CLIENT ALERTS & INSIGHTS

Who Cares About the Wires: Texas Federal Court Rules that Certain Wire Fraud Charges Violate Due Process in Tax Case

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Featured Practices: Litigation, State Attorneys General Investigations & Enforcement, White Collar, Government Investigations & Regulatory Compliance

Key Takeaways

- A Texas federal court dismissed 13 wire fraud charges in a major tax shelter case, ruling that prosecutors cannot use the wire fraud statute to pursue conduct that should be charged under criminal tax laws, which require a higher standard of intent.
- This decision could reshape how federal prosecutors bring charges in tax and other white-collar cases, limiting their ability to use broader statutes like wire fraud when Congress has created specific criminal enforcement regimes. The ruling may increase the *mens rea* burden on prosecutions in such cases.
- Businesses and individuals facing federal investigations for tax or other regulated conduct should closely monitor this legal development and review their risk exposure. Consulting with experienced counsel is critical, as the Fifth Circuit's upcoming decision on appeal could set a precedent affecting future white-collar prosecutions.

On May 6, 2026, U.S. District Judge Karen Gren Scholer of the Northern District of Texas dismissed 13 wire fraud counts against four defendants accused of running a $1 billion tax shelter scheme.[1] The court held that the title 18 wire-fraud counts violated the defendants' due process rights because they covered conduct that the Department of Justice ("DOJ") should have prosecuted exclusively under the title 26 criminal tax statutes-which impose a heightened "willfulness" requirement-rather than the wire-fraud statute's lesser "intent to defraud" standard.

This is a monumental decision with potentially wide-reaching impacts. A matter of first impression in the Fifth Circuit, this would have significant implications for individuals facing wire fraud charges in cases where Congress has established a separate criminal enforcement statutory regime, similar to tax.

Case Background

Defendant Joseph Garza, an attorney, is alleged to have sold a fraudulent tax shelter plan to his wealthy clients. According to the indictment, co-defendants Kevin McDonnell, James Richardson and Craig Fenton (all associated with a tax preparation and accounting firm) would create shell companies that Garza's clients used to create the appearance of legitimate business dealings to claim tax deductions and exemptions. Garza would then return the investment income to clients disguised as payments from private annuities. Beyond helping clients file false tax returns, the defendants allegedly helped create a false paper trail, including fabricating service agreements and sham invoices.

In a 47-count superseding indictment, the government charged Garza with 18 counts of wire fraud, in violation of 18 U.S.C. § 1343; all defendants with conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1349, 1343; 27 counts of aiding and assisting in the preparation and presentation of false and fraudulent income tax returns, in violation of 26 U.S.C. § 7206(2); and one count of a *Klein* conspiracy to defraud the United States, specifically the Internal Revenue Service, in violation of 18 U.S.C. § 371.

The indictment charged two different categories of wire fraud counts: (1) wires for "payment of valuations" and "payment of fees" from clients; and (2) the electronic filing of the allegedly false tax returns. Of the substantive wire fraud counts charged, 13 were based on Garza's electronic filing of clients' tax returns, and 12 of those 13 counts were for tax returns also charged under 26 U.S.C. § 7206(2).

The Court's Ruling

The defendants brought a motion to dismiss with a novel theory not previously adopted by any court: that due process required the dismissal of all wire fraud charges where substantive tax criminal charges were available for the charged conduct. In essence, their argument was that this was a violation of the defendants' due process rights, since Congress had created specific criminal liability regimes for tax crimes, separate and apart from the generalized wire fraud statute. The motion highlighted that the tax crime statutes had a higher *mens rea*-willfulness-than wire fraud's intent to defraud, which lessened the requirements on the government in an unacceptable way.

The Court agreed with the defendants and dismissed the wire fraud counts related to the filing of the various tax forms, regardless of whether separately charged under title 26. The court stressed that due process considerations are heightened in this context because criminal tax offenses receive "special treatment" due to the "complexity of the tax laws."[2] Thus, where the defendant faces charges under the "strictest standard of intent," the government cannot relieve itself of its burden by securing "the alternative option of a possible conviction under the lesser intent to defraud standard of the Wire Fraud Statute"-at least where the purported wire fraud did not implicate any independent culpable conduct.[3] The court also noted that dismissal would reduce juror confusion by removing the need to instruct on two different intent standards for the same tax returns.

The court declined to dismiss the five remaining substantive wire fraud counts based on wires for "payment of valuations" and "payment of fees."[4] Instead, the court retained those counts because the underlying wires did not clearly constitute conduct that should be prosecuted as tax fraud

(where the heightened willfulness standard would apply). The conspiracy count also survived to the extent that it was based on the five surviving substantive counts.

The government has filed an interlocutory appeal to the Fifth Circuit challenging the ruling.

Implications

The Court's ruling in *Garza* has the potential to be a bombshell for federal white collar criminal enforcement. While this ruling was in the context of a tax prosecution, other areas of white collar criminal enforcement (for example, Export Control violations) could face a similar analysis and, likewise, face challenges to the use of the wire fraud statute in those prosecutions. This could have a large impact on sentencing, given the statutory and guidelines enhancements available under the wire fraud statute would be unavailable to the government for certain subject-matter specific criminal statutes. It is unsettled where this will land, and Benesch will continue to keep a close eye on how the Fifth Circuit handles the interlocutory appeal.

Benesch's White Collar, Government Investigations, & Regulatory Compliance Group has represented individuals and entities in complex federal criminal tax investigations and related white-collar matters. We regularly advise clients on pre-indictment strategy and defend against multi-count indictments. If you or your clients have questions related to potential criminal tax exposure or are facing scrutiny from the government in connection with tax planning, tax shelters, or related financial transactions, Benesch is well-positioned to help.

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[1] *United States v. Garza et al.*, No. 3:22-cr-0390, 2026 WL 1244860.

[2] *Id.* at *2.

[3] *Id.*

[4] *Id.* at *3.