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Justice Department Highlights Tax Enforcement Results

WASHINGTON—The Department of Justice today announced highlights of its work during the past year to defend and enforce federal tax laws. The Tax Division has assisted the Internal Revenue Service (IRS) in tracking down tax cheats who use offshore accounts, combating abusive tax shelters, stopping tax defiers and shutting down tax schemes and scams.

It has obtained nearly 500 civil injunctions to stop the promotion of tax scams and the preparation of false and fraudulent tax returns, and has criminally prosecuted numerous tax fraud scheme promoters. During FY 2009, the Tax Division successfully defended refund suits against the United States representing claims of over $665 million, and collected, through affirmative litigation, over $260 million. The division's budget in that period was less than $102 million. Tax Division prosecutors obtained 135 convictions and guilty pleas during FY 2009. Additionally, Tax Division attorneys participated in sentencings for 133 defendants during FY 2009.

"The Department of Justice is strongly committed to promoting compliance with federal tax laws," said John DiCicco, Acting Assistant Attorney General for the Tax Division. "The Department will continue to use all available law enforcement tools to recover tax revenue and to punish tax offenders. Those who promote, facilitate, or engage in tax fraud plans or schemes risk penalties and, where appropriate, criminal prosecution."

"The IRS appreciates the strong support of the Justice Department in our continuing work to enforce the nation's tax laws," IRS Commissioner Doug Shulman said. "In the past year, there has been an impressive list of actions taken on everything from offshore tax evasion to unscrupulous tax return preparers. The combined efforts of the Justice Department and the IRS make a real difference for the hard-working taxpayers who file and pay their taxes every year."

Shutting Down Offshore Tax Evasion

Over the past year, the Tax Division achieved unprecedented results in its efforts to obtain information about, and prosecute where appropriate, U.S. taxpayers who elected to hide their income and assets offshore. These efforts began in February 2009, in United States v. UBS AG, where UBS AG, Switzerland's largest bank, entered into a groundbreaking deferred prosecution agreement, admitting guilt on charges of conspiring to defraud the United States by impeding the IRS. As part of the agreement, UBS agreed to immediately provide the United States with the identities and account information for certain United States customers of UBS's cross-border business. UBS also agreed to exit the business of providing banking services to United States customers with undeclared accounts, and pay $780 million in fines, penalties, interest and restitution.

Immediately following on the heels of the deferred prosecution agreement, the division brought a civil action against UBS, seeking the names of more U.S. taxpayers. After approximately six months, the U.S., UBS and the Swiss government entered into an historic agreement that has put a large chink in the armor of Swiss bank secrecy. Under the settlement, the IRS is to receive account information for thousands of the most significant tax cheats among the U.S. taxpayers who maintain undeclared Swiss bank accounts.

As the UBS matter has generated tremendous publicity and strong forward momentum against bank secrecy worldwide, the division's strategic successes have delivered an unmistakable message to all taxpayers that the days of hiding offshore funds from tax collection are over. The IRS credits the civil settlement and the deferred prosecution agreement with contributing to the huge increase in the number of taxpayers—to almost 15,000 from fewer than 100 in a typical year—who voluntarily came forward to disclose their foreign accounts and bring themselves back into compliance regarding their offshore holdings for many years to come.

As part of its continuing review of offshore account information, the Tax Division, working in conjunction with various U.S. Attorney's Offices, is prosecuting bankers and taxpayers who held offshore accounts that they failed to report to the United States:

- In April 2009, Robert Moran pleaded guilty to filing a false income tax return and admitted to concealing more than $3 million in a secret bank account at UBS. He was sentenced to two months in prison.
- In July 2009, Jeffrey Chernick, of Stanfordville, N.Y., pleaded guilty to filing a false tax return, and was sentenced to three months in prison, six months of house arrest, and six months of probation
- In August 2009, former UBS banker Bradley Birkenfeld was sentenced to 40 months in prison for helping an American billionaire real estate developer evade taxes.
- In January 2010, Juergen Homann, of Saddle River, N.J., was sentenced to five years probation for failure to file a Report of Foreign Bank or Financial Accounts (FBAR). Homann concealed more than $6.1 million in Swiss bank accounts.
- In January 2010, Roberto Cittadini, of Bellevue, Washington, was sentenced to six months of home confinement for failing to report income from secret UBS bank accounts under his control.
- In February 2010, Dr. Andrew Silva of Sterling, Va., pleaded guilty to conspiracy to defraud the United States and making a false statement regarding an undeclared foreign bank.

In connection with its continuing investigation of U.S. taxpayers who use offshore accounts to evade their taxes, the Tax Division is aggressively pursuing taxpayers involved in abusive offshore transactions as well as tax professionals, promoters and others who facilitate these schemes. That includes taxpayers with hidden income in offshore banks and brokerage accounts and those using nominee entities, offshore debit cards, credit cards, wire transfers, foreign trusts, employee-leasing schemes, private annuities and insurance plans. In furtherance of these efforts, in April 2009, a federal court in Colorado granted the United States authorization to request from First Data Corporation, a credit card processing firm, the names of merchants who request that credit card sales proceeds be deposited in offshore bank accounts. The IRS believes that many of these merchants are using offshore accounts to evade taxes.

Further success against offshore scheme promoters was achieved in May 2009 and February 2010, in United States v. Liddell and United States v. Bright, respectively, where the Ninth Circuit granted the IRS access to business records identifying customers who used offshore credit cards to shield income.

In March of 2010, a federal court in Texas allowed the IRS access to documents and financial records of the Stanford Financial Group, which contained information about offshore accounts in Antigua, a banking secrecy jurisdiction.

Halting Tax Scam Promotion and Fraudulent Return Preparation

The Justice Department has vigorously pursued tax fraud scheme promoters to stop their activity and to warn would-be promoters that promoting tax fraud schemes leads to a federal court injunction or to a long stay in jail. Because ongoing tax scams cause continuing harm to the U.S. Treasury and leave participants owing taxes, interest, and often penalties, the government does not wait until a criminal case has been developed to take action to stop the scam. Rather, the Justice Department brings civil injunction suits to stop both the promotion of tax scams and the preparation of false or fraudulent returns. In appropriate cases, the Justice Department brings criminal charges against the promoters, preparers and scam participants to punish them for their unlawful conduct. These injunctions have stopped promoters from selling tax-evasion schemes on the Internet, at seminars, or through other means.

In October 2009 the Justice Department filed seven cases across the nation seeking to shut down tax preparers who allegedly promoted the “OID” or “Redemption” scheme. Using this scheme, tax fraud promoters assist customers in filing fraudulent documents with the IRS claiming refunds for monies that the IRS never received.

- In September 2009, a Sacramento court found that preparer Teresa Marty had been using the same scheme to generate bogus refunds for her customers, and permanently barred her from preparing tax returns for others.
- In January 2010, an Idaho court shut down tax preparer Penny Lea Jones for using the OID scheme to claim $93 million in bogus refunds for customers.
- In March 2010, a federal court in Los Angeles permanently barred Nyla McIntyre of Covina, Calif. and her business, Approved Financial Services, Inc., from preparing tax returns for others and found that she had requested more than $23 million in fraudulent income tax refunds for customers.

The Tax Division has also targeted scheme promoters who falsely claim First-Time Home Buyer Credits on their customers’ returns. Congress enacted the First-Time Homebuyer Credit in 2008 to strengthen the real estate market and help the economy. It allowed persons who have not owned a home in the previous three years to claim a credit of up to $8,000 against their federal income taxes if they bought a home after April 8, 2008.

- In October 2009, a federal court in Texas permanently barred Ludivina Salinas of Mission, Texas, from preparing returns for others in a case where the Justice Department alleged abuse of the Home Buyer credit and other tax law provisions.
- In March 2010, a federal court in Miami issued a permanent injunction to stop Miami-based tax return preparer Paula Olivette Patrice and her business, To the Max Tax Professionals Inc., from improperly claiming the First-Time Home Buyer Credit.
- In March 2010, a federal court in Miami issued a permanent injunction to stop Miami-based tax return preparer Henry Ernesto Medina Jr. and his business, Medina Group Inc., from improperly claiming the First-Time Home Buyer Credit.

The Tax Division also continues to prosecute fraudulent return preparers:

- In December 2009, Daniel Gleason, the head of Renaissance, the Tax People, a multilevel marketing company, was sentenced to 78 months in prison and ordered to pay more than $3,000,000 in restitution to the IRS for conspiracy and aiding in the preparation of false tax returns.
- In December 2009, a federal court in Alabama sentenced Cardale Bates to 57 months in prison for preparing false tax returns.
- In February 2010, Ather Ali pleaded guilty to conspiracy to defraud the United States for filing fraudulent tax returns. Ali and others working with him filed false tax returns using deceased individuals’ identities, claiming fictitious withholding amounts, and seeking more than $2 million in fraudulent refunds.
- In March 2010, Fe Garrett, a San Diego tax return preparer, was sentenced to 65 months in prison for failing to report her business income and preparing fraudulent tax returns for customers containing false itemized deductions, child care expenses, and rental expenses.

Stopping Tax Defiers

The Tax Defier Initiative, which the Tax Division announced in April 2008, targets persons who attempt to undermine our entire tax system. Tax defier cases traditionally involve individuals who spout rhetoric denying the fundamental validity of the tax laws as an excuse for not paying taxes, while also availing themselves of the benefits and rights that the United States provides to its citizens and residents. Tax defier cases referred for investigation or prosecution continue to be a significant part of the work done by the Tax Division.

The success rate in tax defier prosecutions is very high:

- In November 2009, Las Vegas businessman Robert Kahre was sentenced to 190 months in prison for a payroll scheme that concealed and disguised income received by his employees and the employees of the companies for which he provided payroll services.
- During the scheme, Kahre failed to report to the IRS, and failed to withhold tax on, at least $120 million in cash payments made to his and contractors’ employees.
- In July 2009, tax defier Paul Arceneaux of Louisiana was sentenced to 46 months in prison for filing false tax returns, as well as filing fictitious liens and frivolous lawsuits against the Commissioner of Internal Revenue, an IRS employee, and others.
- In August 2009, Douglas Leiter of Minneapolis was sentenced to 121 months in prison for his role in a conspiracy to defraud the IRS by filing false tax returns and creating fictitious non-profit clubs that purported to eliminate taxable income.
- In January 2010, Bruce Mrusek and Bradley Brennecke, both dentists in Cincinnati, pleaded guity to conspiracy and tax evasion for filing false returns, concealing income and assets from the IRS, and fraudulently claiming credits against federal and local taxes.
- In January 2010, Robert Ledford of South Carolina was sentenced to 30 months in prison and ordered to repay back taxes in excess of $875,000 for not filing tax returns since 1991, and hiding income and assets from the IRS.

Curbing High-End Tax Shelters

During the past year, the Tax Division has continued its civil and criminal enforcement efforts against the promoters and facilitators of abusive tax shelters. Abusive shelters for large corporations and high-income individuals have cost the U.S. Treasury many billions annually, according to Treasury Department estimates. The Tax Division has had great success in federal court defending the U.S. Treasury against tax shelter-related claims of large companies and individual investors, and in prosecuting promoters of these abusive transactions. Among the successes during the past year in this area are the following:

- In January 2010, four former Ernst & Young partners, Robert Coplan, Martin Nissenbaum, Richard Shapiro, and Brian Vaughn, were sentenced to prison for their role in designing and marketing fraudulent tax shelter transactions sold by E&Y.
- In December 2009, Michael Parker, the chief operating officer of TransCapital Corporation, a Northern Virginia tax-advantaged investments company, pleaded guilty to conspiring with Daryl Haynor, a KPMG tax partner, and Jon Flask, a TransCapital attorney, to defraud the IRS with regard to tax shelter transactions.
- In August 2009, a federal court in New Jersey denied Schering-Plough's $473 million refund claim, finding that its attempted repatriation of foreign-earned income using certain interest rate swap agreements was without economic substance.
- In October 2009, a federal court in Texas, found Southgate Master Fund's claim to over $1 billion in losses relating to a distressed asset deduction shelter to be lacking economic substance. This was the first DAD shelter transaction to be tried.
- In January 2010, the Court of Federal Claims rejected Wells Fargo's claim for millions of dollars of tax benefits from its participation in 26 Sale-In, Lease-Out tax shelters. In its opinion, the Court characterized the transactions as "offensive [to it] on many levels", and expressed "little sympathy for those who have lost out as a result of this decision."
- In May 2009, the Fifth Circuit denied Klamath Strategic Investment Fund substantial deductions concerning a tax shelter known as Bond Linked Issue Premium Structure ("BLIPS"), after finding the transaction lacked economic substance.
- In November 2009, the Fifth Circuit denied Enbridge Midcoast Energy, Inc. the sizeable tax benefits it sought involving a so-called "intermediary" tax shelter transaction.
- In March 2010, the Federal Circuit denied Jade Trading, LLC the substantial tax benefits it sought in connection with a Son of BOSS tax shelter, by finding that the transaction lacked economic substance.

Other Significant Tax Victories

In addition to our substantial success in combating offshore banking, abusive shelters, tax defiers and tax schemes and scams, the division has had several major victories against taxpayers taking aggressive tax positions:

- In August 2009, in United States v. Textron, Inc., the First Circuit held that tax-accrual workpapers generated by Textron, and the related workpapers of its independent auditor (Ernst & Young), were not protected from disclosure by the work-product privilege.
- In July 2009, a federal court in Texas denied AT&T's requested $505 million tax refund claim, rejecting AT&T's argument that payments from governmental entities were capital contributions instead of taxable income. If the United States had lost the case, the amount at stake for later years would exceed $2 billion.
- In June 2009, the Eighth Circuit, reversing a lower court, sustained the validity of a newly issued regulation and held that medical residents are subject to FICA taxes after the effective date of the regulations, in Mayo Foundation for Medical Education and Research v. United States.

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Further details about these and other tax enforcement cases are available on the Tax Division's Web site www.usdoj.gov/tax/, on the IRS's Web site www.irs.gov, and on the IRS Criminal Division's Web site www.irs.gov/compliance/enforcement/index.html.

The Department of Justice encourages anyone who has information about suspected tax fraud to report it to the IRS tip line at 1-800-829-0433 or visit the IRS at www.irs.govand click on the links "Contact IRS" and "How Do You Report Suspected Tax Fraud Activity."

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