropriate field office, along with relevant research
Criminal Investigation

• For consistency, each field office designates an employee to be responsible for receipt and tracking of both international and domestic fraud referrals (Fraud Referral Coordinator). This employee is responsible for:
  • Maintaining a record of the status of fraud referrals received
  • Ensuring primary numbers are obtained timely and data is entered into Criminal Investigation Management Information System (CIMIS)
  • Assisting Special Agent in Charge (SAC) tracking due dates and extensions
  • Ensuring Subject Criminal Investigation (SCI) numbers are obtained timely for accepted referrals
  • Maintaining documents relating to fraud referrals including Forms 2797, Referral Declination Memorandums, and Requests for Extensions
  • Tracking fraud awareness presentations
10-Day Conference

• **Domestic Fraud Referrals:** CI will arrange the initial conference with the referring compliance employee to discuss the merits of the criminal fraud. The initial conference must be scheduled and occur within 10 business days from the field office’s receipt of the referral. The conference attendees should include the SA, supervisory SA (SSA), referring compliance employee, his/her immediate supervisor, and FTA (if available).

• **International Fraud Referrals:** IO will arrange the initial conference for international fraud referrals, with the referring compliance employee to discuss the merits of the international criminal fraud referral. The initial conference must be scheduled and occur within 10 business days from the field office’s receipt of the referral. The conference attendees should include the SA, SSA, referring compliance employee, his/her immediate supervisor, FTA (if available), a member of IO, and the appropriate attaché (if available).
10-Day Conference

• Compliance employee discusses the referral and related tax returns, evidence gathered, criminal tax computations, explanations raised by the taxpayers or preparers, etc. The conference should also address:

• Whether:
  • Returns were solicited
  • Attempts were made to resolve the civil issues
  • IRS took prior actions involving the alleged offense or similar/past offense

• Observations regarding Taxpayers
  • Age and Health (mental and physical)
  • Education and Occupation

• Availability of records (domestic and international)

• Other issues – flagrancy, significance, public interest, and deterrent effect
Evaluation Period

• SAs are advised to give immediate attention to all fraud referrals
• Within 30 business days (Domestic Referrals) or 60 business days (International Referrals) whether to elevate the fraud referral PI to SCI, or Decline the Referral and return it to the BOD
• Extensions can be granted in writing by designated Territory Manager (TM)
• CI must provide written feedback to referring employee
Accepted Fraud Referrals

• If CI accepts the referral, the PI will be elevated to an SCI
• The SA will place TC 914 controls in the Master File
• The SA will promptly meet with the referring compliance employee to devise a plan of action and to determine:
  • the need for a cooperating compliance employee,
  • which tax returns are to be transferred to CI, and
  • whether detailed memoranda are required from the referring compliance employee concerning contacts with the taxpayer(s) under criminal investigation, his/her/their representative(s) or the preparer(s) of the related tax returns
Declined Fraud Referrals

• If CI declines the referral, the SA will send a memo to the referring BOD listing the reasons for declination and arrange for a disposition conference.

• The disposition conference should include the SA, SSA, referring compliance employee, his/her immediate supervisor, FTA (if available), a member of IO (if necessary), and Criminal Tax Counsel (if warranted).

• If IO deems the international fraud referral lacks criminal potential, IO completes the declination memorandum in lieu of forwarding the referral to the CI field office.

• CI must justify and clearly articulate reasons for decision.

• Under certain circumstances, the referring BOD may appeal.
# Criminal Tax Administration (Fraud Referrals - Received)

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<th>FY16 #</th>
<th>FY17 #</th>
<th>*FY18 #</th>
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*Numbers in FY18 are thru 07/31/18

Top 5 Field Offices with Most Fraud Referrals received from FY16 thru 7/31/18

1. New York
2. Boston
3. Los Angeles
4. St. Louis
5. Philadelphia
Criminal Tax Administration
(Fraud Referrals - Accepted)

Top 5 Field Offices with Most Fraud Referrals received from FY16 thru 7/31/18

<table>
<thead>
<tr>
<th>Source of Investigation</th>
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<td>#  %</td>
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<tr>
<td>Fraud Referral (Form 2797) - Collection</td>
<td>111 74%</td>
<td>110 71%</td>
<td>91 77%</td>
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<tr>
<td>Fraud Referral (Form 2797) - Examination</td>
<td>100 65%</td>
<td>73 65%</td>
<td>67 74%</td>
<td></td>
</tr>
<tr>
<td>Fraud Referral (Form 2797) - Other</td>
<td>10 37%</td>
<td>9 45%</td>
<td>8 57%</td>
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<tr>
<td>Grand Total</td>
<td>221 66%</td>
<td>192 67%</td>
<td>168 73%</td>
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</table>

*Numbers in FY18 are thru 07/31/18
NOTE: These figures include referrals received in previous fiscal years but decided in the next fiscal year.
Inquiring Minds Want to Know…

- Do Field Collection and Examination anticipate more fraud referrals in FY19?
- Are there certain fact patterns or taxpayers that are more likely to be referred?
- Can a Taxpayer reduce the risk of a referral by showing current compliance?
- Can the Taxpayer reduce the risk of a referral through admission of errors, cooperation, and/or submission of draft amended returns?
- Does advance payment of potential liabilities or payment of outstanding assessments reduce the risk of a referral?
- Is there a certain threshold liability that will trigger a referral?
- Will the IRS make a referral on a one-year case?
- Will the Taxpayer ever see the TC 914 reference in the transcripts or other documents produced in response to a FOIA request?
Tips From The Trenches

• Practitioner Due Diligence
• Trust but Verify
• Interview the Witnesses
• Review All Available Documents
• Consider Applicable Privileges
• Consider Conflicts of Interest
• Think Outside the Box
• Educating the Client to Make the Decision
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**Moderator:**

Caroline D. Ciraolo  
Kostelanetz & Fink, LLP  
Washington, D.C.  
cciraolo@kflaw.com

**Panelists:**

Darren John Guillot  
Director, Field Collection Operations  
Internal Revenue Service  
Washington, D.C.

Dawn Harris  
Director, Southwest Area Field Collection  
Internal Revenue Service  
Meza, AZ

Luis Tejeda  
Fraud Technical Advisor Supervisor  
Internal Revenue Service  
Los Angeles, CA

A. Lavar Taylor  
Law Offices of A. Lavar Taylor  
Santa Ana, CA  
ltaylor@taylorlaw.com
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RECOGNIZING AND DEVELOPING FRAUD
I.R.M. 25.1.2 (REV'D AUGUST 12, 2016)

Exhibit A
Recognizing and Developing Fraud
IRM 25.1.2 (Rev’d August 12, 2016)

25.1.2.1 (06-09-2015)

Overview
1. This section discusses recognizing signs of fraud, known as first indicators (or badges) of fraud, and the development process used to prove fraud. Fraud is substantiated by establishing affirmative acts (firm indications) of fraud. Affirmative acts of fraud are actions taken by the taxpayer, return preparer and/or promoter to deceive or defraud. See IRM 25.1.1.3, Indicators of Fraud vs. Affirmative Acts of Fraud, for further information regarding the difference between indicators of fraud and affirmative acts (firm indicators) of fraud.
2. Procedures related to a specific operating division or function are covered in other sections of the Fraud Handbook (IRM 25.1).

25.1.2.2 (08-12-2016)

Fraud Development Procedures
1. When indicators (badges) of fraud are uncovered, the compliance employee must clearly document the potential fraud indicators and initiate a discussion with the compliance employee's group manager. If the compliance employee's group manager concurs there are indicators of fraud warranting fraud development, the compliance employee must contact the fraud technical advisor (FTA) assigned to that area.

   Note:
   For procedures specific to Campus Examination, see IRM 25.1.14.4, Campus Examination Procedures and Fraud Development. Campus Collection procedures are located in IRM 25.1.11.7, Discussion with the Collection Functional Fraud Coordinator.

2. After reviewing the potential fraud indicators and possible barriers to a successful referral, if the compliance employee, compliance employee's group manager and FTA agree the potential for fraud exists, the compliance employee must prepare Form 11661, Fraud Development Recommendation – Examination, or Form 11661-A, Fraud Development Recommendation – Collection, and forward the completed form to the compliance employee's group manager for approval.

   Note:
   Transmitting the forms electronically requires use of Microsoft Outlook Secure Messaging because of the confidential nature of the material (taxpayer information) it contains.

   Form 11661 / 11661-A documents the FTA's involvement and places a case in fraud development status. A case must not be placed in or out of fraud development status without consulting the FTA. If disagreement exists on whether a case should be in fraud development status, the final decision rests with the compliance employee's group manager.

3. The compliance employee's group manager must review Form 11661 / 11661-A and indicate approval by entering his/her name and date, and electronically forward the completed form by secure messaging to the FTA for consideration.

4. When the FTA concurs with the fraud development determination, the FTA completes Form 11661 / 11661-A and returns it to the compliance employee and compliance employee's group manager, using secure messaging. A copy of the form must be placed in the Collection case file or in the Examination work papers; and a copy retained by the FTA. If a case is placed in fraud development status, a plan of action (plan) must be formulated as early as possible to develop and document the affirmative acts of fraud.

5. The initial plan and those containing follow up action items must be documented in the Collection Integrated Collection System (ICS) history or included in the Examination work papers; and a copy retained by
the FTA. All contacts with the FTA and subsequent action plans must be accurately documented in the Collection case file or Examination work papers.

The plan must:

a. Outline the steps required to establish affirmative acts (proof) of fraud.

b. Be the joint effort of the compliance employee, the compliance employee's group manager and the FTA.

c. Guide the case to its appropriate conclusion in a timely manner.

d. Specify any direct assistance by the FTA. The role of the FTA can be advisory or consultive in nature.

Note:

Consultation with the FTA may or may not be face-to-face. Consultations over the phone or by e-mail are possible; however, in-person contact is preferable.

There must be a follow up plan documented on Form 11660, Potential Fraud Development Plan of Action, memorandum, or other document intended for this purpose within 60 days of the initial Plan of Action and within 60 days of all subsequent action plans.

6. The compliance employee, with the compliance employee's group manager's and FTA's concurrence, will place the case in fraud development status.

- The revenue officer must request the input of ICS Sub-code 910 and/or upload of TC 971 AC 281 through the employee's group manager, as appropriate (see IRM 25.1.8.8, Aging of Collection Fraud Cases).

- The examiner must update the Audit Information Management System (AIMS) to status code 17. Cycle time is excluded from the monthly aging reports to management (Month At a Glance Report) for cases in fraud development status.

7. The compliance employee must request the original tax returns, if not already secured. See IRM 4.11.17.4, Requesting Returns Filed Electronically, for guidance on requesting returns filed electronically. For Campus examination procedures on securing original returns, see IRM 4.19.10.4, Fraud Referrals. The compliance employee proceeds with the plan until affirmative acts of fraud are established or a determination is made that the potential for fraud no longer exists. Timely action is required on all cases in fraud development status.

8. If affirmative acts of fraud are established:

a. The compliance employee must suspend collection or examination activity, and immediately notify the group manager and the FTA.

b. The FTA recommends a referral to Criminal Investigation (CI), if criminal criteria are met (see IRM 25.1.3, Criminal Referrals).

c. If criminal criteria has not been met or the case is returned by CI subsequent to a criminal investigation, consideration of the civil fraud penalty under IRC 6663 and/or the fraudulent failure to file penalty under IRC 6651(f), and/or imposition of the 10-year earned income tax credit (EITC) ban under IRC 32(k) is the shared responsibility of the compliance employee, the compliance employee's group manager and the FTA. The final decision rests with the compliance employee's group manager (see IRM 25.1.6.2, Procedures).

If the case is returned because the criminal criteria has not been met or the case is returned by CI subsequent to a criminal investigation, determine if the taxpayer's actions were due to fraud and the criteria for the EITC 10-year ban has been met. IRC 32(k) allows the IRS to impose bans on future claims of EITC against taxpayers who made prior fraudulent claims for the EITC. The 10-year ban is permitted after a final determination is made that the taxpayer's EITC claim was due to fraud. For jointly filed returns, consideration should be given to proposing the 10-year ban separately against each spouse. There should be a separate fraud write-up for each
spouse, citing clear and convincing evidence of fraud on the part of each spouse. If the acts of only one spouse are found to be fraudulent, the 10-year ban will apply only to the culpable spouse.

9. A determination that the potential for fraud no longer exists:
   a. Is made by agreement of the compliance employee, the compliance employee's group manager, and the FTA. If an agreement cannot be reached, the compliance employee's group manager makes the final decision; and
   b. Requires reversal of the Collection Sub-code 910 and/or TC 971 AC 281 (see IRM 25.1.8.8); or return of the Examination case on AIMS to status 12 or other prior status code.

   Caution:
   The compliance employee or the compliance employee's group manager must never seek advice from CI for a specific case under examination/collection activity.

10. For a case that detracts from the established plan of action, the compliance employee's group manager or FTA should recommend return of the case to Collection field investigative status or to Examination status 12. See IRM 4.19.10.4, Fraud Referrals, for Campus examination procedures for returning the case to a prior status. A case is in fraud development status only while there is active FTA involvement in an ongoing audit or collection activity, or until the FTA recommends one of the following actions:

   • Returning the Examination case to AIMS status 12, when it is determined that the potential for fraud no longer exists as evidenced by the reasons and decisions documented on Form 11661.
   • Removing the Collection Sub-code 910, via Form 11661-A, when it is determined that the potential for fraud no longer exists.
   • Transferring the case, by Campus personnel, to the field for further fraud development via Form 11661.
   • Asserting the civil fraud penalty under IRC 6663 and/or the fraudulent failure to file penalty under IRC 6651(f), and/or imposition of the 10-year EITC ban under IRC 32(k) via Form 11661.

   Note:
   The FTA also uses Form 11661 to recommend returning a case to Status 17 from Status 18 (CI); transferring a case to the field for initial fraud development (Campus action); or transferring it to the W&I Austin Campus for initial fraud development. The ultimate decision with respect to all case action rests with the compliance employee's group manager.

25.1.2.3 (06-09-2015)

Indicators of Fraud

1. Listed below are categories of fraud indicators. Each category list is not intended to be all-inclusive, instead citing examples of actions taxpayers may take to deceive or defraud.

2. Indicators of Fraud—Income
   a. Omitting specific items where similar items are included.
   b. Omitting entire sources of income.
   c. Failing to report or explain substantial amounts of income identified as received.
   d. Inability to explain substantial increases in net worth, especially over a period of years.
   e. Substantial personal expenditures exceeding reported resources.
   f. Inability to explain sources of bank deposits substantially exceeding reported income.
   g. Concealing bank accounts, brokerage accounts, and other property.
h. Inadequately explaining dealings in large sums of currency, or the unexplained expenditure of currency.

i. Consistent concealment of unexplained currency, especially in a business not routinely requiring large cash transactions.

j. Failing to deposit receipts in a business account, contrary to established practices.

k. Failing to file a tax return, especially for a period of several years, despite evidence of receipt of substantial amounts of taxable income.

l. Cashing checks, representing income, at check cashing services and at banks where the taxpayer does not maintain an account.

m. Concealing sources of receipts by false description of the source(s) of disclosed income, and/or nontaxable receipts.

3. **Indicators of Fraud—Expenses or Deductions**

   a. Claiming fictitious or substantially overstated deductions.

   b. Claiming substantial business expense deductions for personal expenditures.

   c. Claiming dependency exemptions for nonexistent, deceased, or self-supporting persons. Providing false or altered documents, such as birth certificates, lease documents, school/medical records, for the purpose of claiming the education credit, additional child tax credit, earned income tax credit (EITC), or other refundable credits.

   d. Disguising trust fund loans as expenses or deductions.

4. **Indicators of Fraud—Books and Records**

   a. Multiple sets of books or no records.

   b. Failure to keep adequate records, concealment of records, or refusal to make records available.

   c. False entries, or alterations made on the books and records; back-dated or post-dated documents; false invoices, false applications, false statements, or other false documents or applications.

   d. Invoices are irregularly numbered, unnumbered or altered.

   e. Checks made payable to third parties that are endorsed back to the taxpayer. Checks made payable to vendors and other business payees that are cashed by the taxpayer.

   f. Variances between treatment of questionable items as reflected on the tax return, and representations within the books.

   g. Intentional under- or over-footing of columns in journal or ledger.

   h. Amounts on tax return not in agreement with amounts in books.

   i. Amounts posted to ledger accounts not in agreement with source books or records.

   j. Journalizing questionable items out of correct account.

   k. Recording income items in suspense or asset accounts.

   l. False receipts to donors by exempt organizations.

5. **Indicators of Fraud—Allocations of Income**

   a. Distribution of profits to fictitious partners.

   b. Inclusion of income or deductions in the tax return of a related taxpayer, when tax rate differences are a factor.

6. **Indicators of Fraud—Conduct of Taxpayer**

   a. False statement about a material fact pertaining to the examination.

   b. Attempt to hinder or obstruct the examination. For example, failure to answer questions; repeated cancelled or rescheduled appointments; refusal to provide records; threatening potential witnesses, including the examiner; or assaulting the examiner.

   c. Failure to follow the advice of accountant, attorney or return preparer.
d. Failure to make full disclosure of relevant facts to the accountant, attorney or return preparer.

e. The taxpayer’s knowledge of taxes and business practices where numerous questionable items appear on the tax returns.

f. Testimony of employees concerning irregular business practices by the taxpayer.

g. Destruction of books and records, especially if just after examination was started.

h. Transfer of assets for purposes of concealment, or diversion of funds and/or assets by officials or trustees.

i. Pattern of consistent failure over several years to report income fully.

j. Proof that the tax return was incorrect to such an extent and in respect to items of such magnitude and character as to compel the conclusion that the falsity was known and deliberate.

k. Payment of improper expenses by or for officials or trustees.

l. Willful and intentional failure to execute pension plan amendments.

m. Backdated applications and related documents.

n. False statements on Tax Exempt/Government Entity (TE/GE) determination letter applications.

o. Use of false social security numbers.

p. Submission of false Form W-4.

q. Submission of a false affidavit.

r. Attempt to bribe the examiner.

s. Submission of tax returns with false claims of withholding (Form 1099-OID, Form W-2) or refundable credits (Form 4136, Form 2439) resulting in a substantial refund.

t. Intentional submission of a bad check resulting in erroneous refunds and releases of liens.

u. Submission of false Form W-7 information to secure Individual Taxpayer Identification Number (ITIN) for self and dependants.

7. **Indicators of Fraud—Methods of Concealment**

a. Inadequacy of consideration.

b. Insolvency of transferor.

c. Asset ownership placed in other names.

d. Transfer of all or nearly all of debtor’s property.

e. Close relationship between parties to the transfer.

f. Transfer made in anticipation of a tax assessment or while the investigation of a deficiency is pending.

g. Reservation of any interest in the property transferred.

h. Transaction not in the usual course of business.

i. Retention of possession or continued use of asset.

j. Transactions surrounded by secrecy.

k. False entries in books of transferor or transferee.

l. Unusual disposition of the consideration received for the property.

m. Use of secret bank accounts for income.
n. Deposits into bank accounts under nominee names.

o. Conduct of business transactions in false names.

25.1.2.4 (06-09-2015)

Investigative Techniques

1. The minimum plan of action must include following up on all leads identified as fraud indicators (signs or symptoms); securing copies of all relevant data relating to indicators of fraud; and noting from whom and when obtained.

   Note:
   
   Original documents obtained from the taxpayer or third parties should not be marked, indexed, hole punched, or in any way altered by the compliance employee. Also, it is critical that the compliance employee attempt to secure the taxpayer's explanation(s) for any discrepancies.

2. In cases where a return has not been filed and fraud is suspected, the compliance employee must not demand a return from the taxpayer. A Letter 3798, Non-filer Appointment Letter, should be used in place of the regular initial appointment letter. Books and records pertaining to the unfiled year(s) should still be requested.

3. A Revenue Agent Report (Form 4549 or similar) must not be sent to the taxpayer and/or power of attorney unless and until this action is specifically discussed with the FTA.

4. Most fraud cases involve individual and business taxpayers with poor or nonexistent internal controls and/or where there is little or no separation of duties. When these occur, there is a greater potential for material misstatement of taxable income than in cases involving individuals earning salaries and wages. However, fraud may be present in any type of tax return.

5. Unusual, inconsistent or incongruous items should alert compliance employees to the possibility of fraud and the need for further investigation. Taxpayer misconduct is an early warning sign of possible fraudulent conduct. The method of operating a business (i.e., lack of internal controls, dealing in cash, etc.) may be indicative of improperly filed tax returns. Consider all facts when determining the fraud risk factor. For example, when examining a cash-only business, consider the size and industry type.

6. The initial contact provides the opportunity to obtain valuable information, which may not be readily available later. Indications of fraud may be disclosed in discussions, financial activities and nonresponsive answers. Questions asked should be recorded verbatim. Similarly, nonresponsive answers should be noted verbatim and judgment used in deciding what information is relevant (affidavits may be used). Examination work papers should be noted as to the tax year, the date of the contact, who was present during the contact, and the author of the examination work papers.

   Examination work papers must include the following information:

   • Who prepared the information used to complete the tax return,
   • Who approved and classified expense items,
   • Who deposited business receipts, and
   • How business gross receipts, per the tax return, were determined.

7. The compliance employee must prepare a Memorandum of Interview, summarizing information obtained and statements made. This becomes part of the Collection case file or Examination work papers, and aids in the fraud development.

8. Throughout the investigation, it is important to keep a current and accurate historical record of all contacts and conversations with the taxpayer. This is necessary to track statements when records were received and from whom; and steps taken to determine the accuracy of the information volunteered. Annotations must not be made on records and other evidence received. See IRM 25.1.2.4 (1) for additional guidance. It is important that the chain of custody for evidence obtained is clearly established through the historical record. Although necessary in any investigation, this action can be critical in sustaining fraud.
9. Fraud is not ordinarily discovered when compliance employees readily accept the completeness and accuracy of records presented and explanations offered by the taxpayer. It is necessary to go behind the books and to probe beneath the surface to validate and determine the consistency of information provided and statements made to evaluate the credibility of evidence and testimony provided by the taxpayer. The judgment of the employee will determine the techniques used. The investigation is extended to the point where the employee is satisfied and the conclusions are substantially correct.

Note:

The compliance employee must also consider identity theft issues during the course of an investigation. See IRM 25.23, Identity Protection and Victim Assistance, for additional guidance.

25.1.2.5 (06-09-2015)

Aiding and Abetting

1. It is important to determine who is responsible for the fraudulent act(s). If the taxpayer is not responsible, then neither criminal and/or civil fraud penalties apply. If the preparer is culpable, then the Return Preparer Coordinator in your Area Planning and Special Programs (PSP) must be contacted. See IRM 20.1.6.3, Overview - Preparer, Promoter, Material Advisor, and Failure to Disclose Reportable Transaction Penalties, IRC 6694 Understatement of Taxpayer's Liability by Tax Return Preparer and IRM 25.1.2.9, Return Preparer Fraud, for additional guidance.

2. Civil penalties apply to anyone who aids and abets an understatement of tax liability under IRC 6701. An individual who willfully aids and assists with the understatement of a tax liability can be criminally charged under Title 26 USC 7206(2). The individual must be directly involved in the preparation or presentation of the false or fraudulent document. This may include independent parties such as lawyers, accountants, return preparers, and appraisers who counsel on a course of action. It is possible for criminal referrals and/or civil penalties to apply to both the taxpayer and the person assisting the taxpayer. See IRM 4.32.2.1, Overview of Abusive Transactions (AT) Program.

Page Last Reviewed or Updated: 10-Sep-2017
CRIMINAL REFERRALS
I.R.M. 25.13 (REV'D AUGUST 24, 2016)

Exhibit B
25.1.3.1 (08-05-2015)

Overview

1. This section discusses the purpose and processing of criminal fraud referrals. An important part of this process is the compliance employee’s ability to identify potential criminal fraud.

2. When affirmative acts (firm indications) of fraud/willfulness exist and criminal criteria are met, the compliance employee will refer the case through the Fraud Technical Advisor (FTA) to Criminal Investigation (CI) via Form 2797, Referral Report of Potential Criminal Fraud Cases. The FTA is available to assist in determining if firm indications of fraud/willfulness are present, criminal criteria has been met, etc.

3. CI’s mission is to serve the American public by investigating potential criminal violations of the Internal Revenue Code (IRC) and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law.

4. The primary objective of CI is the prosecution, conviction and incarceration of individuals who violate criminal tax laws and commit related offenses.

5. Criminal prosecutions serve to enhance voluntary compliance.

25.1.3.1.1 (08-05-2015)

Background

1. 

2. 

Note:

3. 

25.1.3.2 (08-05-2015)

Preparation of Form 2797 - Referral Report of Potential Criminal Fraud Cases
1. If after consultation with the FTA, it is determined that a potential fraud case has firm indications of fraud/willfulness and meets criminal criteria, the compliance employee will suspend the examination/collection activity without disclosing to the taxpayer or representative the reason for the suspension. When the taxpayer asks if a fraud referral is being considered or whether CI is involved, the examiner or revenue officer must not give a false or deceitful response. Guidance from the courts provides that compliance employees:
   - May decline to answer questions about criminal potential
   - May not deceive taxpayers when asked specifically about the character or nature of an investigation
   - Are not required to initiate disclosure about developing indicators of fraud or a potential referral to CI, or
   - May simply advise that when firm indicators of fraud are present, a referral to CI is required

   a. Each case is unique. Contact your local FTA for additional guidance.

   b. The compliance employee will complete the current version of Form 2797 (accessed through the Forms Repository). Electronic Publishing provides a fillable form that can be downloaded, saved as a PDF file, edited and electronically transmitted via Microsoft Outlook/Secured Messaging. The FTA is available to assist the compliance employee with preparation of Form 2797.

2. Preparation of Form 2797
   a. The referral will be a detailed presentation of the facts that establish firm indications of fraud/willfulness, including, but not limited to:
      - A description of the firm indications/willfulness [defined in IRM 25.1.1.3(2), Affirmative Acts (Firm Indications) of Fraud];
      - Taxpayer's explanation of the firm indications/willfulness;
      - The estimated criminal tax liability; and
      - The method of proof used for income verification.

   b. If the fraudulent scheme involves multiple parties (e.g., husband and wife, corporation and corporate officers, etc.), the most culpable party (individual or entity) likely to be numbered as the primary investigation (PI) will be identified in items 1a and 1b. All known parties involved in the fraudulent scheme (including the one identified in items 1a and 1b) will be listed in item 1c.

   c. If the referral is a joint referral from multiple sources, the FTA group manager will ensure that each operating division and/or business unit is properly identified and credited for the referral. TE/GE should be notified of any potential criminal investigation that may include a TE/GE type entity.

   d. No work papers or documents are required with the referral. If attachments are necessary to enhance the referral, they must be embedded in the Form 2797 as a PDF file. The initial conference between the referring compliance employee, the FTA and the evaluating special agent (SA) allows the compliance employee the opportunity to explain the case in detail and address any questions regarding the potential criminal violations. CI will be provided access to all work papers and documents needed to effectively evaluate the referral during the initial conference.

3. The compliance employee will enter his/her name and grade, and enter the date the referral is being forwarded via secured e-mail to the compliance employee's group manager.

4. The compliance employee’s group manager will review the referral and if in agreement, will ensure that the proper Area/Territory/Group is entered, approve the referral and forward it via secured e-mail to the FTA for consideration. The compliance employee’s group manager will retain a copy of the referral for the case file.

5. The FTA will review the referral and if in agreement, will approve the referral and prepare a one-page narrative (used to describe additional facts and/or the fraud development process), if necessary, embed the
narrative in the Form 2797 PDF file, and forward it via secured e-mail to the FTA group manager for consideration.

6. The FTA group manager will review the referral and if in agreement, will approve the referral and enter the FTA Management Control Number and forward it via secure e-mail to the appropriate CI Field Office.

25.1.3.3 (08-05-2015)

Referral Evaluation

1. Within 10 workdays of receipt of the referral, the SA assigned to evaluate the referral will identify the subject (individual or entity under criminal investigation consideration) as the primary investigation (PI), assign a PI number to the case and set up the initial conference. At that conference, the referring compliance employee, his/her group manager, the evaluating SA, his/her supervisory special agent (SSA) and the FTA (if available) will meet to discuss the referral and review tax returns, evidence gathered to support the alleged offense, criminal tax computations, etc. Also, the following issues should be discussed at the initial conference:
   a. Verification of income
   b. Explanations offered by the taxpayer, the taxpayer’s representative, and/or the return preparer concerning the alleged offense
   c. Whether returns were solicited and attempts were made to resolve the civil issues, and prior IRS action(s) involving a similar alleged offense and
   d. Observations about the age, health (physical and mental), education and occupation of the taxpayer

Additional factors to consider during the evaluation of the referral include additional tax due to fraud, flagrancy, significance, public interest and the deterrent effect.

2. Within 30 workdays of receipt of the referral, the same individuals will meet again (disposition conference) to discuss CI’s decision to accept or decline the referral. CI is required to provide written feedback to the referring compliance employee, as to their decision (see IRM 25.1.3.4(1) and IRM 25.1.3.5(1)). Area Counsel will be invited to offer legal advice, if it is deemed necessary. Also, the transfer of original tax returns, the need for a cooperating compliance employee, and civil actions concerning statute and prior/subsequent/related return consideration need to be discussed.

3. The FTA will monitor the conference dates and response obligations to ensure all actions occur in a timely manner.

4. The decision to accept or decline a referral may be extended by written agreement of the appropriate field territory manager (TM) or individual responsible for making such decision. The agreement should specify the reason(s) for the request (e.g., delay in receiving original tax returns or an opinion from Counsel) and the date the referring office can expect a determination.

25.1.3.4 (08-24-2016)

Accepted Criminal Referrals

1. If CI accepts the referral, the PI will be elevated as a Subject Criminal Investigation (SCI). CI will provide feedback by completing the "For Criminal Investigation Use Only" portion of item 1c, item 10 and item 11 of Form 2797 and return it via secure e-mail to the FTA group manager.

2. CI will place TC 914 controls in the Master File record. The FTA group manager will forward the accepted referral via secure e-mail to the referring FTA. The FTA will send the accepted referral via secure e-mail to the referring compliance employee and his/her group manager. If the referral was initiated by Examination, the examiner/group manager will update the case to AIMS Status Code 18. If the referral originated from Collection, the revenue officer/group manager will close the case when the TC 914 is posted to
the module, if no further action is required (see IRM 25.1.8.9, Collection Case Disposition). If further action is required, the revenue officer should open an Other Investigation (OI). See IRM 25.1.8.9(7).

3. The SA will promptly meet with the referring compliance employee and determine whether a detailed memorandum is required concerning contacts with the taxpayer, the taxpayer’s representative, or the preparer of the returns (preparer) under criminal investigation. If a memorandum is needed, the following should be included:
   a. The date of each contact the referring compliance employee had with the taxpayer, the taxpayer’s representative, and/or the preparer, and
   b. A summary of what took place during each contact, any explanations offered concerning the alleged offense, and/or any action that could be construed as solicitation, condonation, or an attempt at civil settlement.

4. IRM 25.1.4, Administrative Joint Investigation, provides specific guidance to compliance employees assigned to a joint investigation case as a cooperating compliance employee.
   a. A joint investigation case can originate from one of two sources:
      • A compliance initiated criminal fraud referral (submission of Form 2797), or
      • A CI initiated criminal investigation
   b. There are two types of joint investigations, administrative or non-Grand Jury (referred by CI as a "Prosecution Recommendation" case) and Grand Jury (referred by CI as a "Further Investigation" case). Among the procedural distinctions are the roles and requirements that apply to mandatory quarterly (four-way) conferences.
      • Specific guidance for the compliance employee cooperating in administrative joint investigations is found in IRM 25.1.4, Administrative Joint Investigation.
      • Specific guidance for the compliance employee cooperating in Grand Jury investigations is found in IRM 25.1.5, Grand Jury Investigations.

5. All criminal investigations (administrative and Grand Jury) involving cooperating compliance employees (joint investigations) are subject to mandatory quarterly (four-way) conferences. Four-way conferences are also required for all accepted criminal referrals (administrative and Grand Jury) in which a compliance employee is not asked to participate (non-joint investigations). In this scenario, the mandatory four-way conferences are designed to inform the referring compliance function of the updated investigation status. A status update for this purpose includes: the SA is writing the special agent's report (SAR), discontinuing the case, case forwarded to Department of Justice (DOJ) - Tax or the Assistant United States Attorneys (AUSAs) office, case is going to trial, etc. The SSA and the manager of the cooperating examiner/officer should exercise sufficient control and follow-up to ensure the conferences are conducted and prompt completion of the investigation. The SSA should contact the compliance group manager to schedule the required four-way conference. If the SSA has not contacted the compliance group manager to schedule a mandatory four-way conference when one is due, the compliance group manager may also contact the SA to schedule a four-way conference. However, CI has primary responsibility for scheduling the mandatory four-way conference.
   a. The four-way conference must be attended by the SSA, SA, the compliance group manager and the cooperating compliance employee. The FTA may also attend, when necessary.
   b. The purpose of the four-way conference is to review the status of the investigation and plan actions required of the cooperating compliance employee and the SA. Appropriate follow-up should be done periodically to ensure prompt completion of the investigation and proper use of resources. The inclusion of the FTA does not override the compliance group manager's responsibility for case and resource oversight.
   c. Form 6084, Quarterly Joint Workplan and Conference Memorandum, is used to document the conference discussion. The form is completed by the SSA and should include the following information:
      • Status/progress of the investigation;
• Investigative obstacles (technical issues, noteworthy defenses);
• Planned activities of both the SA and the cooperating examiner/revenue officer;
• Discussions of civil actions (statute extensions, statutory notices of deficiency, prior/subsequent year and related return considerations); and
• Coordination of related investigations with other field offices (venue issues, similar investigative agendas/plans).

Note:

A copy of the completed form must be issued to all attendees.

6. If a taxpayer files a delinquent or amended return during a joint investigation (administrative or Grand Jury), the assigned cooperating compliance employee must discuss such filing with the assigned SA. The assigned SA must provide written guidance to the cooperating compliance employee regarding whether or not any tax shown on such return should be immediately assessed. If the SA determines that such an assessment may jeopardize the criminal case, then the SA should advise the cooperating compliance employee to not make the assessment at that time. At a minimum, however, the cooperating compliance employee must update the statute for assessment on AIMS to reflect receipt of the delinquent return and ensure transaction codes are reflected on Master File to reflect the receipt of an amended and/or delinquent return. See IRM 4.4.9, Delinquent and Substitute for Return Processing, and IRM 4.4.21, Non-Examined Closures and Deleting AIMS Records, for additional guidance on processing amended and/or delinquent returns. When there is no cooperating compliance employee assigned, then the assigned SA must ensure that the transaction codes are reflected on Master File to reflect the receipt of an amended and/or delinquent return, and to ensure the statute is properly reflected.

7. The SA must advise civil compliance functions if the case has been referred/accepted by the DOJ for prosecution (referred by CI as a "Prosecution Recommendation" case) or if the case is the subject of a Grand Jury (referred by CI as a "Further Investigation" case). In either case, CI must submit a Notice of Department of Justice Referral memorandum to the appropriate civil compliance functions advising of such. The memorandum will serve as civil compliance function's supporting documentation to submit the case to Technical Services for suspense, or to the appropriate TE/GE suspense unit. Other civil business operating divisions will forward the case to their appropriate suspense unit.

25.1.3.5 (08-05-2015)

Declined Criminal Referrals

1. If the referral is declined, CI will complete items 10 and 11 of Form 2797 and return it to the FTA group manager via secure e-mail along with a memorandum explaining the reason(s) for the declination.

2. The FTA group manager will forward via secure e-mail the declined referral to the referring FTA. The FTA will send the declined referral via secure e-mail to the referring compliance employee and his/her group manager. The referring compliance employee will resume the examination/collection activity once notification of the declination is received. The compliance employee and FTA will amend the plan of action (Form 11661, Fraud Development Recommendation-Examination, or Form 11661-A, Fraud Development Recommendation-Collection), which will include a schedule of future discussions, if warranted. If additional (new) firm indications of fraud develop, the case may again be referred to CI for criminal investigation consideration, as outlined in IRM 25.1.3.2.

3. If a referral is declined and the FTA, in conjunction with the referring compliance employee and compliance group manager, disagrees with the reasoning behind the declination, it is the FTA's responsibility to elevate the issue to the FTA group manager. If the FTA group manager concurs with the disagreement, he/she will consult with the appropriate TM/equivalent and request that the special agent in charge (SAC)/assistant special agent in charge (ASAC) reconsider the referral. If an agreement still cannot be reached, the matter will be elevated to the area director/equivalent and the CI Director of Field Operations for resolution.
4. **The compliance employee should remove the case from fraud development status if no further actions related to criminal or civil fraud development are anticipated.** For Collection cases, the TC 971 AC 281 should be reversed and/or the Sub Code 910 should be removed. See IRM 25.1.8.8(4), *Aging of Collection Fraud Cases*, for more information. Examination cases will be returned to AIMS Status Code 12 or other appropriate status code if civil fraud (Civil Fraud Penalty and/or Fraudulent Failure to File Penalty) is not being pursued. See IRM 25.1.6.2, *Procedures*; IRM 25.1.7.7, *Assessment Procedure for the Fraudulent Failure to File (FFTF) Penalty* and IRM 25.1.7.8, *Civil Closure*, for additional information.

**25.1.3.6 (08-05-2015)**

**Return Preparers**

1. All potential criminal fraud referrals regarding a return preparer should be discussed with the Small Business/Self-Employed (SB/SE) return preparer coordinator (RPC) [http://mysbse.web.irs.gov/exam/tip/rp/contacts/12293.aspx](http://mysbse.web.irs.gov/exam/tip/rp/contacts/12293.aspx) and the FTA. For cases involving any Tax Exempt/Government Entities (TE/GE) related entity (Employee Plans, Exempt Organizations, Indian Tribal governments, Federal, State or Local governments, or Tax Exempt Bonds) a discussion with the TE/GE Fraud Specialist and/or Functional Fraud Coordinator should take place. For cases involving LB&I preparers/tax shelter promoters, contact the LB&I Senior Program Fraud Analyst for coordination of various resources available.

2. **Form 2797** will be prepared, as described in IRM 25.1.3.2, when the compliance group manager and FTA agree that a return preparer is involved in criminal fraud. The compliance group manager will retain a copy of Form 2797 for the return preparer case file and the FTA will forward a copy of the Form 2797 via secure e-mail to the SB/SE RPC or the TE/GE RPC if the returns are TE/GE-related. Notification will also be sent to TE/GE via e-mail to *TE/GE-EO-FIU*. See IRM 4.1.10, *Planning and Special Programs - Return Preparer Program Coordinator*, for procedures relating to preparer action cases (PACs). If it is determined that the return preparer is not involved in criminal fraud, the Area RPC should be contacted for consideration of a PAC.

3. If the return preparer/promoter scheme involves multiple entities/individuals, only one Form 2797 should be prepared. The individual or legal entity that is considered most culpable will be identified in items 1a and 1b and all entities and/or individuals, including the individual or legal entity identified in items 1a and 1b, will be listed in item 1c. A separate Form 2797 is no longer prepared for each type of tax involved or dissimilar fraudulent acts. The Form 2797 should give specific details relating to the apparent fraudulent act(s) including:

- Names of the taxpayers (i.e. clients of the return preparer/promoter);
- Taxpayer identification numbers (TINs);
- Tax form numbers;
- Amount of the adjustment for each client of the return preparer/promoter; and
- Resulting deficiencies for each client of the return preparer/promoter.

4. The examiner should retain a copy of each taxpayer's report of examination and relevant work papers so that the IRC 6694 civil return preparer penalty can be pursued after disposition of the criminal case.

5. See IRM 25.1.2.9, *Return Preparer Fraud*, for additional guidance.

*Page Last Reviewed or Updated: 10-Sep-2017*
Civil Fraud
IRM 25.1.6 (Rev’d April 29, 2016)

25.1.6.1 (11-05-2014)

Overview

1. This section discusses the procedures to follow in a civil fraud case.
2. A civil fraud penalty case may be developed based on facts and circumstances of a civil examination or result from a case initiated by Criminal Investigation (CI).
3. Civil fraud penalties will be asserted when there is clear and convincing evidence to prove that some part of the underpayment of tax was due to fraud. Such evidence must show the taxpayer’s intent to evade the assessment of tax, which the taxpayer believed to be owing. Intent is distinguished from inadvertence, reliance on incorrect technical advice, sincerely-held difference of opinion, negligence or carelessness. In the case of a joint return, intent must be established separately for each spouse as required by IRC 6663(c). The fraud of one spouse cannot be used to impute fraud by the other spouse. Thus, the civil fraud penalty may be asserted only on one spouse, unless there is sufficient evidence that both spouses participated in the fraudulent act(s) resulting in the underpayment reported in their joint return.

Note:

When considering the civil fraud penalty under IRC 6663 the fact that a taxpayer has no tax due is not sufficient to assert the civil fraud penalty. An affirmative act of fraud, as stated in IRM 25.1.1.3(2), Affirmative Acts (Firm Indications) of Fraud, must also be present.

4. Specific guidance on fraud indicators and the development of fraud may be found in IRM 25.1.1, Overview/Definitions, and IRM 25.1.2, Recognizing and Developing Fraud.

5. IRM 20.1, Penalty Handbook, provides specific procedures for assertion of the civil fraud penalty.

25.1.6.2 (04-29-2016)

Procedures

1. Upon concurrence of the Examination group manager and Fraud Technical Advisor (FTA), fraud development cases will be updated on AIMS to status code 17 (Fraud Development), via Form 11661, Fraud Development Recommendation - Examination.

Note:

Where the FTA and Examination group manager do not agree on whether a case should be developed for potential fraud, the Examination group manager may update the case to AIMS status code 17 without the FTA’s concurrence. However, the compliance group manager should contact the FTA group manager to discuss the situation prior to updating the status code. Regardless, to ensure consistent treatment of all fraud cases, preparation of Form 11661 is required to document the compliance
group manager’s decision for fraud development. Ultimately, the final decision on an examination case rests with the Examination group manager.

2. Determination of the civil fraud penalty is the shared responsibility of the examiner, his/her group manager and the FTA. For LB&I cases, FTA concurrence is mandatory. See IRM 25.1.10.7(3).

**Note:**

Campus Fraud Procedures are prescribed in IRM 4.19.10.4, *Fraud Referrals*. The SB/SE Campuses are positioned to develop and assert the civil fraud penalty, and to impose a 10-year ban on earned income tax credit (EITC) cases.

**Note:**

Campus Fraud Procedures prescribed in IRM 4.19.10.4, *Fraud Referrals*, also apply to the five W&I Campuses. The civil fraud program is centralized at the Austin Campus, and receives transfers of potential fraud cases from all W&I campuses, with the FTA’s approval for case development. The FTA assigned to the Austin Campus assists the Austin Examination Fraud Coordinator (EFC) with case development, write-up, and review as necessary. The EFC works closely with Austin Counsel on preparing and obtaining approval for the 90-day letter language; imposing the 10-year ban on EITC claims and/or asserting the civil fraud penalty.

Each campus’ assigned FTA will assist with the development, write-up and review of the civil fraud penalty issues. Each campus also has dedicated Counsel to assist with review and approval of the penalty issues for Statutory Notice of Deficiency (SNOD) purposes. See IRM 4.19.10.4.10.3, *90-Day Procedures*, for additional guidance.

3. The FTA works with the examiner to ensure the fraud penalty narrative does, in fact, substantiate the assertion of the civil fraud or fraudulent failure to file penalties. The FTA will recommend enhancements to the fraud narrative, as needed, to clearly explain the indicators of fraud. The affirmative acts in each case should be described in such detail as to leave no doubt as to why assertion of the civil fraud penalty or fraudulent failure to file penalty is justified. If the FTA recommends that the examiner further case development, the FTA will document the reason(s) why and note the required additional steps in the Plan of Action.

4. If the FTA concurs with the examiner’s fraud narrative and no additional information is required, the FTA will indicate his/her concurrence with the assertion of the civil fraud penalty or fraudulent failure to file penalty on Form 11661. A copy of the Form 11661 will be forwarded to the FTA group manager and the original will be returned to the examiner for inclusion in the administrative case file.

5. If the Examination group manager disagrees with the FTA recommendation that the civil fraud penalty should be asserted, this should be documented and discussed with the examiner and his/her group manager. The case will be returned to AIMS status code 12 and the Form 11661 will be documented by the FTA to reflect the Examination group manager’s decision. Ultimately, the final decision on such a case rests with the Examination group manager.

**Note:**
For LB&I cases, after discussion with the Examination group manager, the FTA should contact the LB&I Senior Program Fraud Analyst for further discussion.

6. If the Examination group manager disagrees with the FTA recommendation that the civil fraud penalty should not be asserted, this should also be documented and discussed with the examiner and his/her group manager. The case will remain in AIMS status code 17 and the Form 11661 will be documented by the FTA to reflect the Examination group manager’s decision. Ultimately, the final decision on such a case rests with the Examination group manager.

7. For civil disposition of a prosecution case, the examiner should contact CI to ascertain the criminal statutes under which the taxpayer was convicted before attempting to resolve the related civil fraud penalty. If a taxpayer is criminally convicted under IRC 7201, the conviction precludes the taxpayer from objecting to the civil fraud penalty for the year at issue under the doctrine of collateral estoppel. See *IRM 25.1.6.4* for additional information. However, the amount of the liability and the "underpayment" upon which the civil fraud penalty is based must be fully developed. Further, collateral estoppel would only apply to the year or years for which a conviction under IRC 7201 was obtained. For years where the conviction was obtained under a statute other than IRC 7201, or for years for which the taxpayer was not criminally convicted, the examiner must develop the civil fraud penalty prior to recommending its assertion. The examiner should consult the local FTA and Area Counsel for assistance in developing the case. The examiner should obtain a copy of the plea agreement or judgment notating the applicable criminal statutes and years. See *IRM 25.1.5, Grand Jury Investigations*, for procedures in securing information for use in the civil settlement of cases investigated through grand jury procedures.

8. In cases where fraud was considered and the civil fraud penalty is not recommended, the examiner must explain fully in the work papers consideration of the penalty and why it was not asserted.

9. The civil fraud penalty and/or the fraudulent failure to file penalty must be asserted if a taxpayer was successfully prosecuted by the Department of Justice under Title 26 (i.e. IRC 7201, 7203, 7206(1)) and the prosecution involved additional tax assessment(s) as opposed to payment of existing assessment(s). Any exceptions to this rule must be approved by Area Counsel. In unsuccessful prosecution cases, non-assertion of the civil fraud penalty and/or the fraudulent failure to file penalty is the discretion of the Examination group manager. Examination group managers are encouraged to consult with their local FTA for assistance. This rule also applies in the case of any related taxpayer involved in the same transaction and to any other year or period of the same taxpayer which is related to or affects the year or period for which criminal prosecution was successful.

**Note:**

Refer to *IRM 25.1.6.4, Collateral Estoppel*.

**Caution:**

LB&I cases with court ordered restitution may require special handling, contact the LB&I Fraud Program Senior Analyst for additional guidance.

10. Assertion of the civil fraud penalty or fraudulent failure to file penalty should be considered when a taxpayer is successfully prosecuted by the Department of Justice under Title 18 and the facts underlying the criminal case directly relate to additional assessments.
The nature and scope of the civil action in such cases is at the discretion of the Examination group manager. Examination group managers are encouraged to consult with their local FTA for assistance and Area Counsel should be consulted as appropriate.

11. For SB/SE, cases where criminal restitution can be assessed as a tax under IRC 6201(a)(4), contact SB/SE Area Counsel for further guidance.

12. For LB&I, cases with criminal restitution, contact the LB&I Fraud Program Senior Analyst upon receipt for guidance.

13. Cases returned to the field from Fraud or Grand Jury suspense for civil disposition are returned in AIMS status code 17. Based on the facts and circumstances of the case, if and when a joint determination by the examiner, his/her manager and the FTA is made to not develop and/or assert the civil fraud penalty, the case will be updated to AIMS status code 12. The case must clearly document the reason(s) for such determination.

14. Area Counsel must approve the civil fraud penalty prior to issuance of a SNOD.

25.1.6.2.1 (04-29-2016)

Determination of Underpayment

1. On December 30, 2015, the Office of Chief Counsel issued Chief Counsel Notice 2016-004 http://intranet.prod.irs.counsel.treas.gov/irsccdm/ccdm/CC-2016-004.pdf cancelling the guidance previously provided in Chief Counsel Notice 2014-007 to conform with the courts decision in Rand v. Commissioner. Section 209 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113 Div. Q (2015) amends IRC 6664(a) to provide that "a rule similar to the rule of IRC 6211(b)(4) shall apply for purposes of this subsection". Under IRC 6664 as amended, disallowed refundable credits must be taken into account when determining the tax shown on the return and can reduce the tax shown on a return below zero for purposes of calculating the underpayment subject to penalty under IRC 6662 and IRC 6663. Section 209(d)(1) of the PATH Act provides that the amendment is effective for all returns filed after December 18, 2015, and all returns filed on or before December 18, 2015, for which the period of limitations specified in IRC 6501 had not expired as of that date.

2. The recommendation to impose the 10-year EITC ban is independent of whether the taxpayer’s reporting results in an underpayment per IRC 6664, on which the civil fraud penalty is based. For a discussion of the civil fraud (and accuracy-related) penalties, see IRM 20.1.5.2, Common Features of Accuracy-Related and Civil Fraud Penalties; and IRM 20.1.5.14, IRC 6663, Civil Fraud Penalty.

3. Issues that could impact assertion of the fraud penalty, but should not impact consideration of the 10-year EITC ban include:
   
   • Rand Cases - In Rand v. Commissioner, 141 T.C. 376 (2013), the Tax Court reduced or eliminated application of the accuracy-related and fraud penalty in some cases involving disallowed refundable credits, including the Earned Income Tax Credit. As noted above, section 209(a) of the PATH Act reversed the Tax Court’s decision in Rand. If examiners have questions regarding whether the Rand decision affects imposition of the fraud penalty, please contact local Counsel. For more information relating to these changes, visit the Office of Servicewide Penalties website at: http://sbseservicewide.web.irs.gov/penalty/news/557.aspx and consult CC Notice 2014-007 and CC Notice 2016-004.
"Frozen Refund" Cases - The Office of Chief Counsel issued written guidance in 2012 in which it provided that: *When a taxpayer claims a refundable credit, such as the EITC, for which he is ineligible and the Service does not pay the taxpayer a refund (or approve a carry-forward credit) of such tax credit, and there is no other misreporting by the taxpayer on the return, this is not a section 6664 "underpayment". Thus, no civil fraud penalty is appropriate in this situation. The 10-year EITC ban falls under a different Internal Revenue Code section and should, nonetheless, be considered for assertion.*

25.1.6.3 (11-05-2014)

Evidence of Fraud

1. Since direct proof of fraudulent intent is rarely available, fraud must be proven by circumstantial evidence and reasonable inferences. Fraud generally involves one or more of the following elements:
   - Deception
   - Misrepresentation of material facts
   - False or altered documents
   - Evasion (i.e., diversion or omission)

2. The courts focus on key badges of fraud in determining whether there was an "intent to evade" tax. A determination of fraud is based on the taxpayer's entire course of conduct, with each badge of fraud given the weight appropriate to a particular case. An evaluation of fraud is based on the weight of the evidence rather than the quantity of the factors. Some of the common "first indicators (or badges) of fraud" include:
   - Understatement of income (e.g., omissions of specific items or entire sources of income, failure to report substantial amounts of income received)
   - Fictitious or improper deductions (e.g., overstatement of deductions, personal items deducted as business expenses)
   - Accounting irregularities (e.g., two sets of books, false entries on documents)
   - Obstructive actions of the taxpayer (e.g., false statements, destruction of records, transfer of assets, failure to cooperate with the examiner, concealment of assets)
   - A consistent pattern over several years of underreporting taxable income
   - Implausible or inconsistent explanations of behavior
   - Engaging in illegal activities (e.g., drug dealing), or attempting to conceal illegal activities
   - Inadequate records
   - Dealing in cash
   - Failure to file returns, and
   - Education and experience
3. The Facts section of the penalty narrative should include a detailed description of all applicable badges of fraud. Additionally, the examiner should include other items of deception or instances where the taxpayer may have misled or misrepresented facts to the government.

25.1.6.4 (11-05-2014)

Collateral Estoppel

1. Examiners and managers should be aware of collateral estoppel and the important distinction it can have in civil fraud penalty cases.

2. Collateral estoppel is a legal doctrine that prevents a taxpayer, who has been previously convicted of criminal tax evasion under IRC 7201, from asserting a defense to the civil fraud penalty. "Collateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." (Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979)). The courts routinely look to the presence of several factors in applying collateral estoppel.

   - The issue for which estoppel is being sought must have been necessary in reaching the original decision (see Parklane case cited above),
   - The party to be estopped had a "full and fair opportunity to litigate" the issue in the original suit (Montana v. United States, 440 U.S. 147, 154 (1979)), and
   - The issue must have been part of a valid and final judgment. (Ashe v. Swenson, 397 U.S. 436, 443 (1970)).

The doctrine of collateral estoppel applies only to the years for which the taxpayer has been convicted. Intent must be established for non-conviction years.

   **Note:**

   Although a taxpayer is collaterally estopped from asserting a defense to the civil fraud penalty, he may still argue the actual tax amount and amount of the underpayment reported in the return due to fraud.

3. A conviction under IRC 7206(1), filing a false return, does not collaterally estop the taxpayer from asserting a defense to the civil fraud penalty since conviction under IRC 7206(1) does not require proof of fraudulent intent to evade federal income taxes. In these cases, additional development is required to establish the taxpayer's intent to evade assessment of a tax to be due and owing.
25.1.6.5 (04-29-2016)

Case Closing

1. Monitoring fraud-related activities on AIMS
   a. Form 5344, *Examination Closing Record*, is used to capture the following information in item 38:
      • Enter "F" if criminal prosecution has been successfully concluded,
      • Enter "C" if the 75% fraud penalty was asserted under IRC 6663 or
      • Enter "B" if both apply.
   b. Form 5599, *TE/GE Examined Closing Record*, is used by TE/GE to capture the same information in item 38.

2. Form 3198, *Special Handling Notice*, must be used for routing of civil fraud penalty cases. The examiner must identify the applicable penalty code section and computed penalty amount for each tax period on this form and provide any special closing instructions for Centralized Case Processing (CCP) and/or Technical Services.

   a. Certain civil resolution cases (after the criminal prosecution) require mandatory review by Technical Services prior to closure. This includes:
      • Cases successfully prosecuted under Title 26. See *IRM 25.1.6.2 (9)*
      • Cases with tax-related (specifically Examination-related) conditions of probation. IRM 25.1.4.5, *Special Conditions of Probation*.
      • Cases where restitution is assessable under IRC 6201(a)(4). IRM 25.26.1.3.2.2(1)c, *Field Examination Restitution-Based Responsibility*.
   b. These cases will generally include AIMS Freeze Code "P", *Civil Disposition*, and/or AIMS Criminal Restitution Code "1".

   **Note:**

   For any cases identified under (a), even if the AIMS Freeze Code "P" or Criminal Restitution Code "1" are not posted on AIMS, the case must still be transferred to Technical Services for mandatory review prior to closure.
### Exhibit 25.1.6-1

**Procedural Decision Guide**

<table>
<thead>
<tr>
<th>If</th>
<th>Then</th>
<th>Next steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>The FTA concurs with the examiner’s fraud narrative and no additional information is required</td>
<td>The FTA will indicate his/her concurrence with the assertion of the civil fraud penalty or fraudulent failure to file penalty on Form 11661.</td>
<td>A copy of the Form 11661 will be forwarded to the FTA group manager and the original will be returned to the examiner for inclusion in the administrative case file.</td>
</tr>
<tr>
<td>The FTA recommends further development</td>
<td>The FTA documents the reason(s) why and notes the required additional steps in the Plan of Action.</td>
<td>Case is returned to examiner.</td>
</tr>
<tr>
<td>The Examination group manager disagrees with the FTA’s recommendation that the civil fraud penalty should be asserted</td>
<td>The FTA documents and discusses with the examiner and examiner’s group manager. The case will be returned to AIMS status code 12.</td>
<td>Ultimately, the final decision on such a case rests with the Examination group manager. <strong>Note:</strong> For LB&amp;I cases, after discussion with the Examination group manager, the FTA should contact the LB&amp;I Fraud Program Senior Analyst for further discussion.</td>
</tr>
<tr>
<td>The Examination group manager disagrees with the FTA’s recommendation that the penalty should not be asserted</td>
<td>The FTA documents and discusses with the examiner and examiner’s group manager. The case will remain in AIMS status code 17.</td>
<td>Ultimately, the final decision on such a case rests with the Examination group manager.</td>
</tr>
</tbody>
</table>

*Page Last Reviewed or Updated: 10-Sep-2017*
FIELD COLLECTION
I.R.M. 25.1.8 (REV'D OCTOBER 27, 2016)

Exhibit D
Overview

1. Collection is an important cross-functional partner in the detection and referral of fraud issues. The very nature of collection work lends itself to numerous areas of potential fraudulent noncompliance. The following sections highlight some of the fraudulent areas encountered in varying degrees by revenue officers (ROs). Refer to the Fraud Handbook, IRM 25.1.1, Overview/Definitions, through IRM 25.1.7, Failure to File, for detailed guidance in developing indications of fraud and completing the fraud referral process. Of particular value to ROs are the sections devoted to IRM 25.1.2, Recognizing and Developing Fraud, IRM 25.1.3, Criminal Referrals, and IRM 25.1.7, Failure to File, respectively. ROs could also refer to National Fraud Program Standard Operating Procedures, Document 12722, for assistance in recognizing and developing fraud in the collection arena.

Trust Fund Violations

1. A substantial part of Collection’s work involves unpaid payroll taxes, under-reported payroll taxes, and delinquent Form 941, Employer’s Quarterly Federal Tax Return. Many of these cases involve prior quarters and current quarter pyramiding, multiple business entities, or a string of similar defunct businesses. When investigating cases involving unpaid payroll taxes, ROs should look for potential indicators of fraud, such as:

   a. Concealment, false statements or false documents;
   b. Abusive tax avoidance schemes regarding payroll;
   c. Unusual business practices (such as requesting certain sources of income to pay by cash or other acts of questionable ethics) which serve to circumvent normal bookkeeping practices;
   d. Disorganized or non-existent payroll records;
   e. Taxpayer paying business and personal expenses in cash, when cash payments are not customary;
   f. Business owner/officers have a standard of living or lifestyle that is inconsistent with reported income;
   g. Use of nominees (wife, partner, relatives, friends, fictitious partner, other business entities, etc.) to shield business or personal assets;
   h. Business owner/officer is evasive, uncooperative, belligerent, threatening or attempts to interfere with a tax investigation;
   i. A history of non-compliance by the officers including previous entities with unpaid payroll tax liabilities;
   j. Business use of undocumented workers; and/or
   k. Other business related fraudulent activity identified in civil and/or criminal filings or other public sources.

Note:
Refer to IRM 25.1.2.3, *Indicators of Fraud*, for an expanded list of fraud indicators on trust fund and other types of cases involving potential fraud.

2. When initial indicators of fraud are identified and warrant potential fraud development, ROs should consider the potential for:
   a. Pursuit of IRC 7201, Attempt to Evade or Defeat Tax;
   b. Pursuit of IRC 7202, Willful Failure to Collect or Pay Over Tax;
   c. Pursuit of IRC 7206(1), Declaration under penalties of perjury (i.e. false return); and
   d. Civil Injunction

   **Note:**
   See IRM 25.1.3.1, *Overview*, for factors to consider whether further development is warranted.

   **Note:**
   IRC 7201, IRC 7202 and IRC 7206(1) are felonies. IRM Exhibit 25.1.1-1, *Criminal Violations*, is a listing of the elements necessary for the most common statutes under which criminal prosecution may be recommended by Criminal Investigation (CI). Many of the elements associated with establishing proof of responsibility and willfulness in fraud cases are similar to those in a trust fund recovery penalty (TFRP) investigation. Therefore, ROs should continue to conduct TFRP investigations when warranted. However, ROs should be careful not to pursue potential TFRP assessments if indicators of fraud have been identified. ROs should discuss any proposed TFRP assessment with the group manager and local fraud technical advisor (FTA) when indicators of fraud have been established.

3. The RO will discuss the case with the group manager. If the group manager concurs with the fraud potential, the RO should contact the FTA. To identify the local FTA, go to the Fraud website and select Fraud Contacts.

4. Because IRC 7201, IRC 7202, and IRC 7206(1) prosecutions require the government to establish that responsible persons knew of their tax responsibilities and willfully failed to perform them, Letter 903, *Letter to Employer - You Haven't Deposited Federal Employment Taxes*, should be issued early in the development of any employment tax case where an indication of fraud is present. Although Letter 903 is primarily a warning of the potential for additional enforcement actions, it also provides specific instructions and a notice of personal responsibility to the potentially responsible individuals.

5. Letter 903 should be considered in egregious cases of noncompliance and/or when levy sources have been exhausted and the repeater or pyramiding taxpayer has no assets to assist in resolving or offsetting the liability. In cases where criminal charges are pursued based on the failure to adhere to the reporting and payment requirements, use Form 2797, *Referral Report of Potential Fraud Cases*. See IRM 5.7.2.4, *Referrals For Criminal Enforcement*. In cases where only civil sanctions (e.g., an injunction under IRC 7402(a)) are contemplated, see IRM 5.7.2.3, *Referrals For Civil Enforcement*.

6. The RO will advise the group manager and will follow guidelines for making a criminal referral (IRM 25.1.3, *Criminal Referrals*) or a civil referral (IRM 5.17.4.17, *Civil Injunctions under IRC 7402(a) to Restrain Pyramiding*).

7. ROs will monitor the taxpayer's actions and keep the group manager and FTA informed while the case is in fraud development status.

8. If the taxpayer has previously abandoned other business ventures, leaving unpaid and uncollectible tax liabilities, it may be appropriate to seek a civil injunction to stop further pyramiding. Consult with the FTA and local SB/SE Counsel when dealing with this situation.
Evasion of Payment

1. IRC 7201 includes two separate offenses:
   a. the willful attempt to evade or defeat the assessment of a tax; and
   b. the willful attempt to evade or defeat the payment of a tax.

The affirmative acts associated with evasion of payment cases often involve some form of concealment of the taxpayer's ability to pay the tax due and owing or the removal of assets from the reach of the IRS. It should be noted that refusing to pay taxes due, possession of the funds needed to pay the taxes, and even the open assignment of income, without more, do not meet the requirement of the affirmative acts necessary for this felony evasion charge.

2. In addition to the affirmative acts/indicators listed in IRM 25.1.2.2, Fraud Development Procedures, other examples of affirmative acts of evasion of payment include:
   - placing assets in the names of others;
   - dealing in cash when payment of cash is not a standard business practice;
   - causing receipts to be received through and in the name of others;
   - causing debts to be paid through and in the name of others;
   - paying creditors instead of the government;
   - bankrupting a corporation and hiding the assets to avoid payment of employment taxes; and
   - a complete change of taxpayer identity.

See IRM 25.1.8.4, Fraudulent Offers in Compromise, for examples of indications of fraud relating to false statements under penalty of perjury.

Note:
If someone other than the taxpayer completed and signed the Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, or Form 433-B, Collection Information Statement for Businesses, the RO will need to take additional steps to substantiate perjury. Contact the local FTA for assistance.

3. When initial indications of fraud are identified, the RO will discuss the case with the group manager. If the group manager concurs with the fraud potential, contact the FTA.

Fraudulent Offers In Compromise

1. IRM 5.8.10.10, Indicators of Taxpayer Fraud, provides a comprehensive discussion of indications of potential fraud warning signs most identifiable during an interview relating to Offers in Compromise. In addition to those indications of fraud, the ROs should be alert to the potential for false statements under penalty of perjury, i.e., relating to Form 433-A and Form 433-B. Examples of these include, but are not limited to:
   a. False or fraudulent valuation statements or appraisals in support of Form 433-A or Form 433-B;
   b. Sham loans and mortgages;
   c. Significant omission or asset undervaluation;
d. Understated income;
e. Overstated expenses;
f. Large number of claimed dependents;
g. Similar amounts in both checking and savings accounts (e.g. $100 or $1,000);
h. No available credit;
i. Similar listings for monthly income and expenses (e.g. same low wages, same child care expenses); and
j. Reclassification of wage income.

2. When indicators of potential fraud arise during an offer investigation, the offer specialist (OS) will follow guidelines outlined in IRM 5.8.4.18, Potential Fraud Referrals.

3. Open criminal investigations can be identified on the Integrated Data Retrieval System (IDRS) by an unreversed TC 914, TC 916, or TC 918. Cases with a TC 910 are being monitored by CI. When these transaction codes are discovered, contact must be made with the assigned special agent (SA) and procedures in IRM 5.1.5, Balancing Civil and Criminal Cases, must be followed. It may be necessary for the group manager to contact the supervisory special agent (SSA) to determine the next appropriate action. A decision will need to be made on the appropriate actions to take and what may or may not be discussed with the taxpayer.

Note:
Cl should be advised of the TIPRA law (Tax Increase Prevention and Reconciliation Act), which includes a provision for deemed acceptance of the offer if the IRS does not return or reject it within 24 months of the received date. IRS cannot hold offers open indefinitely pending criminal investigation.

4. OS must follow the guidance in IRM 5.8.4.19, Criminal Investigations, when an offer may be or might have been involved in a criminal investigation.

5. If the referral is accepted, CI will make contact with the taxpayer at the appropriate time.

25.1.8.5 (04-22-2015)

Statute of Limitations

1. The criminal statute of limitations must be taken into consideration when developing a case for fraud. It is generally six years for tax offenses.

2. Issues regarding statutes of limitations should be discussed with the FTA during the initial stages of fraud development.

3. Refer to the Department of Justice (DOJ) Criminal Tax Manual on Statute of Limitations which includes a reference table on the Limitations Periods for Common Tax Offenses. This Criminal Tax Manual can be found at the following website: http://www.justice.gov/tax/readingroom/foia/tax.htm.

25.1.8.6 (10-27-2016)

Summons Referral

1. Referral for summons enforcement can be an important part of the potential fraud development process. The ability to enforce a summons is dependent upon many factors.
2. In most instances, summons enforcement will be conducted as an IRC 7604 civil matter, through SB/SE Area Counsel, and is directed toward requiring the person summoned to comply (see IRM 25.5.10, Enforcement of Summons).

   **Note:**

   Under IRC 7602(d), the Service cannot issue or begin to enforce a summons issued to investigate any taxpayer if a Justice Department referral is in effect regarding that taxpayer. A Justice Department referral is in effect if: (1) the Service recommends that the Department of Justice either begin a grand jury investigation of or begin a criminal prosecution of such taxpayer for any alleged offense connected with the internal revenue laws; or (2) pursuant to IRC 6103(h)(3)(B), the Service receives a written request from the Department of Justice for the disclosure of the taxpayer’s return or return information in order to pursue a grand jury investigation or a potential or pending criminal prosecution of the taxpayer for any alleged offense connected with the internal revenue laws.

3. Criminal prosecution under IRC 7210 for failure to obey a summons is rarely utilized and should be considered only after review of IRM 5.17.6, Legal Reference Guide for Revenue Officers, Summons, relating to criminal proceedings and civil enforcement, and consultation with SB/SE Area Counsel.

4. In addition to considering a referral for summons enforcement, cases may warrant additional third party contacts to prove willful intent to deceive. See IRM 25.27.1, Third Party Contact Program, for guidance on third party contact information and specifically, IRM 25.27.1.3.2, Exceptions to IRC 7602(c) Notification Requirements.

25.1.8.7 (10-27-2016)

**Coordination with Criminal Investigation**

1. Where CI case controls (TC 914) are active in any module, ROs will contact the FTA and CI to discuss potential problems prior to initiating contact with taxpayers or their representatives (see IRM 5.1.5, Balancing Civil and Criminal Cases).

2. When balancing civil and criminal priorities, consider the impact and/or lost revenue potential relating to:

   a. Trust Fund Recovery Penalty and Transferee Assessment Statute Expiration Dates (ASED);
   b. Collection Statute Expiration Dates (CSED);
   c. Pyramiding of collected or withheld taxes; and
   d. Collection jeopardy.

   **Note:**

   If a Trust Fund Recovery Penalty investigation has begun and the Letter 1153(DO), 10-Day Notification Letter, 100% Penalty Proposed Against Filer for Corporation, has already been issued to the potentially responsible officer prior to the commencement of the criminal investigation, Collection must notify CI that the letter has been issued, explain the appeal rights the taxpayer has as a result of the notification (See IRM 5.7.6.1.3, Appealing the Proposed Assessment), and determine the best course of action.

3. Refer to IRM 5.1.5, Balancing Civil and Criminal Cases, and Policy Statement 4-26 (see IRM 1.2.13.1.11, Policy Statement 4-26 (Formerly P-4-84)) when evaluating the need for concurrent civil and criminal investigations. IRM 5.1.5 includes detailed information on required coordination efforts between CI and Collection in parallel investigations. This information includes actions necessary to protect Collection statutes, dissipating assets and/or the accrual of additional liabilities.

   **Note:**
If the civil and criminal investigations are conducted simultaneously, close coordination and communication is necessary among all functions. Contact the FTA and Area Counsel for appropriate coordination and procedures.

4. Prior to the expiration of the statute, the RO should document the Integrated Collection System (ICS) history with a summarizing statement that contains the specific MFT, tax period, amount, ASED/CSED and facts to support the decision to allow the statute to expire. The RO will obtain the appropriate managerial concurrence and input any necessary transaction codes (such as an ASED-R indicator). See IRM 5.1.5.12.1, Cases with Imminent Statutes, on how to document statute agreements between CI and Collection.

5. If a cooperating RO is needed for a joint investigation, quarterly four-way meetings should be conducted to review the status of the investigation and plan activities to be accomplished by the cooperating officer and SA in the next quarter. See IRM 25.1.4.3, Administrative Joint Investigation, for joint investigation procedures.

   **Note:**

   Please refer to IRM 5.1.5.3, Resolving Conflicts Regarding Parallel Investigations, for guidance in resolving any disagreements between civil and criminal priorities.

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**25.1.8.8 (10-27-2016)**

### Aging of Collection Fraud Cases

1. Upon concurrence of the FTA, the RO will complete Form 11661-A, Fraud Development Recommendation - Collection.

2. The RO and FTA should identify any significant related entities with open modules that would relate to the development of the potential fraud case, identify them on the Form 11661-A and request assignment of all identified related entities to avoid action being taken on these cases that could harm a future criminal investigation.

3. After approval of Form 11661-A by the FTA, the group manager or their designee will input ICS subcode 910 FRAUD DEVELOPMENT - FTA to the case. The ICS subcode 910 will automatically trigger input of IDRS Transaction Code (TC) 971 with Action Code (AC) 281 on the entity. The TC 971 AC 281 will stop the cycle clock and prevent the taxpayer entity from being included in systemic IDRS/Entity case aging reports.

   **Caution:**

   Subcode 910 and TC 971 AC 281 are not modular specific. TC 971 AC 281 can be found under IDRS command code ENMOD.

   **Note:**

   Although case aging is stopped during the pendency of the fraud development case, it is necessary to continue to take timely and effective case actions designed to move the case forward.

4. The use of TC 971 AC 281 has been expanded to include:

   a. Abusive Tax Avoidance Transactions (ATAT) cases - ICS subcodes 309 to 339.

   **Note:**

   See IRM 5.20.2.4, Aging of ATAT and Suit Development Cases, for more information on the appropriate use of TC 971 AC 281.
Caution:

ATAT cases in fraud development - It is important to enter "FRD" for fraud in the Location field on ICS. This will include the case in the Area fraud report. If "FRD" is not input on the location block, the case will not be counted in the Area fraud report. See IRM 5.20.2.4(5)(c), Aging of ATAT and Suit Development Cases.

b. Suit development cases where additional time is needed to analyze and gather the facts necessary for developing a suit recommendation.

Note:

See IRM 25.3.2, Suits by the United States, for more information on the appropriate use of TC 971 AC 281.

5. Procedures must be followed with the corresponding IRMs on the appropriate use of TC 971 AC 281 for ATAT and Suit development.

6. When the case is no longer in fraud development status or FTA involvement is withdrawn, the manager will be notified and will remove the subcode 910, FRAUD DEVELOPMENT - FTA to the case. When removing the subcode 910, answer "yes" on ICS when asked, "Is TC 972 AC 281 required to re-start the overage clock?" This will trigger the input of TC 972 AC 281 to IDRS.

Caution:

Do not mark No to this question, as the case will still appear on the 910 Report despite the removal of the subcode 910.

Exception:

Cases that require ICS subcodes for time charging purposes will not be updated to ICS subcode 910 when FTA assistance is present and will remain with the specialty assignment. These include specialty assignments such as ATAT - ICS subcode 309 - 339 and Offers in Compromise - ICS subcode 106.

7. To remove the case from fraud development status, the RO must ensure that the subcode 910 has been removed on ICS and the TC 971 AC 281 has been reversed. To check for an unreversed TC 971 AC 281 on ICS, take the following steps:

a. From the case summary screen, select "Entity Detail".

b. Select item "View Entity Transactions".

c. A listing of the Entity Transactions on the case will appear and scroll through to check for any unreversed TC 971 AC 281.

8. If the subcode 910 is not present on the case but the TC 971 AC 281 is on the case, then select "Generate 971/972 AC 281" from the Collection Activities menu within ICS to remove the case from fraud development status. Then select "Generate TC 972 AC 281" option and submit. Next confirm that TC 972/281 will be generated by indicating "yes".

Note:

Currently ICS only cases (no open tax modules - such as Delinquent Returns (DEL RETs) or Balance Dues (BDs)) will not allow for the removal of the TC 971 AC 281 on ICS. A manual Form 4844, Request for Terminal Action, must be completed requesting the TC 972 AC 281 on ENMOD for IDRS.
25.1.8.9 (04-22-2015)

Collection Case Disposition

1. When the RO, Collection group manager, and FTA agree that a firm indication of fraud has been established and criminal criteria have been met, a Form 2797 will be completed and all collection activity will be discontinued until further advice from CI is received. See IRM 25.1.3, Criminal Referrals.

2. When a tax loss computation is needed to support the fraud referral, the FTA will assist the RO in pursuing a collateral referral or securing Exam assistance. Procedures for requesting a collateral referral can be found in IRM 4.1.4.3.20, Collateral Referrals.

3. Refer to IRM 5.1.11.6.2, Referral to Criminal Investigation, for instructions relating to disposition of Delinquent Return investigations (DEL RET’s). Do not use TC 596 to close BMF DEL RET modules.

   **Note:**
   Subcode 910 should only be used for cases in potential fraud development, up to the point of time when CI makes their determination to either accept or decline a fraud referral. See IRM 25.1.8.8(6), Aging of Collection Fraud Cases.

4. Careful consideration should be given to any imminent ASED or CSED statutes that could expire during the CI investigation. Refer to IRM 25.1.8.7, Coordination with Criminal Investigation, and consider the need for parallel proceedings if necessary.

   **Note:**
   Statute expirations should be addressed prior to transferring the case to Centralized Case Processing (CCP) for monitoring.

5. Upon acceptance of the referral, the Collection group manager **will** remove the ICS subcode 910 and reverse TC 971 AC 281. The RO must document the ICS history with an appropriate closing narrative that addresses any imminent statutes. If a statute will be allowed to expire during the pendency of the criminal investigation, refer to IRM 25.1.8.7, Coordination with Criminal Investigation, and secure approval for the appropriate form.

6. CI will initiate the input of TC 914 controls to control the cases accepted for criminal investigation. If TC 914 is present in some tax periods, but not in others, ROs should contact CI to determine whether or not collection actions should be suspended and additional TC 914s should be initiated by CI. It is recommended that the RO contact their local FTA for assistance with this process.

7. If a determination is made that some type of civil action should be taken while the criminal case is active and CI agrees with the proposed civil action, the RO should create an Other Investigation (OI) and follow the procedures in IRM 5.1.5.2, IRS Policy Concerning Parallel Investigations, for parallel investigations. The RO should input subcode 912 on the case in ICS. Subcode 912 should be used when a case has been accepted by CI and additional collection actions are necessary. Subsequent actions may include joint or parallel investigations, statute control, probation/parole, or post-sentencing compliance.

8. If the fraud referral is declined by CI, the RO, Collection group manager and FTA should conduct a post-declination meeting to discuss the criminal referral and possible alternative means of civil closure such as referring the case to Examination for consideration of civil fraud penalties.

   **Note:**
   The RO must document the ICS history about the post-declination meeting and any consideration on referring the case to Examination.

25.1.8.10 (04-22-2015)
Monitoring Cases Under Criminal Investigation

1. If the TC 914 appears on all modules and a decision has been made to suspend all civil enforcement activities on the case, CCP may assume monitoring responsibilities for the case. ROs must ensure that transferred cases meet CCP monitoring requirements. See IRM 5.1.5.12.2, Procedures for Transferring Cases to CCP.

   **Note:**
   See IRM 5.7.3.8, Reporting Expiration of the TFRP Statute, for procedures for reporting the expiration of the TFRP statute and IRM 5.1.19.5, Imminent CSEDs, for procedures for imminent CSEDs, as well as the process outlined in IRM 5.1.5.12.1, Cases with Imminent Statutes, to document agreement between CI and Collection to allow the expiration of an imminent statute due to ongoing criminal investigative actions.

2. To transfer the case to CCP, ROs must follow guidance outlined in IRM 5.1.5.12.2, Procedures for Transferring Cases to CCP.

*Page Last Reviewed or Updated: 10-Sep-2017*
CRIMINAL INVESTIGATION
CRIMINAL FRAUD REFERRALS

I.R.M. 9.4.1.5.1.3 (REV'D MARCH 2, 2018)

Exhibit E
Criminal Investigation
Criminal Fraud Referrals
IRM. 9.4.1.5.1.3 (Rev’d March 2, 2018)

9.4.1.5.1.3 (03-02-2018)

Criminal Fraud Referrals

1. Criminal Investigation receives criminal fraud referrals from compliance employees via the Form
2797, Referral Report of Potential Criminal Fraud Cases. A criminal fraud referral is information acquired
during a civil examination or a collection proceeding that is provided to CI from another IRS-BOD after
affirmative acts (firm indications) of fraud are established and criminal criteria is met. Firm indications are
defined in IRM 25.1.1 (see subsection 25.1.1.3(2), Indicators of Fraud vs. Affirmative Acts of Fraud).

2. Criminal fraud referrals fall into two categories, international and domestic.

3. A criminal fraud referral is considered an international fraud referral if it meets one or more of the
following criteria:
   a. A United States taxpayer who resides in a foreign jurisdiction, or is physically present in a foreign
country or countries for at least 330 full days during any 12 month consecutive period.
   b. A United States taxpayer (includes individuals, corporations, nonresident aliens) whose business
affairs and/or financial transactions substantially occur offshore.
   c. Any taxpayer (includes individuals, corporations, nonresidents aliens) who claims a FTC on a tax
return where the credit is directly attributable to suspected tax fraud.
   d. A foreign taxpayer (includes individuals and corporations) engaged in a trade or business in the
United States.
   e. Abusive offshore tax transactions in which the promoter or client resides in a foreign jurisdiction. For
example, unreported income skimmed from closely held entities or other income streams placed
offshore or domestically in nominee names domiciled offshore.

4. All other fraud referrals not meeting the definition above are considered domestic criminal fraud
referrals.

5. The following items are not criminal fraud referrals:
   a. Armed escort information received from a compliance employee.
   b. Cases under audit at the time CI independently initiates an investigation based on information
from another source. These audits will be placed in suspense, but do not qualify as referrals.

6. The FTA group manager assigns a Management Control Number to each referral and annotates it in
the upper right hand corner on the Form 2797. The number is comprised of eight digits. The first digit
represents the originating FTA group followed by two digits indicating the fiscal year, a three-digit
sequential number (001 will represent the first referral submitted to CI at the start of each fiscal year)
and a two digit number representing the civil BOD making the referral.
7. When there is a common set of facts involving two or more individuals or entities (such as a husband and wife or corporate officer and employees), Compliance will forward one fraud referral with one Management Control Number to CI. Criminal Investigation will number one PI for each Form 2797 regardless of the number of entities discussed in the referral. The SAC or the Director, International Operations approval may grant an exception.

8. Referrals received without a Management Control Number must be returned to the FTA manager. See the SB/SE web page for names and locations of fraud referral specialist managers.

9. In order to facilitate consistency, each field office will designate an employee to be responsible for receipt and tracking of both international and domestic fraud referrals (Fraud Referral Coordinator). This employee will be responsible for:
   a. maintaining a record of the status of fraud referrals received by the field office
   b. ensuring primary numbers are obtained timely and that the Management Control Number and referring BOD are properly entered into CIMIS
   c. assisting the SAC in tracking due dates and extensions
   d. ensuring SCI numbers are obtained timely for accepted referrals
   e. maintaining the field office TIMS folders for documents relating to the fraud referral program including all Forms 2797, Referral Declination Memorandums and Requests for Extensions
   f. tracking fraud awareness presentations

9.4.1.5.1.3.1 (03-02-2018)

Fraud Referral Processing

1. **Domestic Fraud Referrals:** The FTA Managers send Domestic Fraud Referrals via email to the appropriate CI field office for evaluation. Upon receipt, the SA will immediately initiate a PI. In doing so, the SA will ensure that the investigation is properly coded as a fraud referral and that CIMIS correctly reflects the Management Control Number and the BOD source of the referral. The Management Control Number and source are both listed on the Form 2797. Special agents should only code items received through the FTA manager via a Form 2797 as a fraud referral.

2. **International Fraud Referrals:** International fraud referrals conversely are sent to Criminal Investigation, International Operations. Upon receipt, International Operations will initiate a PI and review for criminal potential prior to assigning and disseminating the referral to a field office for evaluation. International Operations is responsible for preliminary analysis and research to assist field offices in their evaluation of international fraud referrals. Within five (5) business days of receipt from the referring business operating division, International Operations will forward international fraud referrals with criminal potential to the appropriate field office, along with relevant research. International Operations will follow the same procedures outlined above when initiating a PI.
10-Day Conference

1. **Domestic Fraud Referrals:** The SA will arrange the initial conference with the referring compliance employee to discuss the merits of the criminal fraud. The initial conference must be scheduled and occur within 10 business days from the field office’s receipt of the referral. The conference attendees should include the SA, SSA, referring compliance employee, his/her immediate supervisor, and FTA (if available).

2. **International Fraud Referrals:** International Operations will arrange the initial conference for international fraud referrals, with the referring compliance employee to discuss the merits of the international criminal fraud referral. The initial conference must be scheduled and occur within 10 business days from the field office’s receipt of the referral. The conference attendees should include the SA, SSA, referring compliance employee, his/her immediate supervisor, FTA (if available), a member of International Operations, and the appropriate attaché (if available).

3. During the 10-day conference, the compliance employee will discuss the referral and related tax returns, evidence gathered in support of the alleged offense, criminal tax computations, etc. The conference should also include a discussion of the following issues:

   a. Whether:
      i. Returns were solicited,
      ii. Attempts were made to resolve the civil issues, or
      iii. IRS took prior actions involving the alleged offense or similar/past offense.

   b. Observations regarding Taxpayers’:
      i. Age
      ii. Health (mental and physical)
      iii. Education
      iv. Occupation

   c. Availability of records (domestic and international)

Evaluation Period

1. It is imperative that SAs give immediate attention to all fraud referrals. The field office must decide whether to elevate the fraud referral PI to a SCI or to decline the referral and return it to the originating BOD within thirty (30) business days of receipt of domestic fraud referrals or sixty (60) business days for international fraud referrals. Since international investigations typically involve complex issues, SAs are given an additional 30 days to evaluate an international fraud referral.

2. Special agents can request an extension of the evaluation period. Extensions must be made by written agreement between the field office and the designated Territory manager. The agreement should specify the reason for the request (such as a delay in receiving tax returns or an opinion from Counsel) and the date the referring office may expect a final determination. If an extension is granted, the...
extension must be annotated in the comment section of the CIMIS section entitled, Plan of Significant Actions. The comments should include relevant information such as the extension request date, approval date, the length of extension and the reason for the extension. In addition, the due date in CIMIS must be updated.

9.4.1.5.1.3.4 (03-02-2018)

Accepted Fraud Referral Processing

1. If CI accepts the referral, the PI will be elevated to an SCI. Criminal Investigation will provide feedback to compliance by completing sections 1c, 9, 10, 11a, 11b, 11c, and 11d on the Form 2797 and return it to the FTA manager.

2. The SA will place TC 914 controls in the Master File.

3. The SA will promptly meet with the referring compliance employee to devise a plan of action and to determine:
   a. the need for a cooperating compliance employee,
   b. which tax returns are to be transferred to CI, and
   c. whether detailed memoranda are required from the referring BOD concerning contacts with the taxpayer(s) under criminal investigation, his/her/their representative(s) or the preparer(s) of the related tax returns

9.4.1.5.1.3.5 (03-02-2018)

Declined Fraud Referral Processing

1. If CI declines the referral, the SA will complete a memorandum to the referring BOD listing the reasons for declination. The SA will complete sections 9, 10, 11a, 11b, 11c, and 11d of the Form 2797, return it to the FTA manager with the declination memorandum, and arrange for a disposition conference. The conference attendees should include the SA, SSA, referring compliance employee, his/her immediate supervisor, FTA (if available), a member of International Operations (if necessary), and Criminal Tax Counsel (if warranted to explain any legal impediments).

2. If International Operations deems the international fraud referral lacks criminal potential, International Operations will complete the declination memorandum in lieu of forwarding the fraud referral to the field office.

3. Under certain circumstances, the referring BOD may request an appeal of a declined fraud referral as outlined in IRM 25.1.3 (see subsection 25.1.3.5(3), Declined Criminal Referrals). Criminal Investigation must be able to justify and clearly articulate the reasons for a referral’s declination.
PRESS RELEASES

Exhibit F
New Hampshire Man Pleads Guilty to False Tax Refund Claim

Portland, Maine: United States Attorney Halsey B. Frank announced that Robert E. DeAngelis, 38, of Newington, New Hampshire, pled guilty to filing a false claim for a federal income tax refund for the 2014 tax year.

According to the charging document and evidence introduced at the plea hearing, DeAngelis filed a federal tax return claiming a refund of $31,615 to which he was not entitled, and the Internal Revenue Service issued a tax refund in that amount.

DeAngelis faces imprisonment of up to five years and a fine of up to $250,000, and payment of full restitution. He will be sentenced after the completion of a presentence investigation report by the U.S. Probation Office.

The investigation was conducted by the Criminal Investigation division of the Internal Revenue Service.

Topic(s):
Tax

Component(s):
USAO - Maine

Contact:
Richard
W. Murphy Assistant United States Attorney Tel: (207) 780-3257
Georgia man sentenced to prison for involvement in stolen identity tax refund fraud scheme

ATLANTA - Jahmir Antoine Robinson has been sentenced to four years, six months in federal prison for running a stolen identity refund fraud (SIRF) scheme after he stole the identities of 153 people, and caused a tax loss of approximately $409,000.

"Thieves never stop looking for ways to take what is not theirs, no matter the harm they cause to people whose identity they stole," said U.S. Attorney Byung J. "BJay" Pak. "Robinson's theft affects not only the 153 who were targeted, it touches all taxpayers."

"With the filing season just starting this week, it is important that taxpayer's keep their identities protected and notify the IRS immediately when someone files their tax return without authorization," said Thomas J. Holloman, Special Agent in Charge, IRS Criminal Investigation. "We will continue to utilize our resources and work with the U.S. Attorney's Office in holding those accountable who use stolen identities to file fraudulent tax returns."

According to U.S. Attorney Pak, the charges and other information presented in court: From April 2011 through April 2012, Jahmir Robinson ran a scheme to defraud the United States by filing false federal income tax returns using stolen identities. Robinson obtained personal identity information, including names, social security numbers, and dates of birth, of true individuals to file federal tax returns without their authorizations. To circumvent IRS checks and balances, Robinson obtained Employer Identification Numbers (EINs) from the IRS for 17 individual corporations and filed fictitious Forms 944 so that the IRS database would automatically match employer income tax withholdings against the individual returns.
In total, Robinson used the stolen identities and EINs to file 153 fraudulent individual tax returns with the IRS for tax years 2010 and 2011. Robinson caused the IRS to disburse refunds to an account he controlled. As a result of the scheme, Robinson caused a tax loss totaling $409,114.27.

Jahmir Antoine Robinson, 35, of Lithonia, Georgia, was sentenced by U.S. District Judge Leigh Martin May to four years, six months in prison in federal prison, four years of supervised release, and ordered to pay $240,033.33 in restitution. Robinson was convicted on these charges on November 8, 2017, after he pleaded guilty.

This case was investigated by the Internal Revenue Service Criminal Investigation.

Assistant U.S. Attorney Bernita B. Maloy prosecuted the case.

For further information please contact the U.S. Attorney’s Public Affairs Office at USAGAN_PressEmails@usdoj.gov or (404) 581-6016 or the IRS-Criminal investigation Public Information Officer at Joseph.Ziegler@ci.irs.gov or (216) 407-9614. The Internet address for the U.S. Attorney’s Office for the Northern District of Georgia is http://www.justice.gov/usao-ndga.
FOR IMMEDIATE RELEASE Thursday, February 22, 2018

Windsor Man Pleads Guilty to Federal Tax Offense

John H. Durham, United States Attorney for the District of Connecticut, announced that CRAIG FRANCIS, also known as Horus Durjaya Bey, 44, of Windsor, pleaded guilty today in New Haven federal court to one count of filing a false tax return.

According to court documents and statements made in court, in February 2009, FRANCIS E-filed a 2008 federal income tax return that listed falsely inflated amounts of both interest income received and taxable income withheld by the government, and requested a fraudulent refund of $255,904. The Internal Revenue Service issued the refund before determining that the tax return was fraudulent, and that FRANCIS was actually entitled to a refund of only $4,073.

FRANCIS spent more than $220,000 within five weeks of receiving the fraudulent refund.

FRANCIS is scheduled to be sentenced by U.S. District Judge Alvin W. Thompson on May 17, 2018, at which time he faces a maximum term of imprisonment of three years. FRANCIS has agreed that, as of today’s date, he owes restitution to the IRS of $380,448.06, which includes interest and penalties.

FRANCIS was arrested on June 7, 2017, in Kissimmee, Florida. He is released on a $250,000 bond pending sentencing.

This matter is being investigated by the Internal Revenue Service – Criminal Investigation Division. The case is being prosecuted by Assistant U.S. Attorney Henry Kopel.

Topic(s):
Tax

Component(s):
USAO - Connecticut
Tennessee Staffing Company Owners Sentenced to Prison for Payroll Tax Fraud

Used Funds Withheld from the IRS to Pay for Luxury Cars and Private School

Two former Memphis staffing company owners were sentenced to prison today for payroll tax fraud, announced Principal Deputy Assistant Attorney General Richard E. Zuckerman of the Justice Department's Tax Division and U.S. Attorney D. Michael Dunavant for the Western District of Tennessee.

Mark Stinson, who was convicted in December 2017 at trial of conspiring to defraud the United States, failing to pay over payroll taxes, filing false tax documents, theft of government funds, and aggravated identity theft, was sentenced to 75 months in prison. His wife, Jayton Stinson, previously pleaded guilty to conspiring to defraud the United States, and was sentenced to one year in prison.

According to court documents and trial testimony, from 2005 through 2015, Mark and Jayton Stinson operated a temporary staffing company in Memphis that provided services to businesses in Tennessee and elsewhere. The staffing company’s standard contract with its customers provided that the staffing company was responsible for withholding employment tax from its employees' wages and paying over the amounts withheld to the Internal Revenue Service (IRS).

The Stinsons failed to pay over $2.8 million in withholdings and other employment taxes due to IRS, failed to timely file employment tax returns and filed false employment tax returns. In an effort to avoid making payments to the IRS, the Stinsons changed the name and structure of the company multiple times after accumulating employment tax liabilities, operating as Jayton Stinson Connex Staffing & Janitorial Service, Connexx Staffing Services LLC, Connexx Staffing Services Inc., and Complete Employment Agency.

The Stinsons also conspired to impede efforts by the IRS to collect on the employment tax liabilities owed by their companies. For example, the Stinsons made false representations to the IRS about their control of the staffing company and their knowledge of the requirement to truthfully account for and pay over the employment taxes, falsely identified multiple family members as company executives, placed the staffing company in the names of nominees who did not have control over the business operations, and established payment arrangements intended to impede an IRS levy placed on their customer payments. The Stinsons
used the withheld funds to pay for personal expenses, including a Mercedes-Benz, a Cadillac Escalade, mortgage payments, and private school tuition for their children.

Mark Stinson also filed a fraudulent tax return for a relative that included a false dependent seeking a refund to which the relative was not entitled. Stinson received a substantial portion of the fraudulent refund.

In addition to the terms of imprisonment, U.S. District Court Judge John T. Fowlkes, Jr. ordered the Stinsons to serve terms of supervised release and to pay restitution of $2.8 million.

Principal Deputy Assistant Attorney General Zuckerman and U.S. Attorney Dunavant commended special agents of IRS-Criminal Investigation, who investigated the case, and Assistant U.S. Attorney Damon Griffin and Trial Attorney Nathan Brooks, who prosecuted the case.

Additional information about the Tax Division and its enforcement efforts may be found on the division's website.

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**Topic(s):**
Tax

**Component(s):**
Tax Division
USAO - Tennessee, Western

**Press Release Number:**
18-257

*Updated March 1, 2018*
FOR IMMEDIATE RELEASE

Washington County Businessman and Convicted Felon Charged with Fraud, Tax and Firearms Offenses

PITTSBURGH – A resident of Washington County, Pennsylvania has been indicted by a federal grand jury in Pittsburgh on charges of wire fraud, tax evasion, conspiracy to defraud the United States, false bankruptcy declaration, and unlawful possession of a firearm by a felon, United States Attorney Scott W. Brady announced today.

The 13-count indictment, returned on March 14, 2018, named George Retos, Jr., age 69, of Washington, Pennsylvania, as the sole defendant.

According to the indictment, Retos defrauded a Small Business Administration preferred lender, Preferred Capital BIDCO, Inc., in connection with $2,000,000 in loans to Prime Plastics, Inc. and Branikas Investments LLC, two entities operated and controlled by Retos. In violation of the loan agreements, Retos allegedly misappropriated tens of thousands of dollars of loan proceeds and pledged collateral through, among other expenditures, the financing of a $41,000 BMW for a family member and tens of thousands of dollars in charges at casinos in Western Pennsylvania and Las Vegas, Nevada.

The indictment also alleges that Retos willfully attempted to evade and defeat the payment of income taxes due and owing by him to the United States of America by concealing from the Internal Revenue Service (IRS) the nature and extent of his income and assets as well as the location thereof; placing business interests in the names of nominees; paying personal expenses with funds and bank accounts of Prime Plastics, Inc., Branikas Investments, Inc., and a third entity, Plastic Power, Inc., all companies controlled by Retos; issuing checks drawn on Prime Plastics, Branikas Investments and Plastic Power bank accounts payable to Retos; and making ATM withdrawals and purchases at casinos in the Western District of Pennsylvania, Las Vegas, Nevada, and elsewhere using Prime Plastics, Branikas Investments and Plastic Power funds and bank accounts.
The indictment further alleges that Retos conspired to defraud the IRS when he agreed with another individual not to pay over to the IRS payroll and employer taxes of Prime Plastics, Inc. and Plastic Power, Inc. Specifically, to avoid ongoing collection efforts by the IRS related to unpaid taxes of Prime Plastics, Inc., Retos and his co-conspirator allegedly arranged for employees of Prime Plastics, Inc. to be transferred to Plastic Power, Inc., which, in turn, also failed to pay employer and payroll taxes to the IRS. According to the indictment, the unpaid employer and payroll taxes totaled hundreds of thousands of dollars.

In addition, the indictment charges Retos with wire fraud in connection with a scheme to fraudulently obtain unemployment compensation from the Commonwealth of Pennsylvania for Prime Plastics, Inc. and, later, Plastic Power, Inc. employees. According to the indictment, Retos reduced the salaries of numerous employees and instructed them to seek unemployment from the state to make up the difference, knowing full well that the employees were ineligible for such unemployment compensation. During the execution of the scheme, Retos allegedly continued to siphon company funds for his personal benefit.

The indictment also alleges that at Retos’ direction, Prime Plastics, Inc. filed for bankruptcy and, among other things, falsely stated that there had been no withdrawals from the entity outside the normal course of business during the preceding two years. In fact, as alleged, Retos was responsible for numerous such expenditures, including thousands of dollars belonging to Prime Plastics, Inc. spent by Retos at casinos in Las Vegas, Nevada and elsewhere.

Finally, the indictment also alleges that Retos, after having been convicted in or around December 1992 of income tax evasion, false statements in connection with a credit application, mail fraud, and interstate transportation of stolen property, possessed on June 26, 2013, a Kel Tec handgun, .380 caliber, and ammunition, .380 hollow point.

U.S. Attorney Brady stated, "George Retos, Jr. is alleged to have used multiple businesses he controlled as his personal slush fund, siphoning money for his use at casinos and for the purchase of a BMW for a relative, among other things. In doing so, the indictment alleges that he committed myriad serious crimes, including engaging in two fraud schemes separately targeting a government-backed lender and the Pennsylvania unemployment compensation system, as well as participating in a conspiracy to defraud the IRS out of significant unpaid business taxes. The U.S. Attorney’s office will continue to investigate and prosecute serious financial crimes, and when a convicted felon is found in possession of a firearm, as is alleged here, we will see that they are held accountable to the full extent of the law."

"Today’s multiple count indictment is the result of the cooperative efforts of IRS-Criminal Investigation and our law enforcement partners," said Acting Special Agent in Charge Ed Wirth. "The Special Agents of IRS-CI remain diligent in their pursuit of those who attempt to undermine the system by committing tax fraud and bankruptcy fraud."

"An important mission of the Office of Inspector General is to investigate allegations of fraud related to the Department of Labor's unemployment insurance program. We will continue to work with our law enforcement partners to safeguard benefits intended for unemployed American workers," stated Richard Deer, Special Agent-in-Charge, Philadelphia Region, U.S. Department of Labor Office of Inspector General.
"The FBI is committed to rooting out these types of fraudulent activities and today's indictment highlights the continued need for that," said Special Agent in Charge Robert Johnson.

Retos faces a maximum sentence of 20 years imprisonment and a fine of $250,000 for each of the seven counts charging him with wire fraud, a maximum sentence of five years imprisonment and a fine of $250,000 for each of the five counts charging him with income tax evasion, conspiracy and false bankruptcy declaration, and a maximum sentence of ten years imprisonment

and a fine of $250,000 for the felon in possession charge. Under the Federal Sentencing Guidelines, the actual sentence imposed would be based upon the seriousness of the offense and the prior criminal history, if any, of the defendant.

Assistant United States Attorneys Mary McKeen Houghton and Eric G. Olshan are prosecuting this case on behalf of the government.

The Federal Bureau of Investigation; the Department of Labor, Office of Inspector General; and the Internal Revenue Service, Criminal Investigation, conducted the investigation leading to the indictment in this case.

An indictment is an accusation. A defendant is presumed innocent unless and until proven guilty.

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**Topic(s):**
Financial Fraud
Firearms Offenses
Tax

**Component(s):**
USAO - Pennsylvania, Western

Updated March 15, 2018
Owner of Michigan Payroll Companies Pleads Guilty to Employment Tax Fraud

A resident of West Bloomfield, Michigan, pleaded guilty today to willfully failing to pay over employment taxes to the Internal Revenue Service (IRS), announced Principal Deputy Assistant Attorney General Richard E. Zuckerman of the Justice Department's Tax Division.

According to documents and information provided to the court, Dino Rotondo owned and operated four professional employer organizations (PEOs) located in Troy, Michigan, which provided payroll-related services to client companies. Rotondo processed payroll and agreed to withhold from client employee paychecks, and send to the IRS, the employment taxes that were due. Despite this obligation, Rotondo did not pay to the IRS employment tax withholdings that his PEOs collected during 2012 and the first quarter of 2013.

Rotondo also admitted that he did not pay to the IRS employment taxes due for an additional business that he owned. In total, Rotondo did not pay more than $1.5 million in employment taxes owed to the IRS.

U.S. District Judge Bernard A. Friedman scheduled sentencing for Jan. 18, 2019. Rotondo faces a statutory maximum sentence of five years in prison. He also faces a period of supervised release, restitution, and monetary penalties.

Principal Deputy Assistant Attorney General Zuckerman thanked special agents of IRS Criminal Investigation, who conducted the investigation, and Tax Division Trial Attorneys Abigail Burger Chingos and Jeffrey Bender, who are prosecuting the case.

Additional information about the Tax Division and its enforcement efforts may be found on the division's website.

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Topic(s):
Tax
FOR IMMEDIATE RELEASE

Thursday, April 12, 2018

Owner of Kansas Medical Staffing Company Indicted in Employment Tax Scheme

Instead of Paying IRS, Used Funds for Racecar Parts and other Personal Expenses

A federal grand jury sitting in Kansas City, Kansas, returned an indictment, which was unsealed yesterday, charging a Jefferson County, Kansas, man with seven counts of willful failure to pay over employment taxes to the Internal Revenue Service (IRS), announced Principal Deputy Assistant Attorney General Richard E. Zuckerman of the Justice Department’s Tax Division and U.S. Attorney Stephen McAllister for the District of Kansas.

According to the indictment, David Monhollon failed to pay over federal income, Social Security, and Medicare taxes withheld from the wages paid to employees of his medical staffing company, First Call Medical Group. The indictment alleges that Monhollon was the owner of First Call and was obligated to pay over to the IRS such payroll taxes on behalf of his company. Instead of remitting the money to the IRS, Monhollon allegedly used the funds to pay for personal expenses including racecar parts and equipment.

If convicted, the defendant faces a statutory maximum sentence of five years in prison for each count. He also faces a period of supervised release, restitution, and monetary penalties. An indictment merely alleges that crimes have been committed. A defendant is presumed innocent until proven guilty.

Principal Deputy Assistant Attorney General Zuckerman and U.S. Attorney McAllister commended special agents of IRS Criminal Investigation, who investigated the case, and Assistant U.S. Attorney Leon Patton and Tax Division Trial Attorney John Mulcahy, who are prosecuting the case.

Additional information about the Tax Division and its enforcement efforts may be found on the division’s website.

Attachment(s):
Download Monhollon Indictment
FOR IMMEDIATE RELEASE

Lexington Business Owner Sentenced for Failing to Pay $1.7 Million in Payroll Taxes

KANSAS CITY, Mo. – A Lexington, Mo., business owner was sentenced in federal court today for failing to pay over to the IRS nearly $1.7 million in payroll taxes.

Randy K. Small, 51, of Lexington, was sentenced by U.S. District Judge Gary A. Fenner to three years in federal prison without parole. The court also ordered Small to pay $1,694,725 in restitution.

On June 20, 2017, Small pleaded guilty to failure to pay over to the IRS the payroll taxes of his employees.

Small is the owner of RSB Leasing, a transportation business that has provided school bus service to multiple school districts in Missouri (including the Buchanan County R-IV School District, the Lexington, Mo., R-5 School District and the Hardin-Central C-2 School District). Small operated the business under three different names, and failed to fully pay employment taxes for each of the three businesses. At the time of his guilty plea, Small admitted that his criminal conduct resulted in an aggregate tax loss of at least $1,457,483.

According to court documents, however, Small has continued to violate tax laws since his change-of-plea hearing. IRS investigators uncovered $237,242 in additional tax harm for employment taxes that were not paid over to the IRS for employees of RSB Leasing, resulting in a total tax liability amount of $1,694,725.

Small operated the business under the name Hill Transportation, Inc., from 2005 through February 2010. After accruing over $300,000 in employment tax liability, Small discontinued operations under Hill Transportation and began operating under the name SPYKE, LLC. After accruing over $1 million in employment tax liability, Small discontinued operations under SPYKE in 2012. Finally, Small operated under the name RSB Leasing which has continued to accrue tax liability.
Small admitted that he did not deposit the Federal Insurance Contributions Act and Medicare (FICA) taxes or the income taxes that he withheld from his employees’ wages, nor did he pay the employer portion of FICA.

While accruing employment tax liabilities, Small withdrew significant amounts of cash, purchased new buses and maintained a personal collection of cars. From 2009 through 2011, Small withdrew $286,052 from the business bank account in the form of cash and cashier's checks payable to himself. Small spent an additional $147,000 to purchase new buses for the business.

During the time period when Small was not paying his taxes, he purchased and maintained a 1998 Lamborghini Diablo SV. On April 13, 2017, about two months prior to his guilty plea, Small sold the Lamborghini for approximately $115,000 and had the proceeds from the sale wired to the business bank account of RSB Leasing. Small failed to disclose the transaction to the government and he has not used any of the proceeds to pay the taxes he owes. Instead, according to documents provided by the IRS, Small engaged in a series of banking transactions to further conceal the proceeds and evade payment to the IRS.

According to court documents, Small filed for bankruptcy with the intent to hinder the collection efforts of the IRS and obstruct the IRS’s ability to collect payment from the foreclosure sale of a parcel of land. The bankruptcy petition was dismissed on Oct. 30, 2017.

This case was prosecuted by Assistant U.S. Attorney Brent Venneman. It was investigated by IRS-Criminal Investigation.

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**Topic(s):**
Tax

**Component(s):**

USAO - Missouri, Western

Updated April 17, 2018

https://www.justice.gov/usao-wdmo/pr/lexington-business-owner-sentenced-failing-pay-17-million-payroll... 4/18/2018
FOR IMMEDIATE RELEASE       Monday, June 11, 2018

Delaware Businessman Sentenced To Prison For Tax Crimes

Wilmington, Del. – David C. Weiss, United States Attorney for the District of Delaware announced today that Jeffrey Minner, age 55, was sentenced to 18 months in prison by U.S. District Court Judge Gregory Sleet. In addition, Minner was ordered to pay $1,223,660 in restitution to the IRS.

According to statements made at the sentencing hearing and documents filed in court, Minner owned and operated Advanced Enterprises Incorporated, a commercial cleaning company that employed between 140 and 185 employees at any given time. Minner pled guilty to withholding taxes from his employees but failing to pay those monies over to the Internal Revenue Service (“IRS”).

Over the course of five years between 2011 and 2016, Minner collected in excess of $1.2 million in employee Medicare, Social Security, and income taxes that he did not pay over to the IRS. Instead, Minner used a portion of those monies to fund his lifestyle and pay off other debts.

In sentencing Minner to prison, U.S. District Court Judge Gregory Sleet said, “I hope this sentence will promote a greater respect for the law.”

U.S. Attorney Weiss added, “The U.S. Tax Code operates on a system of voluntary compliance. Not only will this sentence deter others who might consider diverting employee tax obligations to line their own pockets, but it represents justice for every tax-paying citizen.”

The case was prosecuted by Assistant U.S. Attorneys Whitney C. Cloud and Alexander P. Ibrahim and investigated by special agents from IRS Criminal Investigation.

Topic(s):
Tax
FOR IMMEDIATE RELEASE

Leawood Attorney Pleads Guilty To Federal Tax Evasion

KANSAS CITY, KAN. — A Leawood attorney admitted today that he concealed his assets and income in an effort to keep the Internal Revenue Service from collecting more than $132,000 in taxes he owed, U.S. Attorney Stephen McAllister said.

David B. Mandelbaum, Leawood, Kan., pleaded guilty to one count of tax evasion. In his plea, he admitted he owed more than $132,000 from the 2005, 2006, 2007, 2009 and 2010 tax years. He concealed his assets and income from the IRS by setting up bank accounts under other identities and making false statements. He also kept personal money in a trust account that was supposed to include only funds belonging to clients, in order to hide that money from the IRS.

Sentencing is set for October 29. He faces a penalty of up to three years in federal prison and a fine up to $250,000. He agreed to pay restitution of slightly more than $202,000, which includes penalties and interest. The Internal Revenue Service investigated. Assistant U.S. Attorney Leon Patton is prosecuting.