

## College Fraud Scheme Shows Limits Of IRS Voluntary Disclosure

by Nathan J. Richman

The IRS's voluntary disclosure policy may not help taxpayers who took improper deductions for bribe payments when other federal criminal investigators come calling.

Parents coming forward to the IRS in the wake of the "Operation Varsity Blues" college admissions scandal might avoid a tax charge but could still be vulnerable to a Title 18 fraud charge, according to Caroline Ciruolo of Kostelanetz & Fink LLP.

"If there are parents out there who are not subjects or targets of the Varsity Blues investigation and they are thinking, 'I could become a target. To the extent I have tax compliance issues, I should come forward and come clean on those,' I think that they would want to consult carefully with counsel before doing so," Ciruolo said.

"The voluntary disclosure policy is an IRS policy, so to the extent it binds anyone, it certainly wouldn't bind the FBI or the postal inspectors," according to Sanford J. Boxerman of Capes, Sokol, Goodman & Sarachan PC.

***Voluntary disclosure to the IRS might not do much to minimize a taxpayer's risk of criminal prosecution for nontax crimes, Johnson Ware said.***

Jenny L. Johnson Ware of Johnson Moore said voluntary disclosure to the IRS might not do much to minimize a taxpayer's risk of criminal prosecution for nontax crimes. The Justice Department Tax Division says it respects the IRS's voluntary disclosure practice even though it's not bound by it, she said. "But that's DOJ Tax; that's not DOJ Criminal or anyone else," she noted.

"You would need more protection than what you can get from the IRS," Johnson Ware said.

### Varsity Blues

The massive college cheating scam, first revealed in March, revolves around parents who paid William Rick Singer to help their children get into various prestigious colleges and universities with two fraud schemes. One scheme involved

cheating on the SAT and ACT standardized tests, and the other involved bribing school athletic officials to falsely admit children as athletic recruits.

Most of the allegations against the parents charged as a result of Operation Varsity Blues, as the scandal has been nicknamed, involve behavior in 2017 and 2018. However, the charges against Singer note that both of the entities he used in the schemes have been up and running since 2012, and some of the allegations involve children who have already graduated from college.

That raises the possibility that Singer has had clients participating in his scheme before the last couple of years. Plus, the demand for his services implies he may have had competitors whom the government either hasn't found or hasn't named yet.

While most of the Varsity Blues charges are general fraud or money laundering, the schemes generally involved characterizing the bribe payments as charitable contributions — although some parents called them business expenses. Senate Finance Committee ranking member Ron Wyden, D-Ore., took particular umbrage at the possibility that someone might deduct those bribe payments on a tax return.

Filing a tax return claiming that a bribe was a charitable contribution or a business expense could be criminally charged as tax evasion or filing a false return. Singer and one of the parents involved, Bruce Isackson, have pleaded guilty to tax conspiracy as well as fraud and money laundering charges.

### Tight Fit

The IRS has a program in place for taxpayers who may have committed tax crimes to get out ahead of their problems.

The IRS recently updated its voluntary disclosure regime in the wake of the end of — and taking into account the lessons from — the offshore voluntary disclosure program. Practitioners have been pressing the IRS to resolve uncertainties in the new program, particularly for taxpayers mostly concerned about civil penalty exposure rather than criminal charges.

Boxerman said that the parents deducting their bribe payments as charitable contributions or business expenses presents a real criminal tax

issue, but that the case seems to be predominantly unrelated to tax. “It’s not a strain to say there was a tax offense,” he said. “But the problem is — and I don’t have an answer for it — to what extent you come forward on the voluntary disclosure. That’s fine for the Title 26 [tax crimes], but what does that get you for the Title 18 [fraud crimes]?”

Without tax as the lead charge in a case, the IRS voluntary disclosure procedure is a questionable choice, Boxerman said.

Boxerman said taxpayers related to already-named defendants wouldn’t be able to satisfy the timeliness requirement for a voluntary disclosure. A voluntary disclosure is only timely if it comes before the IRS has started an investigation into the taxpayer.

Johnson Ware said IRS voluntary disclosure would be most useful for taxpayers whose conduct falls in the window between the expiration of the five-year general statute of limitations applicable to fraud crimes and the six-year statute of limitations for tax crimes. “If the taxpayer filed more than one fraudulent return, e.g., deducted fake charitable contributions in more than one tax year, the voluntary disclosure program likely also limits the 75 percent civil fraud penalty to just one tax year,” she said in an email.

Ciraolo, a former head of the Justice Department Tax Division, noted that the IRS doesn’t grant immunity as a result of a voluntary disclosure. Instead, the agency agrees not to refer the case to the Tax Division, she said, adding that a referral contains the tax return information that would be used for any tax charges.

The IRS not making a tax crime referral to the Justice Department won’t protect a taxpayer from other allegations, Ciraolo said.

### Other Options

While a pure IRS voluntary disclosure might not provide much advantage in a case predominated by nontax crimes, concerned taxpayers could instead try to negotiate with a prosecutor, Boxerman said.

Non-Singer clients could consider talking to the Justice Department about exchanging investigation cooperation for a non-prosecution agreement or a misdemeanor plea agreement, according to Johnson Ware. “With the threat of

criminal prosecution removed, the taxpayers could then file amended returns to resolve any related tax issues,” she said.

Johnson Ware said even taxpayers whose voluntary disclosure wouldn’t be timely because the IRS already has their names — perhaps from Singer’s client list — might want to consider amending their returns to remove the improper deductions. “In the right circumstances, this would likely mitigate the risk of criminal tax prosecution,” she said.

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Ciraolo said that while parents who are too late to make a timely voluntary disclosure could still file amended returns to remove improper deductions, they should carefully consult with their representatives because the government might treat those amended returns as admissions and use them as evidence.

On the other hand, a taxpayer’s attempts to correct past misconduct may make a good impression, Ciraolo added. Voluntary disclosure or amending tax returns and paying the tax due are ways to try to do that, she said. But if the government is intent on indicting, the concern over making an admission may be larger than the possible good will, she added. ■