

## **Don't Try This at Home: Tax Refund Barred by Judicial Estoppel.**

After accepting a negotiated plea deal on tax evasion and other charges, one newly released inmate decided to file for a tax refund, arguing he had overpaid his taxes for several years covered by his plea agreement. It didn't end well.

The case was decided by the Sixth Circuit this week. *Mirando v. United States Dep't of Treasury*, 2014 U.S. App. LEXIS 17313 (6th Cir. Sept. 8, 2014). Mr. Mirando first entered a guilty plea on mail fraud, money laundering and tax evasion in 2001 and was incarcerated. *Id.*, slip op. at \*2.

Apparently the lesson didn't sink in. After he was released from prison, he was indicted again on charges of evasion for additional years, including the tax year *after* he was released. Mirando entered into another guilty plea, which was premised upon the government's agreement not to prosecute his ex-wife and children. *Id.* The plea agreement included stipulated amounts of tax liability for the relevant years. *Id.*, slip op. at \*3.

After paying (actually overpaying) his restitution, Mirando sought a refund. When the IRS denied the refund, he filed suit. When he lost in district court, he filed an appeal.

The Sixth Circuit affirmed the district court, ruling that judicial estoppel barred the refund claim. First, the court concluded that the refund suit was inconsistent with his prior plea agreement, which had explicitly stated the amount he owed the IRS. It probably didn't help his case that his initials appeared in the margin on this page of the agreement. *Id.*, slip op. at \*9.

Next, the Sixth Circuit concluded that judicial estoppel was appropriate because he had persuaded the court in the criminal case to accept his plea agreement. If Mirando was permitted to pursue his refund case, it would create the impression that one of the two courts involved had been misled. *Id.*, slip op. at \*12. Finally, the court concluded that Mirando would derive an unfair advantage if he was permitted to pursue his refund claim. While Mirando said he received no benefit from the plea agreement, he did acknowledge that he entered into it to avoid prosecution of his ex-wife and his children. *Id.*, slip op. at \*14-\*15.

The opinion suggests that if he had limited his claim to the overpayment he made on his restitution, the outcome might have been different.

This may sound like a *pro se* case, but it wasn't. Mirando was represented by counsel, and the Sixth Circuit held oral argument in the case. There were some wrinkles in the case; the government erred by failing to raise any affirmative defenses in its answer, but it moved to correct that miscue. For my part, I have a hard time understanding why someone took this case. Perhaps there was some nuance that the Sixth Circuit's opinion doesn't capture.

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