

*Excerpt from eBook*

# IRS Tax Audits and Collections

Criminal Tax Evasion: Burden of Proof  
Criminal Tax Evasion: Collateral Estoppel  
IRS Civil Tax Audits: Statute of Limitations

Prepared by:  
Gary S. Wolfe  
THE WOLFE LAW GROUP



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# THE WOLFE LAW GROUP

Gary S. Wolfe has over 34 years of experience, specializing in IRS Tax Audits and International Tax Matters including: International Tax Planning/Tax Compliance, and International Asset Protection.

As of July 2016, Gary Wolfe has internationally published 15 books and 28 articles. Gary has received 14 international tax awards from five different Global expert societies in LONDON/UK including being voted one of the 100 leading world's law firms with votes from over 150,000 voters in over 160 countries with the following award: Global 100 (2016) (KMH Media Group) - CA/US International Tax Planning Law Firm of the Year.

For more information please visit our website: [gswlaw.com](http://gswlaw.com)

Gary S. Wolfe, A Professional Law Corporation  
6303 Wilshire Blvd., Suite 201  
Los Angeles, CA, 90048  
Tel: 323-782-9139  
Email: [gsw@gswlaw.com](mailto:gsw@gswlaw.com)

## **Chapter 4 - Criminal Tax Evasion: Burden of Proof**

The U.S. taxpayer's exposure to civil penalty/criminal prosecution for unreported income and undisclosed foreign financial accounts is a "double-edged" sword with dual civil/criminal: Evidentiary Standards of Proof, Statute of Limitations, and Collateral Estoppel Issues.

If the IRS first institutes a civil tax audit, they may summons evidence, which may support both a civil penalty (e.g. fraud) and criminal culpability (e.g. tax evasion). The evidence from the civil tax audit may then be used for a subsequent criminal prosecution of the same U.S. taxpayer.

Civil and criminal tax deficiencies may differ; Criminal violations are charged only against the tax deficiency that results from fraud.

Civil tax deficiency includes all tax due on the tax returns (i.e. "evaded income and deductions adjustments).

Under a civil tax audit, the IRS may obtain evidence that may be illegal under criminal proceedings (e.g. Fifth Amendment defenses objecting to "tainted evidence") tax evidence obtained from the civil tax audit may enable the IRS (i.e. the U.S. Attorneys to initiate criminal proceedings against the taxpayer).

Criminal tax fraud requires a higher standard of proof than civil tax fraud. The government must prove "beyond a reasonable doubt" that the defendant is guilty of criminal tax fraud.

In civil tax fraud, the burden of proof required is a preponderance of the evidence (also termed "by clear and convincing evidence") which is a lower evidentiary standard).

A criminal tax decision of a court or jury will bind a civil tax decision, but a civil tax decision does not bind a criminal tax decision.

## **Chapter 5 - Criminal Tax Evasion: Collateral Estoppel**

When criminal tax proceedings are followed by civil tax proceedings, the legal doctrine of collateral estoppel may apply. This doctrine provides that an issue necessarily decided in a previous proceeding (the first proceeding) will determine the issue in a subsequent proceeding (the second proceeding) but only as to matters in the second proceeding that were actually presented and determined in the first proceeding.

A conviction for criminal tax evasion collaterally estops the taxpayer from contesting the existence of tax fraud for purposes of the civil tax fraud penalty (i.e. 75% of the unpaid tax) because a finding of criminal tax fraud (beyond a reasonable doubt) establishes proof of civil tax fraud (by clear and convincing evidence).

Acquittal of criminal tax evasion does not collaterally estop the government from proving civil tax fraud (by clear and convincing evidence). The criminal acquittal may establish that proof of fraud did not exist beyond a reasonable doubt, but that does not mean that proof of fraud by clear and convincing evidence does not exist.

## Chapter 6 - IRS Civil Tax Audits: Statute of Limitations

IRS civil tax audits generally have a 3-year statute of limitations which commences the later of:

1. Tax Return due date or,
2. Date of Tax Return Filing (evidenced by either electronic filing acceptance, or certified mail return receipt).

The 3 year statute of limitations is extended to 6 years if 25% or more of gross income received by the Taxpayer is omitted from the tax return. For this tax issue (i.e. omission of gross income), the Burden of Proof is on the IRS, but if their burden is satisfied all deductions are also subject to the IRS audit (not just the omitted income).

**There is no Statute of Limitations if a tax return is not filed. There is no Statute of Limitations if Taxpayer commits tax fraud (however, the burden of proof is on the IRS).**

The IRS often requests a statute extension if the statute will soon expire. If the statute is not extended the IRS will assess tax which can be a bad result (i.e. the tax is due) but have a good benefit ( i.e. the audit is then terminated with no further tax disallowance issues to be raised by the auditor) with the taxpayer entitled to file a Notice of Protest and seek an IRS administrative appeal (to a separate division of the IRS/Appeals) without paying tax and no IRS tax lien filed or IRS collection instituted on the assessed tax (ie. no IRS levy).

The only exception would be a jeopardy assessment if the IRS considers tax collection to be “at risk” (i.e. the Taxpayer hides assets, flees the US et al.) the IRS may seize the Taxpayer assets under a levy, “freezing these assets” pending resolution of the audit assessment.

Taxpayers who elect to file amended tax returns face the following statute of limitations issues:

1. The amended tax return/claim for refund must filed within 3 years of the filing of the original tax returns
2. If the amended tax return increases tax and is filed within 60 days of the statute expiration date, the IRS gets an additional 60 days to assess from the date of the amended tax return filing;
3. For unfilled tax returns the Taxpayer has 2 years from the date the tax was paid to file a tax refund claim.

Caveat:

If the amended tax return does not increase the tax due, the Statute of Limitations is not extended. For Taxpayers who wish to file a tax refund claim, it may be advisable to file the claim within 60 days before the statute expiration which may preclude IRS review and audit before the expiration of the Statute of Limitations so the Taxpayer receives an uncontested tax refund.

## Chapter 7 – GAO Report

United States Government Accountability Office (GAO) released a [report](#) in March 2013 entitled: Offshore Tax Evasion – IRS Has Collected Billions of Dollars, but May Be Missing Continued Evasion.

What the GAO Found was that as of December 2012, the Internal Revenue Service's (IRS) four offshore programs have resulted in more than 39,000 disclosures by taxpayers and over

\$5.5 billion in revenues.

A [supplement report](#) was published in January 2014 listing Offshore Voluntary Disclosure Program participants by state and the location of foreign bank accounts reported by 2009 Offshore Voluntary Disclosure Program participants.

The top 7 states were:

California 2,524 24%

New York 1,884 18%

Florida 1,022 10%

New Jersey 631 6%

Texas 512 5%

Massachusetts 307 3%

Illinois 291 3%

The top 7 countries where the bank accounts were located:

Switzerland 5,427 42%

United Kingdom 1,058 8%

Canada 556 4%

France 528 4%

Israel 510 4%

Germany 484 4%

China 394 3%

In a recent study, [Gabriel Zucman](#), Asst. Prof., London School of Economics (an international author who works with Thomas Piketty and Emanuel Saez) estimated:

- 1) Switzerland has \$2.4 Trillion in global offshore funds, 1/3 of projected \$7.6 Trillion total (which is 8% of projected global financial assets).
- 2) 60% of foreign owned deposits in Switzerland belong to British Virgin Islands, Jersey and Panama, the leading countries for domiciliation of shell companies.
- 3) Offshore funds in Swiss accounts have risen in recent years
- 4) Data from National Bank of Switzerland confirm only a small percentage of offshore funds in Switzerland have been disclosed to financial authorities
- 5) In 2017, Switzerland will automatically share banking information with OECD countries (Organization for Economic Co-operation and Development), under the multi-year OECD agreement it recently signed.

**Switzerland is the Epicenter of International Tax Evasion & Money Laundering:**

1) Under the 2013/2014 US Govt. GAO Report, the IRS Offshore Voluntary Disclosure Program listed the top 7 countries with undisclosed accounts. #1 was Switzerland with 42% of the accounts (UK was a distant second with 8% of the accounts). Switzerland holds more than 5x the bank accounts of “US tax cheats” than the 2d biggest jurisdiction (UK).

2) Major Swiss banks have admitted to tax evasion as their “business”: In Feb 2009 UBS agreed to pay a \$780m fine and entered into a deferred prosecution agreement with the US Dept. of Justice;

In Jan. 2013, Wegelin Bank, the oldest Swiss Bank (est. 1741) paid a \$74m fine and entered a guilty plea to tax evasion charges and announced it would close its bank;

In November 2014, Credit Suisse entered a guilty plea to tax evasion and agreed to a \$2.6B penalty.

As of December, 2014 more than a dozen Swiss Banks including major bank: HSBC & Julius Baer continue to be investigated for their roles in helping US taxpayers evade taxes. HSBC appears particularly egregious [under investigation](#) in numerous countries e.g. Belgium, Argentina et al. for aiding international tax evasion and money laundering.

The following press release was sent out by the U.S. Department of Justice on 11/21/2014:

[Credit Suisse Sentenced for Conspiracy to Help U.S. Taxpayers Hide Offshore Accounts from Internal Revenue Service](#)

*Pays \$1.8 Billion to Department of Justice and the Internal Revenue Service in a Fine and Restitution*

Credit Suisse AG was sentenced today for conspiracy to aid and assist U.S. taxpayers in filing false income tax returns and other documents with the Internal Revenue Service (IRS). Credit Suisse pleaded guilty to conspiracy on May 19. The sentencing of the Swiss corporation is the result of a years-long investigation by U.S. law enforcement authorities that has also produced indictments of seven Credit Suisse employees and the owner of a trust company since 2011—two of those individuals have pleaded guilty so far—and of U.S. clients of Credit Suisse. The announcement was made by Deputy Attorney General James M. Cole, Acting Deputy Assistant Attorney General Larry J. Wszalek for the Justice Department's Tax Division, U.S. Attorney Dana J. Boente for the Eastern District of Virginia and IRS Commissioner John Koskinen.

At sentencing in the U.S. District Court for the Eastern District of Virginia, U.S. District Chief Judge Rebecca Beach Smith entered judgment and conviction and a restitution order requiring Credit Suisse to pay approximately \$1.8 billion dollars to the United States by Nov. 28, per the plea agreement. Credit Suisse will pay the Justice Department's Crime Victims Fund, through the District Court Clerk's Office for the Eastern District of Virginia, a fine of approximately \$1.136 billion and will pay the IRS \$666.5 million in restitution. The parties agreed that Credit Suisse cannot challenge the restitution amount, which can also provide a basis for an IRS civil tax assessment.

"Today, with its criminal conviction and the payment of \$2.6 billion in fines and restitution, Credit Suisse is held fully accountable for helping U.S. taxpayers engage in tax evasion," said Deputy Attorney General Cole.

(Click link above for complete article).

