IRS Crypto Enforcement Success Wave Keeps Breaking

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The IRS has gone from seizing hundreds of thousands of dollars' worth of cryptocurrency to setting successive records with seizures in the billions of dollars in just a couple of years, according to an IRS official.

In fiscal 2019 the IRS seized $700,000 worth of cryptocurrency, but that number jumped to more than $100 million the next year and has been in the billions for the past two years, Jarod J. Koopman of the IRS Criminal Investigation division said March 4.

In fiscal 2021 the IRS made waves with its first ever $1 billion seizure — part of the fallout from shuttering the dark web illicit marketplace Silk Road. Then, in February, the government broke that record by seizing $3.6 billion related to a $4.6 billion hack of cryptocurrency exchange Bitfinex.

The agency is setting records even though the fiscal year is only half over, Koopman said at a Federal Bar Association virtual tax law conference.

Assets aren't even the only upside of these sorts of operations, because when the IRS can seize information, it can supply leads for more investigations, according to Koopman. "These crypto and cyber cases are global in nature these days. Very rarely does something not touch a foreign country," he said.

Michael C. Boteler of the Justice Department Tax Division said criminal cryptocurrency investigations are moving from the initial round of money laundering and wire fraud cases often associated with the dark web toward traditional tax evasion with new assets and means of concealment.

Koopman said CI has around 100 digital asset cases in inventory, half of which are tax investigations. The division devotes 6 to 7 percent of its direct investigative time to digital asset cases, with as much as two-thirds of that devoted to cryptocurrency, he said. As public interest in digital assets increases along with their integration into traditional finance and everyday use, so will the IRS's and CI's, he said.

In the Mix

Koopman and Boteler both said the same trend is playing out with cryptocurrency mixers. Cryptocurrency mixers or tumblers are programs or services that take in illicit coins and mix them with others — often preexisting holdings — and return the same amount, minus a fee, as an attempt to obscure the ownership trail. In other words, they look like standard money laundering applied to cryptocurrencies.

Koopman said CI's investigations into taxpayer use of tumblers is starting to find more traditional tax evasion and income concealment.

Travis W. Thompson of Sideman & Bancroft LLP noted that the updated instructions for the IRS's voluntary disclosure form include a reference to mixers and tumblers as part of the increased attention the form pays to cryptocurrency. Taxpayers who have used one of those programs or services will have to say why they did so, he added.

Tax representatives handling voluntary disclosures should be aware of that, because it's likely that the IRS will take information on the taxpayer and run it through the agency's databases and tools, according to Lawrence A. Sannicandro of McCarter & English LLP.

"It's incumbent upon practitioners to realize that and do the due diligence upfront to make sure that your client is actually eligible to make a voluntary disclosure, that you're not dealing with illegal-source income or something along those lines," Sannicandro said.

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Damon Rowe, founding director of the IRS Fraud Enforcement Office, said he's retiring from the IRS. He'll have served just over two years in his latest post when he leaves the IRS at the end of March to become an attorney with Meadows, Collier, Reed, Cousins, Crouch & Ungerman LLP.

Lois Deitrich, director of the IRS Office of Promoter Investigations, said her office is planning a bimonthly list of tax scams to add to the IRS's regular publication of the agency's so-called Dirty Dozen. "The Dirty Dozen is going to focus on what taxpayers will be facing. The tax scams [lists] are more for the practitioners," she said.

They are “transactions you might want to take a look at [when] your taxpayer may be coming to you saying, ‘this kinda sounds good, but should I be involved in it or not?’” Deitrich said.

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