**J. Edgar Murdock Inn of Court**

**October 15, 2019**

**Common Criminal Tax Charges**

The federal criminal tax enforcement program is designed to protect the public interest in preserving the integrity of this Nations’ self-assessment tax system through vigorous and uniform enforcement of the internal revenue laws. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because there are insufficient resources to prosecute all violations, deterring others from violating the tax laws is a primary consideration. (Criminal Tax Manual ¶ 1.01[4])

The exercise of prosecutorial discretion in criminal tax cases should be guided by the standards applicable to all criminal prosecutions handled by the Department of Justice. The Tax Division therefore should authorize prosecution for the most serious readily provable offense. The Tax Division should authorize additional charges if they are necessary to ensure that the information or indictment reflects the nature and extent of the defendant’s criminal conduct and to provide the basis for an appropriate sentence or if they will significantly enhance the strength of the government’s case against the defendant or a codefendant. Charging decisions should reflect strategic prosecutorial judgments about how best to ensure that the defendant will be convicted and held accountable for his entire course of criminal conduct, regardless of whether the appropriate charges are suggested by the investigating agency. (Criminal Tax Manual ¶ 1.01[3])

**Tax Evasion**

I.R.C. § 7201: *Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.*

Elements:

1. An affirmative act constituting an attempt to evade or defeat a tax or the payment thereof;

2. An additional tax due and owing; and

3. Willfulness (Government must show (a) the law imposed a duty on the defendant, (b) the defendant knew of that duty, and (c) the defendant voluntarily and intentionally violated that duty).

**Conspiracy**

18 U.S.C. § 371. *If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.*

*If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.*

Elements

1. The existence of an agreement by two or more persons to commit an offense against the United States or defraud the United States;

2. The defendant's knowing and voluntary participation in the conspiracy; and

3. The commission of an overt act in furtherance of the conspiracy.

**Failure to Collect or Pay Over Tax**

I.R.C. §  7202. *Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined . . . or imprisoned not more than 5 years, or both, together with the costs of prosecution.*

Elements:

1. Duty to collect, account for, and pay over a tax;

2. Failure to collect, truthfully account for, or pay over the tax; and

3. Willfulness.

**Failure to File Return, Suupply Information, or pay Tax**

I.R.C. §  7203. *Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined . . ., or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting “felony” for “misdemeanor” and “5 years” for “1 year.”*

Elements

1. The defendant was a person required to file a return *[or had a duty to pay a tax];*

2. The defendant failed to file at the time required by law *[or the tax was not paid at the time required by law];* and

3. The failure to file was willful *[or the failure to pay was willful].*

**Fraud and False Statements**

I.R.C. § 7206(1). *Any person who -- (1) Declaration under penalties of perjury. -- Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; . . . shall be guilty of a felony and, upon conviction thereof, shall be fined . . . or imprisoned not more than 3 years, or both, together with the costs of prosecution.*

Elements

1. The defendant made and subscribed a return, statement, or other document which was false as to a material matter;

2. The return, statement, or other document contained a written declaration that it was made under the penalties of perjury;

3. The defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and

4. The defendant falsely subscribed to the return, statement, or other document willfully, with the specific intent to violate the law.

18 U.S.C. § 1001. *(a) . . . [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States,[ 1 ] knowingly and willfully –*

*(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;*

*(2) makes any materially false, fictitious, or fraudulent statement or representation; or*

*(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;*

*shall be fined under this title or imprisoned not more than 5 years...*

Elements:

1. The defendant made a statement or representation, or made or used a document;

2. The statement, representation, or document is false or fraudulent;

3. The statement, representation, or document is material;

4. The defendant made the statement or representation, or made or used the document, knowingly and willfully; and

5. The statement, representation, or document pertained to an activity within the jurisdiction of the federal agency to which it was addressed.

**Aid or Assist False or Fraudulent Document**

I.R.C. § 7206(2). *Any person who -- . . . (2) Aid or assistance. -- Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; . . . . . shall be guilty of a felony and, upon conviction thereof, shall be fined . . . or imprisoned not more than 3 years, or both, together with the costs of prosecution.*

Elements:

1. Defendant aided or assisted in, procured, counseled, or advised the preparation or presentation of a document in connection with a matter arising under the internal revenue laws;

2. The document was false as to a material matter; and

3. The act of the defendant was willful.

**Fraudulent Returns**

I.R.C. § 7207. *Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined1 . . . or imprisoned not more than 1 year, or both.*

Elements:

1. The defendant submitted a return, statement, or other document to the Internal Revenue Service;

2. the return, statement, or other document was false or fraudulent as to a material matter; and

3. the defendant acted willfully.

**Omnibus Clause – interference with administration**

I.R.C. § 7212. (a) Corrupt or forcible interference. -- Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, *or in any other way corruptly* or by force or threat of force (including any threatening letter or communication) *obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title*, shall, upon conviction thereof, be fined . . ., or imprisoned not more than three years or both . . . .

Elements: the defendant in any way (1) corruptly (2) endeavored (3) to obstruct or impede the due administration of the Internal Revenue Code.

**Offenses with Respect to Collected Taxes**

I.R.C. § 7215

*(a) Penalty.--Any person who fails to comply with any provision of section 7512(b) shall, in addition to any other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined . . . or imprisoned not more than one year, or both, together with the costs of prosecution.*

*(b) Exceptions.--This section shall not apply--*

*(1) to any person, if such person shows that there was reasonable doubt as to (A) whether the law required collection of tax, or (B) who was required by law to collect tax, and*

*(2) to any person, if such person shows that the failure to comply with the provisions of section 7512(b) was due to circumstances beyond his control.*

*For purposes of paragraph (2), a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) shall not be considered to be circumstances beyond the control of a person.*

Elements

1. The defendant was a person required to collect, account for, and pay over FICA taxes and withheld income taxes;

2. The defendant was served with the statutory notice prescribed by Section 7512(a); and

3. The defendant failed to comply with the notice, while not entertaining a reasonable doubt as to whether the law required the defendant to do so, and the failure was not due to circumstances beyond the defendant’s control.

**FBAR**

31 U.S.C. § 5322. *(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter . . . shall be fined not more than $250,000, or imprisoned for not more than five years, or both.*

31 C.F.R. § 1010.350 Reports of foreign financial accounts. *(a) In general. Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in . . . the Report of Foreign Bank and Financial Accounts . . ..*

Elements

1. Willful failure to file FBAR; and

2. Financial interest in a bank, securities, or other financial account in a foreign country**.**

**Limitations Periods**

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| Description of Offense | Code Section | Statute of Limitations | Code Section |
| Tax Evasion | 26 U.S.C. § 7201 | 6 years | 26 U.S.C.§ 6531(2) |
| Failure to Collect,  Account For or Pay  Over | 26 U.S.C. § 7202 | 6 years | 26 U.S.C. § 6531(4) |
| Failure to Pay Tax | 26 U.S.C. § 7203 | 6 years | 26 U.S.C. § 6531(4) |
| Failure to File a Return | 26 U.S.C. § 7203 | 6 years | 26 U.S.C. § 6531(4) |
| Failure to Keep Records | 26 U.S.C. § 7203 | 3 years | 26 U.S.C. § 6531 |
| Failure to Supply Information | 26 U.S.C. § 7203 | 3 years | 26 U.S.C. § 6531 |
| Supplying False Withholding Exemption | 26 U.S.C. § 7205 | 3 years | 26 U.S.C. § 6531 |
| Filing a False Tax Return | 26 U.S.C. § 7206(1) | 6 years | 26 U.S.C. § 6531(5) |
| Aid or Assist in Preparation or Presentation of False Tax Return | 26 U.S.C. § 7206(2) | 6 years | 26 U.S.C. § 6531(3) |
| Deliver or Disclose False Document | 26 U.S.C. § 7207 | 6 years | 26 U.S.C. § 6531(5) |
| Attempt to Interfere with Administration of Internal Revenue Laws | 26 U.S.C. § 7212(a) | 6 years | 26 U.S.C. § 6531(6) |
| Conspiracy to Commit Tax Evasion | 18 U.S.C. § 371 | 6 years | 26 U.S.C. § 6531(8) |
| Conspiracy to Defraud the IRS | 18 U.S.C. § 371 | 6 years | 26 U.S.C. § 6531(1) |
| False Claim for Refund | 18 U.S.C. § 286 / 287 | 5 years | 18 U.S.C. § 3282 |
| False Statement | 18 U.S.C. § 1001 | 5 years | 18 U.S.C. § 3282 |
| Failure to File FBAR | 31 U.S.C. §§ 5314, 5322 | 5 years | 18 U.S.C. § 3282 |

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| CIVIL MATTERS (not comprehensive) | | | |
| Assessment of tax   * False return * Willful evade * No return * Foreign transfers * Substantial omiss. | 26 U.S.C. §§  6201, 6213 | 3 years (after return filed)  Any time  Any time  Any time  3 years after reported  6 years (after return filed) | 26 U.S.C. § 6501(a)  26 U.S.C. § 6501(c)(1)  26 U.S.C. § 6501(c)(2)  26 U.S.C. § 6501(c)(3)  26 U.S.C. § 6501(c)(8)  26 U.S.C. § 6501(e) |
| Collection of tax | 26 U.S.C. § 6301 et seq. | 10 years (after assess) | 26 U.S.C. § 6502 |
| Taxpayer refund suit | 26 U.S.C. § 7422(a) | 2 years (after claim disall.) | 26 U.S.C. § 6532(a) |
| Taxpayer claim for refund | 26 U.S.C. § 6402; 26 C.F.R. § 301.6402-2 | 3 year (filed return) or 2 years (pymt of tax), later of | 26 U.S.C. § 6511(a) |
| FBAR   * Assessment * Treas. Collection * DOJ collection suit | 31 U.S.C. § 5321  31 U.S.C. § 3711  31 U.S.C. § 3711(g)(9)(H) | 6 years  Any time  2 years (after assessment) | 31 U.S.C. § 5321(b)(1)  31 U.S.C. § 3716(e)(1)  31 U.S.C. § 5321(b)(2) |
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| SUSPENSION OF LIMITATIONS PERIOD Suspension period | | | |
| Challenge to John Doe Summons | Criminal limitations (§ 6531) and civil collection (§ 6501) periods | Beginning 6 mos. after court challenge | 26 U.S.C. § 7609(e)(2) |
| Taxpayer outside of US | Criminal cases  Civil collection | Absence period  Absence period (+ time to allow IRS at least 6 mos. to collect after back in US) | 26 U.S.C. § 6531 (flush language)  26 U.S.C. § 6503(c) |
| Foreign evidence | Criminal cases (and relevant request under MLAT, tax treaty or TIEA) | Period during “official request” for foreign evid | 18 U.S.C. § 3292 |