



FRAUD BY THE NUMBERS FRAUD BY THE NUMBERS

Fraud is Taxable, Too!

September 17, 2024 By Roger Wenthe of Roger Wenthe, PLLC

What happens when a fraudster not only defrauds a Government program, but then fails to pay taxes on the ill-gotten gains? The Government's primary fraud-catching tool, the False Claims Act,^[1] doesn't apply to the tax side. Instead, the IRS has its own Whistleblower Program (WP), administered by its Whistleblower Office, to address tax fraud.^[2] In Fiscal Year 2023, the IRS Whistleblower Program paid out **\$88.8 million** to whistleblowers, an average of **26.3%** of the proceeds collected through their help.

We reported last year that fraud on the pandemic-related Paycheck Protection Program (PPP) may have been part of the greatest dollar amount of fraud ever committed on a Government program, totaling an estimated **\$300 billion**.^[3] The government forgave most PPP loans, and the forgiveness amounts were generally exempt from the income tax, unlike normal loan forgiveness, which is usually taxable.^[4]

But if the PPP loan and forgiveness were obtained by fraud (say the borrower wasn't really eligible for the loan or didn't spend the proceeds as required by the program), what then?

The IRS issued a Chief Counsel Advisory concluding that if a PPP borrower's forgiveness application failed to disclose relevant facts showing the borrower wasn't eligible for the loan or for forgiveness, then they didn't receive a "qualifying forgiveness" of their loan. If the loan did not qualify for forgiveness, then there is no exemption from income tax. Although Chief Counsel Advisories must state that they "may not be used or cited as precedent," this one was announced by a press release. A press release is typically used only when the IRS believes there is a significant need to alert the general media and to help taxpayers voluntarily comply with the tax laws.

If all of the \$300 billion in projected PPP fraudulent forgiveness receipts were taxable, but no tax was paid, the loss to the IRS would be staggering. Using the U.S. corporate income tax rate of 21% to make an estimate means that up to **\$63 billion** in tax principal went unpaid. Late payment penalties and underpayment interest totaling 8% annually^[5] would add another **\$13.86 billion**. That gives total potentially collectible proceeds of **\$76.86 billion!**

What could the Government do with an additional \$76.86 billion (after, of course, deducting the 15-30% awards due to any whistleblowers whose disclosures helped recover it)?

- It would allow the Veterans Administration to build **19 new VA hospitals** or **upgrade and renovate 250 of its existing** hospitals and clinics.**[6]**
- It is **150%** of the Federal Government's annual outlay for the construction of roads, bridges and highways.**[7]**
- It is **960%** of the FBI's annual budget for salaries and expenses.**[8]**

Reporting the tax-evasion effect of the fraud is just as important as disclosing the fraud itself!

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[1] 31 U.S.C. 3729 *et seq.*

[2] 26 U.S.C. § 7623.

[3] This amount includes estimated frauds on the PPP Program, the Economic Injury Disaster Loan Program, and the Unemployment Insurance Program.

[4] 15 U.S.C. § 636m(i).

[5] <https://www.irs.gov/pub/irs-pdf/n433.pdf>. This assumes forgiveness happened in 2021 and tax payments have therefore been overdue since the filing deadline of April 15, 2022, which is 29 months ago.

[6] <https://www.military.com/daily-news/2023/03/13/va-asks-historic-41-billion-construction-agency-weighs-closing-some-aging-medical-facilities.html>.

[7] <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/highway-and-road-expenditures>.

[8] <https://www.usaspending.gov/explorer/agency>.

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