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TAX CRIMES

Second Edition

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MATTHEW  BENDER

Preface

For many years, LL.M. programs in taxation offered courses that covered criminal tax issues. Criminal tax procedure often was included in survey courses of tax procedure, and sometimes the criminal tax penalties were covered in a separate course. However, until we offered the original version of this book, no casebook included both the substantive and procedural issues involved in the investigation, prosecution, and defense of criminal tax cases. We believe that this book is the only published book covering those subjects.

The book begins with an overview of the criminal tax system, the personnel involved, and an introduction to some of the issues that will be addressed in more detail in later chapters. We then discuss the elements of the numerous crimes for which a defendant may be charged, focusing on key aspects such as willfulness. Next, the book covers how tax cases are investigated, including the most common steps from a civil tax examination through indictment. In these chapters we will examine the tools the Government has at its disposal to obtain information, as well as the defenses a person under investigation may assert. We then turn to trial and sentencing issues, and we examine the ethical issues and collateral consequences that arise in the investigation and litigation of criminal tax cases. Finally, the book provides a review of the criminal tax system, allowing the reader to put all the foregoing concepts together, with a special emphasis on practical tips for handling these complex and exciting cases.

Each chapter closes with a practical problem designed to highlight some of the key issues addressed in the cases and materials. The problems are based on situations encountered in practice or found in decided cases. Although some of the problems either state or disclose the issues and even the applicable statutes, many of them require analysis of a given set of facts to first determine and then resolve the critical issues.

Books in the Graduate Tax Series are designed to be read with, and complement, the study of the Code and Regulations. LL.M. programs build on, and significantly expand, students' knowledge of the Code, Regulations, and judicial doctrines. But this casebook should be accessible to J.D. students as well as LL.M. candidates, as long as they have had exposure to a basic federal income tax course and some introduction to federal civil, criminal, or tax procedure.

The focus of this book is primarily on criminal tax matters. However, many criminal tax cases begin as civil audits, and most criminal tax cases end with the IRS attempting to assess and collect the taxes it alleges are due and owing. Thus, we will examine civil tax procedure as it relates to criminal tax cases in some detail. For additional information on civil tax procedure, we recommend David M. Richardson, Jerome Borison, and Steve Johnson's *Civil Tax Procedure*, another book in the LexisNexis Graduate Tax Series.

In the original version of this book, we thanked many people who have helped and inspired us in the journey that led to the first version. Their contributions are still with us and present in this version of the book. Others we unintentionally failed to name also contributed. And since the publication, others have contributed to our understanding, practicing, teaching and writing on the subject of tax crimes (as well as living a better life). Rather than attempting again to name those contributors, we just state here that we

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greatly appreciate contributions. We are indebted to them to pass the torch that they lit. We are reminded of Thomas Jefferson's great quote:

He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me.

We hope that others will light their tapers from ours and pass the instruction so generously entrusted to us.

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