

IRS CRIMINAL INVESTIGATION-AN OVERVIEW

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Outline

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- Legal Provisions
- IRS Criminal Investigation (CI) – Overview
- IRS CI – Operation
- IRS CI – Challenges

Legal Provisions

Three Most Common Ways to Commit Tax Violations

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- Under-Report Income
- Overstate Deductions
- Fail to File a Tax Return

Primary Statutes: Tax Evasion

Title 26 USC 7201

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- An additional tax due and owing
- An affirmative attempt in any manner to evade or defeat any tax, or the payment thereof
- Willfulness

Primary Statutes: Willful Failure to File a Return Title 26 USC 7203

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- A legal duty to file
- A failure to file a return
- Willfulness

Primary Statutes: False or Fraudulent Return Title 26 USC 7206 (1)

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- The signing of a return containing a written declaration that it was signed under penalty of perjury
- The inclusion on the return of information that was false as to a material matter
- Willfulness

Primary Statutes: Aiding or Assisting in the Preparation of a False Return 26 USC 7206(2)

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- Defendant aided or assisted in, or procured, consulted or advised in the preparation of a tax return
- The return was false as to a material matter
- Willfulness

Statutes of Limitation

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- Normally 5 years for most federal crimes
- Tax Evasion (6 years)

IRS Criminal Investigation (CI) Overview

IRS Criminal Investigation (CI)

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- CI is the law enforcement arm of the IRS
- CI employs approx. 2800 Special Agents
- CI employs approx. 1600 support positions

IRS Enforcement Business Units

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- Small Business/Self Employed
- Large Business and International
- Wage and Investment
- Tax Exempt and Government Entities
- Office of Professional Responsibility
- Whistleblower Office
- Criminal Investigation

CI's Mission

The mission of Criminal Investigation is to serve the American public by investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law.

IRS CI – Operation

Types of Violations Investigated by CI

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- Legal Source
 - ▣ Evaded income on legally earned income

- Illegal Source
 - ▣ Racketeering
 - ▣ Narcotics trafficking
 - ▣ Securities fraud
 - ▣ Counter-terrorism

Legal Source Investigations

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- International Tax Fraud
- Employment Tax Fraud
- Abusive Return Preparer Fraud
- Non-filers
- Refund fraud
- Abusive foreign & domestic trusts
- Abusive Shelters

Illegal Source Investigations

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- ❑ Securities Fraud
- ❑ Mortgage Fraud
- ❑ Bankruptcy Fraud
- ❑ Medicare/Health Care Fraud
- ❑ Public Corruption
- ❑ Narcotics trafficking
- ❑ Racketeering
- ❑ Counter-terrorism

Leads of Investigations

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- Dept. of Justice Referrals
- Referrals from other law enforcement agencies
- BSA Referrals
- Information from the Public – Whistleblowers
- Fraud Referrals from IRS examiners and collection officers

Conducting Investigations (1)

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- Special Agents are trained to “Follow the Money.”
- When the subject of an investigation is initially interviewed, they are usually advised of their right to remain silent (under the US Constitution).
- Special Agents contact the tax return preparer and third party witnesses including banks and brokerage houses.
- “Intent” witnesses are also interviewed.

Conducting Investigations (2)

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- Investigations can routinely take up to two years.
- During the investigation, a special agent will trace every major financial transactions for a taxpayer during a 3-5 year period.
- Criminal Tax prosecutions normally involve multiple tax years—to demonstrate a pattern of criminal activity

Conducting Investigations (3)

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- Special Agents also conduct surveillance and execute search warrants to obtain evidence.

The Special Agent Must Prove

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- Intent
- Willfulness

(or the matter is civil and not criminal)

Methods of Proof

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- Direct Method-Specific Items

- Indirect Methods
 - ▣ New Worth and Expenditures
 - ▣ Bank Deposits
 - ▣ Hybrid

Special Investigative Techniques

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- Telephonic and Non-telephonic monitoring – must be consensual
- Non-consensual monitoring (telephones)
- Undercover

Case Review Process

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- All recommendations for criminal prosecution (tax violations) are reviewed by:
- IRS CI management
- IRS Counsel Attorneys
- US Department of Justice Tax Attorneys
- Prosecuting Assistant US Attorney

Coordination Between Civil and Criminal Enforcement

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- Many criminal tax investigations begin with a fraud referral from a civil auditor
- The civil audit is suspended during the criminal investigation
- There is strategic coordination within IRS to apply both civil and criminal resources to areas of major tax non-compliance such as abusive tax shelters

Money Laundering

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- One definition of money laundering relates to “transactions designed to conceal the source and ownership of money.”
- CI’s philosophy is that money laundering can be “redefined” as tax evasion in progress.
- CI’s money laundering investigate skills have been utilized in cases involving traditional organized crime and narcotics trafficking.

IRS CI – Challenges

Competing Priorities

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- CI's Top Priority is Legal Source Tax Investigations
- This was emphasized by the Webster Report in 1999. This report cautioned CI to avoid "Mission Drift"
- "Mission Drift" existed in CI because Special Agents were too focused on narcotics crimes and other illegal activity. The Webster Report refocused CI Legal Source Tax Investigations

IRS Reorganization and CI (1)

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- In 2000 under then IRS Commissioner Charles Rossotti, the IRS experienced a reorganization. Special Agents were no longer managed in the field by civil tax executives.
- Effective July 2000, all Special Agents were managed by the office of the Chief CI in Washington, DC

IRS Reorganization and CI (2)

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- Among the benefits to CI were:
 - ▣ The ability to dictate program priorities to all field offices
 - ▣ The ability to more easily coordinate nationwide investigations and enforcement actions
 - ▣ The ability to coordinate more efficiently with IRS Counsel Attorneys

International Tax Fraud

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- International Tax Fraud is a current top priority for CI and the IRS
- CI currently maintains foreign posts in 11 countries
- Continuing emphasis is placed on US taxpayers who have hidden untaxed money in foreign banks
- Tax Treaties

Thank you