

# White Collar Fraud The Life Cycle of an Investigation

An Insider's view of an IRS criminal investigation & the  
role of the Forensic Investigator

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# How Do Criminal Investigations Begin?

Agency Referrals - Law enforcement agencies, federal or state agencies, or other divisions of the Internal Revenue Service.

Financial Reporting Forms - The filing or the failure to file financial forms such as CTRs, SARs, and Forms 8300.

Independent Criminal Investigations - Agents review of Media and Public Records.

Informants - Often disgruntled employees, ex-wives, ex-business partners, etc.

Whistleblowers - Similar to Informants, often with significant evidence and maybe rewarded for information provided.

Request to Join a GJ Investigation at the U.S. Attorney's Office.



# Overview of Crimes IRS-CI Investigates

## The Internal Revenue Code

Title 26 USC § 7201 - Evasion

Title 26 USC § 7202 - Failure to Collect or Pay Over

Title 26 USC § 7203 - Failure to File

Title 26 USC § 7206 - Filing a False Return, etc.

Title 26 USC § 7212 - Corrupt or Forcible Interference

## The Bank Secrecy Act

Title 31 USC § 5324(a)(1) - Fail to File Report

Title 31 USC § 5324(a)(2) - File a False Report

Title 31 USC § 5324(a)(3) - Structuring

## The Money Laundering Control Act

Title 18 USC § 1956(a)(1)(A)(i) - Promotion

Title 18 USC § 1956(a)(1)(B)(i)- Concealment

Title 18 USC § 1957 - Spending > \$10,000



# Other Federal Fraud and Related Statutes

Title 18 USC § 371 - Klein Type Conspiracy

Title 18 USC § 1341 - Mail Fraud

Title 18 USC § 1343 - Wire Fraud

Title 18 USC § 1346 - Honest Services Fraud

Title 18 USC § 1347 - Health Care Fraud

Title 18 USC § 1348 - Securities Fraud

Title 18 USC § 1001 – False Statements



# The Life Cycle of a Criminal Investigation

**Allegation of Criminal Behavior**- CI receives a “Lead” describing alleged criminal behavior relating to the tax liability of an individual or business.

**Review of Information** - Lead is assigned to a Special Agent (SA), where the SA thoughtfully, discretely, quietly reviews the information. Careful consideration is given to the source and credibility of the lead.

**Note** - SAs are very cognizant not to take overt steps during the evaluation in order to protect taxpayers reputation from frivolous and unfounded accusations.

**Result of the Review** - If the allegations prove to be credible and have significant merit, an investigation is authorized by management and overt steps are taken.

**The Investigation** - This is a lengthy process, where the SA follows a methodical plan of action in order to obtain evidence to prove or disprove the allegation. Experience will guide the investigator, however, the body of evidence (not opinion) proves or disproves the allegation of tax fraud.

**Legal Representation** - This can occur at any stage of the investigation.

**Government Prosecutors** - Collaboration with government prosecutors and SAs can occur at any stage of the investigation, either in a GJ setting or after the investigation is completed and charges are approved by the DOJ Tax Division.



# The Life Cycle of a Criminal Investigation

**Cooperation by Subject** - In most cases, the Subject becomes aware they are being investigated prior to an indictment. Depending on the investigative strategy and legal representation, there are opportunities for cooperation by the Subject.

**Indictment/Information** - Evidence collected is presented to the Federal Grand Jury by the government prosecutor. If the members of the GJ believe that the evidence supports the criminal charge, the GJ will issue a True Bill. This is only a formal accusation that a person has committed a crime. It's the burden of the government to prove beyond a reasonable doubt, and obtain a unanimous verdict from a 12 person trial jury.

**Arrest** - An arrest warrant is issued by a US Magistrate Judge and the IRS Agents conduct the arrest. The subject appears before the judge and answers the charge.

**Discovery**- The government provides all the evidence gathered in the investigation to the subject and his/her legal representatives.

**Legal Proceedings** - Depending on the complexity and legal issues, there can be a number of pre-trial hearings.

**Pleading/Trial** - Legal Representatives review the evidence gathered and consider the best options for their client. This will result in either a voluntary pleading of guilty to one or more of the indicted charges or a trial where it's the governments burden to prove the charges "beyond a reasonable doubt" to a 12 person jury.

# Willfulness (all crimes of the IRC)

Must prove the state of mind - more than just an INTENT-ional act

1. Voluntary
2. Intentional
3. Violation Of a Known Legal Duty
4. Conscious and knowing decision to do (or fail to do) something
5. Deliberate Acts
6. Specific INTENT To Violate the Law

# Willfulness is NOT

- An honest mistake
- An accident
- A good faith act
- Reliance on a CPA, attorney, etc.

United States v. Kovel, 296 F.2d 918 (2d  
Cir. 1961)

**“Accounting concepts are a foreign language  
to some lawyers in almost all cases, and to  
almost all lawyers in some cases.”**

# Kovel

- ▶ “[T]he presence of an accountant . . . while the client is relating a complicated tax story to the lawyer, ought not destroy the privilege.”
- ▶ “What is vital to the privilege is that the communication be made in confidence for the purpose of obtaining legal advice from the lawyer. If the advice sought is not legal advice but only accounting service . . . , or if the advice sought is the accountant’s rather than the lawyer’s, no privilege exists.”

# Kovel

- ▶ The burden of establishing the essential elements of the *Kovel* attorney-client privilege falls on the party claiming that the privilege applies
- ▶ The two essential elements to prove application of *Kovel* are:
  - ▶ that the purported *Kovel* expert was engaged *specifically* to assist counsel in rendering *legal advice* to a *particular client*
  - ▶ that the services of the purported *Kovel* expert were necessary *to translate, interpret or explain* communications between the client and attorney that the attorney would not otherwise fully comprehend

# Kovel

- ▶ **Psychiatrists**

- ▶ For example, a psychiatrist “employed by counsel for a defendant to assist him in preparing a defense” fell within privilege

- ▶ *Ursry v. State*, 428 So.2d 713, 714-15 (Fla. Dist. Ct. App. 4th Dist. 1983)

- ▶ **Patent agents**

- ▶ For example, communications with a patent agent “acting to assist an attorney to provide legal services” were privileged

- ▶ *Golden Trade, S.r.L v. Lee Apparel Co.*, 143 F.R.D. 514, 518 (S.D.N.Y. 1992)

- ▶ **Polygraph examiners**

- ▶ For example, a defendant’s communications with a polygraph examiner hired by the defendant’s attorney were privileged

- ▶ *State v. Rickabaugh*, 361 N.W.2d 623, 625 (S.D. 1985)

# Questions ?

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