

The Unsettling Truth
About
Settling Controversies
with the IRS

Brian J. Munson, Esq.

Master of Laws in Taxation



Introduction

The individuals who are discussed herein were famous for their TV ads where they took an aggressive stance on behalf of taxpayers. I myself was inspired by them for some time. I wanted to fight the IRS for the little guy and win huge cases for my clients. I STILL DO.

But then the tax empires came crumbling down. It turned out that my one-time heroes were no more than con-men (and women) who (allegedly) swindled and cheated their clients out of millions of dollars by the use of unfair trade practices.

This article is designed to give a brief outlay of what they did wrong and also provide accurate information on settling with the IRS.



The Tax Lady: Roni Deutch

Roni Deutch built an empire of tax resolution based on her taking a hard stance against the IRS. She eventually had eighty facilities in twenty-three states with annual revenues of twenty-five million dollars. The majority of her Tax Centers, though, were in California, Nevada, and Arizona.

She was then sued by the California Attorney General for perpetrating a “heartless scheme” upon her clients. As it turned out, all three clients who boasted about their settlements in her commercials still owed the IRS the full amounts of their tax liabilities. Rather than having settled their debts, they were merely put on non-collectible status with the IRS. Now, this was good in the sense that the IRS could not currently collect from those taxpayers, but, as will be discussed further later, this is not a permanent solution. Also, the interest and penalties continued to accrue. Thus, despite the IRS not being able to *currently* collect, the debt the taxpayers owed continued to increase.

The suit brought against Ms. Deutch and her firm was based on the fact that these and other claims were misleading to consumers. In fact, a similar lawsuit was filed in New York by the NY Department of Consumer affairs. That suit charged Ms. Deutch with misleading consumers with her ads and failing to include key details and eligibility requirements for IRS settlements. Ms. Deutch settled the allegations for \$300,000 including a \$200,000 settlement fund for victims.

During this time, Ms. Deutch was spending three million dollars annually on advertisements. If you think of this in a logical

sense, it means that she had to bring in more than that from client revenues; and, without specific knowledge, it seems that the cost of such advertising fueled the need to bring in money from clients which could lead to illegal practices such as taking client funds and not performing any actual work. Again, this is a theory, and I have no proof that Ms. Deutch or any other person did this.

As a result of the misleading practices, Ms. Deutch received literally hundreds of complaints with the Better Business Bureau (BBB), and other consumer rating organizations. Eventually, all eighty locations were closed. Ms. Deutch has paid a total of \$34,000,000 in restitution. Her assets have been frozen. She faced contempt charges for shredding over two-and-a-half million documents. The firm has debt of ten million dollars. Ms. Deutch faced personal liability of five million dollars. And, ultimately, she surrendered her Law License.



JK Harris

Mr. Harris poses a similar story. He had three-hundred and twenty-five offices in forty-three states, headquartered in Charleston, South Carolina. Eventually receiving over six-hundred complaints with the BBB Mr. Harris had a rating of “F.” Clients complained of:

- **Problems with Service: 538**
- **Advertising Issues: 45**
- **Billing Collection Issues: 23**
- **Delivery Issues: 14**
- **Guarantee Issues: 5**

638 Total Complaints

Not surprisingly, government action was taken. The South Carolina Attorney General’s office filed suit joined by seventeen other State’s Attorneys General. The suit alleged misleading business and advertising practices including: (1) Exorbitant Fees, (2) Failure to Perform Work once Paid, and (3) Promotion of Telemarketers as “Tax Experts.” Similar separate lawsuits were filed by both the Missouri Attorney General and the Texas Attorney General. The South Carolina class action lawsuit settled for six million dollars.

Mr. Harris eventually filed for Bankruptcy, and closed his doors three months later. This left over one hundred complaints

unresolved. The Bankruptcy Trustee was seeking \$4.8 Million of personal assets from Mr. Harris at the time. Since then, Mr. Harris has been arrested for Contempt.



Tax Masters: Patrick Cox

Patrick Cox's story is one which is all too familiar by now. Based out of Houston, Texas, Tax Masters was bringing in revenue of \$45 Million by 2010. Like Ms. Deutch, Mr. Cox had spent millions of dollars in late-night ads on TV.

BUT, the Minnesota Attorney General filed suit for "Engag[ing] in false, misleading and deceptive acts and practices." Like Mr. Harris, Tax Masters was asking consumers to call and speak with a "tax expert." Rather, what consumers got was a skilled telemarketer with little or no knowledge of tax issues. What they *were* skilled in was taking consumers' money. There was a requirement that customers pay an up-front fee of anywhere from two-to-eight thousand dollars. While \$2,000 may not be an exorbitant fee in and of itself, it is outrageous when the client receives no benefit, and \$8,000 seems egregious even for white-shoe firms in New York.

Mr. Harris eventually settled the allegations of "Taking advantage of people . . . [who] unfortunately when [they] see it on TV, they do believe in it" by paying five-hundred thousand to a Victims' Fund.

Likewise, in Texas, a jury found Tax Masters and Mr. Cox personally guilty of deceptive practices in a unanimous decision, fining both \$195 Million in civil penalties. There were over one-hundred thousand counts of "hollow promises" and at least one case where no attorney ever showed up for a hearing.

Tax Masters was also the subject of an ABC News Investigation in April 2011.

Now, Mr. Cox is personally liable for nearly forty-six million dollars.



Where they all went wrong...

To recap, there are three recurring themes here: (1) Exorbitant Fees, (2) Failure To Do Work after Receiving Payment, and (3) Unfair and Deceptive Trade Practices.

This article is not to suggest that an attorney can never get his or her client an IRS settlement of pennies on the dollar. Rather, the crux of this article is to point out that such occurrences are few and far between. There are solutions which attorneys may offer clients without encroaching on fraud; even on TV.



What CAN be done...

Offers in Compromise

An Offer in Compromise (OIC) is what most taxpayers think of (even they don't know it) when someone mentions settling with the IRS. This is the program offered by the IRS where a taxpayer makes an offer to the IRS of less than what is owed. However, there are some things taxpayers should know.

An OIC is completed in a booklet provided by the IRS – Form 656 Booklet. This is lengthy and detailed. You must provide financial statements for your household. If you have a legitimate doubt as to your liability for part or all of the tax debt, then you must also complete Form 656-L.

Moreover, there are several factors that the IRS takes into consideration (which is never mentioned in the “penny-on-the-dollar” ads, and leads to misleading claims):

- **Ability to pay**

The IRS will not accept an offer if you can pay your tax debt in full via an installment agreement or a lump sum. The taxpayer must make an appropriate offer on what the IRS considers his “true ability to pay.” The IRS will “generally approve an offer in compromise when the amount offered represents the most [they] can expect to collect within a reasonable amount of time” and suggests exploring all other payment options first (such as loans or credit cards whose interest may be lower than the IRS penalties and interest).

- **Income**

How much does the taxpayer earn every month? Is there expendable income? Can this be used to pay off the debt with an installment agreement?

- **Expenses**

What are the taxpayer's monthly expenses? Are they allowable expenses; because only certain expenses are allowed, and then only certain amounts of those expenses are allowed.

- **Asset Equity**

What is the fair market value of the taxpayer's assets? This includes the taxpayer's home and retirement accounts. Does the taxpayer owe anything on the assets? If the taxpayer has equity in the home, is it sufficient to pay the debt? Is it sufficient to pay more than is being offered? You may have to sell assets, including your home, to pay.

Moreover, there are certain requirements (which are also conveniently left out of advertisements):

- **Must be current with all filings**
- **Must be current with all payments**
- **Must NOT be in open Bankruptcy proceedings**

There are many other things that deceptive practitioners do not tell their potential clients. For instance,

the majority of people DO NOT QUALIFY for OIC. Also, the IRS will examine ALL of your assets and all sources of income, IN DETAIL. The process may take as long as a year, and your offer may still be rejected after a year of waiting. Meanwhile, interest is accruing on both the tax owed and any penalties imposed during this time.

Also, The IRS may file a Notice of Federal Tax Lien during the offer investigation. The IRS may levy your assets up to the time that the IRS official signs and accepts your offer as pending.

An OIC is not Cheap. There is \$150 application fee PLUS, an initial payment of 20% is required with submission of the offer when sending in your application (unless you qualify for “Low Income Certification”).

There are also some privacy concerns with submitting an OIC. The law requires the IRS to make certain information from accepted offers available for public inspection and review.

There are also some hidden traps for the future. If your offer is accepted, you must continue to file and pay your tax obligations that become due in the future. If you fail to file and pay any tax obligations that become due within the five years after your offer is accepted, your offer may be defaulted. If your offer is defaulted, all compromised tax debts, including penalties and interest, will be reinstated.

All this being said, an OIC can be a great tool if the taxpayer qualifies, and be of great benefit to the taxpayer who is struggling with previous IRS debt.

Recent developments in Offers-In-Compromise

There have been some recent developments in OICs which are designed to allow more taxpayers qualify.

- **The IRS will now look at only 1 year (instead of 4) of future income for offers paid in 5 or fewer months:**
 - **2 years (instead of 5) for offers paid in 6-24 months.**
 - **All OICs must be paid in full within 24 months of the date the offer is accepted.**
- **Minimum payments on student loans guaranteed by the federal government will be allowed for the TP's post-high school education:**
 - **Proof of payment must be provided.**
 - **Educational Loans, even those from the federal government, were previously not allowed as monthly expenses.**
- **Monthly payments to state taxing authorities may be allowed in certain circumstances.**
- **The National Standard miscellaneous allowance has been expanded (increased):**
 - **Standard allowances incorporate average expenses for basic necessities for citizens in similar geographic areas.**

- **These standards are used when evaluating installment agreements and offers-in-compromise.**
- **Taxpayers can use the allowance to cover expenses such as credit card payments and bank fees and charges.**

Installment Agreements

Another option for paying off tax debts is establishing an Installment Agreement (Agreement) with the IRS. Here, the full liability is used to determine monthly payments; this is NOT A SETTLEMENT.

Monthly minimum payments based on the taxpayer's "Ability to Pay", considering both the taxpayer's Assets and Income.

Interest continues to accrue on the liability, penalties, and previously added interest. The amount owed often continues to grow, despite payments being made. Thus, it is wise to pay as much as possible each month to avoid the "Black Hole Effect" where everything earned is sucked into the payments which never seem to diminish because the taxpayer is only covering the accrued interest.

With an Agreement, the taxpayer will pay the installments until either the full liability is paid, or the time period of collections has tolled (10 years).

Redetermination of Tax

A Tax professional may be able to help with redetermining your tax. This is done by reviewing a return which has already been

filed for you by the IRS, and finding deductions which the taxpayer may not have known of or simply left off.

There are Pros and Cons to this approach. You may pay less tax overall, Interest is recalculated and will be lower, and you may avoid penalties. However, the IRS may re-examine certain issues when the Tax Professional amends the return in order to lower the taxpayer's liability, and you may end up with a greater tax liability in the end.

Still, do not be afraid to consider this option. Ending up with a larger liability is a rarity and typically results from the taxpayer trying to hide something from the Tax Professional.

Non-Collectible Status

A final option, which was previously mentioned, is being placed on non-collectible status. This is a determination made by the IRS based on Income and Asset levels. The taxpayer does not have to pay (for now), and the IRS is required by law to cease all collection activities.

However, the Income and Asset levels are very low. The Taxpayer typically must show near-impooverishment levels. Also, the Statute of Limitations on collections (10 years) is interrupted – meaning the IRS's overall time to collect is increased.

Finally, if circumstances change, the IRS may decide that the taxpayer no longer qualifies for Non-Collectible status, at which time the taxpayer must start making payments.

What a Tax Professional Can Do to Help



A tax professional such as a Tax Attorney, CPA or Enrolled Agent (EA) may be able to help.

Basically, a Tax Professional may be able to help by reducing the amount owed or the ability to pay. A Tax Professional may be able to negotiate the penalties imposed. Sometimes, if a valid reason can be showed why a

return was not filed or a tax not paid, the IRS will abate the penalties. This in turn lowers the overall liability and the interest. However, I must disclose, that this is not as easy as it sounds. The IRS often scrutinizes these hardship or reasonable justification claims and typically denies them. Still, this is an option, and, if it fails, there are others.

A Tax Professional may also be able to review your return and lower your liability with deductions that were not taken (especially if the IRS filed the return in question). This will lower your overall liability upon which penalties and interest are based. Thus this also helps reduce the amount of P&I imposed.

A Tax Professional can point out options to lower your ability to pay. For example, certain assets are exempt from the calculation. One method is to take assets which are not exempt, liquidate them, and use the proceeds to buy exempt assets -- The "Bentley" approach.

A Tax Professional can also "Handle" the IRS for you. Most of the time taxpayers are exhausted and frustrated. Tax

Professionals are more familiar with the processes, and can often accomplish tasks more quickly and more efficiently. Moreover, Tax professionals know the rules and are not intimidated by idle threats the IRS is not supposed to, but often does, make.

About the Author



Brian Munson is a native of New Orleans who moved to Baton Rouge in 2012.

After attending Jesuit High School, Brian received his Bachelor of Science in Business Administration with a concentration in Accounting from The Citadel, The Military College of South Carolina. Brian returned to New Orleans to receive his JD from Tulane University's School of Law. He then received his Master of Laws in Taxation from the University of Houston's Law Center. While at Tulane, Brian was a member of the Business Law Society, VITA, and a student-member of the Tulane Inn of Court.

After practicing on his own in New Orleans, Brian joined Losavio & DeJean, LLC in Baton Rouge.

Brian focuses on Estate Planning and Tax Litigation. He also practices in the areas of Successions, Medicaid Planning, VA Benefits, and Bankruptcy.

Admissions:

- Supreme Court and All Lower Courts of Louisiana
- US Appeals Court for Veterans Claims
- US Tax Court
- IRS

Professional Associations

- Louisiana State Bar Association
- Federal Bar Association, New Orleans Chapter
- Tulane Inn of Court
- Volunteer Income Tax Assistance (VITA)
- American Association of Notaries
- New Orleans Bar Association
- Baton Rouge Bar Association

Other Publications

Tax Expenditure Policy: An Analysis of Indirect Government Spending,
Master's Thesis, Univ. of H. Law Center Lib.



8414 Bluebonnet

Suite 110

Baton Rouge, La. 70810

225-769-4200

www.losaviodejean.com

