

**THE
JURIS DOCTOR
FAMILY WATCH**

**Daniel H. McKinney & Associates
Estate Planning Group**

**A NEWSLETTER FOCUSING ON
ESTATE PLANNING FOR
ASSET PROTECTION**

Daniel H. McKinney
Ohio State Bar Association Board Certified:
Estate Planning, Trust & Probate Law



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TAX TIME AGAIN

BEWARE OF THOSE WHO WILL MISLEAD

Nobody likes paying taxes. There are so many other things that would be far more interesting to spend money on. But as the old saying goes death and taxes are inevitable.

Daniel McKinney and associates are licensed attorneys in practice for many years. In fact, Dan was recently honored at the Cincinnati Bar Associations annual dinner for lawyers practicing more than fifty years. Daniel McKinney is rated by Martindale - Hubbell as an A-V lawyer, the highest rating a lawyer can receive from that national directory and lawyer rating service. This rating reflects both skill and ethics. In 2005, he was again named a Super Lawyer by the Cincinnati Magazine. No lawyer stays around and receives these

accolades without being not only proficient but adhering to the highest professional standards.

More and more attention by consumer law organizations, as well as the press and other news media, is being paid to those who are unscrupulous or unqualified as well as those who may mislead uninformed taxpayers.

If you are not going to prepare your own returns or if you need assistance in working out a tax problem, please consider the following when choosing someone to prepare your taxes:

What are that persons credentials?

What licenses does that person hold?

Is that person licensed to practice before the IRS?

Has that person handled matters of your complexity and your type?

If you need assistance in tax preparation or tax workouts, please contact Daniel McKinney. Dan has prepared simple individual as well as complex pension and estate returns. He has represented many individual, estate and pension clients in tax audits and in tax litigation. He is able to draw on his experience to advise you what will be the best course of action and avoid wasting your time and money chasing down blind, unproductive alleys. Fees are competitive with national tax preparation services who utilize seasonal, marginally trained staff. Please contact us if you would like to discuss any questions you have.

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BEWARE OF OFFERS IN COMPROMISE*

The Offer in Compromise Program (OIC) permits the IRS to compromise a person's tax liabilities by accepting less than full payment based on doubt as to liability, collectibility or effective tax administration. However taxpayers have been lured to unscrupulous practitioners with misleading advertising that misrepresent services and offer unrealistic expectations. The following cases are illustrative for warning the unwary.

Case No. 1

Ron was a self-employed television producer and when work was not plentiful, he supplemented his income by working as a part-time employee of a local ministry. Like many self-employed persons, Ron was always busy, not sophisticated in tax matters, and did not do a good job tracking his business expenses. Ron would utilize the services of a local tax service. Without inquiring further about eligibility for deductions other than spotty receipts, the preparer would advise Ron he owed about \$2,000. Ron never had the funds to pay the tax debt and ultimately the IRS filed a lien in the local property tax office. Since property tax records are public, a tax service discovered the tax lien and began sending Ron advertisements every two weeks representing itself as a group of CPAs and former IRS employees that guaranteed to settle Ron's income tax debts for pennies on the dollar. The advertisements also maintained that he must settle the tax debts immediately or the IRS would take his home and car. Ron needed his car to get to work and was terrified the IRS would take it. Ron finally contacted the tax service. It did not evaluate Ron's income, expenses, assets or liabilities and did not advise him of his eligibility for placement in Currently Not Collectible status. Ultimately, the tax service collected \$2,500 from him. The tax service did not do anything further since he had not filed tax returns for the last two years and was ineligible for OIC. It also failed to advise Ron of his case status and, ultimately, the IRS levied on Ron's bank account. Ron's son became ill with leukemia and he had to move to another city to get treatment. Ron was unable to find work and is now on food stamps. He cannot get the tax service to take action because he cannot afford to pay someone to prepare his tax returns.

Case 2

Maria, a Mexican immigrant, sought a better

life in the United States and became a United States citizen. After marrying an American, her life was fine for a few years until her husband developed a drinking problem and started mentally and physically abusing her. Maria and her self-employed husband filed joint income tax returns but she spoke only a few words of English. Unfortunately, her husband under-reported his income and over-reported his deductions. Ultimately, Maria left her husband but was afraid he would find her so she did not disclose her new address to anyone including the IRS. Since the IRS did not know of the new address, Maria did not receive notice of the IRS audits or the \$5000+ tax assessment on the 2000 federal return and a \$4,000+ assessment on the 2001 return. For the current year, Maria went to a local tax preparer and expected an \$3,500 refund which the IRS retained to offset the prior years tax debts. This was Maria's first notice of the back taxes due.

Having obtained her address, IRS began sending demand letters to pay the remaining tax debt. Maria was supporting a family of three on an annual income of \$10,200. One day Maria drove by a Spanish billboard advertisement that promised to settle federal tax debts for pennies on the dollar representing that the staff was comprised of experienced notarios. In Maria's country, Notarios had special legal expertise and she assumed the tax service was credible. Since Maria did not have the \$1,200 fee demanded by the service she obtained a loan with an astronomical interest rate. The Notarios did not evaluate Maria's case for innocent spouse relief. Instead, they relied on noncollectibility of the OIC settlement offer but did not send any supporting documentation regarding income or expenses. The IRS sent back the offer for lack of sufficient information. The service told Maria that she did not qualify for a tax settlement. They did not tell her she could resubmit the offer with supporting information or file an appeal. The IRS resumed collection action and Maria's wages were garnished. Since she could not live on the reduced income, she quit her job and applied for public benefits.

Case 3

Tom was a disabled veteran who had been homeless on and off for the past five years. Tom mentioned to the shelter counselor that he had not filed tax returns for the past four years. The counselor sent Tom to a local IRS office who prepared tax returns for the past three years so he could get a small refund. He was not required to file

a return for the 4th year. However, IRS kept the refunds to pay for prior years tax debts and then started sending him demand letters. Tom did not know that the statute of limitations on collection of tax debts would expire in a few months. He saw an advertisement in a local paper from a tax service promising to help taxpayers settle tax debts. The service's fee was 20% of the debt which translated to \$200.00 on Tom's \$1,000 debt. The tax service did not tell Tom he qualified to have the IRS place his account in Currently Not Collectible status or that the debts would expire in a few months. Instead it filed an offer in compromise. Nine months after submitting the OIC, the IRS denied the OIC and claimed that Tom did not qualify because he had unfiled tax returns. The IRS specifically cited the tax year that Tom did not file because he was not required to file. The tax service did not file an appeal. The nine months the OIC was pending was added to the collection expiration time. C

Common sense should tell all of us to be wary of claims that sound too good to be true. In

reality offers in compromise are not a piece of cake. Only after the IRS determines the taxpayer is unable to pay the liability in a lump sum or through an installment agreement, and has exhausted the search for other payment arrangements will it consider an offer in compromise. Additionally, the taxpayer must have filed all required tax returns, filed and paid any required employment tax returns on time for the two quarters prior to filing the OIC and be current with deposits for the quarter in which the OIC is submitted. Also, the taxpayer may not be a debtor in a bankruptcy case.

Unrealistic or deceitful representations made by unscrupulous, unlicensed, or uninformed tax services are poorer choices than the legitimate options open to a taxpayer.

*Source

Used with permission.

Gillum, Mary, "Offer in Compromise Case Studies". Tennessee Taxpayer Project, Legal Aid Society of Middle Tennessee and the Cumberlandands

REFUND ANTICIPATION LOANS OR HOW TO BORROW YOUR OWN MONEY AT 1700%

Beware of advertisements like "Fast Cash Refunds", "Express Money" or "Instant Refunds". These ads will offer to get your refund in just a day or two. In some cases people receive refunds only a few days earlier. Although having funds in hand as early as possible is appealing, these programs often come with high fees and interest rates. This is because "instant refund" checks are not really early refunds but a high interest loan through a bank and are more specifically called refund anticipation loans (RAL).

RALs are extremely expensive. A taxpayer can expect to pay about \$100.00 in order to get a \$2,050.00 RAL from a tax preparation chain this year. The loan fee includes the fee supposedly for a "dummy" bank account used to receive the consumer's tax refund from IRS to repay the RAL. The effective APR on this loan would be 187%. The fee for the loan plus the tax preparation fee would typically total about \$220.00. Choosing a tax preparer that charges an application fee - typically \$30.00 per loan - the total would rise to \$250.00. APRs range from about 40% for a loan of \$9,999 to over 700% for a loan of \$200. Loans with administrative fees translate into APRs of about 70% for a loan of \$7,000 to over 1,700% for a loan of \$200.

Since tax preparation companies and their affiliate banks charge fees and interest which are deducted from the refund, the taxpayer receives less

money than he would receive if he could forego the "instant refund". If the IRS denies, delays or reduces the refund, the taxpayer is still responsible for paying off the loans and the longer it takes, the higher the cost. Taxpayers who are unable to pay the loan off quickly may be subject to debt collection and damaged credit. Furthermore, persons who can avoid these loans may obtain their refund checks from IRS just a few days later making a loan unnecessary.

Many tax preparers market an assortment of other products in conjunction with tax preparation. Some of the more common are:

RENT-TO-OWN STORES. For example, Jackson Hewitt's partnership with Rent-A-Center provides for exclusive cross - marketing and places Jackson Hewitt agents in select Rent-A-Center stores. Taxpayers are offered incentives to use their refund or RAL to rent items at the Rent-A-Center.

CHECK CASHERS. H&R Block and Jackson Hewitt partner with check cashers to provide services including check cashing machines inside tax preparation offices for cashing refund and RAL checks. Fees are approximately 2-4% of the check, again reducing the refund.

CAR DEALERSHIPS. A number of preparers, including Liberty Tax partner with car dealers. The

dealers send tax information to tax preparers who e-file the returns. Customers receive an RAL which is used as down payment for a car minus RAL fees with the tax refund being deposited into the dealership's account.

Sources

Refund Loan Products and VITA: A Summary of Issues and Options.

National Consumer Law Center

*RAL Report,, National Consumer Law Center

**DANIEL H. MCKINNEY AGAIN NAMED CINCINNATI SUPER LAWYER BY LAW AND POLITICS AND
THE CINCINNATI MAGAZINE**

DANIEL H. MCKINNEY & ASSOCIATES ESTATE & TAX PLANNING GROUP

Daniel H. McKinney is the founding attorney of McKinney & Namei, Co., LPA and head of the Daniel H. McKinney & Associates Estate Planning Group. He is a native of Cincinnati and a graduate of the Ohio State University and Harvard Law School. Mr. McKinney represents many small businesses and individuals in corporate, tax, real estate, immigration, pension and probate matters. He is board certified by the Ohio State Bar Association in estate planning, trust & probate law and lectures widely. He was named an Ohio Super Lawyer by Cincinnati Magazine in 2004 and again in 2005.

Linda S. Bolin practices Medicaid, long term care, business, probate, health, and elder law. She is vice-chair of the elder law committee of the Cincinnati Bar Association, and has served as vice president of the Chase Women's Law Caucus, president of the Dallas Metro Counseling Association and trustee of the Cincinnati Arts Consortium, the Sarah Center, and the Terrace Guild. Previously, she was a city planner and director of planning for the City of Cincinnati Health Department.

Robert Herzog is a graduate of the Salmon P. Chase College of Law and a member of the Ohio, Cincinnati, and American Bar Associations. Mr. Herzog's focus is in the area of Probate and Estate Planning. He is also a correspondent for WB64 TV.

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