

Pandemic Not Slowing Rollout Of New IRS Fraud Office

By **David van den Berg**

Law360 (August 27, 2020, 3:55 PM EDT) -- The novel coronavirus pandemic isn't delaying the ramp-up of the Internal Revenue Service's recently launched office to combat tax fraud, the office's director told Law360 in a recent interview.



The former head of the IRS criminal investigation unit is now the director of its new fraud enforcement office. (AP)

Though the pandemic has affected the way the IRS' Office of Fraud Enforcement communicates, it won't delay setting up the unit, said Damon Rowe, a former senior official in the IRS' Criminal Investigation Division. The office plans to have a team of 42 fraud enforcement advisers — revenue agents and officers — hired and on board nationwide in 30 to 45 days, said Rowe, who was **tapped to head** the fraud office in March.

As it expands its workforce, the fraud office already has wheels on the ground, with employees getting advice from attorneys in the IRS Office of Chief Counsel and forming relationships across the agency, he said.

The office is pushing resources to areas that **have been identified** as agencywide enforcement priorities, including microcaptive insurance transactions, syndicated conservation easements, coronavirus-related fraud and virtual currency. As it works cases, Rowe said, the fraud office will seek to increase the number of quality criminal and civil fraud referrals.

"We are striving for the best case development possible to achieve the best results in civil or criminal proceedings," he said.

Rowe said his office had already developed a close working relationship with the Office of Chief Counsel. It is being advised by Carolyn Schenck, who **was selected** as national fraud counsel in May, along with IRS attorneys throughout the country, Rowe said.

"There is great support by local counsel in the various geographic regions and judicial districts across the United States to assist with fraud-related investigations," he said. "That support is wide and varied, and includes assistance with interviews, investigative steps and a review of the evidence for possible fraud penalties, whether that be criminal or civil."

Rowe also said counsel had advised his office about nuances of recent legislation and its impact on the country's taxpayers. It makes sense for Office of Chief Counsel attorneys to be involved with the fraud office, said Sandra Brown of Hochman Salkin Toscher & Perez PC.

"Adding a national fraud counsel to the bridge between criminal and civil — where the government has the burden of proof — makes sense," she said. "Training in subjects of evidence and methods of proof are legal issues and having counsel involved is critical."

According to previous remarks by Darren John Guillot, deputy commissioner of operations and collection support in the IRS' Small Business/Self-Employed Division, the fraud office is also **collaborating with field collection** and examination agents on an initiative seeking high-income nonfiler cases for possible referral to the Criminal Investigation arm.

Rowe formerly served in that division, most recently as its executive director for international operations. He's also previously served as special agent in charge of the Los Angeles and Dallas field offices and assistant special agent in charge for the New Orleans field office, according to the IRS.

Rowe said his time in the Criminal Investigation Division will serve him well in his new role, as it taught him about the value of collaborations and making use of data and technology in investigations.

"I've been involved in dismantling and disrupting domestic and international criminal organizations," he said. "I've investigated everything from international tax cheats to international kingpins."

Data analytics will play a key role in helping the fraud office better direct its resources, Rowe said. Such tools will allow the office to focus its compliance efforts by geographic area, determining where in the country a threat is most imminent, he said. Rowe said his team plans to work collaboratively with others throughout the agency to find and study threats.

"The Office of Fraud Enforcement will partner with various groups within the IRS in order to analyze trends for evolving and emerging threats to the U.S. Treasury," he said.

Once these trends are identified, he said, the office "will work with the compliance function of the appropriate business units and develop a strategy for mitigation and deterrence."

Data analytics are just starting to play the role that they should in tax administration, Brown said.

"The IRS' use of data analytics is a useful tool and important step in the IRS' fraud enforcement goals," she said. "That said, the traditional financial investigative tools, e.g., following the money, as used by CI for the past 100 years to prove that someone has willfully and intentionally violated the tax laws, should not be overlooked."

Frank Agostino, founder and president of Agostino & Associates PC, told Law360 that training investigators to use data analytics will cut case development time and lead to more prosecutions.

"My hope is that getting the fraud people in early and focusing investigations on easily demonstrable patterns of fraud will produce cases faster," Agostino said. "We need more prosecutions and more convictions to improve voluntary compliance."

The Fraud Enforcement Office is somewhat of a successor to the IRS' National Fraud Program, and Rowe said his team had taken and adapted many of the existing protocols from that initiative.

"My team enhanced the way we look at fraud and the way we interrogate and integrate data," he said.

While Rowe touted his team's efforts to build on the prior fraud program, Jenny Johnson Ware of McDermott Will & Emery LLP said that whenever the agency changes its approach to finding and investigating fraud, defense lawyers fear the commingling of civil and criminal investigative functions.

Defense lawyers, Ware said, call this a "Tweel issue," referring to a 1977 Fifth Circuit decision, *U.S. v.*

Tweel. In the decision, the Fifth Circuit reversed a conviction and held that evidence the defendant provided during a civil audit should have been suppressed because the IRS wrongly conducted a criminal investigation in the guise of a civil proceeding.

"Depending on how Mr. Rowe and the fraud enforcement advisers view their role, they could help protect taxpayers' rights by policing the line between civil and criminal investigations, or they could cause that line to blur in a way that endangers taxpayers who cooperate in a civil audit without understanding their criminal exposure," she said.

Ware said she's interested to find out whether Rowe's staff spends most of its time on large projects such as syndicated conservation easements or microcaptives, or if it instead gets involved in individual audits where issues aren't related to any other taxpayer. She said she expected the involvement of Rowe's office would increase the chance that related taxpayers are investigated when the IRS identifies indicators of fraud in one audit.

"Where separate groups in the IRS have historically had difficulty tracking tax fraud involving multiple customers of one return preparer, for example, this office should have the capability to put the pieces together and see the bigger picture," she said.

--Additional reporting by Dylan Moroses, Amy Lee Rosen and Joshua Rosenberg. Editing by Robert Rudinger and Neil Cohen.

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