

# Recent Tax Crime Arrests and New York State's Voluntary Disclosure Program

## The CPA

On April 3, 2017, East Rockaway certified public accountant Steve Ballin was arrested for allegedly failing to pay more than \$91,000 in personal income taxes during the last five years.<sup>1</sup> He was charged with four counts of Criminal Tax Fraud in the 3rd Degree (a D felony) and three counts of Repeated Failure to File Personal Income and Earnings Taxes (an E felony).<sup>2</sup> If convicted, he faces up to seven years in prison.<sup>3</sup>



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## The Mayor

On April 6, 2017, Muttontown Mayor Julianne Beckerman was arrested for allegedly failing to file tax returns for five years.<sup>4</sup> She and her husband have been charged with Criminal Tax Fraud in the 2nd Degree (a C felony), two counts of Criminal Tax Fraud in the 3rd Degree (a D felony), Criminal Tax Fraud in the 4th Degree (an E felony), and three counts of Repeated Failure to File Personal Income and Earnings Taxes (an E felony).<sup>5</sup> If convicted, they could face five to fifteen years in prison.<sup>6</sup>

## The Restaurant Owners

On April 19 and 20, 2017, the current and former owners of a restaurant in Mineola, Joseph Rosmaninho and Paul Batista, were arrested for allegedly failing to pay more than \$330,000 in sales tax to the NYSDTF for four years.<sup>7</sup> Both defendants have been charged with Grand Larceny in the 2nd Degree (a C felony), three counts of Criminal Tax Fraud in the 2nd Degree (a C felony), Criminal Tax Fraud in the 3rd Degree (a D felony), and Criminal Tax Fraud in the 5th Degree (an A misdemeanor).<sup>8</sup> If convicted, they could face five to fifteen years in prison.<sup>9</sup>

## New York State Crimes Against Revenue Program

All three of these arrests were the result of a joint investigation by the Nassau County District Attorney's (NCDA) office (which has its own Economic Crimes Bureau to handle these types of investigations) and the New York State Department of Taxation and Finance (NYSDTF). These recent arrests illustrate that the NYSDTF and local District Attorneys' offices are working hand-in-hand to investigate and prosecute tax crimes. This is partly thanks to the New York State Crimes Against Revenue Program (CARP) which was first established in 2004.<sup>10</sup>

The CARP program provides grants to DAs offices across the State to fund investigations and prosecutions of tax crimes.<sup>11</sup> The CARP program is funded by the proceeds from investigations that result in tax revenues, fines and restitution being returned to the State,<sup>12</sup> resulting in an incentive for local DAs to investigate and prosecute tax crimes.<sup>13</sup>

In fact, since the CARP program's



inception, more than \$165 million has been recovered by State.<sup>14</sup> The CARP program currently supports investigation and prosecution of tax crimes in 28 counties including New York City, Nassau and Suffolk.<sup>15</sup> Even the Office of the Special Narcotics Prosecutor in New York City receives CARP funding.<sup>16</sup>

## New York State Voluntary Disclosure Program

Each of the defendants discussed above could possibly have avoided arrest and prosecution through the use of the State's Voluntary Disclosure Program. This program allows non-filers to come forward and avoid not only criminal prosecution, but also steep late filing and late payment penalties.<sup>17</sup> The program also allows "under" filers to come forward and amend their tax returns, likewise avoiding criminal prosecution and late payment penalties.<sup>18</sup>

The Voluntary Disclosure program covers all taxes administered by the NYSDTF, including, income tax, corporate tax and sales and use tax.<sup>19</sup> If a taxpayer meets the eligibility criteria, he can participate even if his non-filing and non-payment were the result of fraudulent or criminal conduct.<sup>20</sup>

The main catch is that the taxpayer must beat the State to the punch. He must come forward before the State comes after him.<sup>21</sup> If a taxpayer is already under audit or investigation, he cannot participate.<sup>22</sup> Other than that, taxpayers need only disclose the taxes they owe; enter an agreement to pay those taxes; and significantly, continue to pay their taxes in the future.<sup>23</sup>

Tax attorneys should warn their clients that if they violate the terms of the agreement, all bets are off. The State can use any disclosed information against them and pursue civil and criminal penalties.<sup>24</sup>

To be eligible for the Voluntary Disclosure Program, an applicant must meet all of the following criteria:

The applicant must not currently be under audit by the Tax Department for the tax type and tax year(s) that he is disclosing;

The applicant must not have

received a bill for the past due taxes that he is disclosing;

- The applicant must not be under criminal investigation by a State agency or political subdivision of the State; and

- The applicant must not be seeking to disclose participation in a tax avoidance transaction (commonly known as a tax shelter) that is a federal or State reportable or listed transaction.<sup>25</sup>

Another benefit of the Voluntary Disclosure Program is that taxpayers can request a limited look-back period of just three years.<sup>26</sup> That means taxpayers who qualify will only have to file and pay taxes for the three most recent delinquent years.<sup>27</sup>

Generally, taxpayers who have not filed or paid for twenty years or more are not eligible for the three year look-back period and must file and pay six years of taxes.<sup>28</sup> Nonetheless this is a huge benefit to the taxpayer. However, all look-back determinations are made by the State on a case-by-case basis.<sup>29</sup>

State residents who have failed to file or pay their taxes, of whatever type, should be wary of the fate of the Beckermans, Joseph Rosmaninho, Paul Batista, and Steven Ballin. The State's Voluntary Disclosure Program provides many substantial benefits to delinquent taxpayers. Taxpayers can apply for the Voluntary Disclosure Program online or seek the assistance of a tax attorney who can file the application on their behalf. A tax attorney assisting a taxpayer with a voluntary disclosure application will need to first obtain a properly executed Power of Attorney from the taxpayer. The remainder of the application must be filed online at <https://www8.tax.ny.gov/VOLD/voldStart>.<sup>30</sup>

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1 Nassau County District Attorney press release, 4/5/2017, available at <https://www.nassaucountyny.gov/CivicAlerts.aspx?AID=5198>

2 *Id.*

3 *Id.*

4 Nassau County District Attorney press release,

4/6/2017, available at <https://www.nassaucountyny.gov/CivicAlerts.aspx?AID=5200>

5 *Id.*

6 *Id.*

7 Nassau County District Attorney press release, 4/21/2017, available at <https://www.nassaucountyny.gov/CivicAlerts.aspx?AID=5237>

8 *Id.*

9 *Id.*

10 Crimes Against Revenue Program (CARP), 7/19/2011, available at <http://www.criminaljustice.ny.gov/crimnet/ojsa/initiatives/carp.htm>

11 *Id.*

12 Governor Cuomo Announces More Than \$14 Million to Help Prosecutors Target Tax and Public Benefits Fraud, 2/19/2015, available at <https://www.governor.ny.gov/news/governor-cuomo-announces-more-14-million-help-prosecutors-target-tax-and-public-benefits-fraud>

13 Perhaps a little overzealously at times; for example, in 2012, tax fraud charges against a Queensbury man were dismissed by a Judge after a review of the evidence found that the prosecution's claims were incorrect. See, *Tax Fraud Charges Against Queensbury Businessman Dropped*, The Post Star, 4/5/2012, available at [http://poststar.com/news/local/tax-fraud-charges-against-queensbury-businessman-dropped/article\\_392884c4-7f66-11e1-8c0d-001a4bcf887a.html](http://poststar.com/news/local/tax-fraud-charges-against-queensbury-businessman-dropped/article_392884c4-7f66-11e1-8c0d-001a4bcf887a.html)

Again in 2015, tax charges against a Grand Island man were dismissed after an independent audit revealed that the taxpayer had actually overpaid his taxes, not underpaid as the prosecution alleged. See, *Tax Charges Dismissed Against Lumber Store Owner*, The Buffalo News, 5/21/2015, available at <http://buffalonews.com/2015/05/21/tax-charges-dismissed-against-lumber-store-owner>. Both men were residents of counties that participated in the CARP program. See, Governor Cuomo Announces More Than \$14 Million to Help Prosecutors Target Tax and Public Benefits Fraud, 2/19/2015, available at <https://www.governor.ny.gov/news/governor-cuomo-announces-more-14-million-help-prosecutors-target-tax-and-public-benefits-fraud>

14 Governor Cuomo Announces More Than \$14 Million to Help Prosecutors Target Tax and Public Benefits Fraud, *supra*

15 *Id.*

16 *Id.*

17 Voluntary Disclosure and Compliance Program - General Program Information, available at [https://www.tax.ny.gov/enforcement/vold/program\\_info.htm](https://www.tax.ny.gov/enforcement/vold/program_info.htm)

18 Pub. 200 The Voluntary Disclosure Program, available at <https://www.tax.ny.gov/pdf/publications/general/pub200.pdf>

19 NYS Tax Law §1700 (2017).

20 Voluntary Disclosure and Compliance Program - General Program Information, *supra*.

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 Voluntary Disclosure and Compliance Program - Limited Look-Back, available at <https://www.tax.ny.gov/enforcement/vold/look-back.htm>

27 *Id.*

28 *Id.*

29 *Id.*

30 Voluntary Disclosure Application, available at <https://www8.tax.ny.gov/VOLD/voldStart>