



## FROM THE DESK OF MORGAN D. KING Aug. 28 2007

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### NEWS FOR LAWYERS HELPING DELINQUENT TAXPAYERS

## TAX E-MAIL SCAMS A GROWING PROBLEM

### IRS WARNS OF E-MAIL TAX SCAMS

Updated June 19, 2007 — In another recent scam, consumers have received a "Tax Avoidance Investigation" e-mail claiming to come from the IRS' "Fraud Department" in which the recipient is asked to complete an "investigation form," for which there is a link contained in the e-mail, because of possible fraud that the recipient committed. It is believed that clicking on the link may activate a Trojan Horse.

IR-2007-109, May 31, 2007

WASHINGTON — The Internal Revenue Service today alerted taxpayers to the latest versions of an e-mail scam intended to fool people into believing they are under investigation by the agency's Criminal Investigation division.

The e-mail purporting to be from IRS Criminal Investigation falsely states that the person is under a criminal probe for submitting a false tax return to the California Franchise Tax Board. The e-mail seeks to entice people to click on a link or open an attachment to learn more information about the complaint against them. The IRS warned people that the e-mail link and attachment is a Trojan Horse that can take over the person's computer hard drive and allow someone to have remote access to the computer.

The IRS urged people not to click the link in the e-mail or open the attachment.

Similar e-mail variations suggest a customer has filed a complaint against a company and the IRS can act as an arbitrator. The latest versions appear aimed at business taxpayers as well as individual taxpayers.

The IRS does not send out unsolicited e-mails or ask for detailed personal and financial information. Additionally,

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the IRS never asks people for the PIN numbers, passwords or similar secret access information for their credit card, bank or other financial accounts.

For more story - <http://www.irs.gov/newsroom/article/0,,id=170894,00.html>

### **3 CASES HOLD TAX COURT HAS JURISDICTION TO REVIEW IRS DENIAL OF INNOCENT SPOUSE RELIEF**

**HELD: TAX COURT MAY REVIEW DENIAL OF INNOCENT-SPOUSE RELIEF**

The Tax Court has jurisdiction to review the IRS denial of a spouse's innocent-spouse application under the criterion of abuse of discretion. The Court rejected the IRS argument that under the Tax Code whether or not to grant innocent-spouse was solely within the discretion of the IRS.

Fernandez v. Commissioner, 114 T.C. 324 (2000).

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**HELD: IRS ABUSED DISCRETION IN DENYING RELIEF**

IRS abused its discretion in denying partial innocent-spouse relief where the spouse applying for such relief justifiably and reasonably relied on the advice of a tax professional.

Cheshire v. Commissioner of Internal Revenue, 115 T.C. 183 (2000).

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**HELD: IRS MAY REVIEW FOR EQUITABLE RELIEF UNDER § 6015(f)**

Where a taxpayer-spouse seeks equitable relief under the innocent-spouse defense per IRC § 6015(f) the Tax Court may review under arbitrary and capricious standard; actual ruling in the case held in abeyance pending IRS decision in connection with the taxpayer's application.

Charlton v. Commissioner of Internal Revenue 114 T.C. 333 (2000).



### **COURT APPLIES HOLE IN DOUGHNUT CRITERIA FOR TAX FRAUD SENTENCE**

The taxpayer was convicted of tax fraud by allocating personal expenses to his corporation and writing them off as business expenses. The trial court sentence was 250 hours of community work, restitution of \$250,000, and probation. The Court of Appeal held the sentence was too low in relation to the offense.

Examples of his fraud:

"One subcontractor, who built custom cabinetry for Tomko's house, stated that he was told by Tomko to "be creative" in his billing and that he had previously been "tipped" that Tomko was running the costs of the construction through his business. Another subcontractor, who installed stainless steel kitchen fixtures at the house, stated that Tomko told him he "wanted this job run through [a local school]" and that the billing invoice was to be sent to Tomko, Inc. Another subcontractor, who did specialty wiring at the house, stated that Tomko instructed him to prepare false invoices indicating that the services he had provided for the house were actually done for yet another local school."

The light sentence imposed by the trial court was justified by, among other things, the taxpayer's record of substantial civic and public service, and his lack of prior criminal history.

On appeal the sentence was invalidated. In holding that the mitigating factors did not justify such a light sentence, the Court of Appeal held:

"Viewed cumulatively, the three factors considered by the District Court as mitigating factors - negligible criminal history, support and ties in the community and charitable work, employment record - pale in comparison to the numerous § 3553(a) factors suggesting that a term of imprisonment is warranted in cases of tax evasion as willful and brazen as Tomko's. A sentence of mere probation, in light of these factors, is unreasonable and it was an abuse of discretion for the District Court to impose it. We do not rule that any below - Guidelines sentence would have been improper in this case, only that the District Court abused its discretion in rendering this particular below-Guidelines sentence.

"The new advisory Guidelines regime leaves ample room for discretion on the part of the District Court, but "discretion, like the hole in the doughnut, does not exist except as an area left open by a surrounding belt of restriction." *Compagnie des Bauxites de Guinea v. Insurance Co. of North Am.*, 651 F.2d 877, 884 (3d Cir. 1981) (quoting R. Dworkin, *Taking Rights Seriously* 31 (1977))."

UNITED STATES OF AMERICA, Appellant v. WILLIAM TOMKO, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT No. 05-4997 (August 20, 2007)



## **SOME TAX-RELATED DOMAIN NAMES AVAILABLE**

We have held the registration of several tax-related domain names for almost 10 years. However, our tax law firm is marketed as TaxJustice.com, and we have no current need for these others.

It seems to me someone out there could make good use of one or more of these. If you're interested, make an offer. It may become an auction, but you may be the only bid. We looking for at least \$950 but will consider any offer.

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E-mail your offers or questions to [morgan@TaxJustice.com](mailto:morgan@TaxJustice.com)



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### HELPING PEOPLE WITH DELINQUENT TAX PROBLEMS

California attorney Morgan D. King has been in practice for over 35 years, many of those years dedicated to finding legal remedies for delinquent tax liabilities. He is the author of the acclaimed King's Discharging Taxes in Bankruptcy, and is currently writing King's Guide to Delinquent Tax Remedies.

King consults with other tax professionals, evaluating cases and writing expert opinion letters to help guide lawyers, enrolled agents, and accountants with their clients. He also represents taxpayers. Among the services offered are:

- Offers-in-compromise
- Marital transmutation agreements
- Representation at collection due process hearings
- Innocent-spouse defense
- Analysis of tax collection statutes of limitations
- Installment payment plans
- Tax Advocate assistance
- Discharge in bankruptcy

Visit Morgan King's web site, TaxJustice.com, by clicking on his picture at right or below.

Or, e-mail him at [morgan@TaxJustice.com](mailto:morgan@TaxJustice.com)

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