



New IRS' 2009 "Dirty Dozen" Tax Scams List Invites Whistleblower Claims Against Employers, Others Engaged In Listed Transactions

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The release yesterday (April 13, 2009) by the Internal Revenue Service of its 2009 "Dirty Dozen" Tax Scams List reminds businesses of the need to act to minimize exposures to tax related whistleblower or other retaliation claims by employees and other service providers that allege the potential involvement of the business in tax scams or other improper tax transactions.

Businesses face whistleblower, tax fraud prosecution, additional tax and penalty liability and other sanctions for involvement in tax shelters or other tax schemes. Employees and other service provider reports to the Internal Revenue Service (IRS) are the leading means through which the IRS identifies and proves fraudulent tax activities.

Yesterday's IRS announcement of its 2009 "dirty dozen" list of tax scams heightens whistleblower risks for businesses by encouraging employees and others who may have knowledge of a business or other taxpayer's involvement in these or other prohibited tax practices to report their suspicions to the IRS and sharing instructions on how to report suspected tax fraud to the IRS as a whistleblower. As part of these instructions, the announcement notes that "[w]histleblowers also may provide allegations of fraud to the IRS and may be eligible for a reward."

The 2009 "dirty dozen" list of tax scams warns businesses about getting involved in 12 tax transactions that the IRS views as likely to create tax fraud and whistleblower risks. The tax schemes that made the 2009 Dirty Dozen List include:

- ✓ Phishing
- ✓ Hiding Income Offshore
- ✓ Filing False or Misleading Forms
- ✓ Abuse of Charitable Organizations and Deductions
- ✓ Return Preparer Fraud
- ✓ Making Frivolous Arguments
- ✓ Making False Claims for Refund and Requests for Abatement
- ✓ Abusive Retirement Plans
- ✓ Disguised Corporate Ownership
- ✓ Zero Wages
- ✓ Misuse of Trusts
- ✓ Fuel Tax Credit Scams

Taxpayers participating in the 2009 Dirty Dozen Tax Scams and other tax transactions listed as tax scams by the IRS risk exposure to additional taxes and penalties, prosecution for tax fraud, and potential whistleblower claims. The Dirty Dozen list singles out for special attention some of the many tax transactions that the IRS views as tax shelters or tax fraud. Depending on the nature of a business and its tax and compensation activities, businesses also may need to be

concerned about scrutiny by the IRS for involvement in various other types of transactions that the IRS has identified as suspect. The IRS is urging U.S. businesses and other taxpayers to avoid participation in these common schemes.

Businesses engaged or accused of engaging in these or other transactions listed as tax scams or tax shelters by the IRS should exercise caution to confirm the appropriateness of the proposed transaction, to document their investigation of allegations of improper tax activities. For profit and non-profit businesses should include appropriate tax compliance oversight in their internal controls and federal sentencing guideline compliance programs. Businesses should review their activities in light of lists of IRS abusive transactions, should evaluate whether any of their transactions may be subject to scrutiny by the IRS, and take other appropriate steps to mitigate their exposure to prosecution for tax fraud, to tax related whistleblower liability and other risks. Businesses also should exercise care when dealing with employees or service providers who make allegations that the business may be involved in improper tax activities. Businesses also need to be prepared to demonstrate that they have not retaliated against individuals who report suspected tax fraud. The best defense to retaliation claims is a consistent, well documented legitimate performance and discipline record. Businesses should strengthen and consistently apply their employee performance and discipline processes to improve performance and deter whistleblower or other retaliation judgments. As part of this process, businesses also should adopt and enforce policies requiring employees and other service providers to report suspected tax or other compliance concerns, administer documented processes for receiving and investigating allegations of potential fraud or other noncompliance, and should document their conclusions and any corrective actions in response to these investigations.

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