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Acute Tax Neuroses

*Lawrence Bloomenthal**

A Cleveland Psychiatrist commented recently that nearly 40% of his male patients were suffering from an increasingly prevalent ailment—"acute taxitis." Corroborating this diagnosis, the *Wall Street Journal* in a front page article cited instances of physical and emotional disturbances resulting from the struggle between the taxpayer's conscience and his tax return.

According to the *Journal,* in Hammond, Indiana a dentist complained to his accountant that he was plagued by ulcers since he started cheating on his taxes. In Pittsburgh, a prosperous business man appeared at the Internal Revenue office to confess tax evasion because his "guilt complex" was getting him down.

Business Deduction Mania Complex

While the most serious conflicts arise from attempts at tax-dodging, there are numerous areas in the tax field where legitimate differences may exist between the taxpayer and the Revenue Service. Deductions for travel and entertainment expenses have become a more pronounced source of contention since the Commissioner of Internal Revenue, in April, 1956, directed examiners to scrutinize all such items more critically. In Revenue Ruling No. 56-168[1] Revenue personnel were instructed to determine whether any part of the deductions claimed for convention and entertainment expenses, and the cost of meals and lodging while away from home were personal, and therefore, non-deductible.

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1 Revenue Ruling No. 56-168, I. R. B. 1956-17, 6; CCH Rewrite Bulletin, ¶ 10,896, April 18, 1956. See also, Taxes Are Taxing, 3 Med. News (19) 1 (Nov. 11, 1957).

Taxpayers who have been in the habit of claiming lump-sum deductions for meetings and conventions will now be called upon to furnish substantiating evidence and explanations far more frequently than in the past. Commingling of family vacations and business trips also is being attacked.

Let us assume that Joe Taxpayer decides to attend an industry convention scheduled for Christmas week in Los Angeles. Taking advantage of the family-plan fares, he arranges for his wife to accompany him and instructs the bookkeeper to charge the entire bill to travel expense. Later, when questioned by a Revenue Agent, he insists that as a company officer, all of his own expenses are fully deductible. Since special functions had been planned for executives' wives, he took it for granted that her expenses were deductible also. Citing Revenue Ruling No. 56-168, the Agent disagrees and proposes disallowance of one-half of Joe's expenses as a vacation trip and all the plane fare, hotel bills and other costs of taking his wife along.

A deduction for Joe's reasonable expenses directly incidental to the convention is conceded by the Agent, especially since Joe produces receipts and cancelled checks for major expenses and can give some proof of minor expenses. However, when he claims that his wife actively participates in the business because she occasionally works as a receptionist and bookkeeper, the examiner points out that it is neither necessary nor customary for employees in these categories to attend a trade convention at company expense.[2]

On the vacation issue, Joe admits that departure from and return to his home city did not coincide with the opening and closing dates of the convention, plus necessary travel time. Nevertheless, he defends the entire trip as having a sound business purpose. Pointing out that competitors had built new plants in various sections of the country, especially in and around California, Oregon and the Southwestern states, he insists that a tour of inspection throughout the area was of immense benefit to the company. While conceding that there could be merit in this argument, a review of hotel bills and charge slips for gasoline, etc. sent into the company, convinces the Agent that approximately half of Joe's time was spent in Yellowstone Park and other vacation spots. Accordingly, he refuses to change his

[2] Internal Revenue Service Publication No. 300, "Deductions For Traveling and Transportation Expenses," April 10, 1956; Vol. 565 CCH Standard Federal Tax Reports, ¶ 6347, p. 52,195.

original determination based on the Commissioner's ruling that post-convention expenses for a round-about return trip to take in interesting sights are no longer regarded as part of the convention expense.

Disallowances also will be made if a post-convention cruise has been included in the travel costs, since Revenue Ruling No. 56-168 comments:

> * * * a post-convention cruise made available to individuals attending the convention, the purpose of which is primarily recreational although some incidental sessions are scheduled for lectures, discussions or exhibitions related to the business interests of the group holding the convention, the expenses paid for the local sightseeing, entertaining and visiting and the entire cost of the post-convention cruise are deemed to represent *non-deductible personal expenses.* (Italics supplied.)

Proper records of the nature and amount of entertainment expenses, whether incurred at home or while traveling, will go a long way in alleviating tensions between the Revenue Examiner and the taxpayer. This was shown in the recent case of *George A. Jacquemat,*[3] where a salesman made it a habit to keep diaries in which he listed the names, places and amounts of entertainment items. When the Commissioner disallowed approximately 25% of the total claimed in each of two years, he appealed to the Tax Court, relying upon his diaries and his own supporting testimony. By this means, substantially all of the claim was allowed.

In the case of professional men, such as doctors, lawyers or accountants, some examiners have questioned entertainment expenses which are not directly related to present clients or accounts. Businessmen, it is assumed, entertain primarily in order to attract new customers, since they are free to solicit orders in a highly competitive market. But professional men are restrained by certain ethical standards from so actively pursuing prospective clients or patients. Also, entertainment aimed at promoting future business would be unethical. However, the majority of decided cases affirm the right of professional people to deduct reasonable amounts as legitimate business expenses. Fraternal organization and country club dues, greens fees, dining room charges, etc., are deductible to the extent that they bear a

[3] Geo. A. Jacquemat, 15 TCM 1045 (8/28/56). Cases on the deductibility and allocation of automobile expenses are collected and discussed in Volume 571 CCH Standard Federal Tax Service, ¶ 1354 and ¶ 1360.02.

direct and proximate relationship to the conduct of a professional practice. Of course, if the taxpayer's family also uses country club facilities, a proportionate part of the dues and charges must be eliminated from business entertainment and treated as personal expenses.

Revenue agents have become increasingly critical also of automobile expense deductions claimed by individuals. Under today's more stringent policy, 100% of the expense for the use of an individually owned automobile is rarely allowable. Usually, 10% or more is allocated to personal use, depending on the circumstances.

Professional Taxitis

Since lawyers, doctors, dentists and other personal service people are dependent primarily on their ability to work continuously, they have contended that they are entitled to deduct the cost of protecting their income to the same extent as premiums on fire, theft and burglary insurance. Their reasoning has been that the cost of replacing income lost through accidental or physical disability is an essential part of their business overhead. Unfortunately, the Tax Court and the Commissioner of Internal Revenue both disagree.

In the *Blaess* case[4] it was decided that a doctor cannot deduct disability insurance premiums as an income-protection expense, although they may be included as medical expenses if deductions are properly itemized. The practical effect of this decision is to deny any deduction at all in most instances, due to the limitations on deductible medical expenses.[5]

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4 Marvin J. Blaess, 28 T. C. No. 78 (6/25/57). Judge Harron distinguished disability income protection insurance premiums from cost of overhead expense reimbursement policy for which the premiums were held deductible in Revenue Ruling No. 55-264, C. B. 1955-1, p. 11.

5 (a) Accident and health insurance premiums must be allocated between coverage for loss of earnings (disability) and reimbursement for medical expenses. Commissioner's position is that only the latter portion of premiums is includible in medical expenses: Revenue Ruling 55-261, C. B. 1955-1, 307.

Limitations on amounts deductible as medical expenses are specified in Sections 213 (b), (c) and (d) of Internal Revenue Code of 1954. See also discussion in Vol. 572 CCH Standard Federal Tax Service, ¶ 2019, p. 23,049.

(b) Post-graduate training course expenses. Lawyer's expenses for attending N. Y. University Institute on Federal Taxation deductible due to necessity to keep up in current work with changing status of the law. Coughlin v. Comm'r., 203 F. 2d 307 (2d Cir. 1953), 53-1 U. S. T. C. ¶ 9321.

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Along the same line, there is another troublesome item—that of deducting the cost of post-graduate education. One of the strange inequities of the present tax law is that investments in new machinery and equipment are recoverable through depreciation, but no extra tax benefits are available to professional men to amortize the cost of their specialized training. Instead, any amounts expended for post-graduate courses are considered personal items intended to enhance one's prestige and future earning power. The only exception is where advanced training is required to maintain an existing position so that it is an income-producing expense. A legitimate means of circumventing this rule appears to be the combination of advanced seminars and clinics with professional conventions. Fees for refresher courses or technical demonstrations of new developments are included in the over-all convention charge and the entire amount is treated as convention expense.

Tax Evasion Delirium Tremens

The major cause of acute taxitis is the mental and physical turmoil arising from accusations by the Revenue Service that false and fraudulent returns have been filed with intent to evade taxes. The three most common means by which tax evasion is discovered are: (1) routine audit—spot checks and surveys; (2) tips from informers in hopes of receiving sizeable rewards, or by jealous neighbors or disgruntled employees; (3) newspaper publicity about marriages, trips, home purchases, robberies, real estate and business transactions.

Whatever the source, either one or two Agents will begin a thorough check. The more serious cases are handled on a joint basis by a Revenue Agent from the Audit Division and a Special Agent from the Intelligence Division.

The recent case of *United States v. Doyle*,[6] is typical of the manner in which evidence for a tax fraud prosecution is developed. While Mr. Doyle happened to be involved in some illegal

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(c) Doctor's expenses for post-graduate courses not deductible. 1921 O. D. 984, 5 C. B. 171. But, Coughlin decision (supra) probably justifies deduction of expenses for courses taken to maintain existing practice of physicians.

(d) Teacher's expenses for courses necessary to qualify for renewal of certificate are deductible. Hill v. Comm'r., 181 F. 2d 906 (4th Cir. 1950), 50-1 U. S. T. C. ¶ 9310.

[6] 234 F. 2d 788 (7th Cir. 1956); for the unreported decision of the District Court, see 56-1 U. S. T. C. ¶ 9553.

ventures, the procedure employed by the Government was the same as in the case of any businessman suspected of fraud.

After careful checking of all known facts, the Agents determined that Doyle had underestimated his income in one year by approximately $27,000 and by about $31,000 in the next year. The technique by which these figures were arrived at demonstrates the meticulous thoroughness of a tax-fraud investigation.

The Agents received no cooperation at any time from the taxpayer, who claimed that all his underlying books of original entry, cancelled checks and bank statements for past years had been burned before the examination began. Moreover, he refused flatly to furnish a net worth statement, even though the Agents offered to show him the Government's accounting information. His only concessions were an oral estimate of living expenses and the turning over of summary sheets showing total receipts and disbursements for the two-year period under investigation.

To build up the prosecution, Agents checked each deposit in every bank account and prepared schedules showing which of the deposited items were cash and which were checks. All disbursements were investigated and all entries in the summary sheets furnished by the taxpayer were traced.

The next step was to canvass all department stores in the entire area between Gary, Indiana, East Chicago and Chicago, for charge accounts in the name of Doyle or any member of his family. All public records were scrutinized for mortgages, real estate transactions, law suits and any recorded transactions to which he might have been a party. The Agents spent from 1951 to 1954 investigating, comparing and analyzing their findings. Finally, an indictment was returned and Doyle was brought to trial in January of 1955. The trial lasted eighteen days, with extremely complicated accounting testimony introduced by both sides. Doyle was convicted and sentenced to two years in federal prison, plus paying the maximum fine of $10,000. In addition, he was liable for substantial back taxes and 50% fraud penalties. On appeal to the Seventh Circuit, the conviction was upheld.[7]

The investigative powers of the Commissioner of Internal Revenue have been held to be similar to those of a Grand Jury.[8] Also, his authority to redetermine income by use of the "net

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[7] Doyle v. U. S., supra, n. 6.

[8] Falsone v. U. S., 205 F. 2d 734 (5th Cir. 1953), 53-2 U. S. T. C. 9367, affg. unreported order of District Court; cert. den., 346 U. S. 864, 74 S. Ct. 103 (1953).

worth" method, regardless of the taxpayer's business being legal or illegal, has been upheld by the Supreme Court. At the same time, the Court has imposed limitations on the net worth method which furnish the taxpayer with definite advantages.[9] The burden of proof always is on the Commissioner to show wilfulness and a deliberate intent to defraud. To prove fraud, there must be either direct proof of specific items of income knowingly omitted, or there must be surrounding circumstances showing fraudulent intent. Increase in net wealth beyond reported taxable income has been held to be circumstantial evidence of intent to defraud.[10]

Originally, the net worth method was employed in checking illegal business enterprises which made a practice of keeping no books. However, in the *Holland* case,[11] the Supreme Court ruled that the character of the business, whether legitimate or otherwise, had no bearing on the Government's right to use this method. Moreover, the fact that the taxpayer's books appear to be adequate does not preclude the use of the net worth approach.

However, one of the limitations imposed in the *Holland* case is that opening net worth must be established with a substantial degree of reliability. Independent corroboration must be produced by the Government in order to demonstrate that expenditures for personal and family expenses, together with investments in new assets during the years under investigation, originated in unreported income rather than from prior accumulated wealth.[12]

For example, in the *Imburgia* case,[13] the taxpayer claimed a large amount of opening cash on hand, but the Government's case showed a prior history of low earnings, together with the absence of any gifts or inheritances; and the existence of loans was carefully negatived. Accordingly, the Tax Court ruled that the Government had carried its burden of proof in establishing opening net worth with a sufficient degree of certainty.

In the *Ford* case,[14] it was shown that the living standard of

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9 Holland v. U. S., 348 U. S. 121, 75 S. Ct. 127 (1954), affirming conviction based on net worth theory.

10 Holland, supra; Daniel Smith v. U. S., 348 U. S. 147, 75 S. Ct. 194 (1954); U. S. v. Calderon, 348 U. S. 160, 75 S. Ct. 186 (1954).

11 Holland v. U. S., supra, n. 9.

12 Calderon and Smith decisions, supra, n. 10, deal with corroboration of opening cash and other elements of the net worth statement.

13 Frank Imburgia, 22 T. C. 1002; Acq. 1955-4, 6.

14 U. S. v. Ford (2d Cir. 1956) affg. unreported decision of District Court, New York. Certiorari granted on 2/24/57.

a policeman combined with his savings during the taxable period was far in excess of anything that could have been achieved on his salary. His explanation that such extra funds came from certain vague sources was thoroughly discredited.

Claims of inheritances from relatives in foreign countries often are used as an explanation of undeposited cash on hand at the opening of the investigation period. This defense is difficult for the Commissioner to overcome because of the inaccessibility of contradictory proof. Yet, the courts seem to view such stories skeptically, as in the case of *Schwartzkopf v. Commissioner*.[15]

The taxpayer claimed he had $300,000 of opening cash on hand on December 31, 1945. He contended that a good part of this sum had been inherited from an uncle who died in a part of Europe now occupied by Russia. Documentary proof of the uncle's death and the inheritance were not produced on the ground that these records had been destroyed during World War II. The only evidence of the inheritance were notations on the taxpayer's passport of amounts allegedly brought back from Europe by him. The Tax Court rejected the story.

All of the circumstances in the case, according to the Tax Court, pointed to a deliberate fraud. Analysis of Schwartzkopf's net worth increase showed that real estate holdings, bank accounts, investments in securities and other assets had increased from approximately $71,000 in January of 1946 to $335,000 by the end of 1951. Exhaustive investigation brought out the fact that Schwartzkopf had no liabilities during this period.

Other defenses also rejected were that he was a bad bookkeeper, poor mathematician and a very busy eye specialist. However, the Court points out that Dr. Schwartzkopf had found time to prepare his own tax returns, that he had kept a receipt book in his own handwriting, and once a month, entered net receipts from the operation of his private hospital. On appeal, the Tax Court was affirmed.

To corroborate unreported income shown by net worth increases, the Commissioner frequently relies on unexplained bank deposits on the theory that they represent omitted income. Here again, the Commissioner must be prepared to show that these deposits did not come from cash on hand accumulated from prior savings, gifts or inheritances.

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[15] 15 T. C. M. 762, T. C. Memo 1956-155, affd. 57-2 U. S. T. C. ¶ 9816 (3rd Cir. 1957).

Occupational Neuroses

In the case of *Dr. Henry Minor,*[16] bank deposits during the years 1943 to 1948 exceeded gross receipts reported for the same period by about $111,250. A net worth statement prepared by the taxpayer's own certified public accountant also showed increases in wealth exceeding reported net income, even though such increases were less than those shown by the Revenue Agents. The Tax Court did not accept the figures of either side. Instead, it made an independent finding based on evidence. According to its conclusion, approximately one-half of the $48,000 in additional taxes determined by the Commissioner were sustained, plus 50% fraud penalties.

Another method of proving the existence of unreported income is by comparing net worth increases with the results obtained by adding back specific items known to have been omitted from income. In *Commissioner v. Stern,*[17] the taxpayer, a prominent ophthalmologist, had reported amounts varying between $13,000 and $19,000 during the years 1943 to 1947. He maintained individual record cards for each patient, setting forth details of treatment and payments received. Also, he kept a day book showing the amounts allegedly collected from each patient. Totals were used as gross receipts in his tax returns.

Upon investigation, Dr. Stern's records were found to contain many errors, alterations and obliterations. The examiners, however, discovered the existence of a code showing the actual amounts collected. Because of the suspicious condition of the records, they were submitted to the Alcohol Tax Unit for chemical tests, where it was ascertained that ink eradicator had been used to change entries. Patients of the doctor were contacted and interviewed. Over 10,000 record cards were scrutinized and tabulated in schedules showing gross receipts on a specific items basis.

A novel defense by Dr. Stern's attorney was that the Government should have used the net worth method, whereby a smaller amount of omitted income would have been shown. The Tax Court held that the Commissioner was not obliged to use the net worth method since there were actual records available for the Government to inspect.

From the cases discussed, it is apparent that opening cash

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[16] Dr. Henry W. Minor, 15 T. C. M. 906, T. C. Memo 1956-175.

[17] 14 T. C. M. 140, T. C. Memo 1955-40.

on hand is one of the most important, yet most elusive, factors in setting up a net worth statement. Without a reasonably accurate starting figure for opening cash, the rest of the net worth statement is meaningless. Consequently, the Commissioner has no right to make any arbitrary assumptions that opening and closing cash are the same.

This rule was clearly established by a recent decision of the 5th Circuit Court of Appeals in the *Estate of Phillips.*[18] Here, the only question was whether either side had produced adequate proof of cash on hand as of January 1, 1947, the opening date of the net worth statement. The Commissioner had used $4,500 for both opening and closing cash on hand and argued that his findings were presumptively correct. It was contended that the burden was on the taxpayer to disprove the accuracy of the Commissioner's findings.

The Tax Court agreed, holding that it was up to the taxpayer to prove error. Upon appeal, however, the Appellate Court reversed this decision. In its opinion, the Court stated:

> The presumption which favors the determination of the Commissioner is not to be regarded as meaning that any arbitrary figure assigned to the cash on hand account without support in the record must nonetheless be treated as conclusive in the absence of an affirmative showing by the taxpayer of the correct amount.

The *Phillips* decision is significant in holding that the taxpayer need only show from all the surrounding circumstances that the opening cash figure used by the Commissioner is obviously erroneous. He need not go further and establish the amount which he claims is correct.

Corroboration of opening cash figures in the Government's net worth surveys can come from various sources. Proof by the Government of an intentional exaggeration of deductions or expenses during the current years can be used to overcome the alleged existence of more opening cash than the Commissioner has allowed. In *United States v. Eggleston,*[19] a second-hand car dealer in Louisville, Kentucky, was convicted of tax fraud and his conviction was sustained on appeal. Costs of used cars were found to be overstated by approximately $19,000 in one year,

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[18] Est. of Phillips (5th Cir. 1957), revg. and remanding Tax Court decision, 14 T. C. M. 516, T. C. Memo 1955-139.

[19] 227 F. 2d 493 (6th Cir. 1956), affg. unreported decision of District Court; cert. den., 352 U. S. 826, 77 S. Ct. 38.

and the cost of repairs to make them saleable was exaggerated by $9,600. Net worth increases supported this finding.

The taxpayer's defense was that used cars were scarce and that he was forced to pay an additional "bird dog" fee of from $25 to $50 cash per car to persons locating cars for him. When pressed for dates, names and addresses of informants, he was unable to give any information. By checking automobile title records, the agents ascertained the names of all persons from whom Eggleston had purchased cars and interviewed them. The new owners were then interviewed to find the price at which the cars had been sold to them. Comparison of these findings with the taxpayer's books was a simple matter.

Although the taxpayer may admit that he cannot account for large net worth increases by reasons of prior cash accumulation from gifts, loans or inheritances, the government still must track down every lead which might account for unreported income. In the *Epstein* case,[20] the taxpayer had two businesses which the agents considered the most likely sources of unexplained funds. However, Epstein insisted that he had at least $168,000 opening cash on hand. His defense was that the Agents had not discovered any specific false entries in his books, and that therefore, the Commissioner and the Court were duty bound to accept his version of the opening cash.

The Special Agent, however, testified that the $20,000 cash on hand allowed in the Government's net worth statement was based not only on his own calculations, but upon Epstein's statements furnished to Dun & Bradstreet and to the Union Planter's Bank.

At the trial, defendant's counsel moved for exclusion of statements given to Dun & Bradstreet and also of the signed statement given the bank, on the ground that these were "extra-judicial statements" which had to be corroborated by independent evidence. Both the trial court and the 6th Circuit Court of Appeals disagreed, stating that this evidence did not constitute declarations against interest and that they were not similar in any way to "confessions" or statements given to police authorities during a criminal investigation. Only the latter type of admission requires corroboration.

In *Epstein's* case, the statements were voluntary declarations made for his own benefit long before any tax investigation was begun. According to the Court, "* * * a man's own acts, conduct

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20 Epstein v. U. S., 246 F. 2d 563 (6th Cir. 1957) affg. an unreported District Court decision.

and declarations, which are voluntary, are always admissible in evidence against him without independent corroboration."

Self-Medication

Tax problems have progressed to the ulcer-producing state when an apparently routine audit shows signs of turning into a full-fledged investigation of criminal tax evasion. At this point, the taxpayer and his representatives must decide whether, when, and to what extent defenses based on the privilege against self-incrimination and unreasonable searches and seizures should be raised.

Since abolition of the rule granting immunity for a timely voluntary disclosure, the basic question is: How far should taxpayers cooperate? In the case of corporate officers, there is little choice. Testimony or documents may not be withheld on the ground that the corporation would be incriminated.[21] Moreover, according to United States Supreme Court rulings, corporate books and records cannot be kept from Government officials on the ground that the officer producing them might be incriminated by their contents. While a corporate officer cannot be forced to reveal the whereabouts of missing books, he is subject to fine and imprisonment for disobedience of the subpoena ordering their production.[22]

In the case of individual taxpayers, if requested informally by a Special Agent to produce records or appear at a hearing in the office of the Intelligence Division, should they refuse? While voluntary appearance is not compulsory, failure to comply or to produce records can lead to the issuance of a summons under Section 7602 of the Internal Revenue Code. Enforcement of the summons by contempt proceedings in the U. S. District Court is provided for in Section 7604 (b) (4).

Voluntary appearance usually is advisable, since the taxpayer does not thereby automatically waive any Constitutional privileges. By citing his privilege against self-incrimination, he still may refuse to answer questions tending to jeopardize him. Taxpayers can be compelled to produce personal records before a Revenue official if they are in their possession, but cannot be compelled to discuss their contents if a proper and timely claim of privilege has been made.

However, non-cooperation presents a curious dilemma. While

21 Hale v. Henkel, 201 U. S. 43, 26 S. Ct. 370 (1906).

22 Wilson v. U. S., 221 U. S. 361, 31 S. Ct. 538 (1910); Curcio v. U. S., 77 S. Ct. 1145 (1957).

the taxpayer's refusal to cooperate because of reliance upon the Fifth Amendment cannot be mentioned by Government witnesses, yet, in *United States v. Croessant*,[23] and in the more recent case of *United States v. Long*,[24] it was made clear that such unwillingness can be brought to the attention of the trial jury.

In the *Long* case, the examiner handling the investigation testified that the taxpayer at no time explained how he arrived at the figures shown on his tax return, nor did he make available any books or records to assist the Revenue Service. After conviction, counsel for the defense moved for a new trial on the ground that it was prejudicial error for the Court to permit evidence that the defendant had relied upon the Fifth Amendment. The record showed, however, that there was no direct reference by the government witnesses to the Fifth Amendment.

Overruling the argument that testimony of non-cooperation was an indirect circumvention of the rule against reference to the Fifth Amendment, the Court stated:

> * * * Recognizing that the taxpayer's conduct during the investigation by revenue agents and his failure to keep books and records are cogent evidence of his wilfulness, and that the filing of false returns is sufficient, of itself, to show wilfulness, the element of wilfulness is not wanting.

Consequently, each case calls for an exercise of judgment to balance the advantages of Constitutional privilege against possible disadvantages of non-cooperation.

Familial Psychosis

In conclusion, mention should be made of a grimly amusing domestic drama, *United States v. Ashby*.[25] Bert Ashby, a practicing Texas attorney, separated from his wife in 1954. She then sued for divorce. While the suit was pending, Mrs. Ashby volun-

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[23] U. S. v. Croessant, 178 F. 2d 96 (3rd Cir. 1949).

[24] U. S. v. Long (W. D. Pa. 1957). Numerous cases deal with dangers of voluntary statements. Courts appear to be reluctant about ready acceptance of claims that statements were obtained by Revenue Agents through illegal coercion, entrapment, misrepresentation of misleading promises of immunity. See: U. S. v. Eitingin, 57-2 U. S. T. C. ¶ 9863, for interesting discussion of alleged deception and failure to advise as to Constitutional rights; Biggs v. U. S. (6th Cir. 1957), affg. unreported District Court decision, 57-2 U. S. T. C. ¶ 9809, in which the Court of Appeals found that surrender of books was voluntary and not induced by threats, fraudulent misrepresentations or misleading promises of immunity; In the Matter of Russo (2d Cir. 1957), 57-1 U. S. T. C. 9395, affg. unreported decision of the District Court (no evidence to support claim that agents deceived taxpayer into believing that examination was for a routine civil audit and not connected with any criminal charge).

[25] U. S. v. Ashby (5th Cir. 1957), 57-2 U. S. T. C. ¶ 9743.

tarily turned over to the Revenue Service the business records of her husband without his knowledge or consent.

Shortly after the divorce was granted, Ashby was indicted for failure to make income tax returns for the years 1952-53. He moved for dismissal of the indictment, for suppression of the records and papers obtained from his wife as evidence, and for the return to him of all of these documents. A hearing was held by the District Court, at which both Ashby and the Government offered testimony. The Government contended that Mrs. Ashby's motive in bringing the records to the Revenue Service was to ascertain her own tax status; Ashby claimed her conduct was prompted by a desire to injure him.

Ashby's motion was granted in full; the District Court's finding was that his ex-wife had been motivated by anger and malice, rather than to obtain information about her own liability. Consequently, the evidence obtained was held to be illegal and inadmissible and the indictment was ordered quashed and dismissed.

Upon appeal to the 5th Circuit, the judgment of the District Court was reversed. After passing on a technical question of jurisdiction, the Court of Appeals considered the taxpaper's arguments. These were: the disqualification of one spouse to testify against the other at common law and under the Texas statutes, violation of search and seizure provisions of the Fourth Amendment, and the self-incrimination provisions of the Fifth Amendment.

The Court of Appeals pointed out that Mrs. Ashby had refused to testify at the preliminary hearing at the District Court and that it did not appear likely that she would testify against her ex-spouse. All she had done was to make available to the agents records showing or indicating the possibility of a community tax liability of her husband and herself. These records were not a communication between husband and wife, and in no sense confidential as between themselves.

On the question of illegal search and seizure and self-incrimination, the Court noted that Government officials had no part in wrongfully taking away Ashby's records. Since an individual unconnected with the Government had placed them in the Government's possession, they could be used both as a basis for indictment by a Grand Jury and as part of the evidence at the trial. *Moral*: "Hell Hath No Fury Like A Woman Scorned." (Shakespeare)

And the tax neuroses multiply.