



BOLDLY | GO

Crazy Tax Cases

Who Said Tax Was Boring!

# Eric L. Green, Esq.



- Managing partner in Green & Sklarz LLC, a boutique tax firm with offices in Connecticut and New York.
- Focus is civil and criminal taxpayer representation before the Department of Justice Tax Division, Internal Revenue Service and state Departments of Revenue Services.
- Eric is a contributing columnist for Bloomberg Tax and has served as a columnist for CCH's Journal of Practice & Procedure.
- Attorney Green is the past Chair of the Executive Committee of the Connecticut Bar Association's Tax Section.
- Eric is a Fellow of the American College of Tax Counsel ("ACTC").

# Learning Objectives

1. Identify the arguments tax protestors use to try and explain why they do not need to pay taxes
2. Understand the definition of ordinary and necessary expenses for creating income
3. Explain the role of perjury and criminal evasion in IRS collection cases, including Offers-in-Compromise



# Crazy Tax Cases: Agenda

- Joe Francis Gone Wild
- Bob's Reasonable Comp Horror Story
- Is the payment deductible?
- Ms. Brimberry's Jewelry
- They weren't too Bright...
- The Drug-Dealer's Assets
- Cracking the Code
- Empty Shipping Boxes



# The Lesson: Tax Liens

- Tax Liens arise automatically under IRC § 6321
- IRS May file a Notice of Federal Tax Lien
- If the taxpayer has valuable real estate and the CSED is going to expire, DOJ can sue to convert the lien to a judgment
- DOJ can foreclose
- IRS can redeem....and this is where things get interesting



# Meet Joe Francis

- Because famous and rich for the Girls Gone Wild video series
- 11/2002, pays \$5.45 million for a 6,000+ sq. ft. modern mansion in Bel Air
- In 2007, the U.S. DOJ filed charges against him for — among other things — more than \$20 million in false corporate tax deductions, hiding money in offshore bank accounts, and unpaid federal taxes for the years of 2002 and 2003



# Meet Joe Francis

- Didn't go to trial for some time because was already in prison on felony charges of filming underage girls.
- Francis is released and greeted with a \$34 million federal tax lien by the IRS.
- JP Morgan Chase began foreclosure proceedings against him for a \$5 million home loan
- Owed Steve Wynn \$2 million for gambling debts and Wynn sued him
- Francis countersued, claiming his losses only occurred after Wynn slyly plied him with booze and hookers

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# Joe Francis

- Jury decided in Wynn's favor
- Francis then accused Wynn — on a primetime TV interview, no less — of trying to kill him, so Wynn sued him again
- Wynn sues for defamation and wins a \$40 million judgement against Francis (reduced on appeal to \$19 million.)
- Francis stated that the “mentally retarded” jury should be “shot dead.”

# Paris Hilton Spills the Beans

- In 2004, an intruder broke into the house and forced Francis to do degrading things on video before abducting him, abandoning him in the trunk of his own Bentley and later attempting to blackmail him. The perpetrator was soon brought to justice courtesy of Paris Hilton, naturally, Joe's girlfriend

**'I was asked to rough him up': Man who robbed 'Girls Gone Wild' creator in 2004 claims he acted on orders from a notorious Genovese mob boss Matty 'The Horse' Ianniello**

DailyMail.com, 8/5/2018

# Steve Wynn

- In 2018, DOJ took possession of the Bel Air property and sold it to Steve Wynn for \$6.7 million
- IRS redeemed the property from Steve Wynn, paying him back the \$6.7 million he spent with closing costs
- Four months later the IRS then flipped the house to the wealthy neighbor, Kuwaiti Billionaire Bassam Alghanim, for \$8.65 million, turning an almost \$2 million profit

## Steve Wynn acquires the Bel Air home of Joe Francis

By James McClain • February 25, 2019



# Redemption

- IRS may redeem a property that is sold at a foreclosure sale
- If a judicial foreclosure – 28 USC 2410
- If administrative foreclosure – 26 USC 7425
- IRS has 120 days from the date of sale to give notice its redeeming
- Must repay what the buyer spent
- Form 5597 Notifies Buyer of redemption

Dear

We have received information that you purchased the property identified above at a foreclosure sale. The Internal Revenue Service has the right to redeem this property from you because the property is subject to a federal tax lien junior to the foreclosing lien.

We are considering redeeming this property and have until \_\_\_\_\_ to take action. We may release our right to redemption if you pay an amount determined to be equal to our redemption right. We have enclosed Publication 487, How to Prepare Application to Release Property Secured by Federal Tax Lien, which describes how to apply for a release. If the right of redemption is determined to be without value, you will not be required to pay to obtain a release.

If we redeem the property, we will pay the sum of:

- The amount you paid for the property at the foreclosure sale, including the amount of the obligation secured by the foreclosing lien to the extent satisfied by the sale if you were the holder of that lien
- The amount of interest paid at the rate of six percent a year for the period from the date of the sale to the date of redemption
- An amount equal to the expenses you incurred to maintain the property less any income received from the property. Income includes a reasonable rental value of the property but this rental value is limited to use of the property by you, use with your consent, or rental use at less than the property's reasonable rental value
- Payments you made to any senior lien holders on the property after the foreclosure sale, if you provide the us with a timely reimbursement request and we approve that request

# Why Redemption is Rare

- Before redeeming a property the IRS must:
  1. Consider if the property is toxic
  2. Consider senior liens and the amounts owed
  3. Independently appraise the property
  4. Consider how much the buyer needs to be reimbursed
  5. Secure a guaranteed bidder for an IRS redemption sale
  6. How much the IRS is owed and potential collectability

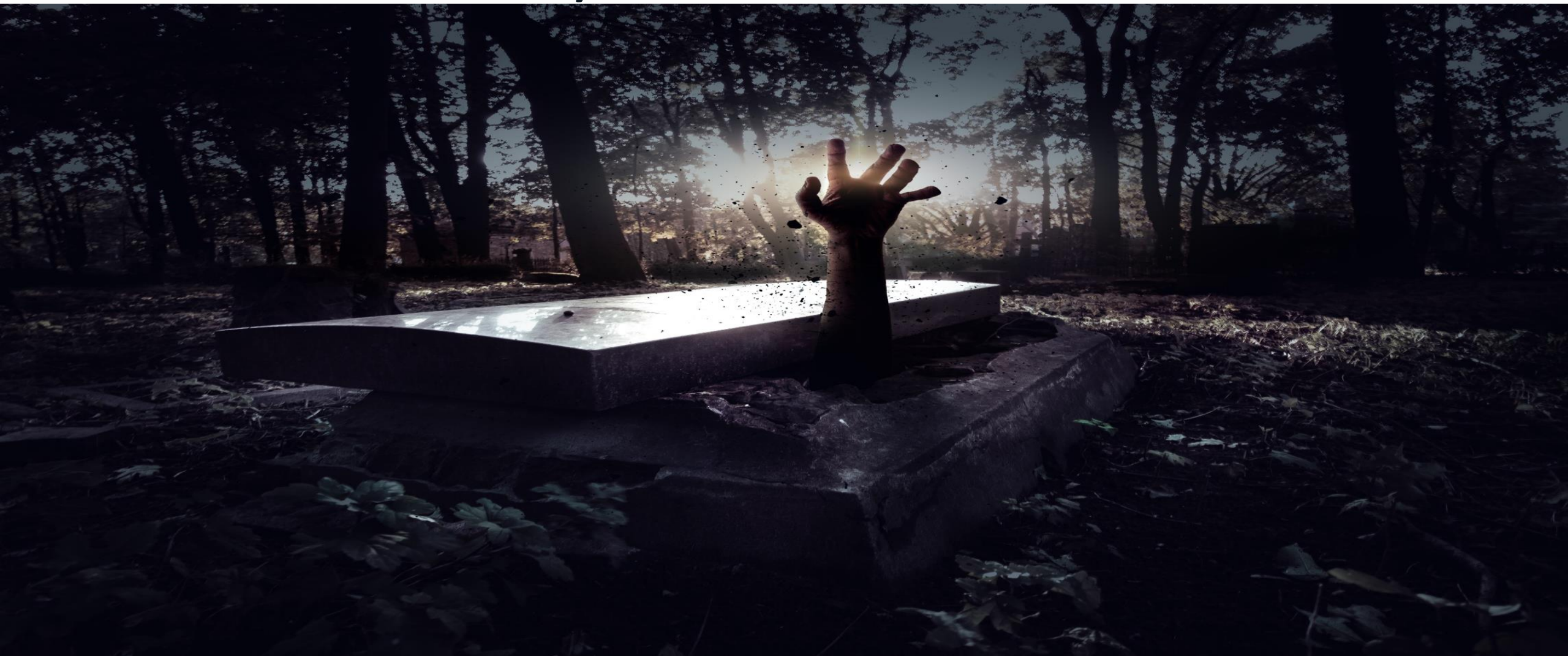


# What Just REALLY Happened....?

- Kuwaiti Billionaire Bassam Alghanim was buying all the properties
- He owned 9 and was adjacent to Francis's property
- Could have started a bidding war with Steve Wynn
- Instead let Wynn grab it cheap and used the IRS to seize it for him!



# Bob's Horror Story



# Meet Bob

- Bob is a CPA (now retired)
- Had 30 corporate clients and 600 individual clients
- One of his S Corporation clients was audited





# Auditor

- Finds in the file a letter from Bob to the client that they are required to take reasonable compensation
- S Corp owner took zero wages and claimed all \$100,000 of S Corp income as dividends
- Auditor now opens audits on 19 other S Corps that Bob prepared

# Audit results

- The auditor determines reasonable compensation was not taken by any of the 20 S Corp owners
- Charges BOB an IRC 6694(a) Negligence penalty (\$500 each at the time) and an IRC 6694(b) Reckless Disregard Penalty (\$5,000 each at the time)
- Bob is facing \$110,000 in IRS penalties
- Taxpayers were not charged anything
- Rationale: Bob, by sending that letter, knew the return was inaccurate



# Issues

- Was the return “Inaccurate”?
- No, and we fought the penalties
- IRC says Commissioner can create a salary for the taxpayer if he or she did not take one, but it’s not for Bob to do
- The returns accurately reflected what happened
- Case settled for the 15% Bob had put down (\$16,500) plus \$10,000 in legal fees

# Takeaway

- S Corp owners must take reasonable comp
- Do not ask them to sign waivers – IRS will use it against you
- This is a revenue stream....

# Is the Payment Deductible?



# The Lesson:

- Section 61(a)(3) gross income means all income from whatever source derived
- Section 1001(a) gain from the sale or other disposition of property is the excess of amount realized over the adjusted basis
- Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.
- Section 162(c) payments that are illegal are not deductible
- Section 212(1) provides that in the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income.

# Is the payment deductible – Revenue Ruling 82-74

- A revenue ruling was filed in 1982 asking the following:
- Individual purchased a building in 1977 for 90x dollars. The building was insured against fire loss for 100x dollars, its fair market value.
- One month later, in order to collect the insurance proceeds, A pays a third party 5x dollars to burn down the building, which was totally destroyed.
- After A's fire insurance claim was paid, the arson was discovered. The insurance proceeds were forfeited and repaid to the insurance company
- A was convicted of arson.



# Is the payment deductible – Revenue Ruling 82-74

- On A's federal income tax return for 1977, A claimed the 90x dollars paid for the building as a casualty loss.
- Business expense of 5x was claimed for the payment to the arsonist



# Is the payment deductible – Revenue Ruling 82-74

- A revenue ruling was sought from the IRS to determine if the casualty loss was allowed, and if the payment to the arsonist was an allowable expense either as ordinary and necessary or, otherwise allowable under IRC § 212 as necessary for the production of the income

# Conclusion

- The IRS Counsel concluded that if a taxpayer pays a third party to burn down the taxpayer's building,
  1. any business deduction claimed for payments to the arsonist is disallowed;
  2. any gain realized upon the payment of fire insurance proceeds is ordinary income and not capital gain;
  3. the entire amount of the insurance proceeds received (unreduced by the taxpayer's adjusted basis in the destroyed property) is includible in gross income;
  4. no deduction is allowed for the loss of the building; and
  5. a loss deduction is allowed for the insurance proceeds repaid to the insurer, in the year of repayment, because it was reported as income.

# Mrs. Brimberry's Jewelry





# The Lesson:

- The IRS utilizes a Collection Information Statement (generally a Form 433) for the client to disclose their financial situation and for it (the IRS) to determine what the taxpayer can afford to pay, if anything.
- These forms are signed under penalty of perjury, effectively making it a crime to submit a collection information statement to the IRS that the taxpayer knows or should know is inaccurate.
- If a false 433 is submitted to the IRS the taxpayer may be charged with violations of IRC § 7201 (Tax Evasion) or IRC § 7206 (False Statement or False Document), or both.
- Now let's meet Mrs. Brimberry.



# United States vs. Brimberry

- Mrs. Brimberry's case is one of the final chapters in the story of Stix Company, Inc.
- Stix Company was the object of a massive embezzlement scheme that generated a glut of litigation in Illinois and Missouri.
- Stix Company was a St. Louis, Missouri, broker-dealer firm engaged in the business of selling securities.
- Thomas Brimberry, a senior vice-president and majority shareholder of Stix and, at the time, Janice Brimberry's husband, siphoned millions of dollars from the firm by manipulating margin accounts.
- Went to jail for bankruptcy fraud, perjury and obstruction of justice.

# Janice Brimberry

- Janice Brimberry was not merely an innocent bystander in the Stix swindle.
- At the trials of the co-conspirators, Janice admitted purchasing blank stock certificates and having the names of real securities (matching the false computer entries) printed on them.
- The false securities were placed in the vault at Stix as a means to avoid detection by Stix's auditors.
- Janice also falsified records, knowingly signed false income tax returns and destroyed evidence.
- Janice was indicted for her role in the Stix swindle but was granted immunity in exchange for her testimony.

# The Tax Issue

- The United States District Court for the Eastern District of Missouri entered a judgment against Janice in favor of Stix for \$23,764,288.67.
- Ordered Janice to turn over all assets in her custody which were purchased with funds diverted from Stix.
- The Brimberys got into trouble with the IRS because they failed to declare the millions of dollars they diverted from Stix on their joint income tax return.
- For the taxable years 1975 through 1981, deficiencies in income taxes of over \$7 million were assessed against the Brimberys. With penalties and interest, the Brimberry's total tax liability was over \$19 million

# The Tax Issue

- Janice and her accountant met with an IRS officer, and Janice provided information regarding her assets and liabilities for IRS on Forms 433-A and 433-B
- The forms asked for information on all assets from which the tax deficiency could be paid.
- Janice represented that she was living with her mother, she depended on her mother for necessary living expenses, she owned no real property, and had no property that could be used to collect the tax.
- Janice signed the forms under penalties of perjury.

# Under Penalties of Perjury

- The IRS learned through a confidential informant that Janice Brimberry was trying to sell a four carat, heart-shaped diamond for \$20,000 to \$25,000.
- The IRS opened a criminal investigation of Janice and set up a sting operation.
- The informant agreed to arrange for a buyer of the jewelry to meet with Janice at the Collinsville, Illinois Hilton.
- In front of a rolling video camera, Janice sold the heart-shaped diamond and another, two carat diamond to the undercover IRS agent for \$36,000.
- The IRS agent gave Janice \$35,000 cash and arranged to deliver the remaining \$1,000 at a later time.

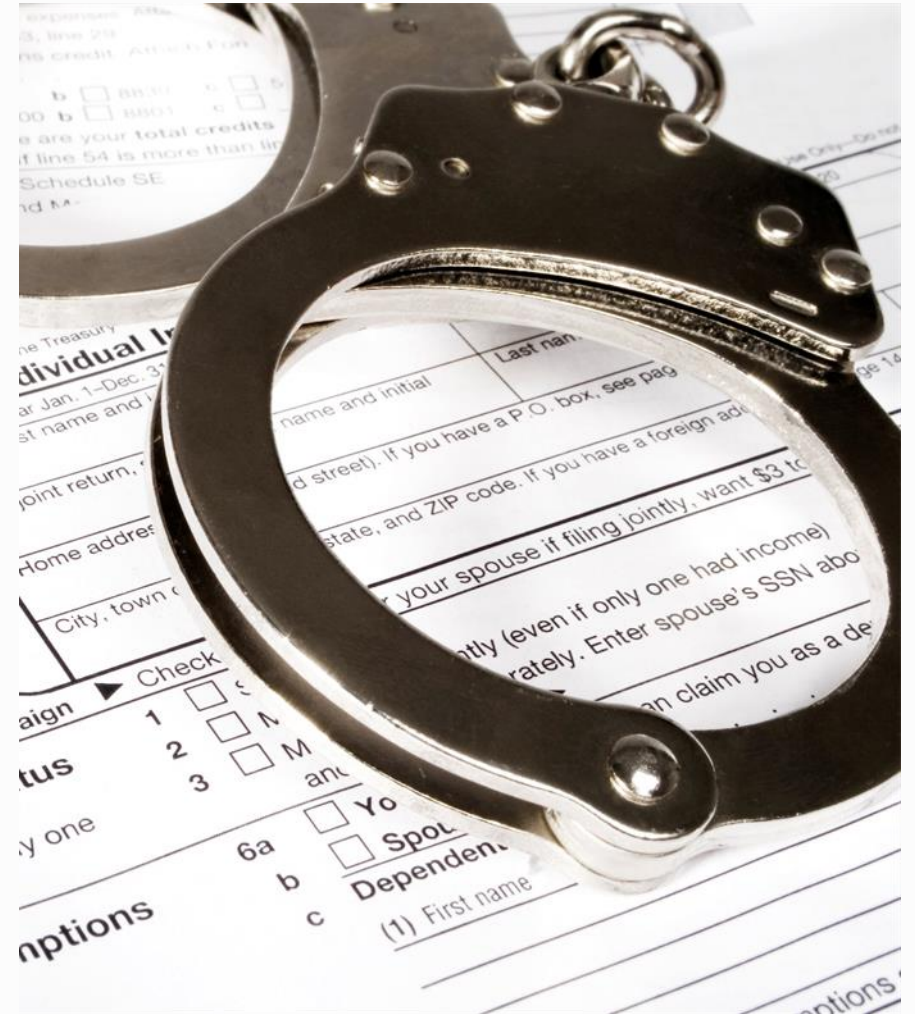
# The Prosecution

- IRS agents detained Janice as she was leaving the hotel room and seized the two diamonds and the \$35,000.
- They also seized a diamond cocktail ring and a woman's 18 carat gold Rolex Presidential watch which Janice was wearing.
- On December 22, 1988, a two-count indictment was filed against Janice Brimberry: willfully and knowingly making and subscribing a false IRS collection information statement, in violation of 26 U.S.C. § 7206(1), by failing to reveal assets, and attempted evasion of payment of \$19 million in income taxes, penalties and interest previously assessed against her for the years 1975 through 1981 in violation of 26 U.S.C. § 7201.



# The Verdict

- Jury found Janice guilty on both counts.
- The district court, pursuant to the Sentencing Guidelines, sentenced Janice to 33 months imprisonment and two-years supervised release on each count, to run concurrently.
- Janice appealed both her conviction and sentence, both of which were later upheld.



# The Lesson & Update

- 433 is signed under penalty of perjury
- Two types of Evasion: Liability and Payment
- IRS has FATCA indicators and Virtual Currency indicators now for Revenue officers as of May 2022
- **MAKE SURE YOU ASK THE CLIENT!**

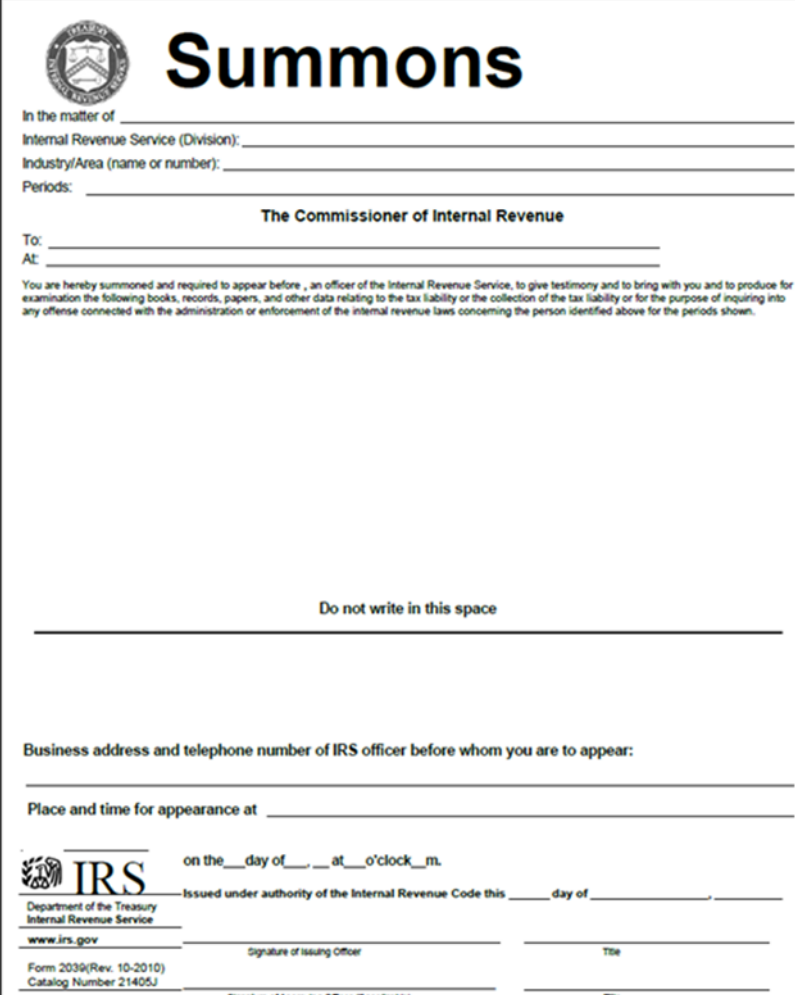


# They Were Not Terribly Bright....



# The Lesson:

- The IRS requests information from Taxpayers all the time
- Audit and Collection
- If not forthcoming, the IRS may resort to an administrative summons



**Summons**

In the matter of \_\_\_\_\_  
Internal Revenue Service (Division): \_\_\_\_\_  
Industry/Area (name or number): \_\_\_\_\_  
Periods: \_\_\_\_\_  
**The Commissioner of Internal Revenue**


To: \_\_\_\_\_  
At: \_\_\_\_\_

You are hereby summoned and required to appear before , 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.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear: \_\_\_\_\_


Place and time for appearance at \_\_\_\_\_  
on the \_\_\_ day of \_\_\_, at \_\_\_ o'clock \_\_m.

 **IRS** Issued under authority of the Internal Revenue Code this \_\_\_ day of \_\_\_\_\_  
Department of the Treasury  
Internal Revenue Service  
www.irs.gov  
Form 2039 (Rev. 10-2010)  
Catalog Number 21405J

Signature of Issuing Officer \_\_\_\_\_ Title \_\_\_\_\_  
Signature of Approving Officer (if applicable) \_\_\_\_\_ Title \_\_\_\_\_

# The Lesson:

- IRS will send it to Counsel who issues a 2nd letter with a new date
- Ignore that, and they send it to the United States Attorney to enforce “Show Cause”
- Jail time and penalties follow



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
OFFICE OF DIVISION COUNSEL  
SMALL BUSINESS/SELF-EMPLOYED  
400 WEST BAY STREET, SUITE 240  
JACKSONVILLE, FLORIDA 32202  
(904) 665-1930  
FAX: (904) 665-1963

OFFICE OF THE CHIEF COUNSEL

CC:SB-JAX:1:Attorney Name  
Case No.

Via Private Delivery Service

Mr. Taxpayer  
1010 Street Address  
City, State zip code

Dear Mr. Taxpayer:

The Small Business/Self-Employed South Atlantic Area Examination Operations unit of the Internal Revenue Service has notified our office that you did not comply with the provisions of the summons (copy enclosed) served on February 6, 2018. Under the terms of the summons, you were required to appear before Revenue Agent John Smith on March 15, 2018, to provide the requested documents and testimony.

Legal proceedings may be brought against you in the United States District Court for not complying with this summons. To avoid such proceedings, you are to appear before:

Name: Revenue Agent John Smith  
Date: May 1, 2018  
Time: 10:00 a.m.  
Address: 290 Broadway - Foley Square New York, NY 10007-1823

Any books, records, or other documents called for in the summons should be produced at that time. If you should fail to contact Revenue Agent Smith, or produce the documents and testimony requested by the summons, this matter will be referred to the Department of Justice.

Sincerely,

MARK J. DOE  
Associate Area Counsel  
(Small Business/Self-Employed)

By: \_\_\_\_\_  
Jane C. Doe  
Attorney (Jacksonville)  
(Small Business/Self-Employed)

Enclosure: Summons

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Petitioner,

IDENT :

Respondent :

ORDER TO SHOW CAUSE

19 Misc. 479 (VLB)

ST ORDER WHICH REQUIRES YOU TO APPEAR IN :  
ROOM 620, UNITED STATES COURTHOUSE, 300  
BROADWAY, WHITE PLAINS, NEW YORK 10601, AT  
DECEMBER 11, 2019.

United States of America (the "Petition"), by its attorney,  
Attorney for the Southern District of New York, together  
with Officer NAME (the "Declaration") of the Internal Revenue

TAXPAYERS, as President of COMPANY NAME Corp.

United States District Court for the Southern District of New  
York, 300 Quarropas Street, White Plains, New York, Room 620, on  
May 1, 2018, to show cause why he should not be compelled to testify  
and other papers demanded in the IRS summons served upon  
him to the Declaration as Exhibit I; and it is further  
ordered that this Order, the Petition, the Declaration together with the  
Respondent's Memorandum of Law be served upon Respondent by an  
attorney, the United States Marshal; or, in the  
absence of any qualified person retained by the



# Defenses

- Summons is overbroad
- Government already has the information in hand
- Designed to intimidate or harass



# Let's meet the Brights

- Cherie Bright is a co-owner of Bright Enterprises, a tax consulting business. In 2007, the Department of Justice filed a civil fraud action against Bright Enterprises and its owners, accusing them of promoting tax shelters
- An order entered against a married couple enforcing the production of documents in a tax shelter prosecution against the couple was proper
- The couple was asked by the IRS to produce documents relating to four offshore credit card accounts, and the couple refused, citing a Fifth Amendment privilege.
- The couple refused to produce any documents, even for an in-camera review, because the mere production of the documents would be evidence that they knew the accounts existed, potentially incriminating the couple.

# The Court's Decision

- The Fifth Amendment protects individuals from having to disclose documents when the very act of production would constitute self-incrimination.
- Cherie and Benjamin Bright (the Brights), subjects of an Internal Revenue Service investigation concerning past tax liability, jointly appeal the district court's order enforcing IRS summonses requiring production of documents, including those relating to offshore accounts.
- The Brights invoked their Fifth Amendment privilege and refused production. They also separately appeal the district court's subsequent order finding them in contempt for failing to produce the documents.

# The Court's Decision

- Government proved its burden that the Brights were in contempt: never denied having the documents
- We hold that the district court acted properly in enforcing the IRS summonses and finding the Brights in contempt.
- The court imposed a \$500 daily fine until the Brights either fully comply with the summonses or sufficiently establish that they are unable to do so, as well as a \$11,593.59 compensatory sanction





# The Drug Dealer's Assets





# The Crash

- A plane crashed that was carrying millions of dollars of marijuana
- The drug runner died in the crash
- Sheriffs seized the drugs and several million of cash in the plane
- An opinion was sought if the value of the drugs could be included in the decedent's estate, and if so at what value?
- IRS Assistant Chief Counsel issued a Field Memorandum

# The Estate

- To the extent that a decedent has an interest in an illegal asset, that asset should be included in the decedent's gross estate
- The fair market value of the marijuana is the price at which it would be sold to the ultimate consumer (street value), not the price a dealer would pay when offering it for resale
- The estate may not claim a debt or loss deduction under the facts in the instant case

# The analysis

- Sections 2033 and 2034 are concerned mainly with interests in property passing through the decedent's probate estate. Section 2033 includes in the decedent's gross estate any interest that the decedent has in property at the time of his death
- Section 2033 provides that "The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death."
- Section 2033 includes in the gross estate the value of all property beneficially owned by the decedent at the time of his death. Treas. Reg. section 20.2033-1.

# Burden is on the taxpayer to prove

- If evidence which, taken as a whole, connected the taxpayer to a likely source of income, the drug trade, to explain possession of enough money to purchase the drugs.
- However, where taxpayers could show they had neither the means to purchase or lease the plane and buy the drugs they can prove they were merely a pilot for hire.
- Here, estate needs to show that the decedent had no economic means of purchasing the drugs and leasing/buying the plane

# Conclusion

- The decedent, if he owned the drugs, had the full use, possession and enjoyment of the drugs.
- There is a market for the drugs and he had the apparent ability to easily sell the drugs.
- On his death, the same rights would be transferred to the objects of his bounty.
- Thus, the drugs would be includible in the decedent's gross estate, estate tax should be applied and assets of the estate used to pay the tax debt
- IRC § 2054 allows a deduction for losses in the settlement of an estate from a casualty or theft that is uninsured – seizure of illegal assets is not a casualty loss, so no deduction.



# Cracking the Code

T.C. Memo. 2014-35

UNITED STATES TAX COURT

STEVEN T. WALTNER, Petitioner *v.*  
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 21953-12L.

Filed February 27, 2014.

Steven T. Waltner, pro se.

Michael W. Lloyd, for respondent.

## MEMORANDUM OPINION

BUCH, Judge: This case began as a collection proceeding in which Steven Waltner challenged the Internal Revenue Service's efforts to collect a frivolous tax submissions penalty. That issue is no longer before us. On November 23, 2013,

# The Lesson:

- Tax Protesting is alive and well
- These arguments have all been shot down by the courts
- Very smart people can get caught up in this
- Judge Buch has a sense of humor

# Meet the Waltners

- Along with the Form 1040, Mr. Waltner submitted three Forms 4852, Substitute for Form W-2, 3 (substitute W-2), each reporting zero wages but simultaneously reporting taxes withheld.
- Also, each substitute W-2 states that he determined that he received zero wages on the basis of “[p]ersonal knowledge and records provided by the company listed as ‘payer’ on line 5” and with respect to the efforts he made to obtain a corrected Form W-2, Wage and Tax Statement, he stated “none”.

# Meet the Waltners

- Mr. Waltner also submitted a “correcting” Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, which he altered by inserting the word “corrected” and replacing the amount of gross proceeds of over \$5,000 with zero.
- At the bottom of the Form 1099-B, Mr. Waltner included the following statement:
- “This correcting Form 1099-B is submitted to rebut a document known to have been submitted by the party identified above as ‘Payer’ and ‘Broker’ which erroneously alleged a payment to the party identified above as ‘Steve T. Waltner’ of ‘gross proceeds’ in connection with a ‘trade or business.’ Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct and complete.”

# The IRS Response

- In March 2010 the IRS sent the Waltners a letter informing them that the return that they had filed and on which they had reported zero wages represented a frivolous position and offering them 30 days within which to submit a corrected return; otherwise the IRS would impose a \$5,000 frivolous submission penalty under section 6702.
- The Waltners did not submit a corrected return, and respondent assessed a \$5,000 penalty and issued to Mr. Waltner a notice of penalty charge, informing him of the assessed penalty.

# The Court's Decision

- During the five months between the issuance of the notice of trial and the trial date the parties filed 24 motions, some of which were supplemented and many of which required responses, competing requests for admissions and supplemental requests for admissions and various other documents, all of which resulted in the Court's issuing no less than 22 orders.
- The number of documents filed illustrates the lack of cooperation by the parties and, to some extent, also indicates acrimony between them.



# The Court's Decision

- Respondent made repeated attempts to elicit overly broad admissions regarding facts and documents related to other years and to nonparties that have no bearing on the year in issue or the penalty at issue in this case.
- For his part, Mr. Waltner refused to stipulate many relevant facts and objected to being compelled to answer interrogatories and produce documents while he simultaneously requested that the Court compel respondent to answer irrelevant interrogatories and produce irrelevant documents.
- We address the various filings by category below.

# The Taxpayer's Arguments

- Mr. Waltner repeatedly advanced frivolous arguments.
- When he first advanced the argument that he was not a “person” as that term is used in the Internal Revenue Code, the Court explained in an order dated September 3, 2013, that his view has long been rejected. Yet he continued to press that point.
- His insistence on pressing a point that has been rejected is consistent with an admonition from *Cracking the Code*: It advises readers to follow its positions notwithstanding the consequences. Indeed, those consequences are often sanctions on the parties advocating those positions, because courts have repeatedly rejected the positions espoused in that book.

# Cracking the Code

- Starting with the premise that taxes are either direct or indirect, Cracking the Code lays the foundation for the remainder of the book on two fallacies.
- The first is that “federal direct taxes which affect citizens of the several states must be apportioned.” The Constitution at one time required this apportionment; however, with the adoption of the 16th Amendment in 1913, this rule no longer applies to income taxes
- The second fallacy is that the Federal Government has legislative authority over only the District of Columbia and U.S. territories and thus lacks the authority to impose taxes within any State.

# Frivolous Arguments

- Section 86 of the Revenue Act of 1862, ch. 119, 12 Stat. at 472, imposed a 3% tax on Federal employees whereas section 90, 12 Stat. at 473, of the same act imposed a 3% tax on “every person residing in the United States
- The author makes an unfounded leap to conclude that by “identification in section 86 of the remuneration (pay) of government workers as taxable—and taxed—this original enactment provides a rare, forthright statutory acknowledgement that the remuneration of private-sectors workers is not
- The author's tortured analysis erroneously concludes that remuneration for work is not profit and thus is not taxable

# Frivolous Arguments

- Amongst the errors in Cracking the Code is the author's misapprehension of the meaning of the word “including”, or perhaps more accurately his ignoring it.
- For example, because certain out-of-date tax provisions expressly stated that they taxed income, including that of Federal employees, the author erroneously concludes that persons who are not Federal employees are not taxed.
- The Supreme Court rejected this view half a century ago.

# Frivolous Arguments

- Because one Code section defines the term “employee” to include government employees, 55 someone who does not work for the government is not included in the definition of an employee. This proposition was rejected in *United States v. Latham*, [ 85-1 ustrc ¶9180] 754 F.2d 747, 750 (7th Cir. 1985).
- Because one Code section defines the United States to include the U.S. territories, 56 the fifty States are not included in the definition of United States. This proposition was rejected in *Wnuck v. Commissioner*, [ Dec. 58,636] 136 T.C. 498, 504 (2011).



# Frivolous Arguments

- This chapter provides an example of how one illogical conclusion can be used to bolster another.
- The author makes the unsupported statement that “[n]eedless to say, the federal government has no authority to subject officers and employees of the several union States to taxation by decree.” He cites no support, and this view has already been rejected by the Supreme Court (Sims, 359 U.S. at 112-113).

# Conclusion

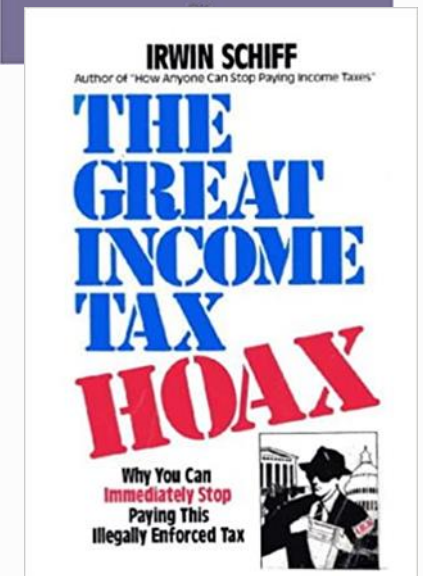
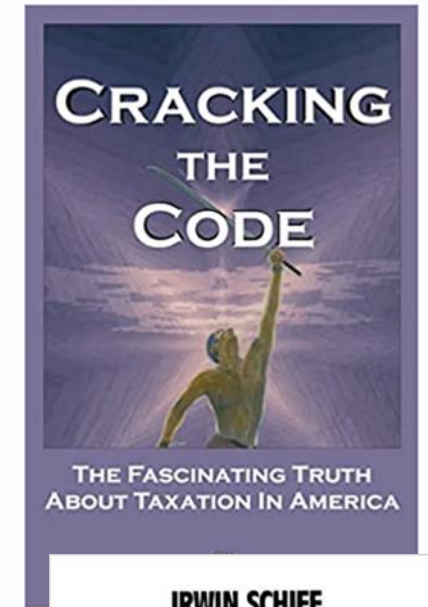
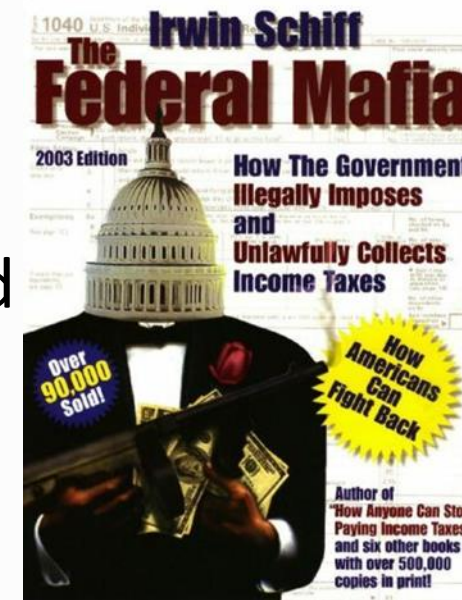
- In misleading its readers into believing that they can avoid taxes because the law simply does not apply, Cracking the Code provides a warning:
- “All that each of us need do is invoke the written law and claim the return of money improperly withheld; de-authorize improper withholdings for the future; rebut any erroneous assertions by others who have paid us; correct any improper assertions that we have made ourselves \* \* \* while being ready to abide the storm of protest, denial, resistance, threats, intimidation and perhaps injustice which might follow.”

# Conclusion

- What the author perceives as injustice is quite the opposite. It is justice. It is the rule of law as embodied in the duly enacted statutes being interpreted by the courts.
- The positions advocated in Cracking the Code have routinely been rejected, with its author being criminally convicted and its adherents being sanctioned.

# Conclusion

- These arguments continue to float around
- Do NOT believe them



# The Empty Shipping Boxes



# The Lesson

- There is usually a sales tax exemption for purchases shipped out of state
- There is a Use Tax often by the recipient state that needs to be reported
- State Auditors are not idiots



# Meet Dennis

- The former chairman of Tyco International, L. Dennis Kozlowski, agreed in 2006 to pay \$21.2 million to settle charges of avoiding New York sales tax on 12 paintings, including a Monet, a Renoir and a Bouguereau.
- The accusation of tax evasion was the beginning of the trail that turned Mr. Kozlowski into a name synonymous with the lavish-spending chief executive, epitomized by such items as a \$6,000 shower curtain.
- In June 2005, Mr. Kozlowski, and Tyco's former financial chief, Mark H. Swartz, were convicted of stealing \$600 million from the company and were sentenced to up to 25 years.

# Meet Dennis

- But Mr. Kozlowski was initially indicted in June 2002 on charges of failing to pay sales tax on millions of dollars in artwork.
- In the settlement of that case Mr. Kozlowski agreed to pay \$3.2 million in sales tax and interest on the 12 paintings, of which more than \$2 million is sales tax.
- He also agreed to pay \$17.9 million in state and city income tax, interest and penalties, of which \$8.3 million represented the tax liability.
- Though he was never charged with income-tax fraud, it is part of the agreement.

# How Did Dennis Get Caught?

- Mr. Kozlowski's sales tax case was part of a broader investigation by the district attorney into nearly a dozen galleries and more than 300 customers who evaded sales tax
- As a result of that investigation, prosecutors have collected \$37.5 million in state and city sales taxes and fines
- The State found the auction houses shipping artwork for buyers to out of state addresses and claiming the exemption
- The postal records showed the boxes had no weight (i.e. Empty)



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Crazy Tax Cases

Who Said Tax Was Boring!