Knowing Collection in 2016

(edited transcript)

[Darren Guillot] Thank you, Aaron. Good morning everyone. My name is Darren Guillot; I'm the Director of IRS Field Collection Operations. And, uh, we're pleased to have, uh, a trial attorney from the Department of Justice joining us today, Valerie Price, uh, about one of the initiatives that I'll speak about in just a moment.

Uh, I have been with the Internal Revenue Service for a long time, and I spent most of my career in collection operations. As the Director of Field Collection Operations those revenue officers who visit you, and knock on doors, and collect taxes and returns out in the field, they work in the operation that I lead out of Washington DC. And Collection Operations, to me, has to be one of the most important ones for our customers to have a good grasp of, a good understanding. It's part of our name.

It's our middle name in a sense: collection.

How many of you though know that 93 percent, 93 percent of all the revenue collected for the United States government comes in through the work we do here at the IRS, our Collection Operations. That's a really important role; it's one we take very seriously. And we also take very seriously our partnership with all of you; we could never do this alone. Without practitioners out there to help taxpayers understand and comply with the law no IRS ever made or ever staffed could be successful with the tax administration system that we have today, so thank you.

So here's a clicker. The objectives of what I'm going to talk about today, uh, together with Valerie, I'm going to share some information about some very important initiatives that we have underway that will enhance compliance, and I'll cover some reminders about dealing, uh, with tax issues for deceased taxpayers.

I'm going to give you some updates on some really important provisions I know you're interested in, related to the FAST Act, Fixing America's Surface Transportation Act, signed into law by the President in December of 2015.

I'm also, um, going to share some detail with you about these topics. Uh, those initiatives, one of them is the Early Interaction Initiative, and it's specifically about employment taxes; it's a very important area. Uh, I'm also going to cover the online payment application and some enhancements we've made, and why it's a good tool for you to be familiar with and use. I'm going to go over updates to the Offer in Compromise program that's always popular with practitioners. It gets a lot of, uh, attention.

Going to have a brief primer again on some of the, uh, tax issues involving decedents. We're going to discuss some reminders about communicating with us, Collection Operations, in and you the practitioners or your clients.

And then we'll give you the latest update, again, on two provisions of the FAST Act. I'm going to talk about passports and I'm going to talk about private debt collection. So with that, let's get started.

So the first one is early interaction. What's early interaction and why is that important? Well, in the context of Field Collection Operations, it really is about employment taxes. So to put that in context for you, I mentioned earlier that the IRS collects 93 percent of all the revenue the United States brings in. But how many of you knew that 70 percent of it, nearly 70 percent of it each and every year is collected at the source by employers on behalf of the United States from their employees? You may simply know these as trust fund taxes or payroll taxes.

Seventy percent of the revenue coming into the nation comes from this source, and unfortunately, not all employers comply with the law and make those payments like they should. In fact, at the end of June 2016, June 30th, not even a month ago gang, we have on our books $59.4 billion in unpaid taxes from Forms 941. So in my experience – and I was a revenue officer myself – interacting with these businesses; why does this happen? Many of them are under-capitalized, and sometimes they see those payroll taxes as a quick and ready source of cash to help them meet operating expenses, keep their heads above water. To make things worse, if they know they're falling behind on these federal tax deposits they don't file the 941 return, exacerbating –the problem by adding to the tax liability and interest a late filing penalty. This is a really important point I want to make, and I make it everywhere I speak on this topic, and Justice Department does too: Businesses that are noncompliant with these trust fund taxes have an unfair advantages – an unfair advantage over businesses that do it by the rules; and trust fund payroll taxes, therefore, have always been a priority of the IRS, and they're going to continue to be.

So how do we work these cases? Who's responsibility is it? Well, primarily and historically it's been the IRS Revenue Officer, The Internal Revenue Officer. How many of you have ever worked with an RO? Okay. It's a pretty significant process; and to show you how much priority we place on it, last year – and this year, it's over 60 percent of all of the work that my employees will handle. Of the 300,000 or so cases we work, over 60 percent of it involves these types of businesses.

What does that look like tactically? They'll go out in the field and make a visit to the business after there's been a perfected debt. They filed a return, it's been assessed, they owe tax, and so we go out and we conduct lengthy financial interviews, investigative interviews to determine their ability to pay. These interviews take hours. They interview potentially responsible persons for the trust fund recovery penalty, which you are familiar with from Internal Revenue Code Section 6672, and determine which principles of the business could be held liable personally, uh, for a portion or all of these unpaid trust fund taxes.

We also frequently will get involved – in taking enforcement actions. It could range from something like filing a notice of federal tax lien, a levy on bank accounts, or even seizure of property. Beyond that, we frequently engage with these taxpayers after we've investigated their finances in getting them into long-term installment agreements. Sometimes the results of the investigation are that we declare them a hardship, and sometimes these taxpayers seek protection in the bankruptcy courts. And you know what; when you look at all of what I just described for you, oftentimes even that doesn't resolve the long-term problem, because they can pyramid and become a repeat customer. This whole process I just described to you can take on average somewhere between 12 and 15 months on each case worked by each revenue officer. More and more when these traditional approaches just don't work – in getting these employers into compliance, we are seeking both civil and criminal sanctions against these employers in very close partnership with the Justice Department; also through work with our IRS Counsel and the Criminal Investigation Division of the IRS. And you'll hear more about this from Valerie in just a moment from a DOJ perspective.

This sounds like, and it probably is not the preferred method of interaction our customers would like to have with us, wouldn't you say? For many, it probably feels intrusive, and it feels reactive. How many businesses have told you, like they tell us, "Wow, if I'd only known what the consequences were?" Don't they wish sometimes they had a time machine and they can go back and think sensibly about what they're doing before they find themselves far behind on these payroll taxes –and what that means for the business and potentially for them individually later on?

This is work, as I said, that's done by revenue officers one-by-one, one case at a time. And since 2010 I've gone from having 4,000 or so revenue officers, 2010, to just under 2,500 revenue officers last week. Gang, that's 40 percent attrition. I've lost almost 40 percent of my people who could handle this kind of work. And make no mistake about it; you may have heard about the IRS having to with our limited resources make certain compromises. But one thing we will not compromise on or ever compromise on is compliance with these employment taxes; and that's why I shared with you earlier how important that is to the National Treasury, 70 percent of the money coming in nearly.

What if – you know, we have to be more proactive and innovative then with the resources we have. What if my enforcement personnel could meet with you or the business without any enforcement authority at all at the earliest signs that a business is falling behind and have a conversation?

Well, when we started to think along these lines we realized that we have one of the original proactive tools since 1972; it's called the Federal Tax Deposit Alert, or FTD Alerts if you've ever worked on one of these. The problem is, like most things that are over 40 years old, maybe not as good as it was 40 years ago; the accuracy could be improved. We've got all sorts of new algorithms and predictive analytics maybe we could apply to it and make it better. And we have been – working feverishly over the past year or so at enhancing the FTD Alert program to make it best in class, accurate, to determine early that a business is showing signs that they're falling behind. A brief 30-minute to one-hour interview with an IRS enforcement person, a revenue officer, where we come before you, when we explain, "Our records seem to indicate you're falling behind. Can we help? Can you help us understand? Can we help you understand where you are right now so we can get this fixed?" and we resolve the case right then and there, versus 12, 13, 14, 15 months, a year-and-a-half working with you or your client to get them back in into compliance; and many times they just can't get there and the business fails. Now with limited resources, doesn't that sound like a smarter way to do business?

We're already starting to see results. Uh, we've been updating – these algorithms. We're already seeing notable improvements in both the filing behavior and the payment behavior of businesses both in the quarter and subsequent quarters after we have engaged them in one of these FTD Alerts. I'll give you a first-hand example. I went out and worked a case with my revenue officer. I go out in the field once a month so I can stay in touch with the tax-paying public we serve with the employees that work for me, and stay close to the work. And I went out to a dental clinic on one of these FTD alerts. I wanted to see – it'd been over 20 years since I worked one, wanted to see what it was like – and we met with a dentist that appeared to be falling behind on deposits. She had 30 or 40 minutes to spare. We went in her office and we shared with her our records. We showed her a printout of what we had that indicated, "Looks like you're falling behind."

In fact, she had been. She had an in-house bookkeeper and the bookkeeper was making deposits monthly when they should have been making them biweekly, incurring federal tax deposit penalties. It's about a few thousand – dollars. She wrote a check and she paid it. We explained to her why she should be a biweekly depositor. She understood that, she shared that with the bookkeeper, and guess what; in future quarters she won't owe those thousands of dollars in penalties all because she met with us for 40 minutes, not 12 or 15 months with the threat of liens and levy actions and seizures. She thanked us.

Look, we were polite and courteous, but I'm not naïve enough to believe she never wants to see me again; and I probably won't see her again, and that's a good thing. That's good customer service. So let me talk a little bit more about specifically what this Early Interaction Initiative really does look like. It's part of the future state.

You've all heard about future state, right? But this is one of the very first future state initiatives out of the bat – out of the bag, right, and it works. We've got data already that shows it works. What we do –is part – as part of future state we're providing more timely service to our customers. It involves helping them understand and meet their payroll tax liabilities. It helps us meet with them when they're just starting to fall behind on deposits and getting caught up so it doesn't become a real liability, a perfected liability. And a third thing it does, it enables us to stop pyramiding before it gets out of control.

One of the saddest things we see is a business, seems to be working fine, lots of employees, and they get in this bad habit of not making their tax deposits to keep up with operating expenses, and they think, "We'll catch up. We'll catch up," and they get to a point where they'll never catch up. And that's bad for the business. It's bad for all of those employees who are totally innocent, in most cases, of what's going on with the business. So having this early interaction helps us stop that at the earliest stage.

So what's different about it today?

Well, for 40 years – I'm going to let you all see behind the curtain now – for almost 40 years what we did was simply looked at an anomaly. Have the deposits changed from one quarter to the next? And we usually got out there in Week 12 or 13 to meet with the business. Sometimes that was soon enough, but friends, many times it wasn't soon enough. They were already too far behind for us to help them and it became a formal case involving all the things I talked about earlier.

What we're doing now is we're issuing these alerts in Weeks 5, 9, and 13. We don't work the traditional 5,000 or so FTD Alerts a year that we have been historically. In 2015 we worked 21,397 FTD Alerts. And beyond that we got real scientific about it. We didn't just assign them all to revenue officers in the field – many of them did – but we assigned –quite a few to the campus for what we call a soft notice. And we handled some using a predictive, prerecorded call, predictive dialer call, and we mixed and matched them, and over the last year we have studied and followed the behavior of those taxpayers to determine which treatment stream really had an effect, which one worked best. And it's helping us improve the algorithm to make it more accurate so that we don't waste our time and send someone like me out to knock on the door of the business when a notice is all that's needed, or a predictive dialer call when you can save the postage and not mail something out. It's been so successful that at this point, at the end of June, last year we had already issued about 12,000; this year just over 6,200. What's the difference? Everything we learned last year is being applied into the new algorithms to make them more accurate, more effective, and we get the best treatment to the – right person at the right time.

So I'll tell about – talk about what's in that soft letter just so you're aware of it. It's basically a letter that goes to a taxpayer and says, "Your deposits seemed to have declined. Is there a problem we can help you with? Can you explain this?" and it's got an enclosed, uh, document that you can return to us, or we invite you to call us and explain it, and that's the end of it. If you're really not falling behind we close the case.

The predictive dialer call is a prerecorded message and it reads like so: "This is an informational call from the Internal Revenue Service. Making your tax deposits and filing your returns on time is important. If you don't, penalties apply. If you need help, check out the publication *The ABCs of FT – FTDs."*

Now, we know there's a lot of concern about impersonations, right, and these calls that a lot of people get, so we –just recently instituted a policy where we're going to issue a letter before you get that predictive dialer call so you know to expect a call's coming. Uh, that's important. And what happens if your FTD Alert is assigned to a revenue officer?

Very similar to what I just described from my own experience. A revenue officer will show up, often almost always unannounced at the business. They will tell you who they are. They'll identify themselves and tell you why they're out there. They'll explain to you, "Our records seem to indicate you're falling behind. How can we help? How can you help us better understand this?"

We'll compare records, we'll talk it through, and a lot of times maybe just had a reorganization or some restructuring at the company and we document that and we close the case; you don't owe anything. We're out there with no enforcement authority at all. Um, so this is something that's important from an impersonation standpoint –for you to know.

You can expect that our employee is going to identify themselves. They're going to show you, uh, their credentials. It's a foldout, two-piece assembly. And they also carry these, uh, Homeland Security, uh, Presidential Directive, or HSPD-12 cards. Most federal employees carry these. It's got a microchip on it, it's got a, a, a serial number, and the credentials that our revenue officers carry also have a serial number, number on them. Both of these forms of identification may help you believe you're really dealing with an IRS employee. But if that's not good enough, you can also ask to speak with the employee's manager or secretary, someone at the office calling the IRS number at a local office who can vouch for them. They shouldn't have a problem with that. They should be A-okay telling you that; and if they're not, well, that should be a sign that maybe they're not really an IRS person.

Our employees will never tell you, "You'd better pay me right now or you're going to jail." My employees are not going to ask for some goofy form of payment either like a prepaid debit card. If we ask you to pay us with a check we're going to ask that that check is made out to U.S. Treasury.

So how do we prioritize these cases? Uh, basically the larger the employer probably gets higher priority. If you've fallen behind on deposits in the prior quarter and now you're doing it again in this quarter, that'll get you some priority. If you haven't filed a 941 tax return from a prior quarter and now you're falling behind on deposits in the current quarter, that's a pretty good sign that we're going to give you priority, and you'll probably be assigned to one of my revenue officers for the full treatment. And resources permitting; if we can see that you're making a lot more deposits than you normally make, that might be a sign that you should be making deposits biweekly instead of monthly –and we may send someone out to talk to you, or send a notice based on that. The goal with this is to move toward real-time customer service.

So we're really excited about this initiative. I mean our best – our greatest interest with businesses is that they survive, that they thrive, that they continue to provide jobs for employees. Most Americans work for a small business y'all. It's not in our interest. Significant enforcement, like the enforcement I talked about earlier; that's our last resort, that's time-consuming, that's a sad state of affairs. We don't want to get there if we can possibly help it. The business of America is business it's been said. We want to help businesses survive and thrive; that's our first priority in working these cases.

Next thing I want to talk about is the Online Payment Agreement. Now just imagine if you never wanted to meet me in person – or talk to me on the phone, or get a scary envelope in the mail from the IRS, but you know you owe some taxes. What if you could go online and take care of it yourself or on behalf of your clients? Well, we've had a tool for some time that's available that does just that, it's called the Online Payment Agreement. And generally speaking, if you qualify for a streamlined installment agreement, you can get – you can use the Online Payment Agreement. Agreements between 120 days and up to 72 months, six years, typically qualify. It's mostly individuals; but in some limited situations businesses can use, uh, following the streamline criteria as well.

It's very simple. Uh, it's an online session that asks you some basic financial information, and it verifies, uh, who you are, and in quick session you get a message that says, "Congratulations, your agreement has been approved. Please print this for your records."

And there you go. You haven't had to talk on the phone or wait on hold. You haven't had me knock at your door. You would think everybody would want to do that.

You know how many installment agreements the IRS works each year? About three million. Guess how many of those three million qualify to use the Online Payment Agreement? Ninety percent plus. What's ninety percent of three million, gang? Let me give you some numbers.

A few years ago, out of those three million taxpayer, you know, who got installment agreements, you know how many used the Online Payment agreement: 80,000. Now we've really improved the system over the last year. We've made it much more user-friendly and easier to authenticate and things like that, so that people can get in and out of it quickly and they're not getting bumped out of the system. And as a result, in 2015 we saw an increase in Online Payment Agreements, up to 322,000 agreements for taxes owed of about $1.3 billion. And it's –getting even better in 2016. So please look into that.

If you're curious about the Online Payment Agreement, you can find a lot more information about it at IRS.gov. Uh, go to the tools menu and you'll find it there. Or simply go to the search engine and insert Online Payment Agreement, and it'll tell you everything you want to know about the Online Payment Agreement.

Uh, you'll see on this screen a graph that shows you on the gray, uh, bar, you'll notice through January and February a significant increase in, uh, agreements on the Online Payment Agreement.

Just briefly, uh, but I know this is important to you as practitioners, some, some comments about communicating with the IRS. The practitioner priority service is great; it's there for you. It helps you get into our system in an accelerated way to help your clients. Uh, we've got a dedicated line for you, it's available from 7:00 AM to 7:00 PM local time –wherever you are in the country, with the exception of Hawaii and Alaska where we'll always go by Pacific Time.

Uh, these numbers will give you the opportunity to locate and apply payments. It allows you to resolve the taxpayer, uh, account sometimes where we have an active account. It helps explain IRS notices and publications. You can get information from 1099s and W2s by calling, uh, this number. And you can also secure a taxpayer income verification. Now what it won't do is help you with things like tax law questions; or if the case is already assigned to the automated under reporter operation, or the automated collection system, the ACS operation; or if it's assigned to a field revenue officer or a field revenue agent. But what we will do is transfer you over to the right office that can help you, if that's what the situation is.

The automated collection system is –arguably one of the greatest innovations and most efficient collection operations in all of tax administration anywhere in the world, it truly is. Uh, they collect taxes and delinquent returns. Uh, if you call ACS – I've sat in their call sites and watched them work these cases; some really talented people. Uh, they'll ask for verification of your identify to make sure we don't disclose information, have an unauthorized disclosure. They're going to ask for the best, best method of payment. They're going to ask about things like a bank account and a place of employment. They're going to talk about ways you can pay, if you will, how you can file a return if you've got some delinquent returns. They're going to talk about expectations and consequences if you set some reasonable commitments for when you're going to get them some information, and they're going to provide education if there's some – any gap in understanding of the tax laws.

The other thing, uh, that I wanted to say about them is that they serve callers on a first-in/first-out basis. Their lines are available from 8:00 AM to 8:00 PM local time.

And now I'll move into a topic that I know gets a lot of publicity, and I know it's a great interest to you all. Someone out in the lobby was asking about Offers in Compromise a moment ago. This is a program that's been around for generations. In fact, in temporary legislation, the Offer in Compromise actually find its roots going back to a law in 1831. So we have been looking to use compromise as a way to give people a fresh start who really don't have any other way to get current with their taxes, or genuinely have doubts that they owe the liability in the first place, for a long time.

Uh, we update the Offer in Compromise program –

annually in many ways. So there's an Offer in Compromise Booklet, Form 656, 656-B. I'd encourage you to see the latest revision of it. Um, we provide updates to the changes in the low-income threshold. We get that information from Health and Human Services. Uh, we've also added information about the Affordable Care Act, uh, to the Offer in Compromise, uh, booklet. And you can also find out more Offer in Compromise on our website.

What I want to bring your attention to, and I highly recommend that you visit and tinker with it, is the OIC, Offer in Compromise Pre-Qualifier tool. How many of you have tried it? I was navigating it myself yesterday just to see how much better it is than the last time I used it about two or three years ago. It's a great tool. It helps taxpayers understand if they're a realistic candidate for an Offer –in Compromise. It tells them if they've beat – uh, meet basic eligibility requirements, it helps them understand, um, based on their financial circumstances if they're a good candidate, and it gives them a loose idea of what the acceptable offer amount might be. It's basically eligibility requirements, but it's a really good first start.

What it doesn't do is evaluate special circumstances. So an Offer in Compromise, if you can pay the liability in full within the statutory period to collect, you're generally speaking not a candidate for an Offer in Compromise, unless you're one of those rare situations where exceptional circumstances exist. And only a human being can evaluate and investigate and make a decision on that. But even if the tool doesn't indicate that you are a good candidate for an Offer in Compromise, you can still submit an Offer in Compromise. We'll work it, we'll –investigate it. So this – just because the Pre-Qualifier tool doesn't give you the information you hope to hear does not mean you can't submit an Offer in Compromise anyway.

Great thing about it, as I found out myself, is the tool's anonymous. It doesn't ask you your name. It doesn't save the information you plug-and-play in it. It's going to ask you about things like your zip code, the state you're in, what kind of, uh, income you have, the value of your assets, et cetera, and it knows based on the minimum amount of information you input, what the national and local standards are. So think about the time saving there. You don't have to pull the charts out and figure all that out, it does it for you. So it's a real time saver.

Look, a lot of taxpayers think that this is just an easy way to settle a tax debt for "pennies on the dollar," and that's just not realistic, gang, it just isn't. If a taxpayer can –truly pay their liability they should, and they should look at things like the, uh, offering – the installment agreement, or paying the liability in full. The liability, the amount of the offer has to reflect what we could reasonably collect. So if you're going to pay in five months, well, we look at what we could collect from you in future income over a 12-month period. If you can pay in 16 to 24 months, we're going to look at what you can pay over a two-year period and so on.

It's important that you fill this application out in its entirety, that you answer all the questions on the financial statement completely, that you sign and date it. Little things like that can cause a delay in the process, and delay is something you want to avoid, because even though we've seen a lot of improvements – for instance, 80 percent of the Offers in Compromise that we worked last year, 80 percent were worked within nine months, a 20 percent weren't. It's a lot of work, gang.

Some good news; last year, 44 percent of all Offers in Compromise submitted were accepted, and that's up from previous years.

Uh, a few words about final tax issues. You know, I've met taxpayers who were surprised to find out that, hey, they're retired, but they still have to file a tax return. So you can imagine the shock and amazement by some taxpayers when they find out that even after someone's dead, there might have to be filing of tax returns. So we've got a website that we've done a lot of work on to put information, uh, about – that can help you with this, you, you as their practitioners, as their representatives, on our decedent, uh, page on IRS.gov. It's got a very long title. It's, "Deceased Persons, Probate, Filing of State and Individual Returns, and Paying Taxes Due." That's a mouthful, but we put all the words in there because we wanted to make it easy for you to –find it if you use the search engine on IRS.gov or your own. If you've got a client who's a surviving spouse, an executor, or an estate administrator, you probably want to steer them toward this website.

Okay. Next item I want to talk about, that you've probably been waiting to hear me talk about, is the FAST Act, the Fixing America's Surface Transportation Act signed into law in December 2015. It's got two provisions that affect field collection operations, collection operations in general.

The first one is passport denial and revocation. Section 32-101 of the Act requires, requires denial, and it authorizes either the revocation or limitation of passports of taxpayers certified to the Department of State as having seriously –

delinquent tax debt. What's seriously delinquent tax debt? You have an unpaid, legally enforceable federal tax liability of an individual that's assessed greater than $50,000.00, a federal tax lien has been filed, and a period to appeal has either elapsed or been exhausted, or a levy's been issued. A serious delinquent tax debt does not include, some examples, if you're in an installment agreement, if you got an Offer in Compromise, if your case is suspended because you're in a CDP hearing, if you've requested innocent spouse release or you've made an innocent spouse election, or if the taxpayer's in a combat zone.

The passport program is not in place yet. We have not started sending the certification to the Department of State; we are still working –on that. And in the meantime, I just want to let you know; just like we would, even if this law didn't exist, we will continue to work very hard with these taxpayers who fall into this category. If you need to reach out to us, to get them in an installment agreement, they won't be on that certification list, if they qualify for an Offer in Compromise, and so on. So please keep that in mind.

It's important to know that we're not going to give the taxpayer advanced notice. When we send the certification to the Department of State we're going to send notification to the taxpayer at the same time. The State Department will not issue a passport to a taxpayer after they receive this notification. If the taxpayer's got a valid passport, the State Department may revoke the passport or limit the taxpayer's travel to the United States after receiving certification. Now the legislation does allow you to protest this. You can go to U.S. District Court or the tax court if you believe we've – erroneously certified to the State Department, uh, you're a taxpayer. And, also, we're required within 30 days to remove you from that certification if the taxpayer has paid in full, if they've entered into an installment agreement or an Offer in Compromise, or if they're in a CDP hearing, or made an innocent spouse election. It's important to know that we handle the certification to the State Department. The action to revoke or limit passports is a process that happens once the case is at State.

And then there's private debt collection, you've probably heard a lot about this. It's in the same Act, it's in Section 32-102, and private debt – the law required us to assign to private debt collectors outstanding inactive tax receivables. It required the IRS to use private debt collectors to pursue collection of outstanding inactive –tax receivables. As soon as this law was signed by President Obama everyone, we immediately started working quickly toward implementing this and making sure it's successful. We created a timeline to implement the program; we collaborated with our information technology people on a safe, secure way to transfer these accounts, when we do, to the private collectors; we established performance metrics; and we work through the federal procurement process in figuring out how we're going to select the private debt collectors, but also very importantly, to get feedback from potential private debt collectors about how to best do this.

We had a Bidders Conference on February the 23rd to get that feedback, and our tentative timeline is we're going to select the private debt collectors in October of 2016, and we'll begin assigning accounts to the private debt collectors in Fiscal Year 2017 at some time.

It's important to know that private collection agencies –

cannot take enforcement action. They cannot take enforcement action, okay. The types of cases they're going to get are removed from active inventory because of a lack of resources or our inability to reach or find the taxpayer. If more than one-third of the statutory period to collect the liability has elapsed and there's been no assignment to an IRS employee, those cases could go to a private collection agency.

If it's been assigned in collection but 365 days have gone by without any attempt by us to work with the taxpayer in collecting that debt, that could be assigned to the private collection agency or any other inactive, uh, tax case that we deem appropriate. These are the taxpayers that will not be assigned, will not be assigned to private debt collectors: deceased; they're under the age of 18; victims of tax-related identify theft; they're currently under examination, criminal – investigation, they're in litigation, or a levy's been issued; if they're subject to a pending or an active installment agreement or an Offer in Compromise; if they have the right to an appeal with the IRS Office of Appeals; if they're classified as an innocent spouse; or if they're in a presidentially-declared disaster area. We're going to do everything that we can to make sure that concerns about impersonation and scams are taken care of with this. So we're going to give taxpayers notice that your account is being assigned to a private debt collector. And before the private debt, debt collector starts working the case, they're also going to send you a notice letting you know that they're the official IRS contractor assigned your debt and they'll be contacting you.

Um, anyway, that's a lot of information. And Valerie Price has joined me, and she's going to talk a little bit more about that early interaction initiative. What happens if early interaction doesn't work – and enforcement's necessary? She's going to talk about some of the criminal and civil assistance the Justice Department has been giving us in field collection.

[Valerie Price]

Good afternoon. My name is Valerie Price and I'm a trial attorney with the Tax Division of the Justice Department out of Washington. I've been doing that for about ten years on the civil side.

Um, have any of you ever had to work with the Tax Division? Okay. So this is the first year that the Department of Justice has been invited to this conference, um, and we're very pleased to be here and to work with our IRS colleagues, and to talk to you a little bit about, um, collection. So I just wanted to give you all a little bit of an overview about when your clients might come into contact with Department of Justice attorneys as opposed to IRS employees and IRS attorneys.

Um, the Tax Division is one of the litigating components of the Department of Justice. There are any Trust Division, the Civil Rights Division, Civil Division, Criminal Division, et cetera; and they're the ones that try the cases in federal courts, all courts except for tax court; that's where you'll be dealing with IRS attorneys. Now the civil attorneys will prosecute and defend cases arising under the Internal Revenue Code, um, on the civil side. So it's just money. Nobody goes to jail unless you violate an injunction, and then you might be spending some time in jail.

The criminal attorneys prosecute cases under the Criminal Code as well as the Internal Revenue Code. And out of Washington they might handle cases by themselves or in conjunction with local U.S. attorneys offices, and then, uh, also local U.S. attorneys offices will handle some cases on their own. And then we have appellate lawyers, and that's when the civil and the criminal trial cases get appealed, and then we have an – office in Washington that handles that. Um, and also the Tax Division will advise the IRS and the Treasury Department on pending regulations and policy and treaty. So that, in a nutshell, is what the Tax Division attorneys will be involved with.

Um, specifically as to collection, there are several ways in which the Department of Justice will get involved in a case and in which your clients potentially could be dealing with attorneys out of the Tax Division. Um, there are about five different ways. There are the most common tax matters that we will see will be when the IRS will refer a case to Department of Justice to bring a collection case. And this is when the IRS has exhausted, uh, their collection remedies. They have ten years from assessment, uh, to pursue collection. And so by the time the Department of Justice gets it to bring a lawsuit, the collection –

statute might be about to run, uh, and then we can get a judgment that's good for 20 years and, and is renewable.

Um, in conjunction with these collection cases for just getting a judgment for the assessments, um, sometimes we bring a foreclosure case along with that if the service has identified assets that can be foreclosed, specifically a piece of property. Those can be separate suits or those can be part of the collection suit.

Um, additionally, sometimes if clients know that collection activity is afoot, that knows the federal tax liens will be filed, or wages might be garnished, they might be tempted to make conveyances which are fraudulent; and we can bring suit to set aside these fraudulent conveyances, and also bring in other parties – spouses, parents, children – to which taxpayers might have transferred assets. And we can get those back, um, by filing suit and setting – aside those fraudulent conveyances.

Akin to the fraudulent conveyances, another way to hide or transfer assets would be to put them into the name of a nominee or an alter ego, to create a company, um, that is controlled by the taxpayer that owes the taxes, or to transfer them, um, to a family member or friend or a corporation, but the taxpayer still retains control. So we ask the court to make a determination about who's actually the beneficial owner, not just who owns legal title, and just to put aside the legal fiction. So that's another way that, um, your client could be dealing with, um, a Tax Division attorney.

Uh, and then the last way is in bankruptcy court. Um, sometimes people want to get relief from their tax burden by filing a petition in bankruptcy court to discharge their taxes. Um, you can discharge all kinds of –debt, including taxes, but there are a lot of exceptions for discharging taxes, uh, specifically employment taxes, Section 6672 taxes if, uh, a taxpayer is being held personally responsible; those are not dischargeable. Um, tax debts that are current, uh, assessed within the three years prior to filing bankruptcy typically can't discharge those.

If your client has not actually filed a tax return, those are not dischargeable; and there are some very harsh rules in some of the circuits that even filing a tax return a day late can bar a taxpayer from discharging those taxes. Um, that's not currently the law in the Fifth Circuit; there's more of a determination of what – if it was an honest and reasonable attempt to comply with a tax code if you filed your tax return late. Um, but filing for bankruptcy is not a cure all, I just wanted to, to note that. Um…So that's typically the civil side of how we get cases.

On the criminal side, a lot of the problem is making false statements to the IRS particularly on collection information statements. Those Offers in Compromise, uh, your clients are going to have to fill out Forms 433-A if they an individual, Forms 433-B if they're a company. And if you do not – if your clients do not, um, list all of their assets, all of their bank accounts, uh, if they omit things, if they do not declare all of their income, those forms are signed under penalty of perjury, and that can be construed as an evasion of taxes, taxes with criminal penalties. Submitting false documents to the IRS during audits, during –the collection process; uh, diverting your income to avoid collections – as I just mentioned about transferring assets to nominees or family members, or creating sham corporations. Um, those also can subject clients to criminal liability. And there is a huge tax gap in this country of about $450 billion. That's the difference between the taxes that are owed and the taxes that are actually paid.

So the Department of Justice takes very seriously using all of our resources to collect those taxes so that everybody can enjoy the benefit of the taxes, um, so they, you know, get paid. Uh, they can be – we can go get those during the collection process, um, during the civil process of getting judgments and enforcing those, and also through restitution in criminal proceedings. So not only can you get, uh, jail time, but also – there can be orders of restitution so that taxpayers have to pay back taxes – and that's taxes, penalties, interest; and that can part of the criminal sentence, and that's something that we certainly do encourage, and we work with you as attorneys offices to get that restitution. And that would typically be – have to be paid, um, after the incarceration has ended; and it can go on for many years because it can be tens, hundreds of thousands, even millions of dollars in restitution.

And I have one minute left. *[Laughs]* Um, but just to give you a quick idea; um, the cases…

These are some recent criminal cases, um, just in this year, uh, all over the country where people were sentenced for tax evasion, which, uh, arose many times over, uh, false statements on 433s, transferring assets anywhere from ten –months to four-year sentences, and restitutions from, uh, $250,000.00 to, uh, over a million dollars. File – failing to file penalties, um, failing to state your full assets, uh, lying on the forms; those are all – were all criminally prosecuted. Um, CPAs, tax return preparers, doctors, owners of businesses, former pilots. Uh, nobody is exempt, uh, and these tax evasion cases, it's not just, you know, 60 days in jail. Uh, in one of these cases in the Bradner case out of Alaska, there was a sentence of four years.

And I think that is the end. Uh, but we're happy to take questions outside of the room.

[Applause]

[Darren Guillot]

Thanks, everyone.

Glossary

Conveyance - the legal process of transferring property from one owner to another.

Early Interaction Initiative - The Internal Revenue Service launched a new initiative designed to more quickly identify employers who are falling behind on their payroll or employment taxes and then help them get caught up on their payment and reporting responsibilities.

Fast Act - enacted on Dec. 4, 2015, contains the following two provisions of interest to taxpayers: One requires the IRS to use private collection agencies for the collection of outstanding inactive tax receivables. The second changes the automatic extension to file Form 5500 back to 2½ months, from the earlier automatic extension of 3 ½ months, for 2016 and later calendar year plan filings.

Federal Tax Deposits (FTD's) – for Form 941 are made up of withholding taxes or trust funds (income tax and Federal Insurance Contributions Act (FICA) taxes, which are Social Security and Medicare held in trust), that are actually part of your employee's wages, along with the employer's share of FICA. FTDs for Form 940 are taxes paid by the employer to provide for unemployment compensation to workers who have lost their jobs.

Federal Tax Lien (FTL) - A federal tax lien is the government's legal claim against your property when you neglect or fail to pay a tax debt. The lien protects the government's interest in all your property, including real estate, personal property and financial assets.

Installment Agreement – If a taxpayer is financially unable to pay their tax debt immediately, they can make monthly payments through an installment agreement.

Levy - An IRS levy permits the legal seizure of property to satisfy a tax debt. It can garnish wages, take money in a bank or other financial account, seize and sell vehicle(s), real estate and other personal property.

Offer in Compromise (OIC) - is an agreement between a taxpayer and the Internal Revenue Service that settles the taxpayer's tax liabilities for less than the full amount owed.

Restitution -involves a payment by the perpetrator of a crime to the victims of that crime. This payment is meant to make the victims whole and restore them.

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