

Criminal Tax Matters

The federal government employs an army of lawyers, accountants, investigators, and special agents to enforce its tax laws; laws that consume many volumes and tens of thousands of pages. To overcome such insurmountable resources, those accused of violating such laws need the assistance of attorneys with the knowledge and experience to appropriately leverage the government or persuade a jury, with an eye towards producing the most favorable outcome for the client now and into the future.

What are tax crimes?

Tax crimes generally fall into two broad categories: “frauds” and “failures.” Tax fraud type crimes are simply situations where the government believes that inaccurate information was provided with the intent to mislead the government. Tax failures on the other hand are situations where the government believes that one who has an obligation to perform some act has just failed to do it with the intent to abstain from doing it. Tax crimes can be committed by businesses as well as by individuals.

As an example of a tax fraud type of claim, the Internal Revenue Code (IRC), section 7201 proscribes a “Tax Evasion.” This is the type of tax crime that most people hear of in the news media because it is also one of the most often prosecuted. Tax evasion comes in two varieties as well: an evasion of assessment or an evasion of payment. Evasion of assessment is the most frequent and is usually charged as the result of the government’s belief that a taxpayer has intentionally filed a false return. This could be due to misstated income or misapplication of deductions and/or credits.

Evasion of payment is less prominent of the two. Evasion of payment occurs after the tax has been established and is owed by the taxpayer. The

government then believes that the taxpayer concealed money or assets from which the tax could be paid such as transferring ownership of significant real or personal property.

Although these tax evasions often involve individuals, their prosecution is not limited in this manner. Corporations can evade taxes as well and the consequences are much worse for this type of client. In the government's view, when corporations behave evasively, they tend to offend to a higher degree and they cannot be imprisoned (though officers and fiduciaries can). Accordingly, the IRC allows corporations to be fined up to \$500,000.00 per occurrence!

Tax failures arise differently. For example, IRC section 7202 prohibits the "Willful Failure to Collect or Pay Over Tax." This is also an example of a prohibition aimed at a business entity because it generally involves a business's responsibility to collect taxes such as Federal Insurance Contribution Act (FICA) and withholdings on wages for employees. The offense is committed either by the failure to collect the tax as required or by the failure to pay the tax after it is collected.

Failures are not limited to businesses, though. Individual tax payers who fail to file a return, fail to supply information required by the IRS, or who fail to pay a tax can be found guilty of a misdemeanor and sent to jail for a year and fined \$25,000.00!

Frauds and failures can be the result of simple errors or omissions. This is understandable because our tax code is so complex. Due to this complexity, professionals are hired to assist with the preparation and compliance both in the individual and corporate sense. Sometimes allegations by the government are brought because of misplaced reliance on those professionals. It is important to remember, even when the stress of such allegations is unbearable, that there are

trustworthy professionals that can provide the support and guidance necessary to preserve your freedom as well as your wealth. We are here and we can help.

What is the process like?

Due to the complexities of the tax laws, as well as the way other criminal activity may impact taxes and income, the federal government uses a rather lengthy and intricate method for bringing about cases alleging a tax crime.

Usually, matters originate by virtue of a special agent's investigation at the Internal Revenue Service (IRS). That agent will summarize her findings in a letter and forward that letter to her supervisor and to the Chief Counsel, Criminal Tax Division of the IRS. The case will progress once that agent concludes that the matter should be prosecuted. At this point the matter is forwarded to the U. S. Attorney General, Tax Division and the U. S. Attorney. The U. S. Attorney may use Grand Jury Investigations to gather evidence.

Other times, after extensive investigation for other crimes, it comes to the attention of the U. S. Attorney that tax crimes have been committed as well. In this scenario, a referral is made to the Tax Division. At all times, the Attorney General remains the "client" of the U. S. Attorney, and must approve of all prosecutions as well as pleas.

During this overly convoluted phase, there are many reports and memoranda produced. These documents may contain vital information that may assist in reducing the charges pending against a client, obtaining a favorable plea offer, or in preparing for trial.

Once a grand jury returns an indictment, the process will advance along the same trajectory as any other federal criminal case. The accused is formally informed of the charges and enters a plea at the arraignment. Discovery ensues

where both the government and the defense exchanges information in preparation for trial. Motions may be filed asking the court to suppress illegally obtained information or to limit the evidence that the government can use at trial. Witnesses and experts will be prepared for trial. Then the trial occurs. More motions may be filed as well as an appeal. From start to finish, the process could take years to complete.

This procedural overview is purposefully broad because every case is unique. The intricacies present in every case vary in their form and significance. Since no case is ever the same as the last, you deserve attentive, experienced, and knowledgeable representation to assist you at every stage of the process.

What can Gianola, Barnum, Bechtel & Jecklin, L.C. do for me and/or my business?

We will begin by assessing your unique situation. We have tax professionals that can dedicate their expansive knowledge to understanding your present circumstances. Once we have an idea of the challenges we are facing, together we will forge a strategic plan forward that addresses the immediacy of your criminal situation that will also allow for relief and stabilization in the short term. Our experts in business solutions can help to modify or restructure your corporate entity in a way that will prevent future issues from arising. You may also have concerns on how this situation will impact your family, so our family law and estate planning attorneys will assist in resolving those issues as well. Finally, our tenacious, experienced litigators will take on the government for you and fight for the resolution that you feel is best—even if it means presenting your case to a jury. We provide comprehensive representation to accomplish comprehensive results, that is our goal at **Gianola, Barnum, Bechtel & Jecklin, L.C.**