LANSING CHAPTER OF THE ASSOCIATION OF CERTIFIED FRAUD EXAMINERS

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In This Issue

Fraud Talk Podcast

Following the Bread Crumbs: Tracing Cryptocurrencies in Fraud Investigations - Larry Nielson - Mason Wilder - Fraud Talk - Episode 117

In this episode, Larry Nielsen, a detective who has spent the last several years teaching himself about cryptocurrencies, shares advice for fraud examiners who are interested in expanding their toolkits to accommodate cryptocurrency investigations. He also discusses some of his experiences tracing cryptocurrencies in both a law enforcement capacity and as a consultant.

https://acfe.podbean.com/e/following-the-breadcrumbs-tracing-cryptocurrencies-in-fraud-investigations-larry-nielson-mason-wilder-fraud-talk-episode-117/

UPCOMING EVENTS

LOCAL:

Michigan Association of Certified Public Accountants
Online – Financial Statement Shenanigans: Stop Them from Fooling You
Wednesday, April 13, 2022
5:00 pm - 7:00 pm
Learn more: https://www.micpa.org/cpe/store/course-detail?ProductId=126653

Central Ohio ACFE Chapter's 21st Annual Emerging Trends in Fraud Investigation and Prevention Conference
In Person and Virtual Event
May 16 - 17, 2022
Earn up to 16 hours of CPE, with 2.5 hours of Ethics CPE
Learn more: https://web.cvent.com/event/de1cf33a-a1fa-4696-b302-1d1feb60def9/summary

Lansing ACFE
Keep watch on your inbox; the LACFE is working hard to plan our next training opportunity!

NATIONAL:

ACFE
Working from Home: Ethics and Corporate Fraud Management
Webinar
April 19, 2022
Learn more: https://www.acfe.com/webinar.aspx?evtid=a3Y1Q000003dxCrUAI

ACFE
Leadership Skills for Anti-Fraud Professionals
Virtual Seminar
April 26, 2022 (early registration ends March 28th)
Learn more: https://www.acfe.com/events.aspx?evtid=a3Y1Q000003db0fUAA

ACFE
Online/In-Person Conference – 2022 Global Fraud Conference
June 19 - 24, 2022 (early registration ends April 6th)
Virtual/Nashville
Learn more: https://www.fraudconference.com/33rd-home.aspx

If you have an event that you would like posted in our newsletter or if you wish to share an article, please contact Jennifer Ostwald at jenny1661@hotmail.com

The Treasury is asked to investigate its hiring of lawyers from big accounting firms.

By Jesse Drucker
Feb. 22, 2022
https://www.nytimes.com/2022/02/22/us/politics/treasury-elizabeth-warren-accounting-firms.html

A pair of Democratic lawmakers asked the Treasury Department's inspector general on Tuesday to investigate the revolving door between the country's biggest accounting firms and key policy positions at the Treasury.

Senator Elizabeth Warren of Massachusetts and Representative Pramila Jayapal of Washington were prompted by an investigation published by The New York Times in September detailing how giant accounting firms embed top lawyers inside the government to draft tax rules that benefit their clients.

The Times found at least 35 examples in which lawyers at the country's biggest accounting firms left to join the government, largely in the Treasury's tax policy office, and then returned to their old firm.

The Times found that while in the government, many of those lawyers granted tax breaks to their former firms' clients, softened efforts to clamp down on tax shelters and approved loopholes used by their former firms. In nearly half the examples, the officials were promoted to partner upon rejoining their old firm.

The pattern has been repeated in both Democratic and Republican administrations, including those of Donald J. Trump, Barack Obama, George W. Bush and Bill Clinton.

Since October, the two lawmakers collected information from five accounting firms — PwC, EY, Deloitte, RSM and KPMG — detailing the phenomenon.

"Following our own investigation that has corroborated these allegations and raised new concerns about the accounting giants that take advantage of these revolving-door schemes, we urge you to immediately open an inquiry into this matter," the two lawmakers wrote in their letter. It was sent to the Treasury Department's acting inspector general, Richard K. Delmar, and its inspector general for tax administration, J. Russell George.

"Accounting giants are abusing the public trust and taking advantage of the revolving door between public service and private profit," the lawmakers said in the letter.

The lawmakers disclosed the responses by the firms, which collectively acknowledged 24 such incidences.

"But these disclosures only reveal the tip of the iceberg," the lawmakers wrote. "Neither the firms nor the Treasury Department provided meaningful information about their employees' responsibilities and clients, either at the firms or while in government."

In their letter, they cited an episode uncovered by The Times of a Deloitte tax lawyer who lobbied to weaken proposed Treasury rules to end an offshore tax strategy pitched by various accounting firms. He then joined the Treasury and oversaw those very regulations — which wound up incorporating the changes he had sought while in the private sector. He soon returned to Deloitte and was promoted to partner.

In their letter, the lawmakers asked the agency to investigate a number of areas, including the extent to which the firms, "via the employees placed at the Treasury Department and I.R.S., may have an untoward influence over department and agency policies or may obtain information or influence that provides their clients with an untoward advantage." They also sought information on the employees' "rewards" after rejoining their firms, as well as the policies at the Treasury, the I.R.S. and the firms to prevent abuse.

Video of the Month

[The Robin Hood Syndrome - YouTube]

Barry Zalma, Esq., CFE presents videos so you can learn how insurance fraud is perpetrated and what is necessary to deter or defeat insurance fraud. This Video Blog of True Crime Stories of Insurance Fraud with the names and places changed to protect the guilty are all based upon investigations conducted by me and fictionalized to create a learning environment for claims personnel, SIU investigators, insurers, police, and lawyers better understand insurance fraud and weapons that can be used to deter or defeat a fraudulent insurance claim. - A True Crime Story of Insurance Fraud Number 19

TurboTax Maker Intuit Faces Tens of Millions in Fees in a Groundbreaking Legal Battle Over Consumer Fraud

by Justin Elliott
Feb. 23, 3:15 p.m. EST
https://www.propublica.org/article/turbotax-maker-intuit-faces-tens-of-millions-in-fees-in-a-groundbreaking-legal-battle-over-consumer-fraud

Faced with a class-action suit filed on behalf of customers who claim they were tricked into paying to file their taxes, TurboTax-maker Intuit knocked the case down. The company insisted its customers had agreed to forego their right to take their grievances to court and were required to use the private arbitration system instead.

But even as Intuit was winning in the class-action case, that very arbitration system was being weaponized against the Silicon Valley company.

A Chicago law firm is using a novel legal strategy by bankrolling customers bringing tens of thousands of arbitration claims against Intuit. Win or lose, this strategy could cost Intuit tens of millions of dollars in legal fees alone — a threat that could prod the company to be more open to a giant settlement.

Nearly three years after ProPublica first reported on how many customers wound up paying for TurboTax when they could have filed their taxes for free, Intuit is fighting a complex set of legal battles to stop consumers from trying to recover money.

Besides the huge number of consumer claims that have been filed, federal regulators and state-level prosecutors are also advancing efforts against the deep-pocketed company, which made $2 billion last year.

The most unusual front in the fight is the strategy to bring tens of thousands of individual consumer claims in arbitration, the alternative to the public court system that has historically been considered friendly to business.

The so-called mass-arbitration tactic was pioneered in recent years as the legal terrain became less friendly to class-action lawsuits, the traditional tool used to recover money for consumers through the court system.

The tactic is akin to using guerilla warfare rather than having soldiers mass on the battlefield and face each other in lines. The law firm pursuing Intuit, Keller Lenkner of Chicago, has generated attention for successfully using the strategy on behalf of delivery workers for DoorDash and Postmates.

Intuit has vigorously defended its practices, denying any wrongdoing in each case. It stresses that millions of people do file their taxes for free using TurboTax each year.

“Intuit was at all times clear and fair with its customers,” a company spokesperson said in a statement to ProPublica, adding that it “not only did not hide free filing options from consumers, Intuit helped drive the adoption of free tax prep by helping more people file their taxes free of charge than all other online tax prep providers combined.”

Following ProPublica’s initial stories, Intuit was first sued in May 2019 in federal court. The case centered on customers who had to pay after starting the filing process using TurboTax’s Free Edition.

At the time, TurboTax maintained the heavily advertised Free Edition alongside a similarly named Free File product. The Free Edition routed some filers to a version of TurboTax that charged them a fee based on which tax forms they had to file.

Meanwhile, the Free File product, which was offered as part of a partnership with the IRS, did not route users to paid products and was truly free for anyone making less than an income threshold. But it was difficult to find. At one point Intuit added code to its website that removed the product from online search engine results. (The company later removed those lines of code.) A subsequent investigation by the Treasury Inspector General for Tax Administration found that in 2019 alone, more than 14 million tax filers paid for online tax prep software from TurboTax and other firms that they could have gotten for free. That amounted to roughly $1 billion in revenue for the industry.

The 2019 lawsuit was a traditional class-action case, in which plaintiffs’ lawyers sue a company on behalf of an entire category of consumers who have allegedly been harmed. If the plaintiffs prevail or the company settles, millions of people may be eligible to get money from the defendant.

But for decades, corporate America waged a successful battle against class-action suits, seeking to narrow their use. In recent years, companies got help from the Supreme Court, which issued a series of decisions that smothered many class-action lawsuits by making it easier for companies to hold customers to binding arbitration agreements. When consumers, including TurboTax users, sign up for a service, the terms-of-service contracts they click on often contain a buried clause that has them agreeing to pursue any grievance through private arbitration, not a lawsuit.

Studies have shown that hardly any users actually read these sprawling contracts. TurboTax’s current terms-of-use agreement, which still contains an arbitration clause, runs to over 15,000 words of dense legalese.

Arbitrations are handled in a private forum outside the court system. Crucially for business defendants, those claims are not bundled together, as class-action cases are. This fundamentally shifts the economic incentives: If one customer was defrauded of $50, it’s not worth a lawyer’s time to pursue the case. The calculus is different if a lawyer can represent an entire class of 20 million customers who each lost $50.

“It’s been just catastrophic for consumers and workers,” said Paul Bland of Public Justice, an advocacy nonprofit affiliated with plaintiff-side law firms. “It has wiped away tons of very well-merited and powerful cases where companies clearly break the law and they just get away with it because of the arbitration clauses.”

Business groups have argued that arbitration is a “simpler and more flexible” alternative to lawsuits and that class-action cases have served mainly to enrich plaintiffs’ lawyers.

After more than a year of litigation and an appeal, Intuit effectively won the federal class-action case against it by relying on TurboTax’s arbitration clause. The U.S. Court of Appeals for the 9th Circuit ruled that TurboTax users had agreed to arbitration by clicking a “Sign In” button on the software that stated users agreed to the service’s terms of use. Those terms contained the arbitration clause.

In that clause, the law firm Keller Lenkner recognized an opportunity. The strategy pioneered by the firm essentially called the bluff of companies that required their workers and customers to settle claims via binding arbitration. It also took advantage of the fact that companies typically must pay fees to the private arbitration organization, running perhaps a few thousand dollars per case.

What makes the strategy even more unusual is that the firm does not have the typical pedigree of plaintiffs’ lawyers, who have long been a stalwart constituency of the Democratic Party. Keller Lenkner was founded by a pair of former clerks for Supreme Court Justice Anthony Kennedy, a Reagan appointee; one also was a clerk for Brett Kavanaugh when he was a George W. Bush-appointed appeals judge.

If a handful of consumers pursue arbitration, the fees companies must pay amount to a rounding error. But if businesses are facing thousands of individual arbitrations — a tactic they didn’t anticipate — the potential fees quickly add up and companies can be pressured into settling. The strategy also requires deep pockets on the part of the plaintiffs’ law firm, since they advance money to their clients to cover a modest arbitration filing fee.

While the strategy has so far been used in only a small number of cases, an academic article on the phenomenon by Georgetown Law professor Maria Glover termed it a revolution of the civil justice landscape, “one in which virtually all Americans are subject to mandatory arbitration agreements with class-action waivers, and one wherein a broad swath of claims—for consumer fraud, racial discrimination, gender discrimination, wage theft, and workplace sexual harassment—have been all but eliminated.”

Keller Lenkner disclosed in a related court filing in 2020 that more than 100,000 consumers had sought individual arbitration against Intuit. The firm advanced the consumers several million dollars in filing fees.

Intuit has tried to stop the mass arbitrations. In late 2020, following the appeals court ruling that doomed the federal class-action lawsuit, the company offered to pay a settlement of $40 million in that case.

If the court had approved the class-action settlement, consumers who failed to opt out would not be able to pursue their arbitration claims. A settlement for the entire class of consumers could have knocked out many of the ongoing arbitrations for a relatively cheap price. Keller Lenkner objected to the settlement.

At a hearing before U.S. District Court Judge Charles Breyer, a lawyer for Intuit complained that “the Keller firm is able to threaten companies — Intuit’s not alone — into paying $3,000 in arbitration fees, for a $100 claim.”

Breyer questioned whether the proposed settlement was in the best interest of consumers.

“I did think when I looked at this, and saw that, really, that this was a way to avoid or otherwise circumscribe arbitration, that it seemed to be that Intuit was, in Hamlet's words, hoisted by their own petard,” Breyer said, adding, “I think arbitration is the petard that Intuit now faces.” His comments were first reported by Reuters.

Breyer rejected the settlement in March 2021.

Since then, the arbitrations have proceeded slowly.

Limited data disclosed by one of the main arbitration organizations covers cases resolved through the end of 2021. It offers a glimpse of the arbitration dynamics, showing outcomes in a handful of cases: Intuit won at least nine and consumers won five, with the arbitrator awarding consumers as little as $35 and as much as $3,348. Intuit has continued to win most of the cases this year, according to a person familiar with the claims.

In one case, Intuit had to pay the consumer’s attorney fees of $9,500. In another, the plaintiff’s lawyers had to pay Intuit’s attorney fees of $5,025. Arbitrators can order the plaintiff to pay the company’s attorneys’ fees if a claim is deemed to be frivolous.

The data also shows several dozen cases that were either dismissed or settled, without giving any detail on how much money changed hands, if any.

The biggest hit for Intuit was on the cost of the arbitration itself, with administrative fees totaling more than $220,000 for around 125 cases. At that rate, 100,000 cases would cost the company more than $175 million in fees alone.

Legal filings suggest Intuit may have already paid tens of million dollars in arbitration fees by now, but public records of the payments won’t be disclosed until more arbitrations are completed.

Intuit has argued that many of the arbitration claims are bogus, and a lawyer for the company dubbed Keller Lenkner’s tactic “a scheme to exploit the consumer-arbitration fee structure to extort a settlement payment from Intuit.”

The lawyer also asserted that many of the claims involve users who either didn’t use TurboTax or did use it but filed for free. More than 1,000 cases — likely ones that fall into one of those two categories — have been withdrawn by Keller Lenkner, the public data shows.

In part because arbitrations are conducted in secret, it's difficult to tell much about the success of the strategy in past mass arbitrations. Keller Lenkner has previously said that in a recent two-year period it secured more than $190 million for more than 100,000 individual clients, an average of $1,900 per client.

In a separate case filed against Intuit by the Los Angeles city attorney and Santa Clara County attorney on behalf of California consumers, the two sides are still fighting over what documents and data Intuit has to hand over. Both sides recently proposed a trial date of July 2023, but it has not yet been finalized.

Meanwhile, the Federal Trade Commission and a set of at least five state attorneys general are still actively investigating Intuit. Tech news outlet The Information reported last month that the FTC, now led by progressive chair Lina Khan, was pushing forward with the investigation despite a recent Supreme Court ruling that trimmed the agency's authority in such cases.

One FTC commissioner, Rohit Chopra, voted to proceed with the case before he left the agency last October. But Chopra's vote was in place only temporarily, according to a person familiar with the matter. The rest of the commission did not take up the matter at the time. An FTC spokesman declined to comment.

This year, the IRS Free File program allows anyone making less than $73,000 last year to use tax prep software and file a federal return for free.

But the program, which was originally conceived as an alternative to the IRS offering its own free filing service, is entering its first year without the participation of the two titans of the online tax prep industry. In 2019 and earlier years, TurboTax and H&R Block together accounted for around two-thirds of all filings through the program, according to ProPublica's analysis. Intuit announced last year it was leaving the program "to focus on further innovating in ways not allowable under the current Free File guidelines."

Only much smaller and less recognizable companies like TaxAct, TaxHawk and TaxSlayer, which only hold a sliver of the overall market, remain.

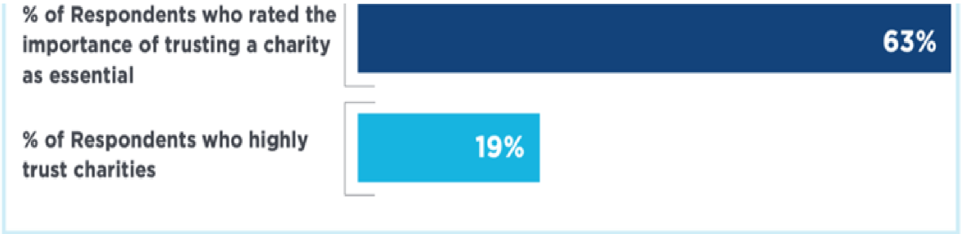
Charity fraud: How can you donate without becoming a victim of a scam?

February 21, 2022
Giancarlo Berrocal, CFE
https://acfeinsights.squarespace.com/acfe-insights/2022/2/17/charity-fraud-how-can-you-donate-without-becoming-a-victim-of-a-scam

How many times have you seen an ad on social media asking you to donate to a cause? The reality is that many of us have a generous heart that prompts us to act and promote just causes like increasing research to fight breast cancer, protecting the environment or providing natural disaster aid in a developing country. Our natural tendency is to sympathize with these causes, which often compels us to donate money and/or property. Unfortunately, not all causes we are called to join have a noble motive; some of them are organized by unscrupulous individuals who take advantage of our generosity to steal our money. But how can you donate without being a victim of a charity scam? Is there a bulletproof way to give you the peace of mind that your contributions are going to the desired cause?

According to Giving USA's 2021 annual report, Americans (individuals and corporations) gave around $471 billion to charity in 2021. To put it into perspective, America's generous giving is more than Austria's gross domestic product. Typically, generosity is a sign of a nation's prosperity and good values, especially in difficult economic times. Nonetheless, giving to charity also poses certain risks and challenges. The FBI's 2020 IC3 Annual Report showed an increase in charity fraud cases in recent years. Reported charity fraud accounted for $4.4 million in losses, which has increased more than twofold since 2018.

Charity fraud is not only financially detrimental to donors, but also to an individual's trust in charitable organizations, which affects legitimate charities. According to the Give.org Donor Trust Report 2021, "Trust is considered highly important in the giving process. However, self-reported reliance on trust as a giving indicator has eroded over the past 4 years."



SOURCE: BBB WISE GIVING ALLIANCE - GIVE.ORG

What can you look for to avoid charity fraud?

According to the Donor Trust Report 2020, individuals are more likely to trust a charitable organization when they exhibit the following factors: evaluation by a third-party independent organization, name recognition and accomplishments shared by the organization. However, these factors alone may not be enough to prevent and deter charity fraud. There are certain red flags you should pay attention to in order to avoid being a victim of this type of scam.

Red flags of charity fraud

- **Pressure to donate —** fraudsters will try to instill a “sense of urgency” in the victim’s mind to make them donate immediately.
- **New charitable organization —** Some scammers will create an organization after a major event (earthquake, COVID-19 pandemic, etc.) for the purpose of defrauding individuals. Typically, the name of the organization cannot be found online using basic online searching tools.
- **Use of certain payment methods —** Scammers usually prefer cryptocurrencies, gift cards and wire transfers as a form of payment to receive donations.
- **Less than 65% of donations go to intended cause —** BBB Wise Giving Alliance recommends that any charitable organization should spend at least 65% proceeds in charity’s program activities.
- **Use of robocalls/automated calls —** Be suspicious of robocalls trying to raise money. These robocalls are most likely scams.
- **Negative media/reviews —** If a charitable organization is being flagged in social media or the press for dubious practices or scams/fraudulent conduct, then you should refrain from making any donation.

Steps to follow to avoid charity scams

- Look up the organization’s website to verify its authenticity. Do not click on links or download attachments sent by a purported organization via email/texts.
- Be aware of crowdfunding — if a person is raising money using crowdfunding campaign through a fundraising platform such as GoFundMe, make sure you know or trust the person who is behind the campaign. Crowdfunding is easy to set up and the legitimacy of the fundraising campaign is difficult to verify.
- Use online resources to verify the charitable organization’s review and credibility. You can use these free resources such as Charity Watch, Charity Navigator, and BBB Wise Giving Alliance.

- Use a check or credit card to make your donations.
- Look at the charitable organization's IRS tax exempt status.
- Verify the charitable organization's registration status in your state.

How to report charity fraud

If you become a victim of charity fraud, report your case immediately to:

- The Federal Trade Commission
- National Center for Disaster Fraud
- The FBI

Also, contact your State Consumer Protection Office.

Quote of the Month

"An aggressive war is the great crime against everything good in the world. A defensive war, which must necessarily turn to aggressive at the earliest moment, is the necessary great counter-crime. But never think that war, no matter how necessary, nor how justified, is not a crime. Ask the infantry and ask the dead."

- Ernest Hemingway

  Introduction to *Treasury for the Free World* by Ben Raeburn