

**STATEMENT OF EILEEN J. O'CONNOR
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SENATE FINANCE COMMITTEE**

**“FILING YOUR TAXES: AN OUNCE OF PREVENTION IS WORTH
A POUND OF CURE”
APRIL 12, 2007**

Thank you for the opportunity to appear before you to discuss the tax enforcement work of the Tax Division of the United States Department of Justice. You have asked that I advise you, in particular, about enforcement actions aimed at fraudulent tax return preparation and the promotion of tax fraud schemes and scams.

Background

The attorneys of the Tax Division represent the United States in virtually all civil and criminal trial and appellate litigation arising under the internal revenue laws, in all state and federal courts except the United States Tax Court.

Tax Division attorneys are essential to IRS enforcement activity at all levels. When the IRS is examining a taxpayer's federal income tax return, for example, the IRS will need the Tax Division to, among other things, enforce and defend its summonses while the examinations are ongoing. When the examination is complete and the IRS has determined that additional tax is owed, the Tax Division will represent the United States in court, if it comes to that, to collect and defend the IRS's tax assessments. At any given time, we have nearly 7,000 civil cases in litigation. In any given year, we handle about 700 civil appeals, including those from decisions of the Tax Court.

The Tax Division's criminal prosecutors authorize all grand jury investigations and all prosecutions involving violations of the internal revenue laws and, alone, or in conjunction with Assistant United States Attorneys, investigate and prosecute the crimes. In the last few years, we have authorized between 1100 and 1800 criminal tax prosecutions per year.

During the six years since my confirmation to head the Tax Division, its workload has increased, and changed in character, as well. The cases we have now are much more labor intensive, and have much more at stake than those we faced eight or ten years ago. Not only are the dollars at stake in the cases much higher, but the cases' potential impact on the ultimate enforceability of the tax laws as a whole has grown significantly.

During the past year, we have achieved substantial and meaningful victories in the tax shelter arena:

- The Supreme Court let stand the decision of the United States Court of Appeals for the Sixth Circuit that the COLI (corporate-owned life insurance) program **The Dow Chemical Company** used to claim more than \$33 million of tax deductions was an economic sham.

- The Supreme Court also let stand the decision of the United States Court of Appeals for the Federal Circuit that the IRS was right to disallow the \$375 million loss **Coltec Industries** claimed from its “contingent liability” tax shelter.
- The United States Court of Appeals for the Second Circuit held that the IRS properly disallowed the losses **General Electric Capital Corporation** claimed from its participation in an equipment leasing tax shelter, resulting in \$62 million in additional income taxes.
- The United States District Court for the Middle District of North Carolina granted summary judgment for the United States in the first Lease In - Lease Out (LILO) tax shelter to go to court, **BB&T Corporation v. United States**.
- Ruling for the United States on an issue raised by tax shelter participants in several tax shelter refund suits, the United States Court of Appeals for the Federal Circuit, in **AD Global Fund, LLC v. United States**, ruled that the statute of limitations on the return of a person who participates in a tax shelter partnership does not expire before the statute of limitations on the partnership’s return does.

We also won three challenges to the government’s disallowance of benefits from the so-called Son-of-BOSS tax shelter: **Colm Producer Inc. v. United States** (N.D. Tex.), **Klamath Strategic Investment Fund, LLC v. United States** (E.D. Tex.), and **Cemco Investors v. United States** (N.D. Ill.).

On March 29, the law firm **Jenkins & Gilchrist** entered into a non-prosecution cooperation agreement with the United States Attorney for the Southern District of New York, admitting wrongdoing in connection with developing and marketing fraudulent tax shelters and providing fraudulent tax opinions that wrongly deprived the U.S. Treasury of significant tax revenues.

In January 2007, **Steven Michael Acosta**, a former KPMG manager, pleaded guilty to four felony tax charges in connection with his involvement in KPMG’s promotion of tax shelter transactions. In December 2006, Utah businessman **Chandler S. Moisen** pleaded guilty to conspiracy and wire fraud in connection with a criminal probe of tax shelters promoted by a group of KPMG, LLP executives.

Since 2001, the Department of Justice has successfully prosecuted hundreds of tax cheats and promoters of abusive tax schemes; it has sought and obtained more than 230 civil injunctions to stop the promotion of tax scams and the preparation of false and fraudulent tax returns. We have helped the IRS to identify and pursue hundreds of customers who engaged in abusive tax shelter transactions, while, at the same time, pursuing the professionals who designed, facilitated, or accommodated the underlying tax shelter transactions.

The President’s Budget Request for the Division for the fiscal year 2008, as did the one for fiscal year 2007, requested additional resources for the Tax Division to enable us to meet the additional challenges created by the IRS’s increased enforcement. The members of the Senate Finance Committee can appreciate more than most the importance of the Tax Division’s work. I

request your strong support for ensuring that tax law enforcement is appropriately funded, both at the IRS and the Department of Justice.

Criminal Prosecutions

During fiscal year 2006, the Justice Department’s Tax Division authorized the prosecution of 1,180 defendants for tax crimes, an increase of more than 34 percent over the number authorized for prosecution in 2001. The Tax Division’s criminal enforcement priorities include investigating return preparers and tax professionals as well as schemes that involve:

- Using trusts or other entities to conceal control over income and assets;
- Shifting assets and income to hidden offshore accounts;
- Making false statements to the IRS in order to claim tax refunds;
- Selling and promoting fraudulent tax avoidance schemes;
- Using frivolous justifications for not filing truthful tax returns;
- Failing to withhold, report and pay payroll and income taxes;
- Failing to report income on individual and corporate returns; and
- Failing to file tax returns.

You asked us to discuss: (1) the Tax Division’s acceptance rate for IRS criminal referrals, and (2) whether we are too selective. Tax Division prosecutors review IRS referrals to assure that uniform standards of prosecution are employed and that criminal tax violations warranting prosecution are prosecuted. The Tax Division’s actions on criminal cases referred by the IRS, including declinations, for the last three fiscal years are as follows:

Tax Division’s Actions on Criminal Cases Referred by IRS

	FY 2004	FY 2005	FY 2006
Prosecution authorized (defendants)	1,381	1,273	1,180
Prosecution declined	46	52	75
Percentage of targets declined	3.22%	3.92%	5.98%
Grand Jury Investigation authorized*	84	98	144

* Occasionally, a case the IRS refers for authorization of prosecution has prosecution potential, but lacks sufficient evidence to prove the tax violation beyond a reasonable doubt. In those cases, rather than authorizing prosecution, the Division authorizes a grand jury investigation to obtain the necessary evidence to obtain an indictment and conviction.

As the chart reflects, the percentage of targets that we decline to prosecute is relatively constant and low, ranging from three to six percent over this period. Moreover, our conviction rate is high—on the order of 97 percent for the 2006 fiscal year. The low percentage of declined cases and the high conviction rate suggests that the IRS is applying the appropriate standards in its case selection and that, as a general proposition, it is satisfactorily investigating the cases that

it refers. Your staff asked us to comment on whether we are overly selective in evaluating IRS referrals. In a word, “no.” The Tax Division’s declination rate is not, by any definition, high. The Tax Division’s judgment in authorizing tax prosecutions is invaluable. It would be inappropriate to bring charges that cannot be proven in a court of law and tax cases can be difficult to prove. In addition, because of the significance of deterrence in tax law enforcement, it would be counterproductive to prosecute tax cases that might not result in a conviction.

Civil Injunctions

The Tax Division continues to bring civil injunction suits to stop illegal tax fraud schemes and tax preparers who prepare fraudulent tax returns. For example, on April 2, 2007, we filed civil injunction suits against five corporations that operate Jackson Hewitt tax preparation franchises, as well as 24 individuals who manage or work at the franchises. According to the four lawsuits—filed in federal courts in Chicago, Atlanta, Detroit and Raleigh, N.C.—the corporations operate under franchise agreements with Jackson Hewitt Tax Services Inc. of Parsippany, N.J., the nation’s second largest tax preparation firm. The suits allege that one of the individual defendants, **Farrukh Sohail** of Atlanta, Ga., wholly or partly owns each of the five corporations, which prepared and filed over 105,000 federal income tax returns last year. The five corporations allegedly operate more than 125 Jackson Hewitt retail tax preparation stores in the Chicago, Atlanta, Detroit and Raleigh-Durham, N.C. areas. According to the complaint, Sohail and other defendants “created and fostered a business environment” at the Jackson Hewitt franchises “in which fraudulent tax return preparation is encouraged and flourishes.” Examples of fraud alleged in the lawsuits include filing false returns claiming refunds based on phony W-2 forms; using fabricated businesses and business expenses on returns to claim bogus deductions; claiming fuel tax credits in absurd amounts for customers clearly not entitled to any credits; and massive fraud related to claiming the federal earned income tax credit. The five Jackson Hewitt franchises named in the four suits are: Chicago Suit: **Smart Tax, Inc., d/b/a Jackson Hewitt Tax Service; Ask Tax, Inc., d/b/a Jackson Hewitt Tax Service;** Atlanta Suit: **Smart Tax of Georgia, Inc., d/b/a Jackson Hewitt Tax Service;** Detroit Suit: **So Far, Inc., d/b/a Jackson Hewitt Tax Service;** and Raleigh Suit: **Smart Tax of North Carolina, Inc., d/b/a Jackson Hewitt Tax Service.**

On April 2, 2007, we also filed a suit to block **Robert L. Schulz**, of Queensbury, N.Y., from selling an alleged tax fraud scheme that is estimated to have cost the Treasury more than \$21 million. Also named in the suit are two corporations, “**We the People Foundation for Constitutional Education, Inc.**,” and “**We the People Congress, Inc.**” The complaint, filed in Syracuse with the United States District Court for the Northern District of New York, alleges that Schulz has used the two “We the People” entities to market a nationwide tax fraud scheme, called “the Tax Termination Package,” to employers and employees. According to the complaint, the Tax Termination Package includes forms the defendants falsely tell customers can be used to replace forms the IRS requires employers and employees to use in connection with federal tax withholding from wages. The suit says that Schulz and the “We the People” entities falsely state that use of the replacement forms will allow customers to legally stop tax withholding. According to the complaint, the defendants base the scheme on frivolous arguments about federal tax laws that federal courts have repeatedly rejected. These tactics are on the IRS’s 2007 list of the Dirty Dozen tax scams.

In response to the government’s suits, courts across the country have barred tax preparers from preparing inaccurate returns and promoters of tax fraud scams from selling tax-evasion schemes on the Internet, at seminars, or through other means. Since January 2001, the Justice Department has sought and obtained injunctions against more than 230 tax return preparers and promoters, including 84 since January 2006, and it has filed complaints against 285. We expect to obtain many more injunctions throughout the year. The tax scam promoters we have sought to

enjoin have cost the federal Treasury an estimated \$2.5 billion, and have had an estimated 500,000 customers. The United States recently has obtained injunctions that barred the following schemes:

- Filing tax returns that falsely report “zero income”;
- Claiming that only income from a foreign source is taxable, using a spurious interpretation of Section 861 of the Internal Revenue Code;
- Failing to withhold, report and pay payroll and income taxes;
- Claiming personal living expenses as business expenses;
- Preparing amended tax returns to claim tax refunds without customers’ knowledge or consent;
- Using trusts to conceal ownership or control of assets;
- Asserting that casino gaming proceeds paid to Native Americans are exempt from federal income tax; and
- Forming a “corporation sole” for the improper purpose of avoiding tax.

We have also obtained injunctions against employers who fail to withhold, account for and pay over employment and withholding taxes.

When we obtain an injunction in federal court, compliance with the injunction stops the harm caused by the promotion of tax fraud schemes and the preparation of false tax returns. Thus, our efforts seek to minimize the number of people who get caught up in these schemes and to assure that every American abides by their duty to pay tax. Individual taxpayers also benefit to the extent that our injunction suits help to steer them away from bad preparers because clients of these preparers are often left holding the bill with little ability to pay.

Coordinated Civil and Criminal Proceedings

The Department and the IRS bring both civil and criminal tools to bear in the fight against tax fraud. An ongoing tax scam causes continuing harm to the federal Treasury and it leaves participants owing taxes, interest and, often, penalties as well. We do not wait until a criminal case has been developed to take action to stop the scam. Rather, we bring civil injunction suits to stop both the promotion of tax scams and the preparation of false or fraudulent returns. Additionally, in appropriate cases, we bring criminal charges against the promoters, preparers, and scam participants to punish them for their unlawful conduct.

Return Preparer Fraud

Fraud committed by return preparers continues to be a significant problem. Indeed, since 2004 the IRS’s Dirty Dozen list of tax scams has warned taxpayers about return preparer fraud. The current list describes the problem in the following terms:

Return Preparer Fraud: Dishonest return preparers can cause many headaches for taxpayers who fall victim to their schemes. Such preparers make their money by skimming a portion of their clients’ refunds and charging inflated fees for return preparation services. They attract new clients by promising large refunds. Some

preparers promote filing fraudulent claims for refunds on items such as fuel tax credits to recover taxes paid in prior years. Taxpayers should choose carefully when hiring a tax preparer. As the old saying goes, "If it sounds too good to be true, it probably is." Remember that no matter who prepares the return, the taxpayer is ultimately responsible for its accuracy. Since 2002, the courts have issued injunctions ordering dozens of individuals to cease preparing returns, and the Department of Justice has filed complaints against dozens of others. During fiscal year 2006, 109 tax return preparers were convicted of tax crimes and sentenced to an average of 18 months in prison.

See IR-2007-37, Feb. 20, 2007 at <http://www.irs.gov/newsroom/article/0,,id=167983,00.html>.

Corrupt accountants and unscrupulous tax return preparers cause enormous losses to the tax system and to the flow of revenues to the federal Treasury. Tax professionals often commit a large number of frauds. Indeed, in a pending criminal case, the indictment alleges that the five defendants prepared more than 6,000 fraudulent income tax returns in 2003. Promises of large tax refunds are used to attract customers. For example, **Alease Marie Lewis**, a return preparer in Georgia who was convicted on September 12, 2006, of aiding and abetting the filing of false returns, boosted her return preparation business from 200 returns to over 1,000 returns by preparing and electronically filing tax returns with inflated or fictitious deductions. An attorney for a large-scale tax return preparer told us, in arguing that an injunction suit against his client was not warranted, that fraud is commonplace and everyone does it. Tax Division attorneys continue to aggressively investigate and prosecute such cases.

People who hire a tax return preparer need to be careful when they do, not only because the taxpayer is responsible for the accuracy of the return, but also because some preparers have engaged in identity theft. For example, on March 14, 2007, **Kandi Rose Roberts, aka Kandi Kroon**, pleaded guilty in Seattle to various tax crimes and identity theft. According to the plea agreement, Roberts and her husband participated in a conspiracy to defraud the United States by submitting fraudulent tax returns in the names of others. Roberts then collected more than \$40,000 in tax refunds to which she was not entitled. In addition to the scheme to defraud the IRS, the couple also conspired to commit bank fraud. The couple made use of personal identifying information of family members and others who had used Kandi Roberts' tax preparation services. Using that information they opened bank and credit accounts. They forged checks on accounts belonging to family members and ran up large credit card bills in the names of family members and others.

Another return preparer case involving identity theft is an injunction suit in which a federal judge entered an order on August 8, 2006, that permanently barred **Jean-Marie Boucicaut and Marie Thelemarque** of Orlando, Florida, and Boucicaut's company, Tax Review Corporation, from preparing federal tax returns for others. The court also ordered Boucicaut and Thelemarque to return \$772,449 plus interest to the United States that they fraudulently obtained by intercepting and cashing 593 tax refund checks of other persons. The judge found that the defendants filed amended income tax returns for persons without their authorization who did not know that the defendants had filed returns on their behalf. The government alleged that the defendants obtained tax information from copies of old tax returns given to them after the defendants offered to help taxpayers recover money allegedly owed to

them by the IRS. The court stated that defendants used this information to prepare returns requesting tax refunds based on false credits and bogus deductions and directed the IRS to send the requested refund checks directly to them.

Examples of criminal cases that involved return preparation fraud (but not identity theft) include:

- On March 8, 2007, a federal judge in Fort Lauderdale, Florida, sentenced **Ellis Jerome Parker Sr.**, a Broward County tax return preparer, to 60 months in prison for preparing and presenting income tax returns to the IRS that falsifying claimed Schedule A deductions such as medical and dental expenses, charitable contributions, and employee business expenses. The scheme involved hundreds of returns.
- On October 5, 2006, a federal judge sentenced southern California tax return preparer, **Susan O'Brien**, to 125 months in prison, and her two associates, **Robert Richard Evans** and **William Dean Cook**, to 78 months and 24 months in prison, respectively, for tax fraud. In May 2006, a federal jury convicted the defendants in connection with promoting a \$1 million tax evasion scheme involving sham trusts and the preparation of false income tax returns. Five other defendants pleaded guilty to felony tax charges before the trial of these defendants.
- In May 2006, a federal judge sentenced Buffalo-area return preparer **Joseph C. Dettelis** to 50 months in prison for his conviction of aiding and assisting in the preparation of false tax returns, filing false claims with the IRS, and making false statements to the IRS. As part of the scheme, Dettelis charged his clients one-third of the fraudulent tax refunds they received from the IRS.

Examples of injunction cases against return preparers include:

- On March 19, 2007, a federal judge in Grand Rapids, Michigan, issued a temporary restraining order barring **Donald A. Gray** of Portage, Michigan, from preparing federal income tax returns for others. The court found that the man has been preparing income tax returns for customers based on the frivolous theory that wages are not income for federal tax purposes unless the wage earner works for the government based on a scheme promoted by Peter Eric Hendrickson in a self-published book entitled “Cracking the Code, The Fascinating Truth About Taxation in America.”
- On February 5, 2007, a federal judge in Minnesota issued a permanent order barring **Nash Sonibare**, a Nigerian immigrant who operated Liberty Financial Group in St. Paul, Minnesota, from preparing federal income tax returns for others. The court found that Sonibare repeatedly prepared federal income tax returns for customers that contained false or inflated Schedule C expenses, false Schedule C businesses, false or inflated Schedule C business losses, false education credits, false dependency exemptions, and other fraudulent items. The complaint alleged that many of his customers were immigrants from various African countries and had limited English-language skills.

- On June 29, 2006, a federal judge in Miami, Florida barred a Jackson Hewitt franchise, its owner **Ahmad Labib Baltagi**, and two employees from preparing federal income tax returns that claim a frivolous federal income tax exemption for casino gaming proceeds paid to Native Americans. The court ordered the firm to notify all customers for whom the firm made such a claim. According to the Government's complaint, the franchise operated approximately 20 Jackson Hewitt offices and employed approximately 150 tax preparers in the Miami area

Schemes and Scams in General

On March 15, 2007, the IRS issued guidance identifying 40 frivolous positions that taxpayers should avoid when filing their tax returns. IR-2007-61. <http://www.irs.gov/newsroom/article/0,,id=168637,00.html>. Many, if not all, of those positions, along with the Dirty Dozen, have been marketed by promoters of tax schemes and scams, usually through the Internet. The Lead Development Center, which the IRS established in April, 2002, with the encouragement and support of this Committee, researches information items about abusive schemes and monitors the Internet to identify tax schemes and their promoters. The IRS uses that information to open investigations that eventually result in referrals to the Tax Division for injunction suits or for criminal prosecution.

The Tax Division and the IRS have developed an expedited referral process so that the cases are quickly and properly investigated. Division attorneys have participated in training hundreds of IRS agents and lawyers about developing injunction and penalty cases against tax scam promoters.

Domestic Schemes and Scams

Criminal tax prosecutions involving domestic schemes and scams, *i.e.*, ones without an offshore element include:

- On March 26, 2007, **Todd Eugene Strand** of Murrieta, California, pleaded guilty in a Kansas City, Kansas, federal court to conspiracy to defraud the United States in the assessment and computation of taxes and mail fraud charges for his involvement in a tax fraud scheme that involved marketing a program promoted by the Topeka-based Renaissance, The Tax People Inc. designed to sell illegal tax deductions through false and misleading representations. Renaissance claimed that its customers could lawfully reduce their income taxes by deducting personal expenses as legitimate business expenses by following this program. Renaissance promoted that the program would pay for itself through reduced federal income tax withholdings and directed customers to file amended Forms W-4 with their employers, reducing taxes withheld from their salaries.
- On March 19, 2007, a federal judge sentenced **Dennis Shollenburg** and **Hazel Hagy** to federal prison for their roles in a conspiracy, to defraud the IRS in connection with a "pure trust" tax fraud scheme. Shollenburg, the President and Chief Executive Officer of First Mountain Bank, Big Bear, California, was sentenced to 37 months in prison, and

Hazel Hagy, the bank's Executive Vice President and Chief Financial Officer, was sentenced to 21 months in prison.

- In January 2007, a federal judge sentenced **David J. Orr** and former attorneys, **Todd Cannon** and **Michael Behunin**, to prison terms of 60 months, 36 months and 29 months, for their respective roles in promoting a tax and investment fraud scheme involving trusts. In February 2007, **Lanny White** was sentenced to 60 months for his role in the scheme. The defendants promoted a fraudulent trust scheme designed to help others evade taxes. Orr and White admitted that their actions cost the federal Treasury between \$5 million and \$10 million in lost tax revenue; Cannon, \$3 million; and Behunin, more than \$1 million.
- In November 2006, Valencia, California attorneys **Martin Arnoldini** and **Jerrold Boschma** were each sentenced to 54 months in prison and ordered to pay \$900,000 in restitution for their roles in a fraudulent trust scheme designed to evade federal income taxes. In a plea agreement, they admitted that they and their co-conspirators promoted the scheme in seminars, promotional materials and opinion letters, fraudulently representing to customers that their tax liabilities could be lawfully reduced by transferring businesses, homes, investments and other assets into a trust's name. Arnoldini and Boschma admitted that their actions caused a loss of federal tax revenue totaling approximately \$3.6 million and also admitted to participating in fraudulent investment schemes that caused clients to lose approximately \$1.3 million.

Examples of domestic schemes and scams that we have successfully enjoined include:

- On December 5, 2006, a federal judge in Chicago permanently barred **Carmelo Zanfei** of Steger, Illinois, and **William Crouse** of Greenwood, Indiana, and their businesses from promoting a health care reimbursement account scheme. The scheme helped hundreds of businesses and thousands of employees avoid federal employment taxes and, in the case of the employees, resulted in the under-reporting of income. According to the court, Zanfei and Crouse sold illegal or improper health care expense reimbursement plans to hundreds of employer-customers. The court concluded that the defendants knowingly misrepresented the tax benefits to employees and employers in selling these plans. According to complaint, the IRS estimated that the defendants' schemes cost the United States Treasury losses of between \$12 million and \$63 million and would cause ongoing losses of between \$6 million to \$24 million per year if the defendants were not stopped.
- On November 29, 2006, a federal judge permanently barred **John Baptist Kotmair, Jr.**, of Westminster, Maryland, and his organization, "**Save-a-Patriot Fellowship**," from selling a tax-fraud scheme. Kotmair promoted the position that U.S. citizens need not pay any taxes on income earned within the 50 states – a view that has come to be known as the section 861 argument. The court said the defendants boasted that their operation "has grown into a complex" of property with the equipment necessary to generate large numbers of frivolous documents to file with the IRS. The court found that Kotmair and

his organization knew or had reason to know their statements to customers were false but “stubbornly choose to ignore the rulings of numerous courts.”

- On November 17, 2006, a federal judge in South Carolina barred **John Howard Alexander** of Greenville from promoting schemes that promise tax benefits based on statements to customers that United States citizens are not subject to tax, that residents of South Carolina are not required to file federal tax returns while working in the United States, and that customers can escape tax by revoking or rescinding their Social Security numbers.

Offshore Schemes and Scams

IRS referrals to the Tax Division for criminal prosecution or for the commencement of an injunction suit frequently involve offshore tax fraud. Criminal tax prosecutions involving offshore evasion include:

- On December 15, 2006, **Robert N. Bedford** was convicted of conspiracy to defraud the United States and to cause the filing of false tax returns. Bedford, **Paul D. Harris**, and **Lester Retherford** ran an organization called **Tower Executive Resources, Ltd.** that specialized in offshore tax evasion and to which wealthy taxpayers paid initiation fees of up to \$50,000. The Tower promoters set up shell corporations that were used to conceal more than \$11 million in taxable income. Clients transferred these millions to secret offshore bank accounts in locations such as the Turks and Caicos Islands titled in the names of nominee entities. Following their convictions, Harris and Retherford received prison sentences of 66 months and 48 months, respectively for their roles in the scheme. Bedford is awaiting sentencing.
- On June 29, 2006, a federal judge sentenced five defendants, **Dennis Poseley** (84 months), **David Trepas** (60 months), **Patricia Ensign** (18 months), **Rachel McElhinney** (16 months), and **Keith Priest** (18 months), to prison terms for their respective roles in promoting a tax evasion scheme that used offshore trusts and bank accounts. The defendants advanced their scheme through domestic and offshore seminars, a promotional website, an interactive telephone conference line, and the use of offshore banks and nominee entities. From 1996 through early 2003, the defendants received \$4.7 million in fees from the sale of 2,000 “pure trust packages” that enabled customers to hide their income and assets from the IRS.
- On May 30, 2006, a federal judge sentenced **John David Van Hove** (aka “**Johnny Liberty**”) to 27 months in prison for his role in a tax fraud and wire fraud scheme. Van Hove offered his clients various schemes for hiding income and assets from the IRS, including the use of “common law trusts” to conceal ownership and control of assets and income and the use of offshore trusts with related bank accounts in which assets would be repatriated through the use of a debit card. He also offered to set up International Business Corporations (IBCs) with no independent economic reality that did not represent actual ongoing business concerns. Van Hove also used misrepresentations and false promises to obtain money from clients.

Examples of offshore schemes or scams that we have successfully enjoined include:

- On March 22, 2007, a federal court permanently barred **Victor Carlisle Sullivan Jr.** of Albany, Ga., from promoting and organizing an alleged tax fraud scheme involving the use of offshore trusts. The government alleged in the complaint that Sullivan, a Certified Public Accountant (CPA), promoted a tax fraud scheme that used sham domestic and offshore trusts to help customers evade taxes and to conceal their income and assets. The complaint stated that the IRS estimated that the trust scheme cost the U.S. Treasury over \$5 million since 1998.
- On November 20, 2006, a federal court permanently barred **Lynn Lakers**, a Boulder City, Nevada, tax-return preparer, in connection with an alleged offshore-trust tax scam. The complaint alleged that Lakers, participating with three others, prepared false tax returns for phony trusts sold by her fellow defendants. According to the complaint, the IRS estimates that this tax fraud scheme resulted in at least \$31 million in lost revenue to the federal Treasury. According to the complaint, the scheme allegedly helped customers hide their income from the IRS in Caribbean bank accounts. The defendants' customers allegedly used phony loans and gifts to repatriate their money while concealing it from the IRS. Customers allegedly paid as much as \$14,500 to participate in the scheme.
- On April 3, 2006, a federal court in Orlando permanently barred **Pierre Gauthier** of Longwood, Fla., and his father, **Jean Jay Gauthier** of Daytona Beach Shores, from promoting an alleged tax-fraud scheme. According to the complaint, the Gauthiers helped customers set up offshore trusts and corporations to conceal their income and assets from the IRS, while using offshore debit or credit cards to repatriate the funds.

Tax Crimes Committed by Federal and State Prison Inmates

Fraudulent refund claims filed by prison inmates have been a significant tax enforcement problem for the IRS in recent years. The IRS has attempted to address this problem, in part, by obtaining lists of federal and state prisoners in an effort to screen refund claims and by working with prison officials to reduce or eliminate access to tax forms and materials.

A recent criminal prosecution illustrates one scheme for committing this crime. **Marvin Kirk Jones** and his daughter **Shanika Jones** were convicted on January 16, 2007, of conspiracy to file false refund claims. While serving a life sentence for murder as an inmate in the Georgia Department of Corrections in Nicholls, Georgia, Marvin Kirk Jones solicited or stole social security numbers from fellow inmates and used this information to create false Forms W-2 and file 30 false Forms 1040 EZ. The corresponding refunds, which were made payable to individual prisoners, were directed to addresses controlled by either Jones' ex-wife, Sylvia Jones or his daughter, Shanika Jones. The intended tax loss exceeded \$200,000.

Under current law, when IRS has information about fraudulent claims filed by an inmate, the IRS can refer the matter to the Department for prosecution or an injunction suit, but cannot disclose tax information to prison officials to prevent further false claims by a particular prisoner

because of tax confidentiality restrictions. Code section 6103(a) prohibits the disclosure of tax information with specified exceptions, and none of the exceptions permit the IRS to refer inmate tax fraud information to prison officials to prevent further violations or to impose administrative sanctions.

Criminal prosecutions or injunction suits against inmates have minimal deterrent effect, are expensive, and are not as effective as administrative remedies and punishments imposed by prison officials in preventing the misconduct. The President's 2008 budget proposal recommended enactment of legislation authorizing IRS to disclose limited return information to federal and state prison officials about tax violations committed by inmates. An amendment to H.R. 1591 authorizing disclosures to the Federal Bureau of Prisons, but not to state prison officials, was approved by the Senate on March 29, 2007. Disclosure to Federal prison officials was also included in the Taxpayer Protection Act of 2007, H.R. 1677, approved by the Ways and Means Committee on March 26, 2007.

Conclusion

Thank you again for inviting me to participate in this hearing, and thank you for your continued support for the tax enforcement efforts of the IRS and the Department of Justice. I will be pleased to answer any questions that you have.