



## FROM THE DESK OF MORGAN D. KING OCT. 22, 2007

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### NEWS & UPDATES

#### IRS WARNS TAXPAYERS ABOUT CERTAIN TRUST ARRANGEMENTS SOLD AS WELFARE BENEFIT FUNDS

WASHINGTON – The Internal Revenue Service and the Treasury Department cautioned taxpayers about participating in certain trust arrangements being sold to professional corporations and other small businesses as welfare benefit funds and identified some of the arrangements as listed transactions

For more story -

<http://www.irs.gov/irs/article/0,,id=174844,00.html>

#### CALIFORNIA STATE TAX AGENCY POSTS DEADBEAT TAXPAYERS ON ITS WEBSITE

"California Revenue & Taxation Code Section 19195 directs the Franchise Tax Board to publish an annual list of the top 250 taxpayers with liened state income tax delinquencies greater than \$100,000. Before we publish the list, we mail each taxpayer who may potentially be on the list, a certified letter, return receipt requested. The letter provides them an opportunity to voluntarily settle their liability."

Prominent names on the list include Dionne Warwick (\$2,665,305.83), O.J. Simpson (\$1,435,484.17), and Sinbad The Magician (Sinbad Adkins) (\$2,138,592.62).

More story - <http://www.ftb.ca.gov/individuals/txdlnqnt.html>

#### TAXPAYER SAYS PRIVATE TAX COLLECTION IS A FAILURE

From Birmingham News

"I would like to set the record straight regarding the Internal Revenue Service program of hiring private tax-

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collection agencies, which this newspaper recently endorsed ("Proving its worth," The News, Oct. 15). This is a program that has not delivered as promised and risks the identity theft of potentially millions of hardworking taxpayers, as well.

"The recent U.S. House of Representatives vote in favor of the Tax Collection Responsibility Act of 2007, which would bar the IRS from outsourcing its tax collection responsibilities, was a vote all taxpayers should cheer.

"When Congress authorized the program, supporters promised the start-up costs would be \$10 million to \$15 million; compare that to the \$71 million the IRS has actually spent to get the program running. Further, the program was to quickly break even, but the agency is now projecting the program will not hit that goal this year, or even next.

"Fiscally, the program was a bust from the beginning. Even the IRS admits it is not a cost-effective program. For every \$1 the IRS invests into collecting delinquent tax accounts, trained IRS workers collect nearly \$13 in back taxes. Private collection companies collect only about \$4 per \$1 spent - and that is before taking a commission cut of up to 25 percent.

More story -

<http://www.al.com/opinion/birminghamnews/index.ssf?/base/opinion/1192782292214840.xml&coll=2>

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#### TEXAS CANDIDATES OWE DELINQUENT TAXES

Some council, HISD candidates still owe on tax bills  
They have yet to settle thousands in annual property taxes

By CAROLYN FEIBEL and ERICKA MELLON  
Source: Houston Chronicle

Several candidates for City Council and the Houston school board have not paid thousands of dollars in property taxes — money that keeps afloat the entities they hope to govern.

The candidates are among a small number of Harris County residents who have not settled their annual bills, which are due every Jan. 31, said Paul Bettencourt, the county's tax assessor and collector.

"I do not know why somebody would have the guts to run for the office and be delinquent," he said. "That means they haven't paid their own taxes to their own jurisdiction that they're running for."

For more story -

<http://www.chron.com/disp/story.mpl/front/5223681.html>

## IRS LOOKS AT TAX-FRAUD SCHEMES & SCAMS

TAKES ON TAX-PROTESTER ARGUMENTS

Introduction



One of the Internal Revenue Service's priorities is to combat abusive tax avoidance schemes and the individuals who promote them. To reach the maximum audience, the IRS recognizes the importance of partnering with external stakeholders. The IRS's external stakeholders, such as the practitioner community, have an enormous reach as well as an excellent relationship with U.S. taxpayers.



This document is one of a series of toolkits developed to assist external stakeholders in assisting the IRS. Each toolkit provides an explanation of the scheme, background, facts and law, and talking points.

In addition to helping educate the public about abusive tax avoidance schemes, external stakeholders are urged to report scheme promoters and/or any new schemes identified to the IRS's Abusive Schemes Lead Development Center. Instructions are also included in the toolkit.

## Anti-Tax Law Evasion Schemes - Law and Arguments (Section I)

### I. The Voluntary Nature of the Federal Income Tax System

#### A. Contention: The filing of a tax return is voluntary.

Some assert that they are not required to file federal tax returns because the filing of a tax return is voluntary. Proponents point to the fact that the IRS itself tells taxpayers in the Form 1040 instruction book that the tax system is voluntary. Additionally, the Supreme Court's opinion in *Flora v. United States*, 362 U.S. 145, 176 (1960), is often quoted for the proposition that "our system of taxation is based upon voluntary assessment and payment, not upon distraint."

**The Law:** The word "voluntary," as used in *Flora* and in IRS publications, refers to our system of allowing taxpayers to determine the correct amount of tax and complete the appropriate returns, rather than have the government determine tax for them. The requirement to file an income tax return is not voluntary and is clearly set forth in Internal Revenue Code §§ 6011(a) , 6012(a) , et seq., and 6072(a). See also Treas. Reg. § 1.6011-1(a).

Any taxpayer who has received more than a statutorily determined amount of gross income is obligated to file a return. Failure to file a tax return could subject the noncomplying individual to criminal penalties, including fines and imprisonment, as well as civil penalties. In *United States v. Tedder*, 787 F.2d 540, 542 (10 th Cir. 1986), the court clearly states, "although Treasury regulations establish voluntary compliance as the general method of income tax collection, Congress gave the Secretary of the Treasury the power to enforce the income tax laws through involuntary collection . . . . The IRS' efforts to obtain compliance with the tax laws are entirely proper."

For more story -

<http://www.irs.gov/businesses/small/article/0,,id=106498,00.html>

Story cites case law -

<http://www.irs.gov/businesses/small/article/0,,id=106502,00.html>

## TAXPAYERS SUE IRS FOR UNAUTHORIZED

## DISCLOSURES TO 3RD PERSONS: AWARDED SUBSTANTIAL DAMAGES AND ATTORNEYS' FEES

In this case heard by the 8th Circuit court of appeals (Kansas City) the U.S. District awarded the taxpayers/plaintiffs actual and statutory damages, attorney's fees and costs, and punitive damages for disclosing to 20 people the taxpayers' private tax return information during an investigation of possible criminal conduct by the taxpayers.

In this civil lawsuit the taxpayers sued under 26 U.S.C. § 7431 (Civil damages for unauthorized inspection or disclosure of returns and return information).

The IRS agent was found guilty of violation of the taxpayers' privacy rights and unauthorized disclosure of return information when he " . . . told many third parties that the taxpayers were being investigated for criminal tax violations and accused the taxpayers of several crimes." The IRS agent " ... also warned some of the taxpayers' business customers that they might be liable for the taxpayers' unpaid taxes." He blabbed return information to approximately 20 people.

The district court found 793 unauthorized disclosures of return information, in violation of 26 U.S.C. § 6103. The disclosures were found to fall within the definition of intentional conduct outside the standard of conduct for IRS special agents under § 7431(c)(1)(B)(ii).

The court awarded them a combination of statutory and actual damages totaling \$73,000, attorney's fees and costs of \$463,777, and punitive damages of \$173,589. The IRS appealed.

On appeal, the appellate court, finding that the taxpayers had " ... substantially prevailed and that the government's position was not substantially justified," affirmed the district court award of damages, fees, and a portion of the punitive damages.

The trial court's award of punitive damages was based on the provisions of 26 U.S.C. § 7431(c)(1) which allow either actual damages plus punitive damages, or in the alternative, statutory damages of \$1,000 per violation, but no punitive damages. The court of appeal held that the trial court had based its punitive damages award on an incorrect mix of actual damages and statutory damages, and reduced the punitive damages award to \$19,589.26.

The first issue was whether the IRS agent did anything wrong. The IRS argued that § 6103 permits the investigator to identify himself, state that he is performing a criminal investigation, and name the taxpayer under investigation. The court of appeal disagreed, pointing to the language of § 6103 specifically protecting the taxpayer's identity and whether or not the taxpayer is being investigated.

Another key argument in the case revolved around how, exactly, the court should count violations in calculating damages. The question was whether a single disclosure to a group of people is one unauthorized disclosure, or one for each person hearing the disclosure. The court, acknowledging that some courts would find otherwise (citing



a 9th Circuit opinion that one speaker who blabbed confidential information in a newspaper story going to 184,000 readers comprised only one unauthorized disclosure), stated "A disclosure to 100 people is certainly more egregious than a disclosure to one person," and upheld the trial court's method of counting.

Snider v. U.S. 468 F.3d 500 (8th Cir. 2006).

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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 Legal 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
- Collection appeals
- Discharge in bankruptcy

Visit Morgan King's web site, [TaxJustice.com](http://TaxJustice.com), by clicking on his picture at right or the link below.

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