Current Federal Tax Developments

Week of June 28, 2021

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PPP LOANS
SBA REPORTED TO BE WITHDRAWING LOAN NECESSITY QUESTIONNAIRES FOR PPP LOAN PROGRAM

Citation: Associated General Contractors Statement, 6/23/21

The Associated General Contractors of America (AGCA) on June 23, 2021 published a statement[1] which indicated that the SBA will be withdrawing the "Loan Necessity Questionnaire" that applied to borrowers who had PPP loans of over $2 million.

Jeff Drew reported on the *Journal of Accountancy* website the following information after the *Journal* contacted the AGCA to follow-up on the short statement:

> Asked via email for more details, Brian Turmail, the AGC's vice president of Public Affairs & Strategic Initiatives, said that the group learned about the SBA's plans from the U.S. Department of Justice, the federal agency with which the AGC is negotiating the possible termination of its lawsuit against the SBA.
>
> "The Justice Department informed our lawyers that the SBA has already begun the process of withdrawing the questionnaire by submitting a formal request to OIRA [Office of Information and Regulatory Affairs]," Turmail said. "Once that is finalized, the SBA will make a formal announcement about the fact via updated frequently asked questions. Not sure what the timing will be on that, but the Justice Department officials made it quite clear that the form is being withdrawn."[2]

The AGCA had filed suit[3] in December 2020 in the United States District Court for the District of Columbia to force the SBA to revise the forms (SBA Form 3509, *Paycheck Protection Program Loan Necessity Questionnaire (For-Profit Borrowers)*, and SBA Form 3510, *Paycheck Protection Program Loan Necessity Questionnaire (Non-Profit Borrowers)*). The AGCA article issued at the time the suit was filed described the basis of their challenge:

> The complaint, which the association filed in the United States District Court for the District of Columbia, asserts that the process that produced the form, and the form itself, violate the Paperwork Reduction Act and the Administrative Procedures Act, and that the federal agencies failed to meet the minimum standards for due

[1] Glen Birnbaum, Twitter Post with an image of the statement, https://twitter.com/GlenBirnbaum/status/1408058801601888259, June 24, 2021 (retrieved June 28, 2021)

[2] Jeff Drew, "SBA may be dropping PPP Loan Necessity Questionnaire requirement," *Journal of Accountancy* website, June 25, 2021 (retrieved June 28, 2021)

[3] Complaint for Declaratory and Injunctive Relief, *Associated General Contractors of America, Inc. v. United States Small Business Administration and United States Office of Management and Budget*, United States District Court for the District of Columbia, December 8, 2020, https://www.agc.org/sites/default/files/Files/Communications/AGC_vs_SBA.pdf (retrieved June 28, 2021)

> process. The association is requesting the court to declare that the questionnaire is arbitrary and capricious, and to declare that the SBA cannot lawfully use the information that the form generates to find a company ineligible for a PPP loan or deny a company's application for forgiveness of its loan.
>
> The association noted that the CARES Act (which established the PPP program) only required loan applicants to make a "good faith certification that the uncertainty of current economic conditions makes necessary the loan request…." Instead of asking borrowers how they concluded they faced such uncertainty when applying for their loans, the form attempts to set a means test, a revenue reduction test and a liquidity test that Congress never contemplated, and it focuses on later events that few companies could have predicted when applying.[4]

As this was written the SBA has not commented on any plans to withdraw the form.

SECTION: 121
COURT FINDS THERE IS A REASONABLE DISPUTE OVER WHETHER THE TAXPAYER'S FINANCIAL DISTRESS WAS AN UNFORESEEN CIRCUMSTANCE FOR SALE OF RESIDENCE

Citation: United States v. R. John Forte et al., US DC UT, Case No. 2:18-cv-00200, 6/21/21

A U.S. District Court found that the issues surrounding the taxpayer's sale of a property that the taxpayer argued qualified for the principal residence exclusion under IRC §121 were not clear enough to grant summary judgement to either the taxpayer or the IRS on the issue of qualification for the exclusion in the case of *United States v. Forte*, *et al.*[5]

The opinion described the situation as follows:

> The Fortes purchased their home on Windsong Lane (Windsong Home) in 2000 and lived there until 2005. ... In June 2003, the Fortes purchased a lot on Snow Forest Cove with the intent to build a home. The Fortes obtained a loan and began constructing a home (Snow Forest Home) in September 2004. The Fortes sold the Windsong Home in September 2005. The Fortes did not get paid the full contractual amount from the buyer of the Windsong Home

[4] "Construction Trade Group Sues To Block Fed's Unlawful Effort To Change Paycheck Protection Program (PPP) Rules," Associated General Contractors of America website, December 8, 2020, https://www.agc.org/news/2020/12/08/construction-trade-group-sues-block-fed%E2%80%99s-unlawful-effort-change-paycheck-protecti-0 (retrieved June 28, 2021)

[5] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/court-refuses-to-find-income-on-sale-of-homes-should/76p47 (retrieved June 27, 2021)

> Specifically, the Fortes were unable to fully collect on seller finance notes in connection with the Windsong Home sale.[6]

The Snow Forest home, whose disposition would lead to this case, was occupied in 2005. The facts related to that home were described as follows:

> During 2005, the Fortes were experiencing financial stress. The Fortes moved into the Snow Forest Home in December 2005. On or about December 21, 2005, the Fortes purchased the lot adjacent to their home (Lot 3) for $435,000 with the intent to retain a scenic view from their newly constructed Snow Forest Home.
>
> When the Fortes moved into the Snow Forest Home, they had a loan with a high interest rate. They could not refinance the loan due to their bad credit, so they entered into an agreement whereby a "friend of a friend" (Edvik) helped refinance the loan by borrowing in his name. In January 2006, the Fortes executed a warranty deed conveying title to the Snow Forest Home to Edvik, which was recorded. A trust deed naming Edvik as Trustor and the Fortes as beneficiaries was also recorded. Edvik obtained a loan for $1.4 million. Edvik kept $20,000 of the proceeds, and the remainder was used to pay off the Fortes' loans. The Fortes made the mortgage payments on the new loan. In April 2006, the Fortes also executed a warranty deed for Lot 3 in favor of Edvik.
>
> In February 2007, Edvik signed a quitclaim deed conveying title of the Snow Forest Home to the Fortes. By May 2007, the loan on the Snow Forest Home in Edvik's name was in default. In August 2007, the Fortes transferred title to the Snow Forest Home to an LLC they owned. It is disputed if and to what extent the Fortes' financial situation was worsening in the fall of 2007. But it is undisputed that the Fortes sold the Snow Forest Home and Lot 3 for $2.7 million and moved out in September 2007.[7]

The problem is that the taxpayers had not used the home as their principal residence for two years prior to sale, as required under the general rule of IRC §121(a) which reads:

> (a)Exclusion
>
> Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.[8]

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[6] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021

[7] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021

[8] IRC §121(a)

However, IRC §121(c) allows for a prorated exclusion to be available if the taxpayer meets the requirements. As the opinion explains:

> Both motions ask the court to determine whether the Fortes are entitled to exclude from their income gain from the 2007 sale of the Snow Forest Home. 26 U.S.C. § 121(a) provides that "[g]ross income shall not include gain from the sale or exchange or property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 or more years." It is undisputed that the Fortes did not own and use the Snow Forest Home for a period of two or more years, so they do not qualify for the full exclusion provided by statute.
>
> However, the Fortes may be entitled to a partial exclusion for the period they did own and use the Snow Forest home if they sold the home due to "unforeseen circumstances." Unforeseen circumstances means that "the primary reason for the sale or exchange is the occurrence of an event that the taxpayer could not reasonably have anticipated before purchasing and occupying the residence." A sale "is deemed to be by reason of unforeseen circumstances . . . if any of the events specified . . . occur during the period of the taxpayer's ownership and use of the residence as the taxpayer's principal residence. Examples of "unforeseen circumstances include: (1) "involuntary conversion of the residence," (2) "natural or man-made disasters or acts of war or terrorism resulting in a casualty to the residence," (3) death of a qualified individual, (4) "cessation of employment as a result of which the qualified individual is eligible for unemployment compensation," (5) "change in employment or self-employment that results in the taxpayer's inability to pay housing costs," (6) legal separation or divorce, and (7) "multiple births resulting from the same pregnancy."[9]

The taxpayers argued that unforeseen circumstances required the sale of the Snow Forest home—their failure to collect the balance due on the Windsong Lane created in a financial situation that forced the taxpayers to sell their home.

The IRS argued that this was not the cause—their financial problems existed at the time they bought the Snow Forest Home and thus were fully forseeable.

> Plaintiff argues that the Fortes cannot rely on the "unforeseen circumstances" provision because when the Fortes moved into the Snow Forest Home, they "were aware of the precarious financial position they were in." Plaintiff claims that the Fortes further exacerbated their financial difficulties by purchasing Lot 3 the month they moved into the Snow Forest Home.[10]

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[9] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021

[10] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021

The IRS argued the case was like that in *Chiarito v. Commissioner*, T.C. Summary Opinion 2010-149.

> In *Chiarito*, the court determined the taxpayers were not entitled to exclude from their income a gain resulting from the sale of a residence. The taxpayers owned a catering business and purchased a home with the intent to build a second residence on the property which would have an industrial kitchen for their catering business. However, the home was subject to certain regulations that prevented the taxpayers from building the second residence with the industrial kitchen. In reviewing whether the taxpayers could properly exclude the gain from their income, the court made multiple determinations beyond the fact that the taxpayers knew of their financial difficulties. For instance, the court determined that (1) that the taxpayers knew they had a need for an industrial kitchen over one year before purchasing the new home, (2) they were "well aware" of the financial losses the restaurant had sustained in the previous three years, (3) they learned of their inability to build a second residence on the property after they sold the previous home, and (4) there was evidence the sale of the home was attributed to their preference for the other home, all precluding their ability to exclude the gain from their gross income based on "unforeseen circumstances." In short, the court made multiple fact findings that went beyond general financial difficulty.
>
> Plaintiff's argument is that because the Fortes "were aware of their financial difficulties" and made those difficulties worse by purchasing Lot 3, they cannot claim it was unforeseeable they would sell the home prior to living in it for two years.[11]

However, the Court noted that, as a Summary Opinion, the ruling was not binding on the Court and, as well, the Forte's situation was distinguishable from *Chiarito*.

> However, beyond addressing that the Fortes were in financial trouble, Plaintiff does not address how the Fortes could reasonably have anticipated that they would not receive the full sale price of the Windsong Home prior to moving into the Snow Forest Home. There remains a genuine dispute of material fact as to whether the Fortes could reasonably have anticipated that they would not collect the remaining seller finance notes and that this would further exacerbate the Fortes' financial problems, forcing them to sell the Snow Forest Home in under two years.[12]

But it's not clear that the Fortes were unaware of the pending default on the Windsong Home when they acquired the Snow Forest Home:

> The Fortes argue that it was unforeseeable that they would be defrauded and not receive the full sale proceeds from the buyers of the Windsong Home. They contend that they suffered a "devastating

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[11] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021

[12] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021

> financial blow" after moving into the Snow Forest Home and "that they were victims of a financial crime."
>
> It is undisputed that the Fortes were already experiencing financial problems in 2005 prior to moving into the Snow Forest Home. But it is disputed when they realized they would not be able to collect the remaining $695,000 in holdbacks from the buyers of the Windsong Home. Mr. Forte's testimony alludes to trying to collect money from the buyers, but the record does not allow the court to conclude as a matter of law that the Fortes did or did not realize the full extent of the fraud against them until after they moved into the Snow Forest Home in December 2005.[13]

Thus, the Court refused to find, as the IRS requested, that there were no unforeseen circumstances that would qualify the sale for partial exclusion. But the Court also refused to find that the situation did involve such unforeseen circumstances as the taxpayers wished. Rather, the Court found that there was a reasonable dispute over the facts that makes the case one that cannot be satisfied via summary judgment—rather, the matter needs to go to trial.

SECTION: 401
IRS EXTENDS RELIEF ALLOWING FOR REMOTE WITNESSING OF SIGNING OF PLAN DOCUMENTS THROUGH JUNE 2022, ASKS FOR COMMENTS ON ALLOWING SUCH PROCEDURES PERMANENTLY

Citation: Notice 2021-40, 6/24/21

The IRS has again extended, through June 30, 2022, the temporary relief originally found in Notice 2020-42 and extended by Notice 2021-3 that removes the physical presence requirement for participant elections to be witnessed by a plan representative or a notary public.[14]

Original Relief and First Extension

The Notice describes the original grant of relief and the extension as follows:

> On March 13, 2020, the President determined that the COVID-19 pandemic was of sufficient severity and magnitude to warrant an emergency determination under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121- 5207. In response to the public health emergency caused by the COVID-19 pandemic and

[13] *United States v. R. John Forte et al.*, US DC UT, Case No. 2:18-cv-00200, June 21, 2021

[14] Notice 2021-40, June 24, 2021, https://www.irs.gov/pub/irs-drop/n-21-40.pdf (retrieved June 24, 2021)

> related social distancing precautions, Notice 2020-42, 2020-26 IRB 986, provided temporary relief through December 31, 2020, from the physical presence requirement for any participant election witnessed by a notary public of a state that permits remote electronic notarization or by a plan representative, if certain requirements were satisfied. Notice 2021-3 (1) extended this temporary relief through June 30, 2021, (2) noted that, during this temporary relief period, a participant is still able to have a participant election witnessed in the physical presence of a notary public and have that participant election be accepted by a plan in accordance with § 1.401(a)-21(d)(6)(i), (3) solicited comments on whether relief from the physical presence requirement should be made permanent and, if made permanent, what, if any, procedural safeguards are necessary in order to reduce the risk of fraud, spousal coercion, or other abuse in the absence of a physical presence requirement, and (4) stated that any permanent modification of the physical presence requirement would be made through the regulatory process, thus providing an additional opportunity for stakeholders to provide comments.[15]

Terms of Additional Extension

The Notice provides the following information on the extension:

> This notice extends, for the 12-month period from July 1, 2021, through June 30, 2022, the temporary relief provided in Notice 2021-3, including extension of all the requirements to qualify for that relief. Accordingly, for that 12-month period, a plan may qualify for relief from the physical presence requirement for any participant election witnessed by a notary public or a plan representative using an electronic system that satisfies the applicable requirements specified in section III.A and B of Notice 2021-3.[16]

The referenced provisions provide specific instructions for both the use of a remote notary public and a remote plan representative.

Remote Notary Public

If the plan wishes to make use of a notary public who is not physically present, the following provisions apply (with the June 30, 2021 date now being extended to June 30, 2022):

> In the case of a participant election witnessed by a notary public, for the period from January 1, 2021, through June 30, 2021, the physical presence requirement in § 1.401(a)-21(d)(6) is deemed satisfied for an electronic system that uses remote notarization if executed via live audio-video technology that otherwise satisfies the requirements of

[15] Notice 2021-40, June 24, 2021, Section II BACKGROUND

[16] Notice 2021-40, June 24, 2021, Section II EXTENSION OF RELIEF

> participant elections under § 1.401(a)-21(d)(6) and is consistent with state law requirements that apply to the notary public.[17]

Remote Plan Representative

Similarly, Notice 2021-3 provided the following rules to be followed if the plan representative will witness the signatures remotely (with the June 30, 2021 date now being extended to June 30, 2022):

> In the case of a participant election witnessed by a plan representative, for the period from January 1, 2021, through June 30, 2021, the physical presence requirement in § 1.401(a)-21(d)(6) is deemed satisfied for an electronic system if the electronic system using live audio-video technology satisfies the following requirements:
>
> > (1) The individual signing the participant election must present a valid photo ID to the plan representative during the live audio-video conference, and may not merely transmit a copy of the photo ID prior to or after the witnessing;
> >
> > (2) The live audio-video conference must allow for direct interaction between the individual and the plan representative (for example, a pre-recorded video of the person signing is not sufficient);
> >
> > (3) The individual must transmit by fax or electronic means a legible copy of the signed document directly to the plan representative on the same date it was signed;
> >
> > and
> >
> > (4) After receiving the signed document, the plan representative must acknowledge that the signature has been witnessed by the plan representative in accordance with the requirements of this notice and transmit the signed document, including the acknowledgement, back to the individual under a system that satisfies the applicable notice requirements under § 1.401(a)-21(c).[18]

Could This Be Made Permanent?

As the IRS did in Notice 2021-3, the IRS is asking for comments regarding whether these options should be made permanent rather than reverting to a physical presence requirement on July 1, 2022. The agency is asking in particular for comments on the following items:

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[17] Notice 2021-3, December 22, 2020, Section III.A, https://www.taxnotes.com/research/federal/irs-guidance/notices/relief-extended-to-let-plan-participants-sign-elections-remotely/2dbsz?h=2021-3 (retrieved June 24, 2021)

[18] Notice 2021-3, December 22, 2020, Section III.B

- How the temporary removal of the physical presence requirement for participant elections required to be witnessed by a plan representative or a notary public has affected costs and burdens for all parties (for example, participants, spouses, and plans) and whether there are costs and burdens associated with the physical presence requirement that support modifying the requirement on a permanent basis;

- Whether there is evidence that the temporary removal of the physical presence requirement has resulted in fraud, spousal coercion, or other abuse, and how, if the physical presence requirement is permanently modified, increased fraud, spousal coercion, or other abuse may be likely to result from that modification;

- How participant elections are being witnessed, or are expected to be witnessed, as the COVID-19 pandemic abates (for example, whether the availability of in-person notarization has returned, or is expected to return, to pre-COVID19 pandemic levels);

- If guidance permanently modifying the physical presence requirement is issued, what procedures should be established to provide the same safeguards for participant elections as are provided through the physical presence requirement; and

- If guidance permanently modifying the physical presence requirement is issued, whether the guidance should establish procedures for witnessing by plan representatives that are different from procedures for witnessing by notaries.[19]

The IRS is requesting that comments be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov by September 30, 2021. Those submitting comments should type "IRS-2021-40" in the search field to find the location to submit these comments.[20]

SECTION: 7206
CPA'S CONVICTION OF ASSISTING CLIENT IN FILING FALSE RETURN UPHELD ON APPEAL

Citation: United States v. John H. Nardozzi, Case No. 20-1093, CA1, 6/24/21

The First Circuit Court of Appeals has affirmed the conviction of a CPA for fraud, conspiracy and assisting in the filing of false tax returns in the case of *United States v. John H. Nardozzi*.[21]

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[19] Notice 2021-40, June 24, 2021, Section IV. REQUEST FOR COMMENTS

[20] Notice 2021-40, June 24, 2021, Section IV. REQUEST FOR COMMENTS

[21] *United States v. John H. Nardozzi*, Case No. 20-1093, CA1, June 24, 2021, https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/first-circuit-affirms-cpa%e2%80%99s-tax-fraud-conviction%2c-sentence/76pq8 (retrieved June 27, 2021)

The CPA at trial had argued that he had relied upon information provided to him by his client's bookkeepers or by the taxpayer directly and he was "out of the loop" and did not act with criminal intent. However, the jury did not agree with that view, convicting the CPA on all counts.[22]

So what exactly went on in this situation? The appellate panel described the items on which it was alleged the CPA had criminally assisted in the filing of false tax returns:

> The government presented evidence that Nardozzi had prepared and filed tax returns on behalf of Joyce, Mary Joyce, and the Joyce law firm which defrauded the United States by misreporting income and mischaracterizing transactions, costing the government $598,362.80 in tax revenue.
>
> The government presented evidence that Joyce used his law firm to pay personal expenses, such as tuition, credit card bills, vacations, car purchases, and shopping expenses, and Nardozzi then classified those payments as tax-deductible business expenses, reducing the Joyce law firm's taxable income by approximately $2.2 million over a four-year period. IRS revenue agent James McCurdy testified that this defrauded the government out of $793,982 in corporate taxes.
>
> The government presented evidence Nardozzi prepared and filed tax documents that assigned $390,000 of the Joyce law firm's revenue to Mary Joyce — even though she performed no work for the firm — to inflate her allowable tax-deductible SEP-IRA contributions. By increasing the maximum tax-deductible contribution, the returns prepared and filed by Nardozzi allowed the Joyces to claim an additional $267,807 in deductions on their personal returns, impeding the IRS's accurate assessment of taxes against them.
>
> Nardozzi also prepared and filed a return on behalf of Joyce which improperly classified a $427,000 stock purchase as an IRA rollover. This fraudulently allowed Joyce to avoid paying any taxes or early withdrawal penalties on $217,500 withdrawn from Joyce's SEP-IRA and $105,125 withdrawn from Mary Joyce's SEP-IRA (with the remaining funds for the stock purchase coming from other sources).
>
> Nardozzi failed to properly report on Joyce's 2014 return — which he prepared and filed — Joyce's use of approximately $150,000 of business funds to pay off a personal loan as taxable income. Nardozzi does not dispute on appeal that each of these instances "impede[d] the IRS." *Mubayyid*, 658 F.3d at 57 (emphasis omitted) (quoting *Adkinson*, 158 F.3d at 1154).[23]

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[22] *United States v. John H. Nardozzi*, Case No. 20-1093, CA1, June 24, 2021

[23] *United States v. John H. Nardozzi*, Case No. 20-1093, CA1, June 24, 2021

As well, the government introduced evidence to show that the CPA had expertise in the areas in question:

> The government further introduced at trial evidence of Nardozzi's awareness of the particular tax considerations for a C-corporation, such as the Joyce law firm. Nardozzi had, for example, discussed the problem of "double-taxation" between personal and corporate taxes for a C-corporation in a journal article and at seminars.[24]

The panel disagreed that no evidence had been submitted to show the CPA conspired with the client to have the client avoid taxes. The court noted that such a conspiracy can be shown by the actions of the parties:

> Nardozzi argues that "there was no evidence of [a] conspiratorial agreement between Joyce and Nardozzi" and that as to all counts there is insufficient evidence that Nardozzi acted either knowingly or willfully. We disagree. There is ample evidence in the record from which the jury could have concluded there was a conspiratorial agreement between Joyce and Nardozzi. "[I]t is a 'well-established legal principle that a conspiracy may be based on a tacit agreement shown from an implicit working relationship.'" *Mubayyid*, 658 F.3d at 57 (quoting *United States v. Patrick*, 248 F.3d 11, 20 (1st Cir. 2001)).[25]

Specifically, the panel noted the following items:

> Nardozzi was an experienced CPA, with particular knowledge of the tax consequences of a C-corporation such as the Joyce law firm. Nardozzi repeatedly mischaracterized personal expenses on Joyce's returns as business expenses, allowing Joyce to claim millions of dollars in business tax deductions. In at least two instances — the early withdrawal of SEP-IRA funds for Joyce's one-time $427,000 stock purchase and the use of business funds to pay off a personal loan — Nardozzi expressly informed Joyce that the transaction would have negative tax consequences. When Joyce objected to paying additional taxes, Nardozzi, knowing it was illegal to do so, followed Joyce's wishes and reported these transactions in a way that avoided any increased taxes.[26]

The clear implication is that a CPA with this level of expertise and experience had to know there were issues here because of how often the situation arose. And it also seems that when the client balked at paying the tax once the CPA informed the client about the bad tax consequences of a transaction, the CPA caved in and reported the transaction to get rid of the tax consequences.

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[24] *United States v. John H. Nardozzi*, Case No. 20-1093, CA1, June 24, 2021

[25] *United States v. John H. Nardozzi*, Case No. 20-1093, CA1, June 24, 2021

[26] *United States v. John H. Nardozzi*, Case No. 20-1093, CA1, June 24, 2021

The opinion notes:

> A jury could easily conclude that Nardozzi knew that personal expenses could not be claimed as business deductions and knew the tax implications of Joyce's financial dealings. A jury could also conclude that Nardozzi understood the consequences of Joyce's dealings based on Nardozzi's proposal to create backdated corporate minutes declaring a dividend that could be used to reduce or eliminate Joyce's personal loan. The government's case is made even stronger by the fact that Nardozzi expressly advised Joyce that certain transactions would have adverse tax consequences, but the return misrepresented those transactions to avoid increased tax liabilities. In these circumstances, the jury verdict is well supported by the record at trial.[27]

[27] *United States v. John H. Nardozzi*, Case No. 20-1093, CA1, June 24, 2021