

March 30, 2010

VIA HAND DELIVERY

The Honorable Douglas H. Shulman
Commissioner of Internal Revenue
Internal Revenue Service
1111 Constitution Avenue, NW
Room 3000
Washington, DC 20224

John DiCicco, Esq.
Acting Assistant Attorney General
Department of Justice
Tax Division
950 Pennsylvania Avenue NW
Room 4137
Washington, DC 20530

Gentlemen:

The undersigned are private practitioners who specialize in criminal tax matters. Many of us have served in senior tax enforcement positions in the Internal Revenue Service and the Department of Justice. We have all spent our careers in the public and private sectors advancing tax compliance and good tax enforcement policy, and we have always believed that a core component of the IRS compliance mission is its Voluntary Disclosure Policy (“VDP”). The decades old VDP embodies a determination that our tax system benefits from having a mechanism for non-compliant individuals to come forward and avoid criminal prosecution by disclosing their prior misconduct.

We write as a group to address a development that could jeopardize the VDP at the height of its visibility and success, as it recently brought thousands of American taxpayers into compliance and likely billions of dollars in assets into the tax system. Our immediate concern is the prospect that the government may bring criminal tax charges against persons who attempted voluntary disclosures but were later advised that pursuant to the VDP they were not timely. Such action would effectively destroy the VDP.

The individuals involved in these cases started the process of making a voluntary disclosure at various times, some in 2008 and others later. But irrespective of when or how they began, such persons did come forward in the utmost good faith and make a full and complete disclosure to the IRS of their foreign accounts. Indeed, in official statements and public presentations during 2008 and 2009, the Commissioner of Internal Revenue and other IRS and Justice Department officials explicitly encouraged them to do so. Yet, the government now may decide that based on a literal reading of the VDP these persons were too late in coming forward and should be prosecuted.

We understand that the VDP is an act of administrative grace by the IRS, creating no enforceable rights. We also understand that there are different cases with distinct facts. However, in our view, prosecuting persons who came forward in good faith during the fast moving events of late 2008 through mid-2009 would smack of trickery, like playing "gotcha." It would undercut the credibility of the Commissioner and his office. It would be public fodder for press stories, articles and panel discussions for years.

In a practical sense, it would also change what we tell our clients. To a very large extent, we are the gatekeepers of the VDP. Clients come to us with a high level of distrust of the IRS. We routinely explain that because the IRS wants to encourage voluntary disclosures, it has treated those who come forward with fairness. Indeed, the undersigned had such conversations with thousands of clients last year, leading nearly all of them into the IRS settlement initiative. If the government now prosecutes persons who attempted good faith disclosures, we, and any other practitioner in this business, will necessarily have to change the risk assessment we provide to our clients. They will not care about the technical nuances of why certain taxpayers who attempted disclosures were prosecuted and others were not. Disclosures will likely grind to a halt.

The highly charged and uniquely visible developments in the offshore account area have put enormous pressure on the interpretation and application of the VDP. We believe that if the government moves forward in these cases, the VDP will for all practical purposes become irrelevant. Surely the government has enough ongoing offshore account criminal investigations that do not involve attempted voluntary disclosures to achieve its enforcement objectives without eviscerating a vital component of the IRS's compliance mission at the very peak of its extraordinary recent success.

We respectfully urge the relevant decision makers to consider these views in deciding whether to recommend prosecution in cases where good faith disclosures have been attempted. Indeed, some of the signatories to this letter have clients directly implicated in this issue, and we believe that referrals in some of these cases are being reviewed at this time, with a rapid decision requested by the line attorneys. We would therefore appreciate your prompt attention to this matter.

cc: The Honorable Michael F. Mundaca, Assistant Secretary of Tax Policy, U. S.
Department of the Treasury
The Honorable William J. Wilkins, Chief Counsel, Internal Revenue Service
Steven T. Miller, Deputy Commissioner of Internal Revenue, Internal Revenue Service
Victor Song, Chief, Criminal Investigation Division, Internal Revenue Service
Rick Raven, Deputy Chief, Criminal Investigation Division, Internal Revenue Service
Karen L. Hawkins, Director, Office of Professional Responsibility, Internal Revenue Service
Edward F. Cronin, Associate Chief Counsel Criminal Tax, Internal Revenue Service
Nina E. Olson, National Taxpayer Advocate, Internal Revenue Service

Ronald A. Cimino, Acting Deputy Assistant Attorney General, U. S. Department of Justice, Tax Division

Bruce M. Salad, Acting Deputy Assistant Attorney General, U. S. Department of Justice, Tax Division (for certain matters)

Signators:¹

Stuart E. Abrams

Frankel & Abrams

Assistant U.S. Attorney, Southern District of New York, 1982-1989

Chief of Major Crimes Unit, 1986-1988

Associate Independent Counsel (Iran-Contra), 1989-1990

Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2003-2005

James A. Bruton III

Williams & Connolly

Acting Assistant Attorney General, Department of Justice, Tax Division, 1992-1993

Principal Deputy Assistant Attorney General, Department of Justice, 1989-1992

Larry A. Campagna

Chamberlain, Hrdlicka, White, Williams & Martin

Vice-Chair, ABA Section of Taxation Committee on Civil and Criminal Tax Penalties, 2009-

Caroline D. Ciraolo

Rosenberg Martin Greenberg, LLP

Chair, Taxation Section, Maryland State Bar Association, 2008-2009

John M. Colvin

Chicoine & Hallett

Michael C. Durney

Law Offices of Michael C. Durney

Acting Assistant Attorney General, Department of Justice, Tax Division, 1987-1988

Principal Deputy Assistant Attorney General, Department of Justice, 1986-1987

Gerald A. Feffer

Assistant United States Attorney, Southern District of New York, 1971-1976

Deputy Assistant Attorney General, Department of Justice, Tax Division, 1979-1981

¹ Law firm and bar affiliations are for identification purposes.

Lawrence S. Feld
Law Office of Lawrence S. Feld
Assistant United States Attorney, Southern District of New York, 1972-1975

Robert S. Fink
Kostelanetz & Fink LLP
Chair, ABA Section of Taxation Committee on Civil and Criminal Tax Penalties, 1983-1985

Miriam Fisher
Morgan, Lewis & Bockius, LLP
Special Assistant to the Assistant Attorney General, Tax Division, Department of Justice,
1989-1991

Nathan J. Hochman
Bingham McCutchen LLP
Assistant Attorney General, U.S. Department of Justice, Tax Division, 2008-2009

Lawrence S. Horn
Sills Cummis & Gross P.C.
Assistant United States Attorney, District of New Jersey, 1971-1978

Paula M. Junghans
Zuckerman, Spaeder LLP
Acting Assistant Attorney General, Department of Justice, Tax Division 1999-2001
Deputy Assistant Attorney General, Department of Justice, Tax Division, 1998-1999

Barbara Kaplan
Greenberg Traurig, LLP
Senior Trial Attorney, Internal Revenue Service, 1975-1979

Kathryn Keneally
Fulbright & Jaworski L.L.P.
Council Director, ABA Section of Taxation, 2008-
Chair, ABA Section of Taxation, Standards of Practice Committee, 2005-2007
Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2001-2003

Mark E. Matthews
Morgan, Lewis & Bockius, LLP
Deputy Commissioner, Services/Enforcement, Internal Revenue Service, 2003-2006
Chief, Criminal Investigation Division, Internal Revenue Service, 2000-2002
Deputy Assistant Attorney General, Department of Justice, Tax Division 1993-1998

Robert E. McKenzie
Arnstein & Lehr LLP
Council Director, ABA Section of Taxation, 1998-2001

Scott D. Michel
Caplin & Drysdale, Chartered
Chair, ABA Section of Taxation, Standards of Practice Committee, 2009-
Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1997-1999

Cono R. Namorato
Caplin & Drysdale, Chartered
Director, Office of Professional Responsibility, Internal Revenue Service, 2004-2006
Deputy Assistant Attorney General, Department of Justice, Tax Division, 1977-1978
Chief, Criminal Section, Department of Justice, Tax Division, 1975-1977
Special Agent, Internal Revenue Service, Intelligence (now Criminal Investigation) Division,
1963-1968
Former Chair, Subcommittee on Criminal Tax Policy, ABA Section of Taxation,
Committee on Civil and Criminal Tax Penalties

Roger M. Olsen
Assistant Attorney General, Department of Justice, Tax Division, 1983-1987
Deputy Assistant Attorney General, Department of Justice, Tax Division, 1981-1983

Kathleen Pakenham
White & Case LLP

Charles P. Rettig
Hochman, Salkin, Rettig, Toscher & Perez, P.C.
Chair, Committee on Civil & Criminal Tax Penalties, ABA Tax Section, 2009-

Edward M. Robbins, Jr.
Hochman, Salkin, Rettig, Toscher & Perez, P.C
Central District of California -- Assistant United States Attorney, 1983-2004; Tax Division,
Chief, 1994-2004 and Assistant Chief, 1988-1994

Richard J. Sapinski
Sills Cummis & Gross, P.C.
Special Trial Attorney, Internal Revenue Service, 1984-1987

Bryan C. Skarlatos
Kostelanetz & Fink LLP
Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2007-2009

William E. Taggart, Jr.
Taggart & Hawkins
Dean Emeritus Golden Gate University School of Law

Justin A. Thornton
Law Offices of Justin Thornton
Senior Trial Attorney, Department of Justice, Tax Division, 1979-1987

Steven Toscher
Hochman, Salkin, Rettig, Toscher & Perez, P.C.
Internal Revenue Agent, 1974-1976
Trial Attorney, Department of Justice, Tax Division, 1979-1983

Josh O. Ungerman
Meadows, Collier, Reed, Cousins, Crough & Ungerman L.L.P.
IRS District Counsel Senior Attorney, 2002-2004
Special Assistant U.S. Attorney, Northern District of Texas, 2002-2004

M. Todd Welty
Sonnenschein Nath & Rosenthal LLP

Bruce Zagaris
Berliner Corcoran & Rowe L.L.P.

Thomas E. Zehnle
Bryan Cave LLP
Chief, Criminal Enforcement Section (Southern) U.S. Department of Justice, Tax Division,
2001-2004