

# **Criminal Tax: What Tax Professionals Need to Know to Help Clients & Themselves**

## **NAEA Solutions Room**

### **Presented by:**

**Parag P. Patel, Esq.**

**Tax Attorney**

**Patel Law Offices**

**60 Walnut Ave., Suite 202**

**Clark, NJ 07066**

**732-623-9800**

**mail@PatelLawOffices.com**

**www.PatelLawOffices.com**

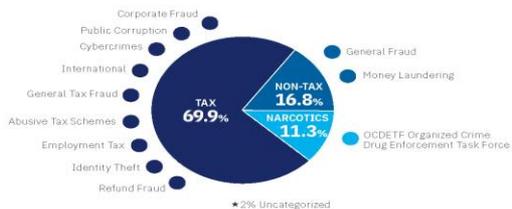
**Patel  
LAW  
Offices**

**Patel  
LAW  
Offices**

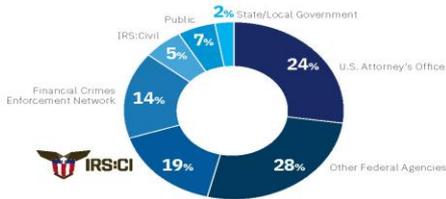
# IRS Criminal Investigation (CI) Division

## 2023 SNAPSHOT

### DIRECT INVESTIGATIVE TIME SPENT\*



### INVESTIGATION SOURCES



### STAFFING\*\*



\*\* CI's staffing levels are by fiscal year and reflect an actual count of employees based on the Employee Master Database as of PP19.



Tax Fraud Identified

\$5.5B



Other Identified Financial Crimes

\$31.6B



Warrants Executed

1334



Referred For Prosecution

1838



Conviction Rate

88.4%



Convictions

1508



Petabytes Of Digital Data

1.71

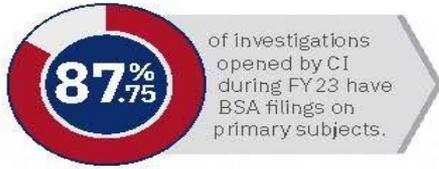


# IRS CI: the BSA connection

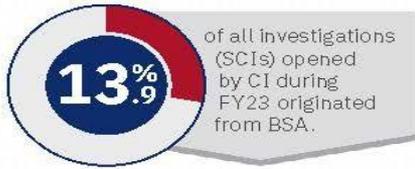


## BANK SECRECY ACT (BSA) AT A GLANCE — FY23

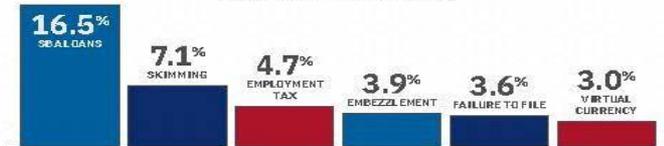
BSA data is a critical component for IRS Criminal Investigation (CI) to identify and investigate evolving and increasingly complex financial crimes. Documented metrics demonstrate the value of BSA information through enhancement and acceleration of CI investigations.



BSA Filings Associated with Primary Subjects



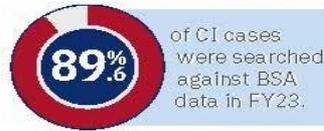
Types of Criminal Activity\*



\*Other types of criminal activity includes, but is not limited to, international, narcotics, and refund fraud.



## CI INVESTIGATIVE PERSONNEL SEARCHED BSA FILINGS MORE THAN 1.9M TIMES IN FY23



>38,000  
Average Weekly Searches in FY23

>165,000  
Average Monthly Searches in FY23

85.7% of investigations recommended for prosecution (FY21–23) have a primary subject with a related BSA filing.

Average sentence of those convicted was **39 Mos.**

**\$7.4B**  
in asset seizures



## Defendant Caused Nearly \$2M in Tax Loss to the IRS

A New Jersey man pleaded guilty today to tax evasion for evading employment tax penalties assessed against him.

According to court documents and statements made in court, Joseph Caravella, of Randolph, owned several masonry companies in New Jersey. From 2008 to 2016, the IRS assessed approximately \$650,000 in Trust Fund Recovery penalties against Caravella for causing three masonry businesses that he owned to not pay their federal employment taxes. From around March 2008 through in or around April 2019, Caravella sought to evade the payment of these penalties by placing companies that he controlled in the names of nominee owners and avoiding using a bank account in his own name to prevent the IRS from levying the funds. Also during that time, Caravella continued to cause his businesses not to pay employment taxes, resulting in an additional loss of \$1.2 million to the IRS.

In total, Caravella caused a tax loss to the IRS of \$1,885,519.39.

Caravella is scheduled to be sentenced on March 18. He faces a maximum penalty of five years in prison, a period of supervised release, restitution and monetary penalties. A federal judge will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

Acting Deputy Assistant Attorney General Stuart M. Goldberg of the Justice Department's Tax Division and U.S. Attorney Philip R. Sellinger for the District of New Jersey made the

# Check cashing N.J. construction company owner pleads guilty to tax evasion

Date : 21-Aug-24

Last week, the owner of a local construction company in New Jersey admitted he cheated the IRS out of about \$1.35 million in taxes.

Alain Rodrigues, 49, of Old Bridge evaded taxes and filed false returns when he deposited only a portion of customers' payments into a business bank account, then converted the rest of the payments to cash and money orders, according to the U.S. Attorney's Office for New Jersey.

Rodrigues deposited the cash and money orders into a personal bank account or used it to pay cash wages to employees from 2017 to 2020, according to federal prosecutors.

He reported only the portion of the company's revenue that was deposited in the business bank account on his taxes for the business, prosecutors said. Rodrigues also didn't deduct all the required taxes from workers' wages or pay employment taxes on them.

The company provided masonry services.

In all, the company paid \$554,873 less than it owed in income taxes and failed to pay about \$793,139 in employment taxes, officials said.

In an example provided in court documents, a customer provided Rodrigues' company a \$14,306 check on Nov. 30, 2018. He then used a check cashing service to convert those funds into four \$1,000 money orders and \$10,000 in cash. Check cashing businesses retain mandatory detailed records, which likely supported the government's charges.

## CATEGORIES

- [Estate Planning and Probate](#)
- [Planning for Tax Minimization](#)

## RECENT POSTS

- [IRS Quietly Changes its Voluntary Disclosure Practice For the Worse August 30, 2024](#)
- [Check cashing N.J. construction company owner pleads guilty to tax evasion August 21, 2024](#)
- [New IRS Voluntary disclosure program for employee retention credit August 21, 2024](#)
- [US Supreme Court Will Favor Taxpayer Challenges to the IRS July 12, 2024](#)
- [Comments on Proposed Regulations on Transactions with Foreign Trusts and Reporting Large Foreign Gifts July 10, 2024](#)
- [IRS Form 8621 Frequently Misunderstood July 5, 2024](#)
- [IRS Criminal Investigations: A Serious Threat With Warning Signs July 2, 2024](#)
- [Handling an Unexpected Visit from](#)

## News

All News

Blogs

Photo Galleries

Podcasts

**Press Releases**

Speeches

Videos

[Archived News](#)

[Para Noticias en Español](#)

## PRESS RELEASE

# Ohio Restaurant Owner Convicted of Employment Tax Crimes

Friday, September 20, 2024

Share >

**For Immediate Release**

Office of Public Affairs

After five days of trial, a federal jury convicted Richard Bhoelai, 65, of Cincinnati, today for failing to pay taxes he withheld from employees' wages at three restaurants he owned and operated.

According to evidence presented at trial, Bhoelai owned and operated Richie's Fast Food Restaurants Inc., an S-Corporation used to operate three fried chicken restaurants in the Cincinnati area since 1991. Bhoelai was responsible for withholding Social Security, Medicare and income taxes from employees' wages and paying those funds over to the IRS. Bhoelai employed between 22 and 34 employees between at least 2017 and 2018. During that time, he withheld taxes from employees' wages but did not pay them over to the IRS. Prior to that time, Bhoelai had not paid over such taxes from earlier years and the IRS had assessed a penalty against him for failing to do so. Instead of paying over the taxes, Bhoelai used money from the businesses for his personal benefit, including gambling.

The jury found Bhoelai guilty of eight counts of failing to pay over taxes for four quarters in 2017 and four quarters in 2018. Bhoelai's sentencing date has not yet been set. He faces a maximum penalty of five years in prison for each failure to pay taxes count. A federal district court judge

[All News](#)[Blogs](#)[Photo Galleries](#)[Podcasts](#)[Press Releases](#)[Speeches](#)[Videos](#)[Archived News](#)[Para Noticias en Español](#)

# Pennsylvania Business Owner Sentenced for Tax Evasion

Thursday, September 5, 2024

[Share](#)

**For Immediate Release**

Office of Public Affairs

## Defendant Attempted to Thwart IRS Efforts to Collect Over \$400,000 in Taxes

A Pennsylvania man was sentenced today to 24 months in prison for evading his personal and employment taxes.

According to court documents and evidence presented at trial, Brandon Aumiller, of Milroy, owned an insurance sales business. For tax years 2007 and 2009 through 2011, Aumiller filed personal income tax returns reporting that he owed taxes, but did not pay them. He also filed employment tax returns for his business reporting that it owed taxes for the third quarter of 2013 and the first two quarters of 2014, but did not pay those taxes either.

When the IRS sought to collect the taxes Aumiller admitted he owed, Aumiller engaged in a multi-year scheme to thwart the IRS' efforts by concealing his assets in nominee bank accounts, structuring multiple real estate deals to conceal the transactions from the IRS and submitting false financial disclosure forms to the IRS that did not fully disclose his bank accounts and his real estate assets.

In total, Aumiller caused a tax loss to the IRS of \$478,270.



TOP

All News

Blogs

Photo Galleries

Podcasts

**Press Releases**

Speeches

Videos

[Archived News](#)

[Para Noticias en Español](#)

# Roofing Business Owner and Payroll Administrator Both Plead Guilty in Employment Tax Conspiracy

Friday, November 8, 2024

Share >

**For Immediate Release**

Office of Public Affairs

A Florida man and woman both pleaded guilty yesterday to conspiring to defraud the United States by not paying employment taxes to the IRS.

According to court documents and statements made in court, William Skaggs Jr. owned and operated Nastar Roofing, a roofing company that operated throughout the Fort Myers area. Billie Adkison was the business's main office administrator, whose duties included managing payroll.

Between 2013 and 2023, Nastar employees, including Skaggs and Adkison, and others acting at their direction withdrew over \$21 million from the company's bank accounts to pay employees predominantly in cash without withholding Social Security, Medicare and federal income taxes from those wages. They did this to escape paying employment taxes they knew were legally required.

At times, Nastar used a payroll provider to issue nominal employee paychecks, but Nastar did not inform the payroll company about the cash wages. As such, when the payroll company filed employment tax returns with the IRS that included wages for Nastar employees, the forms were

TOP

---

Podcasts

**Press Releases**

Speeches

---

Videos

[Archived News](#)

---

[Para Noticias en Español](#)

Tuesday, October 22, 2024

Share



**For Immediate Release**

Office of Public Affairs

## Evaded Over \$1.7M in Taxes

A Florida man pleaded guilty today to evading the payment of more than \$1.7 million he owed for tax years 2004 through 2014.

According to court documents and statements made in court, David Albert Fletcher, of Deltona, owned and operated several furniture liquidations businesses in Florida, including Century Liquidators. For tax years 2004 through 2013, Fletcher did not timely file his federal income tax returns or pay taxes. After an audit, the IRS assessed a total of \$1.7 million in taxes, interest and penalties against him.

To evade collection of these taxes, Fletcher concealed his income and assets from the IRS. For example, Fletcher used nominees to hide his purchases of luxury vehicles, including Rolls Royces. Fletcher also filed false income tax returns that understated his income and when interviewed by an IRS special agent, falsely represented the amount of income he earned.

A sentencing hearing will be set at a later date. Fletcher faces a maximum penalty of five years in prison. A federal district court judge will determine any sentence after considering the Sentencing Guidelines and other statutory factors.

↑  
TOP

# Willfulness is REQUIRED

ALL of the CRIMINAL tax statutes require some form of willfulness.

The 75% CIVIL fraud penalty requires willfulness.

“Willfulness” = a voluntary and intentional violation of a known legal duty. It means the taxpayer acted with a bad purpose to disobey or disregard the tax law, not through accidental negligence or misunderstanding.

# Differences Between Civil Fraud and Criminal Fraud

## Consequences

- Money (civil) vs. incarceration (criminal)

## Burden of proof

- Clear and convincing (civil) vs. beyond a reasonable doubt (criminal)

## Statutes of limitations

- Unlimited (civil) vs. six years (criminal)

# How Do To Identify Taxpayers with Fraud Risks?

- First: Be aware of latest IRS compliance fraud focus priorities
  - High-income non-filers (those with income over \$100k);
  - Cryptocurrency;
  - Foreign bank accounts and foreign income not reported on tax return;
  - Failure to remit employment taxes and file employment tax returns.
  - Employee Retention Credit (ERC) Claims
- Second: Be aware of factors IRS looks at in determining whether fraud is present—does client have any “bad” factors?
  - Badges of Fraud. See IRM pt. 25.1.2.3 (4/23/21).
  - Note: Often, the government does not have a strong case against a client for fraud but the client makes the matter criminal. For example, the client may make a false statement during the investigation or may attempt to interfere with the government’s investigation.

# “Badges of fraud”

- “Badges of fraud” a/k/a Repeated failure to report or pay tax
- Serial “errors”
  - Attempts to confuse, conceal or “overly advocate”
  - False invoices or other documents
  - Destruction of records
  - Failure to produce damaging documents or information
  - Overly complex structures or arrangement with no legitimate business purpose
  - Off-books bank accounts
  - Use of pseudonyms or fake names
    - Lying or excessive delaying during an audit
- Admissions
  - Double set of books
  - Incriminating e-mails, notes or statements

# Identifying Risks: Income Tax Returns

- IRS examiners instructed to look for potential indicators of fraud in income tax cases, which include:
  - Omissions of income (particularly over multiple years);
  - Inability to explain increases in net worth;
  - Inability to explain origin of bank deposits;
  - Non-disclosure of foreign bank accounts and digital assets, such as cryptocurrency;
  - Refusal to provide books and records;
  - Amounts on return not in agreement with books;
  - Multiple sets of books or no records;
  - False statements to IRS by TP or TP representative.

# Identifying Risks: Employment Taxes

- IRS employees (including Revenue Officers) are instructed to look for potential indicators of fraud in employment tax cases, which include:
  - Use of business funds to pay personal expenses;
  - Disorganized, incomplete, or non-existent payroll records;
  - Use of nominees (wife, partner, relatives, friends, etc.) to shield business or personal assets;
  - Business owner/officer is evasive, uncooperative, and attempts to interfere with tax investigation;
  - History of non-compliance by officers, including previous entities with unpaid payroll tax liabilities.

# Beware of Parallel Investigations

In most cases, IRS will suspend a civil investigation until a related criminal investigation is complete

- In some cases, there are parallel proceedings
- IRM 1.2.1.5.11 (10-05-2005), *Policy Statement 4-26, Criminal and civil aspects in enforcement*
- IRM 9.5.1.5 (09-27-2011), *Parallel Investigations*
- IRM 38.3.1.8 (10-03-2007), *Balancing Criminal and Civil Aspects*
- Justice Manual – 6-4.400 (Feb. 2018)

# Types of Criminal Tax Investigations

- There are 2 types of investigations:
  - Administrative Investigations
  - Grand Jury Investigations

# Target vs Witness vs Subject

Prosecutors and agents talk in terms of “target”, “witness”, and “subject”:

- Target = a person who the government has decided to investigate/prosecute.
- Witness = a person the government believes is innocent but may have relevant information.
- Subject = is someone in between; the government has not decided yet.

These categories have no real legal effect.

- If government seeks to interview you and says you are “just a witness” there is nothing stopping them from taking your statement and using it to prosecute you later.
- No judge will dismiss your charges and your statement is probably admissible against you.
- So it is not a good idea to rely too heavily on these classifications.

# Administrative Investigation

- Administrative is still criminal...
- Initial Procedures in Criminal Tax Investigations
  - Which criminal statutes are alleged to have been violated.
  - By whom, when, where, by what means the offense was committed.
  - The elements of each alleged offense, what evidence must be obtained to establish the elements, and the probable sources of the evidence.
  - The timing and sequence of key interviews and service of summonses.
  - Whether the subject will be contacted for an initial interview.
  - Whether the subject's books and records have been examined.

# Administrative Investigation

A criminal investigation can use the broad spectrum of investigative techniques available.

For example:

- Summonses
- Interviews of subjects/targets (generally within 30 days and simultaneous with return preparer and/or accountant)
- Execution of search warrant where IRS CI Agent is affiant

# IRS Administrative Summonses

Summons	
In the matter of <u>Malta Pension Plans et al 1000312911</u>	
Internal Revenue Service (division)	<u>Criminal Investigation</u>
Industry/Area (name or number)	<u>Chicago Field Office</u>
Periods	<u>2014 through Present</u>
<b>The Commissioner of Internal Revenue</b>	
To	<u>[REDACTED]</u>
At	<u>[REDACTED]</u>
You are hereby summoned and required to appear before <u>Brian Visalli</u> or his designee, an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.	
The Internal Revenue Service, Criminal Investigation is investigating the financial instruments known as "Malta Pension Plans" for the years 2014 through the present. As part of our investigation, we need to establish your involvement in the use of these financial instruments.	
Please contact Special Agent Brian Visalli at 312-287-1494 at your earliest convenience to discuss scheduling an interview.	
<b>Attestation</b>	
I hereby certify that I have examined and compared this copy of the summons with the original and that it is a true and correct copy of the original.	
Signature of IRS officer serving the summons <u>[Signature]</u>	Title <u>SIA</u>
<b>Business address and telephone number of IRS officer before whom you are to appear</b> 2001 Butterfield Road, Suite 1205, Downers Grove, IL 60515, (312) 287-1494	
<b>Place and time for appearance at</b> <u>TBD</u>	
on the _____ day of _____, _____ (year) at _____ o'clock _____, m.	
Issued under authority of the Internal Revenue Code this <u>30th</u> day of <u>June</u> , <u>2023</u> (year)	
Signature of issuing officer <u>[Signature]</u>	Title Special Agent
Signature of approving officer (if applicable) <u>Brian Visalli</u>	Title
Form <b>2039</b> (Rev. 3-2020) Catalog Number 21405J publish.no.irs.gov Department of the Treasury - Internal Revenue Service Part A — to be given to person summoned	

# IRS Administrative Summonses

- 1. Consult an Attorney:** Immediately seek legal counsel from an attorney specializing in tax law to explore your options.
- 2. Client Communication:** Inform the client that the accountant received the summons. Explain that they are seeking legal counsel and will keep the client updated.
- 3. Preserve Records:** Do not destroy or alter any records that might be relevant to the summons.
- 4. Follow Legal Advice:** Follow the attorney's guidance regarding responding to the summons, producing documents, or appearing for testimony. The attorney will help determine the best course of action to protect both the accountant's and the client's interests.
- 5. Maintain Confidentiality:** Unless legally required or with the client's explicit permission, you should not disclose the contents of the summons or any related information to third parties.
- 6. Cooperation:** It's generally advisable to cooperate with the IRS investigation, but only under the guidance of legal counsel. Refusing to comply with a summons can lead to legal consequences.

# Investigative Techniques

## What are the Agents doing?

- Federal financial investigations take time, the approximate average of investigating a criminal tax case is 18+ months.
- Gathering evidence to prove or disprove allegation
  - Interview witnesses
  - Subpoena and analyze financial records
  - Conduct surveillance, undercover, etc.
  - Attempting to prove “Willfullness”
- Agents are the fact-finders, DOJ are the Government attorneys

# Privileges

## Federally Authorized Tax Practitioner Privilege:

Section 7525 extends the common-law attorney-client privilege to tax advice furnished by a federally authorized tax practitioner; however, it may be asserted only in noncriminal tax matters.

This privilege protects confidential communications between taxpayers and federally authorized tax practitioners (e.g., CPAs, enrolled agents, etc.) in noncriminal tax proceedings before the IRS or federal court.

# Attorney-Client Privilege

The Attorney-Client privilege applies:

- (1) Where legal advice of any kind is sought;
  - (2) from a professional legal advisor in his capacity as such
  - (3) the communications relating to that purpose;
  - (4) made in confidence;
  - (5) by the client
- 
- Waiver

# The "Kovel" Accountant

*United States v. Kovel*, 296 F.2d 918, 921–22 (2nd Cir. 1961)

where the attorney-client privilege may extend to communications between the client and the accountant only where an attorney retains an accountant to assist the lawyer in providing legal advice to a client concerning tax issues.

# IRS Enforcement Campaign Targets High-Income Non-Filers

Date : 01-Mar-24

Recent funding increases through the Inflation Reduction Act (IRA) have revitalized the IRS's enforcement capabilities. A new campaign signals this shift, targeting high-income taxpayers who failed to file federal income tax returns. This initiative represents a strategic pivot for the IRS, prioritizing the pursuit of large, unreported income sources to maximize revenue collection.

The Internal Revenue Service (IRS) has initiated a new enforcement campaign targeting high-income taxpayers who have failed to file federal income tax returns. This campaign focuses on individuals with unreported income exceeding \$400,000 annually for tax years 2017 through 2021. The IRS expects this initiative to yield significant recovery of unpaid taxes, along with associated penalties and interest. This effort aligns with the IRS' broader focus on examining large corporations and high-net-worth individuals.

## Key Actions

- The IRS has identified over 125,000 instances of high-income non-compliance.
- Targeted taxpayers will receive CP59 Notices detailing steps for achieving compliance. Those with incomes exceeding \$1 million will likely face escalated outreach.
- The IRS will use third-party reported income data (Forms W-2, 1099, etc.) for targeted identification.

## Increased Enforcement Capacity

Historically, resource constraints limited the IRS's consistent pursuit of high-income non-filers. Funding

## SEARCH

## CATEGORIES

- [Estate Planning and Probate](#)
- [Planning for Tax Minimization](#)

## RECENT POSTS

- [IRS Quietly Changes its Voluntary Disclosure Practice For the Worse](#)  
August 30, 2024
- [Check cashing N.J. construction company owner pleads guilty to tax evasion](#)  
August 21, 2024
- [New IRS Voluntary disclosure program for employee retention credit](#)  
August 21, 2024
- [US Supreme Court Will Favor Taxpayer Challenges to the IRS](#)  
July 12, 2024
- [Comments on Proposed Regulations on Transactions with Foreign Trusts and Reporting Large Foreign Gifts](#)  
July 10, 2024
- [IRS Form 8621 Frequently Misunderstood](#)  
July 5, 2024
- [IRS Criminal Investigations: A Serious](#)

# U.S. Department of the Treasury, IRS announce \$1.3 billion recovered from high-income, high-wealth individuals under Inflation Reduction Act initiatives

[English](#) | 
 [Español](#) | 
 [中文\(简体\)](#)

## Topics in the news

### News releases

News releases for frequently asked questions

### Multimedia center

### Tax relief in disaster situations

### Inflation Reduction Act

### Tax reform

### Taxpayer First Act

### Tax scams and consumer alerts

### The tax gap

### Fact sheets

## \$172 million recovered from 21,000 wealthy taxpayers who have not filed tax returns since 2017 in first six months of new initiative

IR-2024-233, Sept. 6, 2024

WASHINGTON — Today, U.S. Secretary of the Treasury Janet L. Yellen and Commissioner of the Internal Revenue Service Danny Werfel are delivering remarks at the Austin, Texas, IRS campus to announce new milestones under Inflation Reduction Act initiatives to ensure wealthy individuals pay taxes owed, improve service for taxpayers through the Digital First Initiative and modernize foundational technology.

### Ensuring high-income, high-wealth taxpayers pay taxes owed

- The IRS in February 2024 launched an initiative to pursue 125,000 high-income, high-wealth taxpayers who have not filed taxes since 2017. These are cases where IRS has received third party information—such as through Forms W-2 and 1099s—indicating these people received income between \$400,000 and \$1 million or more than \$1 million, but failed to file a tax return. Prior to the Inflation Reduction Act, the IRS non-filer program ran sporadically since 2016 due to severe budget and staff limitations that did not allow these cases to be pursued. With new Inflation Reduction Act funding, the IRS now has the capacity to do this core tax administration work. **In the first six months of this initiative, nearly 21,000 of these wealthy taxpayers have filed, leading to \$172 million in taxes being paid.**
- The IRS in the fall of 2023 launched a new initiative using Inflation Reduction Act funding to pursue high-income, high-wealth individuals who have failed to pay recognized tax debt, with dozens of senior employees assigned to these cases.

# Criminal Prosecutions Against Non- Filers

<b>Non-Filer</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
Investigations Initiated	251	260	243
Prosecution Recommendations	141	152	137
Informations/ Indictments	115	115	128
Sentenced	116	116	88
Incarceration Rate	83%	78%	80%
Average Months to Serve	28	35	35

# Bad Facts in Criminal Failure to File Cases

FACTORS to be considered:

- Amount of taxes owed and unpaid
- Pattern of many years of non-filing
- Prior filing compliance
- Adequate income to trigger filing requirements
- Willfulness evidence
- Action made not to file (i.e., returns prepared but taxpayer did not file)
- Unfiled returns submitted as part of loan application, in court proceedings, etc.

# Compliance for Non-Filers: Strategies and Resources

# Lookback Period for Delinquent Taxpayers:

Statute of Limitations Considerations

# Statutes of Limitations for Assessment of Tax and Penalties Under the Internal Revenue Code (IRC)

- Section 6501
  - Generally: The IRS must assess any penalty within three years of the date of filing or due date of the return, whichever is later.
  - If no return is filed or the IRS prepares a “substitute for return,” the Statute of limitations (SOL) does not begin to run.
- In the case of fraud, no SOL (indefinite period).

# Statute of Limitations for Assessment: Common Exceptions to 3-Year Rule

- Substantial Omission of Items – If the taxpayer omits from gross income in excess of 25% of the amount of gross income stated in the return (or understates basis in excess of 25%), then SOL is 6 years unless the item was adequately disclosed on the return.
- Failure to Disclose Certain Foreign Transfers – 3 years after foreign information return is filed. (i.e., failure to file Forms 5471, 3520, etc. (excl FBARs), will keep statute of limitations open.
- If a taxpayer omits from his tax return more than \$5,000 of income attributable to a foreign asset reportable on a Form 8938 then the 6 year statute of limitations applies to the omission.

# Statute of Limitations

- There is no statute of limitations for assessment where a return has not been filed. I.R.C. 6501(c).
- The statute of limitations for assessment is not triggered by the IRS's assessment of tax based on an I.R.C. 6020(b) substitute for return. IRM 25.6.1.9.4.5.

# IRS 6-Year “Policy” on Delinquent Returns

- **IRS Policy Statement 5-133, Delinquent returns—enforcement of filing requirements (IRM 1.2.1.6.18):** “Normally, application of the above criteria will result in enforcement of delinquency procedures for not more than six (6) years. Enforcement beyond such period will not be undertaken without prior managerial approval. Also, if delinquency procedures are not to be enforced for the full six-year period of delinquency, prior managerial approval must be secured.” See also IRM 4.23.12.2 (06-13-2023).
- **Factors to be taken into account include** history of noncompliance, income from illegal sources, effect on voluntary compliance, revenue, and collectability, etc.

# Tax Return Preparation

- Use an accountant under *Kovel* agreement
- Collect wage and income transcripts
- Collect account transcripts (determine whether the IRS has made SFR assessments)
- Determine which to file first to avoid more SFR assessments
- Use of reasonable estimates and reconstructive methods under “Cohan rule” set out in *Cohan v. Comm’r*, 39 F.2d 540 (2d Cir. 1930). Look to IRS Audit Guides for methods of reconstructing income and expenses.

# Possible Solutions or Options?

- Do Nothing and Sweat Out Criminal Tax Statute of Limitations (usually 6 years);
- Quiet Disclosure;
- IRS Voluntary Disclosure Program.

# Risks for Quiet Disclosure

- No protection for criminal prosecution.
- Submission of returns/information to IRS can constitute admission by the taxpayer, which can be used by the government in a later criminal proceeding.
- Real Life Example of Quiet Disclosure Gone Wrong:
  - Mr. Bruer did not report \$7.7 million in income from 2007 through 2014. He also maintained financial accounts in various countries throughout the world. He did not report these accounts on FBARs. When advised by a foreign bank that he should enter into the IRS OVDP, he opted instead to file a quiet disclosure for 6 years of returns. The returns were used as evidence against him. Making matters worse, the returns were not correct. He later pled guilty to criminal tax evasion and willful failure to file FBARs.

# IRS Criminal Investigation Voluntary Disclosure Practice

## A Closer Look

## Volunteer

## Tax Statistics

## Do Business with the IRS

## Privacy Policy

## Freedom of Information Act

## Civil Rights

## Criminal Investigation

What We Investigate

Identify Tax Schemes

Report Tax Fraud

Voluntary Disclosure

About Us

Investigation Process

Press Releases

Annual Report

You have a legal duty to fully comply with U.S. tax laws. "Voluntary compliance" is the cornerstone of our tax system. While most taxpayers voluntarily comply with their obligations, some fail to do so. We have a wide variety of civil and criminal sanctions that we may impose on non-compliant taxpayers. Failure to voluntarily comply may result in imprisonment, fines, and penalties.

If you have willfully failed to comply with tax or tax-related obligations, submitting a voluntary disclosure may be a means to resolve your non-compliance and limit exposure to criminal prosecution.

### + What is the Voluntary Disclosure Practice?

### + Who may disclose

### + How to disclose

### + Contact and feedback

### + Historical information

## Voluntary Disclosure not for you?

- [Amended Return Procedures](#)
- [Delinquent Return Procedures](#)
- [Other Options Available For U.S. Taxpayers with Undisclosed Foreign Financial Assets](#)

## Helpful Information

- [Form 14457, Voluntary Disclosure Practice Preclearance and Application](#) [PDF](#)
- [Internal Revenue Manual \(IRM\) 9.5.11.9, Voluntary Disclosure Practice](#)
- [Form 2848, Power of Attorney and Declaration of Representative](#) [PDF](#)

# IRS Voluntary Disclosure Program

- If taxpayer makes a **timely, accurate, and complete** voluntary disclosure to the IRS and otherwise **cooperates** with the IRS, taxpayer may avoid criminal prosecution for prior year non-compliance.
- Timely
  - Voluntary disclosure must be received by IRS-CI prior to: (1) IRS commencing civil examination or criminal investigation; (2) receiving information from a third party alerting IRS to noncompliance; or (3) acquiring information directly related to noncompliance from a criminal enforcement action (*i.e.*, search warrant, grand jury subpoena, etc.).
- Accurate and Complete
  - Disclose all facts (good and bad) and answer all questions on the appropriate IRS Form 14457 to the best of taxpayer's ability.
- Cooperate
  - In examination of tax returns and in making good-faith efforts to pay all taxes and penalties imposed.

# IRS Voluntary Disclosure Program

- More on the VDP
  - Lookback period is 6 years, which includes filing of, where appropriate, original returns, amended returns, and/or foreign-information returns (FBAR, Form 8938, etc.).
  - Three General Steps:
    - Submit Part I of Form 14457 to IRS-CI (pre-clearance). IRS-CI will review information in Part I of Form 14457—primarily to determine if disclosure is timely; if approved, IRS-CI will send correspondence indicating taxpayer may submit Part II of Form 14457;
    - Submit Part II of Form 14457 (preliminary acceptance). Part II of Form 14457 requests source of funds and estimate of unreported income for lookback period. Also asks for information on any professional advisors and for narrative of willful conduct. IRS-CI reviews information for completeness/accuracy and then sends correspondence to taxpayer indicating has been preliminary accepted.
    - Taxpayer waits for contact letter from IRS examination. Taxpayer submits returns to examination and obtains a closing agreement.

# VDP Penalty Regime

- In February 2022, IRS issued new Form 14457 and instructions, which provides new guidance on VDP penalty regime.
  - Income Tax Penalties: 75% civil penalty, generally on highest income tax liability of lookback period.
    - Note: This is in lieu of accuracy-related penalties and failure-to-file and failure-to-pay penalties for entire lookback period.
  - Estate Tax Penalties: Civil fraud penalty at reduced rate of 50%, rather than 75%.
  - Gift Tax and GST Penalties: If more than one year of non-disclosure (*i.e.*, non-filed Forms 709), 75% fraud penalty imposed on highest tax year. If only one year, 50% fraud penalty imposed on such year.
  - Employment Tax Penalties: 75% fraud penalty applies to the tax quarter with the highest employment tax liability. Although late-filing and late-payment penalties under Section 6651(a)(1) and (a)(2) will not apply, IRS will impose FTD penalties.

# VDP Penalty Income Tax Example #1

Matt has unfiled income tax returns for 2018 through 2022. If returns had been filed, Matt would have owed income taxes of \$100,000 for 2018, \$100,000 for 2019, \$150,000 for 2020, \$150,000 for 2021, and \$200,000 for 2022.

Matt enters the VDP and meets all of the requirements of the program. If Matt had not entered the VDP, Matt would have had to pay the income taxes, plus an additional 25% late-filing penalty for 2018 through 2022 which would equal \$175,000.

Under the VDP, Matt must pay a 75% fraud penalty on the highest tax liability year of 2022 equal to \$150,000 (75% x \$200,000). The fraud penalty is in lieu of other civil penalties, including the late-filing penalty. Matt actually pays less penalties under the VDP.

**PLUS HE GETS NON-PROSECUTION COMFORT.**

# VDP Penalty Income Tax Example #2

Al is a contractor who has not filed tax returns for 10 years. Al has never been subject to IRS examination regarding his non-filings. Al enters the VDP and meets all of the requirements of the program, resulting in a closing agreement from the IRS for the non-filed income tax returns.

Under the VDP, Al would only have to file and pay tax with respect to the last 6 years of non-filed tax returns. The IRS would not seek payment of tax for the four years outside the disclosure period, even though Al did not file tax returns for those years.

**PLUS HE GETS NON-PROSECUTION COMFORT.**

# VDP Penalty Regime - Examples

- Income Tax Penalties. Taxpayer submits 6 years of amended returns, reporting additional income tax for each year. IRS will impose one fraud penalty (75%) on year with highest tax liability but no accuracy-related penalties for other 5 years.
- Estate Tax Penalties. Executor filed a Form 706 and intentionally omitted \$2 million of assets that should have been reported. Executor submits an amended Form 706 correctly reporting the \$2 million asset. Executor will pay a fraud penalty of 50% on the undisclosed asset and no accuracy-related penalty will apply.

# VDP Penalty Regime - Examples

- Employment Tax Penalties. Employer failed to file Forms 940/941 for several years. Employer submits delinquent returns. The IRS will impose one 75% fraud penalty on the highest tax quarter with the highest tax liability with no delinquency penalties on the other periods, but failure-to-deposit penalty will apply to all periods.
- FBAR Penalties. Taxpayer had a maximum account balance of \$500,000 during the tax year and \$100,000 on the reporting deadline date. Under mitigation guidelines, Taxpayer must pay FBAR penalty of greater of 10% of maximum account balance during year (\$500,000) or 50% of the account balance on the violation date (\$100,000). Accordingly, Taxpayer must pay \$50,000.

# IRS Quietly Changes its Voluntary Disclosure Practice For the Worse

Date : 30-Aug-24

The IRS's Voluntary Disclosure Practice (VDP) allows noncompliant taxpayers who have failed to meet their tax obligations to come into compliance and avoid criminal prosecution. Financially, the VDP offers the benefit of reduced penalties compared to those imposed through audits or criminal investigations, helping taxpayers resolve liabilities more predictably and possibly with lower penalties. The VDP assesses a single one-year 75% fraud penalty instead of all years' 20% accuracy-related penalties and 25% delinquency penalties.

Last month the IRS quietly implemented significant changes to Form 14457, which is integral to the Voluntary Disclosure Practice (VDP). These updates reflect a more stringent approach by the IRS towards taxpayers seeking to rectify past noncompliance. Key changes include stricter requirements for document preparation and submission, a mandatory admission of willfulness, and a reinforced expectation of full payment of taxes, interest, and penalties. These revisions emphasize the need for taxpayers to be fully prepared and transparent in their disclosures, signaling the IRS's commitment to expediting compliance and closing the door on leniency in cases of tax noncompliance.

Below is an in-depth overview of the key changes and their implications:

## 1. Document Submission Requirements

Previous Requirement (Before June 2024):

## SEARCH

## CATEGORIES

- [Estate Planning and Probate](#)
- [Planning for Tax Minimization](#)

## RECENT POSTS

- [IRS Quietly Changes its Voluntary Disclosure Practice For the Worse](#)  
August 30, 2024
- [Check cashing N.J. construction company owner pleads guilty to tax evasion](#)  
August 21, 2024
- [New IRS Voluntary disclosure program for employee retention credit](#)  
August 21, 2024
- [US Supreme Court Will Favor Taxpayer Challenges to the IRS](#)  
July 12, 2024
- [Comments on Proposed Regulations on Transactions with Foreign Trusts and Reporting Large Foreign Gifts](#)  
July 10, 2024
- [IRS Form 8621 Frequently Misunderstood](#)  
July 5, 2024
- [IRS Criminal Investigations: A Serious](#)



# VDP Summary:

## When Should You Recommend It?

- Taxpayers who have committed tax crimes or tax-related crimes and have criminal exposure due to willfulness.
- Taxpayers concerned that the IRS may possibly view their conduct as willful or criminal and do not want to risk being investigated.
- Taxpayers whose conduct is in an uncertain “gray area” but want predictability and finality.

Questions?  
Happy to help you and your clients...

**Parag P. Patel, Esq.**  
**Tax Attorney**

**60 Walnut Ave., Suite 202**  
**Clark, NJ 07066**  
**732-623-9800**

**mail@PatelLawOffices.com**  
**[www.PatelLawOffices.com](http://www.PatelLawOffices.com)**

**Our Other Websites:**

**[Patel Law Offices Blog](#)**

**[LateFBAR.com](#)**

**[IRSRevokedPassport](#)**

**[Late5471.com](#)**

**[Late8938.com](#)**

**[Late 8621.com](#)**

**[FLResidency.com](#)**

**Florida Office:**  
**6734 Coral Lake Dr**  
**Margate, FL 33063**

