

Attachment 17

From: [Shapley Gary A Jr](#)
To: [Waldon Darrell J](#)
Cc: [Watson Lola B](#)
Subject: For Review/Approval: Sensitive T26 Prosecution Recommendation - SPORTSMAN - SA Ziegler
Date: Tuesday, February 15, 2022 4:14:13 PM
Attachments: [image001.png](#)

Darrell,

Please see below for the prosecution recommendation package for SPORTSMAN requesting approval to refer this to DOJ Tax. There are additional documents included as required when the investigation is classified as sensitive per IRM 9.4.1.6.3 and DOJ Tax guidance.

Background: The [REDACTED] investigation concerning SPORTSMAN started as a result of an investigation involving a [REDACTED] online amateur internet pornography company [REDACTED]. Research on the company yielded bank reports indicating that SPORTSMAN made payments to an alleged escort, who also had received payments from the [REDACTED] amateur pornography company. A review of SPORTSMAN's tax filings was performed which indicated that SPORTSMAN failed to file his 2016, 2017 and 2018 U.S. Individual Income Tax Returns, and a 2017 U.S. Corporate Income Tax Return with whom he appears to be the responsible party. Further, consulting and board of director payments were observed made to an intermediary for the financial benefit of SPORTSMAN in 2014, which do not appear to be reported on his 2014 Form 1040.

Charges:

Charges	Counts	Tax Years/Forms
26:7206(1) False Return	3	2014, 2018, 2019 Forms 1040
26:7201 Evasion of Assessment	3	2014, 2018, 2019 Forms 1040
26:7203 Failure to Timely Pay	2	2015, 2019 Forms 1040
26:7203 Failure to Timely File and Pay	3	2016, 2017, 2018 Forms 1040 2017, 2018 Forms 1120

USAO: The Delaware USAO is anticipating the referral of this matter to their office as close to Friday, February 18, 2022 as possible. They plan to discuss the referral with defense counsel and will move toward indicting in the April time frame.

DOJ Tax: DOJ Tax prosecutors have been a part of the investigative team since they approved the expansion to include tax violations in May 2019. DOJ Tax is currently reviewing a draft copy of the SAR and is preparing their prosecution recommendation for review at DOJ. SA Ziegler is assisting in the process.

USAO/DOJ Tax Position: Based on discussions we have had with both parties, they support this

investigation and are planning to indict.

CT Counsel: Non-Concur – This SAR was at CT counsel for approximately 58 days. Until day 55, the prosecution team was told by CT counsel that they would be concurring with all counts presented in the report. On day 55 was the first time we heard otherwise and it changed to being a blanket non-concurrence even though local CT counsel stated that the 2014 and 2018 years were solid concurs in her write up.

The elements of the violations recommended are met beyond a reasonable doubt. DOJ Tax and the USAO in Delaware agree with this opinion. CT counsel's opinion is not supported by the evidence, and case law (U.S. v. Shorter) contradicts their main support for non-concurrence; addiction issues effecting willfulness. SPORTSMAN acted willfully, engaging in numerous affirmative acts to affect his criminal tax violations that lasted for several years. Even though SPORTSMAN is known to have addiction issues, the universe of his conduct clearly indicated he was lucid during his periods of insobriety and therefore a blanket lack of willfulness defense to the pattern of conduct is not reasonable nor logical. In addition, seven counts in this prosecution recommendation involve the preparation and filing of tax returns that occurred several months after SPORTSMAN is known to have become sober in May of 2019. This fact negates the position CT used repeatedly to support a non-concur.

Please see SSA Shapley's previously provided analysis of CT's unsupported conclusions linked below.

[Element Analysis and Rebuttal of CT's Basis for Non-Concurrence](#)

*****Transmission of Referral Package to DOJ Tax***:** DOJ Tax asked that I personally transmit this referral to the first level reviewer. Chief Jason Poole indicated that the JEFs system is accessible to a large number of people so this process is necessary to limit who has access to the transmittal.

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Document Name – Signature Level Required:

1. [Transmittal Letter SAC to DOJ Tax](#) – **SAC Signature**
2. [Notice of DOJ Referral](#) – **SAC Signature** (We will transmit this at a later date)
3. [Action Routing Sheet](#) – **ASAC, SAC, DFO, Chief of Staff, Deputy Chief, Chief**
4. [Note to Reviewer](#) – Sensitive Investigation
5. [Prosecution Recommendation Report](#) (To avoid long load times, the word version is linked here without evidence – the PDF version with evidence can be accessed at the link below)
6. [CT CEM](#)
7. [Fact Sheet](#)
8. [Control Log](#) – **SAC Checks Approve/Disapprove**
9. [T26 Prosecution Recommendation Checksheet](#)


The below link is to the folder containing all the documents listed above and related to this package.

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I am prepared to brief senior leaders if you feel it is warranted. Please let me know if you require any additional information.

Thank you.

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