

# ***“PARALLEL IRS INVESTIGATIONS: A WOLF IN LAMB’S CLOTHING?”***

---

By

Howard L. Richshafer, Esq.

## ***I. Background.***

---

A. 34 years ago, a major federal appeals court was outraged by IRS’ conduct. This is the infamous “Tweel Case.” The Court claimed it could not “condone [IRS’] shocking conduct.” The Court admonished IRS that taxpayers expect good faith from the government in enforcing and collecting taxes. The Court directed IRS to discontinue using “sneaky and deliberate deception” during civil audits to gather evidence leading to criminal tax prosecutions.<sup>1</sup> Mainly due to Tweel, IRS adopted policies requiring revenue officers, revenue agents, and tax auditors to suspend civil investigations if potential fraud is uncovered.

B. Recent IRS policies (quietly surfacing in 2009 and 2010) introduced new investigative standards teetering on the edge of “sneaky and deliberate deception.” They may even violate your client’s *Tweel* rights: to be free of unreasonable searches and seizures. These new policies instruct examiners: (1) not to disclose to a taxpayer or the taxpayer’s representative that the investigation has been referred to IRS’ criminal division, (2) to intentionally mislead the taxpayer about the examiner’s sharing of evidence with IRS’ criminal agents, and (3) to continue the civil examination while concurrently working closely with IRS criminal agents.

Are IRS’ new policies quietly returning to the old pre-Tweel policies of “sneaky and deliberate deception”?

C. Practitioners must be more careful to protect tax clients and themselves. **These new policies relate to IRS’ “parallel investigation” program.**

D. They are found in IRS’ Internal Revenue Manual, or “IRM.” The IRM contains IRS policies, guidelines, and instructions concerning its operations. The IRM is updated by “Manual Supplements.” The IRM is not legally binding on taxpayers. This is because they are only directed to its agents, examiners, and other employees. Nonetheless, the IRM is an excellent research source for tax practitioners. It tells practitioners what IRS is looking for during an audit or investigation. It instructs its agents on applying penalties, and other administrative procedures. And, it instructs its examiners on the “do’s and don’ts” of conducting parallel investigations—the topic of this article.

---

<sup>1</sup> Tweel vs. United States, 39 AFTR 2d 77-1223, (CA-5, 1977).

## *II. History: Nicholas Tweel Takes on IRS; 5<sup>th</sup> Circuit Court of Appeals Sides with Tweel.*

---

A. In May 1969, IRS revenue agent D. Miller notified Tweel that Miller was going to audit Tweel's 1966, 1967, and 1968 income tax returns.

B. Tweel contacted his CPA, B. Bagby. Tweel asked CPA Bagby to contact agent Miller to handle the audit.

C. IRS recently concluded auditing Tweel's 1958-63 income tax returns. That exam was referred to IRS' criminal division. But IRS dropped the criminal investigation and the exam was settled civilly. So, both Tweel and CPA Bagby questioned whether IRS was conducting another criminal examination.

D. CPA Bagby contacted IRS agent Miller. Bagby asked whether the new audit was being coordinated with IRS' criminal division. Agent Miller responded that the new audit did not involve IRS' criminal division.

E. Relying on agent Miller's representation, CPA Bagby concluded that agent Miller was only conducting a routine civil audit of Tweel's tax returns. Thus, CPA Bagby provided voluminous records to agent Miller. IRS used those records to prosecute and ultimately convict Tweel of income tax evasion and other criminal tax charges.

F. What agent Miller did not disclose to CPA Bagby was that the audit was **not** a routine one. In fact, agent Miller conducted it at the specific request of the Organized Crime & Racketeering section of the U.S. Justice Department. Albeit there were no IRS criminal agents working with agent Miller when CPA Bagby posed his question, the literal truth was not the whole truth.

1. Agent Miller knew that the Justice Department's criminal unit requested the civil audit; and

2. Agent Miller also knew that his audit and the evidence to be gathered during Tweel's audit would be provided to the Justice Department and could lead to Tweel's prosecution.

G. A federal jury convicted Tweel of the criminal tax charges. Tweel appealed.

H. The 5<sup>th</sup> Circuit Court of Appeals reversed the conviction and remanded it to the trial court for the following reasons:

1. The evidence obtained by agent Miller was obtained by deception—Miller intentionally failed to disclose to CPA Bagby or to Tweel the criminal nature of Miller's audit; thus, the Court held that agent Miller's conduct was a "sneaky and deliberate" deception of the truth;

2. The evidence obtained by agent Miller was thus obtained illegally. It violated Tweel’s constitutional rights under the 4<sup>th</sup> Amendment’s “unreasonable search and seizure” provisions; and

3. The Court admonished IRS that deception of this sort would not be tolerated. The Court ordered IRS to correct such procedures immediately.

I. Two years later, a federal trial court suppressed inculpatory evidence (evidence of guilt) in another tax case.<sup>2</sup> In that case, the revenue agent was auditing Touissant’s federal income tax returns. The agent had firm evidence of tax fraud yet continued interviewing the taxpayer without disclosing that the information could be used against him in a criminal tax prosecution. The court suppressed the evidence finding that it was obtained by the IRS agent through fraud and deceit—thus violating Touissant’s constitutional rights under the 4<sup>th</sup> Amendment (against unreasonable searches and seizures by the government).

J. In 1993, the 8<sup>th</sup> Circuit Court of Appeals held that evidence obtained by IRS criminal agents can be suppressed if: (1) the taxpayer has not been honestly apprised of the nature of IRS’ investigation, (2) IRS affirmatively and intentionally misled the taxpayer, and (3) IRS’ conduct prejudiced the taxpayer’s constitutional rights.<sup>3</sup>

These cases highlight some of the numerous cases suppressing evidence obtained by IRS by using civil audits for criminal purposes.

K. As the result of cases like these, IRS adopted policies to combat using civil examinations inappropriately to gather evidence for criminal prosecutions. Generally, those policies required civil agents to immediately discontinue audit or collection activities upon discovering evidence of tax fraud. And, to refer the case to IRS’ criminal agents.

L. But in 2004, IRS began ignoring Tweel principles and cases based on Tweel. IRS began introducing subtle changes to its Internal Revenue Manual (“IRM”). The IRM adopted a policy dictating against the mutual exclusivity of a civil and criminal case. Under the 2004 revisions, the civil and criminal case aspects “[should] be balanced” so as not to jeopardize the criminal aspects<sup>4</sup>. IRS began opening the door to the gradual deterioration of the Tweel principles.

M. And so recently (2009 and 2010), more dramatic IRM revisions specifically expanded the scope of simultaneous or “parallel” criminal and civil examinations. **Practitioners must be aware of these changes when representing a client during an IRS civil audit or collection investigation.**

N. But first, let’s explore the technical differences between a “parallel investigation” and its related cousin—the “joint investigation.”

---

<sup>2</sup> Touissant vs. United States, 43 AFTR 2d 79-642 (SD Tex., 1979).

<sup>3</sup> United States v. Grunewald, 987 F. 2d 531 (8<sup>th</sup> Cir. 1993).

<sup>4</sup> See IRM section 38.3.1.8 (Balancing Criminal and Civil Aspects).

### ***III. Differences: Parallel Investigation vs. Joint Investigation.***

---

A. Revenue officers, tax compliance officers, and revenue agents conduct exams or investigations of federal tax returns/accounts to administer the Internal Revenue Code (hereafter “Code”). They collect delinquent taxes and examine tax returns to determine the correctness of tax liabilities. These IRS employees are civil agents. Civil investigations can result in additional tax, interest, and civil monetary penalties.

B. To the contrary, an IRS special agent’s duties are quite different. Special agents enforce the federal criminal tax statutes to encourage voluntary compliance with our tax system. To achieve this voluntary compliance goal, special agents investigate suspected criminal tax offenses. They recommend prosecution if evidence supports a reasonable likelihood of conviction. Criminal investigations can lead to convictions resulting in imprisonment, fines, and restitution. Criminal investigations can lead to severe consequences for the client—and the client’s family.

C. Current IRS Policy Statements instruct IRS agents that criminal tax convictions can be jeopardized if they simultaneously pursue both the criminal and civil tax aspects of a case. Therefore, IRS gives deference to the criminal aspects of a case.<sup>5</sup> As a general rule, where IRS’ civil agents suspect tax fraud, they must suspend their investigation, refer the case to IRS’ criminal agents, and discontinue any contact with the taxpayer or the taxpayer’s representative.

D. Now, what’s the difference between a so-called “joint (criminal) investigation” and a “parallel investigation?”

1. **Joint Investigations.** In a joint investigation, the criminal aspects predominate. A special agent from IRS’ criminal division conducts a full-scale investigation jointly with a civil agent (i.e., a revenue officer or revenue agent). The special agent controls the investigation. He or she determines the investigation plan due to the importance of the criminal aspects. The cooperating IRS civil agent assists the special agent by interviewing witnesses, analyzing tax returns and financial records, and performing accounting or auditing procedures. In some joint investigations, the taxpayer may be totally unaware of its existence.

2. **Parallel Investigations.** In a parallel investigation, IRS considers the civil and criminal investigations as being simultaneously and separately conducted. In a parallel investigation, the criminal aspects do not necessarily predominate. Therefore, of necessity, they require significant coordination between IRS’ criminal and civil operating divisions. In a parallel investigation, the special agent is not permitted to direct or control the civil agent’s actions. Revenue officers are instructed to be aware of a TC 914 Active Criminal Investigation code appearing on the same taxpayer’s account transcript—this warns the revenue officer of the need for a parallel investigation. In such cases, or where a parallel investigation is

---

<sup>5</sup> See IRS Policy Statement 4-26 (formerly P-4-84).

ongoing, any proposed civil enforcement action must be coordinated with a special agent to minimize adverse consequences to the criminal case. For example, a revenue officer may not take any of the following actions without obtaining approval from IRS' Special Agent in Charge or SAC:

- a. contacting the taxpayer;
- b. taking enforced collection action against a taxpayer (i.e., levy, lien, seizure, etc); or
- c. entering into an agreement with the taxpayer to resolve a civil tax liability.<sup>6</sup>

#### ***IV. IRS' New 2009/2010 IRM Provisions Expanding Parallel Investigations.***

---

A. To IRS, the criminal aspects still trumps the civil case; for example, the IRM warns its agents that a parallel investigation requires coordination and balancing "without prejudicing a criminal prosecution."<sup>7</sup>

B. In August 2009, IRS expanded and encouraged the use of parallel investigations. For example, IRS now condones and encourages parallel investigations by its civil agents.<sup>8</sup>

C. The IRM revisions provide surprising levels of detail on: (a) how to commence a parallel investigation, (b) coordinating investigative tactics, (c) sharing evidence between civil and criminal agents, and (d) how to respond to questions posed by the taxpayer or taxpayer's representative.

#### **D. Commencing a Parallel Investigation.**

1. Once IRS units agree to conduct separate parallel investigations of your client, the IRM instructs its criminal and civil agents to coordinate evidence development to support both investigations while being mindful of legal constraints.<sup>9</sup>

2. Revenue officers are encouraged to consult with IRS Fraud Technical Advisors ("FTA").<sup>10</sup>

3. Ongoing communications (between civil and criminal agents) is "essential for a successful parallel investigation."<sup>11</sup>

---

<sup>6</sup> IRM section 5.1.5.2 (8) (revised as of August 31, 2010).

<sup>7</sup> IRM section 38.3.1.8 (Balancing Criminal and Civil Aspects).

<sup>8</sup> IRM, section 5.1.5.1, paragraph 1 (revised as of August 3, 2009).

<sup>9</sup> IRM section 5.1.5.4, paragraph 1 (Commencement of Parallel Investigation, 8/3/2009).

<sup>10</sup> Id., paragraph 2.

E. Holding Regular Coordination Meetings.

1. Once IRS decides to conduct a parallel investigation, the IRM instructs the operating divisions to hold regular case status coordination meetings.<sup>12</sup>

2. The participants must include a special agent, revenue officer, respective group managers, and SB/SE Area Counsel and Criminal Tax attorneys.<sup>13</sup> If the case has been referred to the Justice Department or a local U.S. Attorney's Office for potential criminal prosecution, attorneys from those offices are required to attend the meetings.

3. The purpose of these meetings is to "communicate the case developments and to facilitate information sharing..."<sup>14</sup>

4. The IRM warns that its criminal agents "[should not] direct the actions in the [civil] investigation."<sup>15</sup> As a practical matter, the criminal agents will attempt to control the civil investigation.

F. Sharing Information.

1. The IRM encourages information (i.e., evidence) sharing between its civil and criminal agents.<sup>16</sup>

2. In particular, sharing evidence and information is considered a "key ingredient in developing civil and criminal cases simultaneously and efficiently."<sup>17</sup>

3. The civil agent must make the civil investigation file accessible to the criminal agent.<sup>18</sup> Note the mandatory directive here.

G. Interviewing the Taxpayer.

1. IRS relishes interviewing your client. Interviewing the taxpayer is the most critical component of any IRS investigation. It enables IRS to obtain inculpatory evidence (i.e., evidence of criminal conduct) to be used against your client in a criminal prosecution. Hence, practitioners must alert themselves to the IRM provisions in this area.

2. The IRM instructs the civil agent to notify the criminal agent of all meetings with the taxpayer prior to such meetings; and, the civil agent is not permitted to

---

<sup>11</sup> Id., paragraph 3.

<sup>12</sup> IRM section 5.1.5.5, paragraph 1, (Coordination Meetings, 8/3/2009).

<sup>13</sup> Id.

<sup>14</sup> Id., paragraph 3, (Coordination Meetings).

<sup>15</sup> Id.

<sup>16</sup> IRM section 5.1.5.8 (Information Sharing, 8/3/2009).

<sup>17</sup> Id., paragraph 1.

<sup>18</sup> Id., paragraph 5.

interview the taxpayer without that notification (and assumed consent to proceed with the meeting).<sup>19</sup>

3. If a taxpayer asks the civil agent whether the taxpayer is under an IRS criminal investigation, the civil agent must provide accurate information to the taxpayer without misleading the taxpayer; in such cases, the civil agent should inform the taxpayer that any information obtained by that agent **can be** shared with IRS' criminal agents.<sup>20</sup> Yet, the IRM instructs the civil agent that the agent **must** provide all evidence gathered during the civil investigation to IRS criminal agents.<sup>21</sup>

4. Also, the IRM instructs the examiner not to inform the taxpayer that the case was referred to IRS' criminal agents.<sup>22</sup>

#### H. The Revised IRM Applies to All IRS Civil Agents Including Revenue Officers, Revenue Agents, and Tax Compliance Officers.

1. The IRM's parallel investigation provisions specifically refer to "revenue officers"; but other IRM provisions include other civil examiners like revenue agents and tax compliance officers as subject to the same IRM parallel investigation provisions.<sup>23</sup>

### *V. When Will IRS Use A Parallel Investigation?*

---

A. The most likely time: failure to remit federal withholding taxes. The so-called "trust fund taxes."

B. Clients are still struggling with the Great Recession. Businesses-- small, medium, and large-- are strapped for cash. They manage to pay necessary expenses to stay afloat-- rent, supplies, and employees must be paid. Tight cash flows prevent business owners from remitting withholding taxes to IRS. They mistakenly believe the taxes can be remitted after cash flow improves. In many cases, the quarterly employment tax reports (Forms 941) are not even filed.

But in these precarious economic times, cash flow doesn't improve. The unremitted withholding taxes quickly pyramid into an impossibility of payment. They quickly accumulate to hundreds of thousands of dollars to several million dollars.

---

<sup>19</sup> IRM, section 5.1.5.6 (Interviews, 8/3/2009).

<sup>20</sup> Id., paragraph 3.

<sup>21</sup> IRM, section 5.1.5.8, paragraph (Information Sharing) ("Access to all available information in the civil file **must** be provided to [criminal investigation]"). Emphasis added.

<sup>22</sup> Id.

<sup>23</sup> For example, see IRM section 4.32.2.6.6 (instructing "examiners" in abusive tax shelter examinations), and, section 25.1.3.2 (instructing examiners concerning possible criminal aspects of an examination).

C. Eventually, a revenue officer contacts the business owner. The revenue officer secures any delinquent 941's, and, collects delinquent withholding taxes, penalties, and interest. More often than not, IRS uses enforced collection methods (i.e., levies, liens, property seizures, injunctions) to collect the unpaid taxes.

D. But more often than not, the business can't pay the overwhelming unpaid withholding taxes and statutory accruals. So, the Code authorizes IRS to impose a penalty against anyone responsible for the payment failure. This penalty is the "trust fund recovery penalty."<sup>24</sup> This is a civil penalty. It can be assessed against anyone who was responsible for the remittance failure. The penalty itself is comprised of the unpaid employees' share of FICA and Medicare and federal withholding taxes.

E. In addition to the trust fund recovery penalty, the Code also contains a criminal penalty making it a felony to willfully fail to remit withheld (payroll) taxes to IRS.<sup>25</sup> If convicted, a person can face up to a five-year imprisonment, \$10,000 fine, or both, with costs of prosecution.

F. Prior to assessing the trust fund penalty, revenue officers must conduct a "4180 interview" of those having control or responsibility to remit withholding taxes to IRS. A client may unwittingly subject himself/herself to such an interview without even knowing whether the Service has instituted a parallel investigation with IRS' criminal agents. The interview Q&A could be shared with IRS criminal agents leading to the potential for prosecution, conviction, and imprisonment. Result: IRS' criminal agents relied on the revenue officer to conduct the 4180 interview without even warning the taxpayer that the interview could be used to prosecute the taxpayer. **PRACTITIONER HINT: BE ESPECIALLY MINDFUL TO ADVISE A CLIENT TO BE TRUTHFUL DURING A 4180 INTERVIEW. THIS ALSO APPLIES TO THE CLIENT'S ANSWERS CONTAINED ON IRS FORMS 433-A or 433-B (Note: these forms are signed under "penalty of perjury"—they reflect the client's general information, income, assets, living expenses, and other financial-related questions or information).**

G. In fact, the IRM has targeted trust fund recovery penalty cases for the parallel investigation program.<sup>26</sup> **PRACTITIONER HINT: BE ESPECIALLY DILIGENT IN THESE CASES TO PROTECT A CLIENT AND AVOID BEING IMPLICATED WITH THE CLIENT.**

H. The IRM also envisions using parallel investigations for (a) tax lien filings, (b) levies against a taxpayer's assets, (c) administrative summons of records, and (d) investigating erroneous refunds.<sup>27</sup>

I. Nonetheless, parallel investigations could also be used in civil IRS audits and IRS collection cases.

---

<sup>24</sup> Code §6672.

<sup>25</sup> Code §7202.

<sup>26</sup> IRM section 5.1.5.1, paragraph 3.

<sup>27</sup> Id.

## *VI. Parallel Investigations: What are the Legal Challenges?*

---

A. **Remember the major legal principle in Tweel:**

1. **Civil IRS agents cannot obtain evidence from a taxpayer by deception—this includes “sneaky and deliberate” deceptions of the truth.** For example, if a revenue agent intentionally fails to disclose the criminal nature of the audit or investigation to a taxpayer, such conduct can be a deception of the truth. A court can suppress such evidence in a criminal tax prosecution.

B. Under the Tweel principle, do IRS’ new parallel investigation policies encourage such “sneaky and deliberate” conduct? Do they really disguise IRS’ criminal investigation by withholding material information from your client?

C. Example of Potential “Sneaky and Deliberate” IRS Conduct.

1. The IRM concerning taxpayer interviews raises concerns.

2. The IRM instructs its examiner never to disclose to the taxpayer that a criminal IRS investigation is also ongoing.<sup>28</sup> The examiner is instructed not to give a false or deceitful response if a taxpayer asks whether IRS criminal is involved; but the IRM assures its examiner that being silent or declining to answer that question is not false or deceitful.<sup>29</sup>

a. But note that silence can be equated with fraud where there is a legal (or moral) duty to speak; and, silence can also be equated with fraud if an inquiry left unanswered could be intentionally misleading.<sup>30</sup>

b. Thus, silence can be equated with fraud where an IRS examiner fails to answer the taxpayer’s question whether the case involves IRS criminal investigation.

3. The IRM also instructs examiners to inform your client that “information (provided by the client, or you) **can be** shared” with IRS criminal if you or the client asks whether the case involves criminal investigation.<sup>31</sup> But the IRM also informs the examiner that all evidence obtained (from your client) **must be** shared with IRS criminal.<sup>32</sup> **PRACTITIONER NOTE:** There’s a huge difference between “can be” and “must be” shared with criminal investigation.

4. It does appear that a good case can be made that the IRM encourages “sneaky and deliberate” conduct, and especially when you or your client asks whether the case involves criminal investigators.

---

<sup>28</sup> IRM section 5.1.5.6, paragraph 3 (Interviews); also, IRM section 25.1.3.2, paragraph 1.

<sup>29</sup> Id at 25.1.3.2, paragraph 1.

<sup>30</sup> United States v. Prudden, 424 F 2d 1032, (5<sup>th</sup> Cir. 1970), cert. denied, 400 U.S. 831, 91 S. Ct. 62 (1970)

<sup>31</sup> IRM section 5.1.5.6, paragraph 3 (Interviews).

<sup>32</sup> IRM section 5.1.5.8 paragraph 5 (Information Sharing).

D. Other examples of “sneaky and deliberate” IRS conduct involve deliberately withholding information from clients, refusing to respond to client questions concerning a criminal investigation, and relying on civil agents to collect evidence from a client without informing your client of his or her *Miranda* rights.

E. But trouble arises with such issues in the 6<sup>th</sup> Circuit Court of Appeals (which includes both Ohio and Kentucky). Generally, the 6<sup>th</sup> Circuit holds that just being “sneaky” isn’t enough—instead, IRS must “affirmatively mislead” your client. The 6<sup>th</sup> Circuit requires a clear showing that IRS tricked or deceived the taxpayer to provide evidence that was ultimately used against the taxpayer in the subsequent criminal tax prosecution.

F. Query: whether an IRS examiner affirmatively misrepresents when the examiner represents that evidence “**can be shared**” with criminal IRS knowing full well that such evidence “**must be shared**” with criminal IRS? I believe that’s an affirmative misrepresentation acquired through deception, which is actionable---result: any exculpatory evidence provided to the IRS from the misrepresentation should be suppressed by a federal court if the taxpayer is prosecuted.

## ***VII. Precautions to Protect Clients.***

---

A. Predicting what courts may do with IRS’ new policies is less important than taking steps to protect clients.

B. Practitioners representing clients in tax audits or in tax collection cases must be especially vigilant when dealing with a revenue agent, revenue officer, or tax compliance officer.

C. If you do not know whether IRS is conducting a parallel investigation, client documents you provide could be used to ultimately prosecute your client. And, the client may ultimately sue you for turning over documents.

D. So, it is important for you to determine whether IRS is conducting a parallel investigation. What’s the best way to do that?

E. **First, determine whether there are suspicious signs that a parallel investigation may be ongoing. Ask yourself these questions:**

1. Is the civil agent displaying a disproportionate amount of interest or time understanding or documenting a specific transaction or activity?

2. Is the civil agent requesting copies of voluminous records or documents instead of merely reviewing them?

3. Is the civil agent concentrating on your client’s intent or motives concerning a transaction or activity?

4. Is the civil agent focusing on whether the client knew, understood, or appreciated the consequences of violating a specific legal duty (e.g., filing a tax return, not cheating, depositing withholding tax, not concealing assets, etc.)?

5. Is the civil agent requesting or concentrating on multiple tax year records or documents?

These questions can help you determine whether IRS may be conducting a parallel investigation focusing on the willfulness element of all federal tax crimes.

F. Should you ask the civil agent whether your client is also under criminal investigation? Generally no. This can tip off the examiner or revenue officer that there may be criminal conduct in the case. **Better Idea:** ask whether the civil agent is conducting a simultaneous parallel investigation under the new IRM provisions.

1. If the agent tells you that any evidence gathered by the agent **can be** shared with IRS criminal, this is your warning that IRS is probably conducting a parallel investigation. You should take precautionary steps to protect your client's constitutional rights and to minimize the likelihood of criminal prosecution. Document your precise question and the agent's precise answer in a memorandum to your file. Do not provide any further evidence to the agent. You should advise the client to engage competent criminal tax counsel.

2. If the agent tells you that IRS is conducting a parallel investigation, document that response in a memorandum to the file. Do not provide any further evidence to the agent. Advise the client to contact competent criminal tax counsel.

3. If the agent tells you that IRS is **not conducting** a parallel investigation, document that answer in a memorandum to the file. Nevertheless, you should exercise caution in providing evidence to IRS if the agent manifests the behavior described in paragraph VII E, *supra*.

4. If the agent doesn't answer your question or declines to answer, this is evidence that IRS is probably conducting a parallel investigation. Suspend the examination. Document the agent's response in a memorandum to the file. Do not provide any further evidence to the agent. Advise the client to consult competent criminal tax counsel.

G. Overall, you must be alert for any IRS behavior appearing odd or suspicious. For example, whether you feel the civil agent may be deceiving you or your client with evasive answers, sneaky responses, exhibiting suspicious behavior, or conducting unorthodox procedures. Document the agent's specific behavior immediately.

H. Remember, the 6<sup>th</sup> Circuit's position: just being "sneaky" isn't enough—IRS must "affirmatively mislead" your client. The 6<sup>th</sup> Circuit requires a clear showing that IRS tricked or deceived your client to turn over evidence ultimately used against the client in a subsequent criminal tax prosecution. So, practitioners must be alert for "sneaky" behavior on behalf of the civil agent, and, behavior that affirmatively misleads you or the client in turning over evidence to the civil agent. Again, document such behavior immediately.

I. The IRM has directed its agents to use parallel investigations for trust fund cases, levies, liens, and summons enforcement proceedings. It goes without saying that practitioners must assure that clients make truthful representations to IRS in all cases, but especially in the cases identified above. In a 4180 interview (trust fund responsibility), the revenue officer usually interviews your client and transcribes the client's answers; practitioners must assure that the client's answers are honest and that the revenue officer transcribed the answers accurately. Don't hesitate to challenge your client to assure truthfulness, completeness, and accuracy.

918175.1  
9/6/2011