



DEPARTMENT OF THE ATTORNEY GENERAL

News Release

LINDA LINGLE
GOVERNOR

Mark J. Bennett, Attorney General
Phone: (808) 586-1282
Fax: (808) 586-1239

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TAX FRAUD INDICTMENTS AND PLEAS ANNOUNCED

HONOLULU-Attorney General Mark Bennett announced today that: Eugene K. Miranda, 60, of Hawaii Kai, was indicted on February 25, 2003 by an Oahu Grand Jury and charged with two counts of attempted tax evasion, two counts of filing fraudulent state income tax returns, and two counts of theft in the second degree. The charges arise out of allegedly fraudulent state income tax returns filed by Miranda for calendar years 2000 and 2001.

Public school teacher Victor W. Jeffries, 48, and his wife Elizabeth Aguirre-Jeffries, 45, of Hawaii Kai, were indicted on February 25, 2003 by the Oahu Grand Jury and charged with five counts of attempted tax evasion, four counts of filing fraudulent tax returns, two counts of theft in the second degree and one count of willful failure to file an annual income tax return. The charges arise out of allegedly fraudulent state income tax returns filed by Mr. and Mrs. Jeffries for calendar years 1997 through 2001.

On February 20, 2003, Salesman Andrew K.T. Tung, 27, of Honolulu, pled no contest to one count of filing a false or fraudulent state income tax return for calendar year 2000 and one count of theft in the second degree for fraudulently obtaining a calendar year 2001 state income tax refund in the amount of \$1,449.00. First Circuit Court Judge Richard K. Perkins will sentence Mr. Tung on May 14, 2003.

On February 19, 2003, Matson employee Douglas J. Abarca, 60, pled no contest to one count of filing a false or fraudulent state income tax return for calendar year 2000 and one count of theft in the second degree for fraudulently obtaining a calendar year 2001 state income tax refund in the amount of \$5,677.00. First Circuit Court Judge Michael D. Wilson will sentence Mr. Abarca on April 30, 2002.

On February 19, 2003, City bus driver Dale M. Keama, 40, of Hawaii Kai, pled no contest to one count of filing a false or fraudulent state income tax return for calendar year 2000 and one count of theft in the second degree for fraudulently obtaining a calendar year 2001 state income tax refund in the amount of \$2,775.00. First Circuit Court Judge Richard K. Perkins will sentence Mr. Keama on May 14, 2003.

On February 3, 2003, City bus driver James L.K. Faria, 29, of Waimanalo, pled no contest to one count of filing a false or fraudulent state income tax return for calendar year 2000 and one count of theft in the second degree for fraudulently obtaining a calendar year 2001 state income tax refund in the amount of \$3,743.00. First Circuit Court Judge Marie M. Milks will sentence Mr. Faria on April 15, 2003.

On January 29, 2003, Salesman Jeffrey R. Yano, formerly of Honolulu, returned to Hawaii voluntarily from Oregon and pled no contest to one count of filing a false or fraudulent state income tax return for calendar year 2000. First Circuit Court Judge Michael D. Wilson will sentence Mr. Yano on April 9, 2003.

An indictment is an accusation only. All defendants are presumed innocent until proven guilty in court.

Attempted tax evasion is punishable under state law by a fine of up to \$100,000 dollars and by up to five years in prison for each offense.

Filing false or fraudulent income tax returns is punishable under state law by a fine of up to \$100,000 and by up to three years in prison for each offense.

Theft in the second degree is punishable up a fine of up to \$10,000 and by up to five years in prison for each offense.

Willful failure to file a tax return is punishable under state law by a fine of up to \$25,000 and up to one year in jail for each offense.

There are several tax preparers who are advising individuals that they can avoid their income tax obligations because wages are not taxable under their interpretation of federal law. Their argument is frequently referred to as the "section 861" argument or the "zero adjusted gross income" argument. Every court in the country that has written concerning that argument has dismissed it as frivolous, See, *United States v. Thurston P. Bell*, 2003 WL 102610 (M.D. Pennsylvania, January 10, 2003); *Takaba v. Commissioner of Internal Revenue*, 2002 WL 31818000 (U.S. Tax Ct., December 16, 2002); *United States v. Rosile*, 2002 WL 1760861 (M.D. Fla., June 10, 2002); *United States v. Bossett*, 2002 WL 1058105 (M.D. Fla., March 26, 2002); *Corcoran v. Commissioner of Internal Revenue*, 2002 WL 71029 (U.S. Tax Ct., January 18, 2002); *Loofbourrow v. Commissioner of Internal Revenue*, 208 F. Supp.2d 698 (S.D. Texas, 2002); *Williams v. Commissioner of Internal Revenue*, 114 T.C. 136 (U.S. Tax Ct., March 1, 2000). Taxpayers and tax return preparers who advance such arguments are subject to severe civil penalties and criminal prosecution.

Filing state income tax returns and making a frivolous argument regarding section 861 of the Federal Internal Revenue Code is particularly inappropriate in Hawaii because Hawaii law provides that section 861 of the Internal Revenue Code does not apply to state income taxes (§235-2.3(b)(23), Hawaii Revised Statutes.) Thus, those who make this argument in Hawaii risk indictment.

Fraudulent tax return cases are routinely prosecuted in the State of Hawaii. An individual taxpayer is ultimately responsible for the truthfulness of the return filed.

There are a few steps that taxpayers should always follow:

1. Read the return. Ultimately, the taxpayer is responsible for the truthfulness of the tax return.
2. If a tax return preparer offers to prepare your return for a percentage of any refund, be wary. Such a scheme gives incentive to the return preparer to prepare a fraudulent return;
3. If a return preparer offers to prepare your return for a fee but refuses to sign the return as the paid preparer, contact law enforcement authorities. The conduct is unlawful.
4. If a return preparer tells you that wages earned in Hawaii are not subject to taxation because

Hawaii is not a state, go elsewhere for tax advice. Advancing such an argument is frivolous and will subject you to very expensive sanctions, *Rhoads v. Okamura*, 98 Haw. 407 (2002), including possible indictment.

5. If in response to your inquiry whether or not something on a return is legal, a tax return preparer starts reciting the Uniform Commercial Code (U.C.C.), be concerned. The Uniform Commercial Code applies to commercial transactions, it does not apply in tax cases or the criminal prosecution of tax crimes.

6. If you receive a letter from a federal or state taxing authority advising you that a return is frivolous, contact a licensed attorney or certified public accountant as soon as possible. The state tax department usually does not refer cases to the Department of the Attorney General for criminal prosecution when a taxpayer takes reasonable steps to cure a problem before it is turned over to a criminal investigator.

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For more information, contact:
Office of the Attorney General
Phone: (808) 586-1282

For detailed information, contact:
Ricky R. Damerville
Deputy Attorney General,
Criminal Justice Division
Telephone: (808) 586-1160

Email: hawaiiag@hawaii.gov
