



Podcast 104 – Voluntary Disclosure Update with John and Laura

Eric Green:

Hey everyone. Thank you for joining and listening into this week's Tax Rep Network podcast. I am Eric Green. Joining me today are John Nail and Laura Gavioli. John is a tax controversy attorney with Chamberlain Hrdlicka in Atlanta, Georgia where his practice is where he focuses, like many of us, on civilly and criminally representing taxpayers before the IRS and exams appeals litigation in federal district court, US tax court, and IRS obviously administratively.

Laura is a tax controversy attorney with Alston Bird in New York where she also represents those taxpayers facing civil and criminal tax issues. More importantly, they are both my committee buddies at the ABA tax section, civil and criminal penalties' committee, where we are, the three of us are, the subcommittee on voluntary disclosures. And so we just went through the process of updating the ABA tax section on the changes in voluntary disclosure. They've been many. And I just thought, "Hey, it'd be great if we could get together and do this for the podcast." So John and Laura, thanks for doing this as always.

Laura Gavioli:

Well, thanks for having me.

John Nail:

Thanks for [inaudible 00:01:16].

Eric Green:

No, no, I think it's great. And there's a lot going on. In fact, I wish I'd recorded our conversation when we just logged on because that was actually good. So I thought why don't we start with domestic voluntary disclosure. And John, if you don't mind, for the folks that are listening that they've heard voluntary disclosure. It's a foreign bank account thing. But we've had a domestic voluntary disclosure program for a long time. IRS has done domestic voluntary disclosures. Can you sort of just for the audience bring them up to speed on what a voluntary disclosure is and kind of how this works?

John Nail:

Sure. And I think a big thing is the offshore voluntary disclosure program that everyone is I think familiar with, heard a lot about it over the last few years. That ended in 2018 and this new program is really geared towards voluntary disclosures for all types of tax, both foreign and domestic. And so, I think the concept of the voluntary disclosure is the taxpayer coming forward

in a timely manner, providing truthful and complete information, a lot of information, to the government.

And the new program is defining voluntary disclosures as requiring the taxpayer to one, cooperate with the IRS in determining tax liability and any reporting requirements, two, cooperating with the government with any investigations of advisors or enablers, three, submitting required returns, reports, any information along those lines. And then four, paying the liability or making a good faith effort to pay the liability in full tax interest and penalties.

Eric Green:

Yeah. And there's a lot to unpack there. And I want to bring this up again because I don't know if you guys have had this experience. I've had it. John, you mentioned the client comes forward and makes a full, complete, and honest disclosure. And the goal here of the voluntary disclosure program, at least what I've always felt it was, is the bargain is we're going to clean this up, and because you don't know about me IRS, you're going to agree that because I come forward you will not criminally prosecute me or refer me for prosecution.

But I've had clients, and perhaps I'd like to hear if you guys have had this, where the client starts playing games where they're sort of going to come forward but not really come forward. We really don't want to tell them about everything. And we were talking about the form, which we'll get to a little bit later. Laurie, I mean, how much of a deep dive into your client and their affairs do you have to do?

Laura Gavioli:

Well, I mean, particularly under the changes that have happened in the 2020 guidance and 2018 guidance, and this has been kind of a process over the last 10 years since the UBS scandal and the evolution program, it places the burden so much on the tax practitioner when a client comes in the door to really get to know your client well, and get complete disclosures at the very outset of the engagement, which can be tough because you're building a relationship of trust with that client. These are pieces of information they haven't disclosed to the IRS. It's their personal financial dealings. A lot of time it's family issues. You really have to drill down and get everything that you can because pre-clearance... so the new form requires a tremendous amount of information about your financial assets, your offshore advisors, where everything is located.

And to actually be accepted into the program you now have to sign a detailed narrative under penalties of perjury, a narrative that can't be amended. It can't be supplemented down the road. And it has to lay out all of the factors describing why you were not compliant in the first place. And has the practitioner representing this client you really have to work with them before you even come in the door with the IRS to get everything possible.

I mean, I'm sure we've all had the experience to have a client coming back six months in and saying, "Oh, I didn't know they meant all the accounts," or, "Oh, I forgot my uncle left me this money. And I'm the signatory on this account in Hong Kong," or whatever. So it requires you to really get all that information at the outset in ways that we haven't always done in the past.

Eric Green:

Yeah. And I actually used Mr. Schiavo in Boston as the example of this. And for those of you listening, who are not familiar with this when the offshore program started, I think in '09, Mr.

Schiavo who is at, I think, Boston Consulting or Bain, one of the big consulting firms in Boston, who had hidden Swiss bank accounts, decides he's going to do a quiet disclosure, which means you don't do the program. You're just going to quiet... That's why it's called quiet. You're just going to amend the returns and file them.

So that's what he does. He files them. But you know what? He'll give him some of the accounts, but not all of the accounts. It's like the criminal that says, "Look, I'll report some cash because it looks dumb if I don't have some, but I don't want to give them." So, he does a partial disclosure, if you will. Well, when the UBS information came over and the government then went to match, they began to realize that Mr. Schiavo had given some of the accounts, not all of the accounts. Special agents went and knocked at Mr. Schiavo door one morning. He said, "Give me your card. Thank you very much," which is smart and shut the door.

The next day or two days later, he filed amended returns, the amended to the amended. He reamended his returns and now picked up everything. So the lesson there is he committed fraud on the original filing. He committed fraud on his quiet disclosure and just admitted to it when he filed all the amended returns without being prompted by... He couldn't even sit across the table and be like, "I haven't touched that account in 20 years. I just forgot about it." And so he was prosecuted.

So, the lesson I use when I tell that story is if we're going to do this taxpayer potential client, not to become risqué, but you're taking it all off. We're not hiding anything. You're showing the government everything. This is not a time to start playing a shell game because one, you're now on their radar, right? We're now handing this. This will get assigned to a civil auditor who's going to go through it. I find the auditors are very good that they pick to do this. I find the auditors are very thorough.

And by the way, we've done a lot of voluntary disclosures in the last several years where I've had non-filers who just have no records. And the only way to really fix that... For instance, if you had undocumented workers, you have no records. I have no IDs. It's not like I can just file the missing returns. I have no info. That's something you can really clean up through this. And we'll get into that. And they're aware of it. And I find the auditors to be pretty fair, but they are very thorough.

And so, one of the things, John, again, to go back to you, you listed those things and let's talk about them. I think the lesson for people if you're a CPA listed and you have a client, one, this is an area I would get an attorney involved, someone who does a criminal tax controversy because there are issues there that you may not spot that they will or at the very least help craft the disclosure. There some streamlined offshores where I would have a CPA, EA say, "look, I'll consult with you. There's no reason you can't do this." Right? I'm in New Haven. We have Yale. So, we have a lot of professors that come from overseas, a lot of students come from overseas. They left the account there. I'll tell the CPA, "Look, do the form. If you want, I'll review it. I'll charge an hour or whatever." This is a kind of a no brainer.

When you're dealing with domestic... And again, John, you mentioned the idea. These are people that have criminal exposure. So, you have a client now, and I want people to understand this. Unlike the offshore streamlined, when you... I always felt voluntary now is, and this may be foolish, is more serious because what we're dealing with now is someone who has theoretically knowingly filed a false return. So, they've committed a crime. We're dealing with a criminal. They probably don't think of themselves as criminals. The government does know about them

yet. So, the risk here... I mean, would you agree? The risk here I think is much higher versus like, "I left my account there four years ago and I'm looking at \$40,000 in negligence penalties."

John Nail:

Yeah, that's right. I mean, I definitely think you are coming forward with as much information as... especially part one and part two of the form as well. But part one, because the government has taken an interesting tack with the form, which is really this is only intended for clients with criminal exposure, that there's willful non-compliance. There's a lot of clients that you're talking about that maybe they don't see themselves as criminal. Maybe they see themselves as, "I messed up, but this isn't the same level as criminal tax evasion. Do I need to do voluntary disclosure?"

It's all or nothing now, because you either A, choose to do one of the... The government says if you don't think it's criminal then you do a quiet disclosure. That's an interesting change over past few years where they said, "Don't do a quiet split of truth. Under no circumstances is that a good idea." Now they're saying, "Yeah, you should do the quiet disclosure if you don't think it's criminal." But if you decide to go the criminal route, like you said, you're giving them everything because you can get through the whole process. And at the end of the civil audit, you've given them really just about everything the government discovers you made a materially false statement on one thing, your pre-clearance is revoked. And suddenly it's getting referred back to CI for potential prosecution. I mean, that is certainly something that is a big risk at this point.

Eric Green:

Well, and you mentioned the form. Let's get to that in a moment so the audience knows what we're talking about, part one, part two. But it used to be... When the memo, the 18 memos, came out and it had about, "You should only do this if you believe you have criminal exposure," I actually call Frank Agostino. I said, "Do you think they did that because of us?" Because I would take every non filer... Let's say a non-filer came to me. First thing we would do is voluntary disclosure. I don't know if we even have criminal exposure, but you know what? Let's get our foot in the door before they know about it. All right? I could negotiate maybe let's just do three years.

It was the open for negotiation. So, I would get them in. So, this way there was... My fear was a 7203, potential willful failure to file a return kind of thing. Let's just get them in, right? Let's throw the voluntary disclosure. It'll take them six months to a year anyway. We can work on the returns or whatever we're going to do. So, I would shove non-filers in. And my sense was that the government was like, 'No, we don't want those people in voluntary disclosure.'

If you're purely just filing returns and there's nothing else that you believe rises to criminal intent, like you said, you can call quiet disclosure, just file the returns or just amend the returns. Again, another good reason or I think to have a criminal attorney involved, because you're now making a judgment call on do you have criminal exposure. But I remember when that came out and I remember thinking to myself, "Oh, there goes that," because, like you said, you're agreeing to a 75% civil fraud penalty. But, John, can you expound on... when you said part one and part two explain to the audience the form and kind of how this works.

John Nail:

Sure. And so, the form itself was released in April of last year. So, it's the form 14457. The instructions really are... that became, I think, the guidance that all practitioners are relying on

now, because you were referring to the memo that came out in 2018. That lapsed. And now it's this new form. So, part one is the pre-clearance request. Unlike prior pre clearances, which were very... my experience is in the offshore area. There's not a ton of information. There's certainly some but not a lot of information.

Here the taxpayer is giving up a lot of information to the IRS and sending it in. There's no signature required. So, it's not under penalty of perjury or anything like that, but they're giving a lot of information. And it's things like passports, entities, account numbers, addresses. And then after that time the government has at least 30 days, they say it might be longer than 60, to consider it. After the consideration, if it's timely, meaning they haven't gotten them from... There's a very specific standard for timeliness that we can get into. But if it's timely and complete, they will pre clear you for disclosure. And then you have 45 days to submit part two of the form 14457.

And that is where you're providing again, another round of a significant amount of information. But in addition to that, you're also providing a narrative of all non-compliance during the covered years, which will be generally speaking the past six months. And that narrative can't just be the good facts. It's got to be the good facts and the bad facts. The narrative can't be supplemented. So, if the taxpayer decides, well, we'll give some of the information now and if they find something we'll supplement, that's not an option. It's has to be complete. It has to be truthful. And it has to be signed under penalty of perjury. So that is a big step forward because that's all before acceptance into the voluntary disclosure program.

Eric Green:

Yeah. I mean, the pre-clearance before this was literally name, social, date of birth, and address. You gave them nothing. They had no idea why you were coming in. Laura, does the form bother you at all? I don't like the form, especially the pre-clearance aspect of it I don't like, because like John just laid out, does it bother you we're giving the government so much stuff right up front where we don't know if they're investigating us or not?

Laura Gavioli:

Well, absolutely. I mean, I think it, because there's so much disclosure required upfront, it's very hard to gauge what the IRS is going to do with the information. I mean, Eric, you've described kind of a historic voluntary disclosure practice where you're going to a local CI to make the disclosures. Sometimes you can even tell story on an anonymous basis. Those days are over. Under this form it's very clear the practice is centralized. It's one unit maybe far away from where you and your clients are, and you have to go through this process. You have to basically give them a lot of information, particularly in the offshore area, about financial accounts, which the client may not have, or what they have may not be complete and accurate yet. And sometimes it does take time to get these records.

So, you have to then decide. You can't just, like Eric you described and I think that was a lot of people's experiences historically, is you have a client come in the door. They have an issue. They haven't filed or they have problems they didn't do amend. And your instinct is let's put them in voluntary disclosure right now. Let's beat the IRS to the punch to make sure it's timely. Given the requirements upfront now you're going to need to probably take more time before you go that route and submit this form.

So, the problem is if you want to encourage voluntary compliance and you're putting this big burden on people to take that first step is it actually a deterrent in some ways, particularly where these are criminal cases and where things like the narrative could be used against a taxpayer that gets rejected ultimately as not being timely can be an issue.

Eric Green:

No, the form is a problem to me, almost to the point of it being a real hang-up, because the gut call is do we bring them in? Well, here's what I think it comes down to. If we do the form and we submit the form with a passport account, whatever, information, will that give up the fraud? If it will I really have to think hard about this because it's a real gamble. I mean, to throw everything on the table, if that won't give up the fraud, I might be more inclined to do it if the fraud is in some other area of the return. But if it were like I didn't disclose the account and now I got to list my accounts effectively the pre-clearance is the disclosure.

And so now, I mean, I'd have to tell the client, "Look, this is the gamble, because we don't know if you're under investigation." It feels like in many ways they wiped out the pre-clearance. They call the pre-clearance, but not really, right? In some ways, if you give them all of this you could be just giving them everything. The narrative is simply putting it to a narrative.

Laura Gavioli:

Well, and I think it's a product too of the fact that the IRS is receiving information from so many different sources now, particularly in the offshore area that they're trying to retain discretion because they're receiving volumes of information they're trying to process, and they don't know if they have. Sometimes I think they don't know, in some cases, if they have information on a particular taxpayer and wants to disqualify them from voluntary disclosure. I mean, between things like the Coinbase summons with cryptocurrency they have names of account holders there. FATCA they're receiving a ton of exchange of information, but query whether if they have these volumes of information and they haven't gotten to it yet doesn't it help them for a taxpayer to come forward and say, "Here you go, here's my connection. I'm laying this all out for you. And I want to pay the tax and I want to come forward. And I'm agreeing to these penalties as part of the process." I mean, to me, it seems like that's kind of the point of voluntary disclosure is to bring people in.

Eric Green:

Well, and it does dampen sort of the gusto to do this. By the time you get a taxpayer who wants to come clean and you've gone through everything, this I think does act as a deterrent. At least if you could do the voluntary disclosure prior to the '18 memo where it was just name, date of birth, social, and address, you could get that in. So now you're at least in before you've heard from the government formally, and you wouldn't maybe have to turn over information if they came back and said, "Sorry, you're not cleared. You're on somebody's radar somewhere." It really is a problem.

By the way, from timing, I'd be interested to hear what you guys are seeing. It's over a year. I mean, we submit these. We're waiting now well over a year. In fact, I was getting very frustrated, and then I think in '18 we did the full day criminal tax program. I was a Zhanna Ziering at Caplin Drysdale. She looked at me, she's like a year. We're on 16 months and haven't heard. We go, "Okay, at least it's not just me." So, I know it says you'll hear 30 to 60 days. If that happens, it's

probably because they could knock them out right away. Otherwise, I think I'm finding, and just for the audience, it's been well over a year on most of ours before we hear from anyone.

Laura Gavioli:

Yeah. That's been my experience too. And I have had this situation too. I mean, you're talking about... Again, this is intended for people with criminal exposure. You've put in a pre-clearance request, you're sitting there, you haven't heard anything. During that time current year tax returns are coming due, estimated tax payments have to be made. So, you have to make some decisions about what you're going to do and kind of hedging your bets about whether this is going to be accepted or not and whether you go ahead and advise the client to make those payments and file those returns and what they'll look like.

Eric Green:

Which does come down... The whole timeliness is an issue. What qualifies to be timely in, have you actually seen them reverse? Have you ever gotten somebody pre-cleared and then have the government then try to undo that? I have not. Somebody told me a story about that. I have not experienced that.

Laura Gavioli:

I haven't seen that. I have had people certainly rejected from voluntary disclosure as untimely because they've received information from other sources in particular like Swiss banking program, that kind of thing.

John Nail:

Yeah, that's my experience too. I haven't seen that, but I mean, I guess I can imagine as they're getting these extensive amounts of information and John Doe summons, maybe not knowing what they have and then coming back after the fact, that would just be surprising to me. And that's probably why it's taking so long on the front end though.

Eric Green:

Right. Before we move over, because I do want to talk about the change in the offshore program, but one of the things that did strike me, you have to make a good faith effort to pay. So the client comes in. They'd like to clean this up. Whatever it was that they had... They don't have the money. It's gone. It used to be you come in, there'd be a bill. And then you had all your normal collection options available to you. If you can full pay, you full pay, installment agreement, or uncollectible, or offering compromise.

What is going on with that? I mean, I know you have to make a good faith payment. Have you seen or what kind of guidance is there for people who can't? Let's say you know right out unless they hit the lottery, they can't.

John Nail:

Right. I think you're seeing that now with... It's again, talking about the amount of information that's required upfront. After you get that initial pre-clearance under part one with your part two submission if you can't pay, there's a box for you to check to say that you do not anticipate to be

able to pay that liability. And then to be able to get in under part two, you have to submit the standard 433, whatever is applicable for the disclosing entity.

So, you're going even further down the information rabbit hole at that point by giving information about financial assets, income, other things of that sort that's, again, another document that signed under penalty of perjury. So, I definitely think that's a big part. It's great that they are recognizing upfront that these are big penalties, but it is also another significant amount of information that they have to give before they get into the program.

Eric Green:

Right. Right. So, I think the takeaway here is domestic voluntary disclosure is there are pitfalls. I've told CPAs, EAs you don't need an attorney. You can do this, whatever. This is not one of those. This is one where you're going to want to have an attorney involved assisting you with this because there are going to be some... You're going to have to make some calls and actually give advice. And I would suggest we're really now bordering into criminal legal advice, which I would not recommend CPAs and EAs should be doing on their own, no matter how long they've done this. All right. So, with that, Laura, can you update us on offshore? Where are we with the offshore program?

Laura Gavioli:

Well, with offshore you're going to be following basically the same... You're going to be using the IRS form 14457 that John described. Under the program itself which you're going to be looking at is the 75% civil fraud penalty like you are in domestic, but you're going to be looking at 50% willful FBAR penalties. That's the standard.

There is some room for you to go in and say that you are the extraordinary case where a 50% penalty is not going to apply. And you do have the ability on a case-by-case basis to talk to negotiate information return penalties. They're not automatic. But it is a steep ask for people who have not yet come forward under any of the prior offshore programs. But what the new program guidance is doing is sort of merging domestic and offshore into kind of one voluntary disclosure practice and just adding on the FBAR penalties and information return penalties as part of the audit process in a voluntary disclosure.

Eric Green:

Does streamline still exist?

Laura Gavioli:

Absolutely. Yes. Streamline still exists. So does delinquent information return submission procedures, and those are encouraged in cases where you don't have criminal exposure. This is really intended for those people who streamlined or delinquent information returns don't fit well basically. They have some factors of willfulness related to the offshore accounts.

Eric Green:

Right. And John, to qualify for streamlined again, for those folks who were not familiar with it, Laura just said it can't be willful. What does the streamlined program look like?

John Nail:

Right. And so, it's certainly something where you are looking at... I think most people are going to be considering the lack of willfulness as the main component when they are bringing people forward. And that's going to be a determination that is made really at the outset. And I think that's for people with offshore accounts who maybe that's something that they didn't know they had signature access to or something along those lines. You're going to have to go to a professional.

And as you said, really, the key is even if they're working with their CPA, having a CPA touch base with an attorney saying, "This is who I have." There's got to be a determination there made to make the decision between going into the streamline, the delinquent filing programs, versus stepping into the voluntary disclosure program and everything that comes with that.

Eric Green:

Well, yeah, because this can get murky. So, for the folks listening, there are some very clear examples. So, for instance, I had a guy, MBA, a Yale undergrad, Harvard MBA, did energy deals all over the world. He was one of my first folks who came in for OVDI. Was that... or OVDP, whichever one was first, in '09 or 2010. He was the first one in that I had. He would actually do deals that had to be paid in cash. He would literally carry it to a Swiss bank. There was no argument given his education and background and the amounts involved that it was anything but willful. That was easy. We're taking the 20% deal, which was the deal at the time, and we're doing the program.

Then we have, as I mentioned, we have a slew of these, "I'm a Yale professor for three years. I left my accounts back in the old country." We're doing a streamline. In fact, it offends me that they even should even give up 5%. I mean, the government really has no claim on that in my mind. I wouldn't say it's a Scribner's error, but it almost is, right? I mean, most people around the world don't think that I have to disclose to the US government, the account I got as a kid in France or India or wherever. Those are easier.

Then you get kind of these people who are in the middle, right? "I left the accounts in the old country, but I've been moving money back and forth. No, I've never told my accountant about that. But when we go back, we'd like to spend that money there." And now we start to wander from the black and white into one of the shades of gray. What I'm doing is I'm agreeing with you, Laura and John. I think this is an instance where you really want to have an attorney at least vet it because once you start out of the white or the black into the gray someone's got to make literally a legal opinion on what they think the potential exposure is.

One thing though I do want to ask you about is, I'll tell you what I think, but the idea of quiet disclosing with the offshore bank account. Now, I did a ton of this in '09 and '10 because we had this, "I'm a professor. I came a year ago. I just moved..." I had one moved from Naples, Italy, didn't even speak English to be here near her grandchildren. So, she's been in the country for nine months. Why would we give up 20% of her life savings to the US government when there was clearly...? So those people, we just quiet disclosed, meaning it was like one year, right? We just filed it late. And it was paper filed in Detroit. And if you did it the right time of year it just got buried with 20 million other ones.

What would you advise clients today where everything is electronic and online, and if it's delinquent you have to say why? And FinCEN, as far as I'm concerned, knows in 10 seconds that you've quiet disclosed.

Laura Gavioli:

Well, I mean, I think you kind of have to go back to this is the guidance. I mean, I think you probably do need to follow a delinquent information return submissions and give the reasons why it's disclosed. I mean, there've been a number of problems, particularly around 3520s recently with reasonable cause statements for those. But I think, yeah, I mean, back in 2009 it was somewhat easier, although the advice was pretty disjointed, right? It was, okay, you can make a quiet disclosure, but then several years later they came back and said, "Well, quiet disclosure is not a voluntary disclosure."

And they've now come back full circle and said, "No, we want you, if you don't have criminal exposure to do a quiet disclosure." So, it's a little disjointed. But I think probably to be on the safe side you should be following delinquent information return submission for procedures.

Eric Green:

Yeah. Which, by the way, if you're listening, what that is, and you can grab this on the IRS website, is if your income tax returns are accurate, so in other words, there's no unreported income it's merely the failure to file the foreign forms, these information returns, don't come into any of... don't do streamline, don't do offshore. Just file what they call the delinquent foreign information return procedures. You just file them. Often you write a statement across the top and you tell them that's how you're filing it.

Same with the FBARs. You can go online and there's a box Y. And I always made sure income tax is properly reported. We are filing this missing form pursuant to the delinquent procedures. What happens more is there's no leeway. The return has to be accurate. So, the person comes in, they didn't disclose the foreign accounts. And by the way, they believe some of the charitable deductions are inaccurate. And it's like, okay. I don't think you can quiet disclose.

What my feeling would be if you can do delinquent, that's great, streamlined, and you're willing to give them the 5%, fine. I think the idea that look, we'll amend the return to fix the... that we'll go and we'll quietly do the FBARs. We'll just quietly file the return. I don't see how a quiet disclosure works anymore because the government with its use of both artificial intelligence and just data mining and data comparison, I don't see how the government doesn't know in five seconds that you now have done a quiet disclosure of a foreign account.

Now, again, I don't know what they're doing with that. I mean, there is a limit to how much manpower, womanpower, professional employee power... to be very woke. I mean, there are only so many cases they can do. But that might be an easy one. Just send them a bill for \$10,000 a year. And in that case, maybe the streamline starts looking a lot better, depending on how much you had in the account. I just don't think the old quiet disclose would work. If you fit into delinquent, you're going to do delinquent, right? You'd be crazy not to.

Streamline now 5% depending how much was in the account you started doing one of these, the risk, of course, being what, 10,000 per year per account potentially for six years, that gets very expensive.

Laura Gavioli:

Yeah. Well, I guess the answer is quiet it's not very quiet anymore. It's pretty noisy, right?

Eric Green:

To a computer it's loud and clear.

John Nail:

It requires you to take the government at its word that they will not... they want you into that quiet disclosure program. And I think that there are certainly some people who might, but they also say with the voluntary disclosure relating to joint returners, they say even if one spouse is not willful, they should come into the program. So, I mean, I think a quiet disclosure gets very dangerous.

Laura Gavioli:

Yeah. Well, and that guidance too. I don't know if you guys do much innocence [inaudible 00:38:42] but that guidance to seemed a little unrealistic in many cases. And usually if there's doing a voluntary disclosure they have criminal exposure, they're doing this. They're probably having some marital problems as well. And with the other spouse is not going to be willing to go through this process without a family court potentially being involved in it. I think that's great that they want the both spouses to join in, but I think it's going to be a tough sell in a lot of marriages, I would imagine.

Eric Green:

No, in fact, what's funny is we also see it in the whistleblower but in reverse where we... And literally, a few weeks ago, we did a podcast with Gary Alford who's the special agent in charge of New Haven, who you may know because he broke the Silk Road case. But he was in New York. Gary. Gary is now up here in New Haven, and Mike Villa from Meadows Collier we did a program on whistleblowing where we talked about...

I don't know if we talked about it, but I've had kind of the reverse where they don't care if they get hurt, they just want to hurt the other one by whistleblowing. And we have to try to talk them off the ledge because what happens is husband is cheating, gets caught, but husband and wife were both skimming out of the restaurant. So now they go to get divorced. He provides the returns and she's like, "Hey, wait a minute. I know those returns aren't right." And now wants to whistleblower just because, "No, no, no, no, no, no. We don't want to do that." There are other ways to get even, but that's not one of them.

And so, look, we're actually running out of time. So just to wrap up first of all, thank you both for doing this. And for those listening, I'm going to put John and Laura's information in the description below. So, if you want to get in touch with Laura and John, you need a consult, you can get a hold of the two of them. But I guess John and Laura, just if you don't mind kind of final thoughts. Again, I'm aiming this at the CPAs and the EAs that are listening I guess Laura, you first, what would be your last thought, your last advice?

Laura Gavioli:

Well, I think just that these are very sticky situations and there are a lot of options. The best option obviously is to come forward and to get the advice of an attorney to do that. Even with the increased disclosures you're going to see up front I can tell you from cases that didn't come forward or cases that got rejected from a voluntary disclosure, it takes an enormous amount of time in your life and expense if you don't come forward. So, the go talk to an attorney if you're having this issue or tax professionals if you're having this issue for a client. We're here and there a number of good options for making disclosures.

John Nail:

And I think just to kind of piggyback off of that, I definitely think that the key phrase here is due diligence. You definitely have to do the background work. You have to ask the question and then ask it again and then ask it a third time a slightly different way to make sure your client's giving all the information they have and really know about. I mean, I think it kind of comes back. I think I remember hearing Frank Agostino at one of the early ABA meetings I went to where he said trust but verify. And I think that's especially more so now. You really have to get into the background of what a client has done, knows, and what they can prove to make these disclosures, because you're not guaranteed a lot of time. You might end up getting time because it takes the government some time to get around to it. But you're not guaranteed a lot of time to then go get the information.

Eric Green:

Good advice both of you. Listen, thank you. And everyone, thank you for listening. Like I said, in the description you'll have John and Laura's contact. And guys, listen, thank you again. Thank you for the ABA work, but also thank you for joining me today. And I got to see if we can get someone from the IRS now to answer on the pre-clearance thing. So, we may do a part two to this in a little while. No, no, don't get me wrong. I'm going to be emailing Chief Lee and Justin Cole, who's his media person, saying, "Hey, who's in charge of this? We got to talk to them." All right, everyone, listen, thank you and have a great day.

Laura Gavioli:

Thanks, Eric.

John Nail:

Thank you.