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**IRS EMPHASIS ON TAX FRAUD
ENFORCEMENT**

Prepared by:

JOEL N. CROUCH, J.D.
JOHN D. CROWDER, J.D., LL.M.

Presented by:

JOEL N. CROUCH, J.D.
Board Certified in Tax Law by the Texas Board of Legal Specialization



MEADOWS COLLIER

ATTORNEYS AT LAW

MEADOWS, COLLIER, REED, COUSINS,
CROUCH & UNGERMAN, L.L.P.

901 Main Street, Suite 3700
Dallas, Texas 75202
Main (214) 744-3700
Fax (214) 747-3732
(800) 451-0093
www.meadowscollier.com

Internet E-Mail:
jcrouch@meadowscollier.com

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IRS Emphasis on Tax Fraud Enforcement

No one has to look far to find memes on social media urging people to “commit tax fraud.” These memes have become so popular that even Amazon sells shirts with Barney, the big purple dinosaur, telling people to commit tax fraud.¹ In this article, we discuss four main topics: (1) how the IRS has undertaken concerted efforts to prioritize tax fraud; (2) new fraud focus areas of the IRS; (3) the distinctions between civil and criminal tax fraud; and (4) helpful tips for practitioners in alleviating a client’s criminal tax fraud exposure.

The IRS has sought out tax fraudsters since the United States established an income tax. If, when performing an audit, an IRS agent finds a “firm indication of fraud,” the Internal Revenue Manual instructs the agent to refer the taxpayer to the IRS’s Criminal Investigation (“CI”) unit.² Agents in the CI unit then perform highly skilled forensic accounting and investigative work to allow the IRS to prove, beyond a reasonable doubt, that the taxpayer committed a tax crime.³ After CI determines that the taxpayer has committed fraud beyond a reasonable doubt, they refer the case for prosecution.⁴

Due to budget constraints, as well as other issues, the IRS audited only 0.6% of all individual returns between tax years 2010 and 2018.⁵ The audit rate has declined seven years in a row, reaching the lowest audit rate since 2002.⁶ Therefore, with the declining audit rate, there has also been a decline in fraud referrals to CI.⁷ In 2019, CI undertook 2,485 investigations and recommended 1,893 of those cases for prosecution.⁸ In 2018, only 2,886 criminal investigations were initiated, which represents just another data point in the downward trend of investigations over the recent years.⁹ The extremely low number of tax fraud investigations has undoubtedly had an adverse effect on deterrence efforts.

However, despite what Barney the dinosaur says, it could not be a worse time to commit tax fraud. A concerted effort has been undertaken by Commissioner Charles Rettig and the IRS, as a whole, to increase the referrals to CI.¹⁰ Such efforts are exhibited by the promotion of Deputy Chief of CI, Eric Hylton, to the head of the Small Business/Self-Employed (“SB/SE”) Division. Hylton has stated that his focus is to use his position and fraud experience to encourage agents in

¹ *Barney Commit Tax Fraud Shirt*, Amazon, <https://www.amazon.com/Barney-Commit-Tax-Fraud-Shirt/dp/B08CCW8ZT2> (last visited Nov 2, 2020).

² IRM section 25.1.3.1.

³ IRM section 25.1.3.1.

⁴ IRM section 25.1.3.4.

⁵ I.R.S., *Compliance Presence* (Oct. 22, 2020), available at <https://www.irs.gov/statistics/compliance-presence>.

⁶ Richard Rubin, *IRS Audit Rate Drops Again as It Examines Fewer High-Income Households*, Wall Street Journal (May 20, 2019), available at <https://www.wsj.com/articles/irs-audit-rate-drops-again-as-it-examines-fewer-high-income-households-11558363990>.

⁷ *The New Wave of Fraud Referrals: Fact or Fiction*, 2018 ANNUAL TAX CONTROVERSY INSTITUTE, UCLA EXTENSION (October 23, 2018), available at <http://business.uclaextension.edu/wp-content/uploads/The-New-Wave-of-Fraud-Referrals-UCLA-Oct-2018-REVISED.pdf>.

⁸ I.R.S., *IRS: CRIMINAL INVESTIGATIONS ANNUAL REPORT 2019, 100 YEARS 1919-2019* at 145, available at https://www.irs.gov/pub/irs-utl/2019_irs_criminal_investigation_annual_report.pdf. (last visited Nov 2, 2020).

⁹ *Id.*

¹⁰ Allyson Versprille, *IRS Looking to Refer More Cases to Criminal Investigation Unit*, Bloomberg Tax (June 21, 2019), available at <https://news.bloombergtax.com/daily-tax-report/irs-looking-to-refer-more-cases-to-criminal-investigation-unit>.

the SB/SE Division to seek out more fraud cases.¹¹ Additionally, the IRS has recently announced the formation of a new Fraud Enforcement Office to be headed by former CI official Damon Rowe.¹² This new office, housed in the SB/SE Division, has the goal of increasing fraud referrals by training IRS examiners to look for a firm indication of fraud to refer to CI.¹³

The IRS has also streamlined communication between departments. David Hubbert, deputy assistant attorney general (civil matters), Justice Department, Tax Division, said that efforts have been made to decrease red tape when communicating within the IRS.¹⁴ Currently, the tax division assistant chiefs now talk directly with IRS officials such as Damon Rowe, SB/SE Division executive director of the Fraud Enforcement Office; Carolyn Schenck, IRS National Fraud Counsel; and Brendan O'Dell, IRS promoter investigations coordinator.¹⁵ Coupled with streamlined communication, new tools such as SharePoint have added even more efficiency to the IRS, said Thomas A. Cullinan, counselor to the IRS Commissioner Rettig.¹⁶ Promotions of employees with significant fraud experience show a top-down approach to focus on fraud enforcement and training that illustrate an institutionalized effort to increase fraud referrals. Combine these efforts with streamlined communication and there may be nothing that can get in their way.

Despite a raging pandemic across the United States, the IRS has taken measured steps to increase fraud enforcement. Damon Rowe stated that the new Office of Fraud Enforcement will have 42 fraud enforcement advisers hired and ready to work by late September or mid-October 2020.¹⁷ However, Darren Guillot, deputy commissioner for collections and operations support in the SB/SE Division, emphasized that the return to enforcement activities will be gradual to prioritize the safety of their staff.¹⁸ The IRS currently has 75 percent of collections and operations support personnel working remotely, which is a major increase from five percent before the pandemic, said Guillot.¹⁹ The IRS offices are reopening, by following social distancing requirements and using physical barriers to keep employees safe. Guillot also stated that offices

¹¹ I.R.S. News Release IR-2019-137, *Veteran IRS enforcement leaders selected* (July 31, 2019), available at <https://www.irs.gov/newsroom/veteran-irs-enforcement-leaders-selected-to-lead-sbse-tege-hylton-ripperda-to-serve-as-commissioners>.

¹² I.R.S. News Release IR-2020-49, *IRS Criminal Investigation veteran selected* (Mar. 5, 2020), available at <https://www.irs.gov/newsroom/irs-criminal-investigation-veteran-selected-as-new-fraud-enforcement-director>.

¹³ *Id.*

¹⁴ Kristen A. Parillo, *Data Analytics Are Now Essential Anti-Tax-Shelter Tools*, TaxNotes (July 16, 2020), available at <https://www.taxnotes.com/tax-notes-today-federal/tax-avoidance-and-evasion/data-analytics-are-now-essential-anti-tax-shelter-tools/2020/07/16/2cqkm>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ David van den Berg, *Pandemic Not Slowing Rollout Of New IRS Fraud Office*, Law360 (Aug. 27, 2020), available at <https://www.law360.com/tax-authority/articles/1305025/pandemic-not-slowing-rollout-of-new-irs-fraud-office>.

¹⁸ William Hoffman, *IRS Moving Cautiously as It Reboots Enforcement Efforts*, TaxNotes (July 23, 2020), available at <https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/irs-moving-cautiously-it-reboots-enforcement-efforts/2020/07/23/2crd9>.

¹⁹ *Id.*

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