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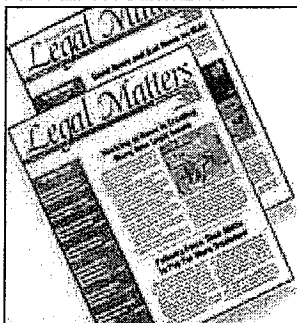
IRS To Vigorously Prosecute Estate Tax Fraud

By Jeffrey A. Baskies

In an April 27 press release, the U.S. Attorney's Office in Connecticut announced a guilty plea by a former resident of Greenwich, Conn., on a charge of estate tax fraud.

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But, in fact, defendant Rosemarie Bria, who was the executor of her mother's estate, appears to be the first person prosecuted in recent history for the crime of filing a false Form 706, a federal estate tax return.

Steven Hickey, a spokesman for IRS Criminal Investigations, told the Connecticut Post: "This is an extremely rare prosecution. ... It's the first one I've seen."

And, apparently, if the IRS has its way, this will not be the last such prosecution.

In the press release, U.S. Attorney Kevin J. O'Connor stated: "It is every citizen's obligation to honestly report and pay taxes. Those who attempt to hide assets and cheat on their taxes cheat their fellow citizens. Such conduct will be vigorously investigated and prosecuted."

Facts

Bria, the defendant in the Connecticut case, currently lives in New York City. Her mother's estate, of which she was executor, was administered in Connecticut.

In pleading guilty, the defendant admitted that, on or about Feb. 10, 1998, she willfully made and subscribed a Form 706 for tax year 1997 by purposely omitting assets that she knew should have been included as assets of the estate. Those omitted assets were worth approximately \$400,000.

As a result of the false filing, the defendant failed to pay more than \$137,000 in estate taxes.

For her crime, Bria faces a possible term of imprisonment of up to three years, a term of supervised release of up to one year and a fine of up to \$250,000. She is scheduled to be sentenced on July 26 by Chief Judge Robert N. Chatigny.

What Does This Mean For Clients?

How often do we hear this: "Why should I have to report that asset on the estate tax return? If I don't, who will know? And if the IRS finds it, what's the worst that can happen?"

Or how about this one: "The family jewelry and/or art collection surely shouldn't be subject to tax, right?"

Or how about this favorite: "I don't have to worry about it - this estate is really small potatoes for the IRS, right?"

All too often, I think we hear questions like that from clients. And we of course have had to appeal to their sense of duty and responsibility.

"You have to report the assets, because that's the law and that's your job," we tell them.

Sometimes we may try to put the fear of the IRS into them. We may say something like: "Many estate tax returns get audited, and on audit the IRS requests copies of all statements, all old income tax returns and all insurance policies, so the IRS will find those assets if you don't report them."

But even those appeals do not always resonate.

Some clients feel it is just fundamentally unfair to have to pay so much in taxes on assets that were already taxed (as income). So they seek any way to cut corners and save money. Some clients feel they are smarter than we are - smarter than the IRS. And some probably do feel that items like family jewels shouldn't be subject to tax.

But now, the IRS has raised the ante.

Adding criminal penalties as well as civil penalties definitely should increase our clients' attention.

Moreover, it is worth noting that the IRS prosecuted this case where the amount of taxes due was only \$137,000.

This was not a multi-million-dollar case. If the IRS will vigorously pursue a case of this magnitude, then our wealthier clients better take notice.

What Does This Mean For Planners?

For estate planners and probate lawyers, this case obviously raises issues of concern.

- When representing executors, we must be sure our clients know the risks they face if they willfully file a false return.

Perhaps a statement should be added to your standard retainer letter. It seems prudent in your retainer to advise clients of the risks they face in their roles as executors and their duties to fully gather and disclose the estate assets.

- If you act as return preparer, this vigorous prosecution could be harmful to you as well.

Theoretically, you too need to be extra vigilant that you are not aiding your client in willfully underpaying taxes. If there are borderline issues of includibility, your opinion on whether to disclose or omit assets could be scrutinized. You need to be careful not to be deemed a conspirator with your client. While that issue was not presented in Rosemarie Bria's case, it is not a far leap to envision a scenario where the IRS goes after not only the fiduciary but also the return preparer.

- If you serve as a fiduciary for clients, then you may be further exposed.

Not only would you have the double-duty as executor and lawyer, but you will be held to a standard of care relative to your knowledge. While determining what's an intentional or willful omission on the part of a "lay" executor may depend on the client's knowledge and circumstances, it is fair to assume that the lawyer acting as executor will be held to the standard of a prudent lawyer-executor. And that may make it easier for the IRS to prove that you were willful in an omission.

Conclusion

What is more interesting - the fact that the IRS went after a false return preparer for criminal fraud or the fact that the amount at issue was only \$137,000?

This case really shatters a couple of myths in the probate arena.

First, it is a cold reminder of the need for full and accurate disclosure by executors on the Form 706 - there is no room for monkey business there.

Second, it shows that the service does not only go after the large estates. So many of our clients might like to think they could take liberties because the estate is "only a few million dollars." But they cannot.

The gauntlet has been thrown and executors beware. Regardless of the size of the estate, the IRS is prepared (and perhaps even eager) to vigorously prosecute tax cheating.

Jeffrey A. Baskies, Esq., who practiced estate planning in Florida for many years, is currently the CEO of Lawyers Weekly Inc. in Boston. Board certified emeritus as a specialist in wills, estates and trusts law by the Florida Bar, his column runs regularly in Lawyers Weekly USA, the national newspaper for small law firms. If you have questions or issues relating to estate planning, please feel free to e-mail Jeff at jbaskies@lawyersweekly.com. All questions are encouraged.

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