



Offshore account holders win a victory in government tax case

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The Justice Department got a black eye last week in a case involving a 79-year old Florida widow with \$43 million in offshore accounts.

By Lynnley Browning



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FORTUNE -- Federal judges usually dislike tax evaders, and in recent years they have imposed hefty fines, lengthy probation, and even prison sentences on dozens of Americans with offshore bank accounts. But the watershed case of Mary Estelle Curran, a 79-year-old widow who earned five seconds of probation for not disclosing an inherited Swiss account, is different.

Curran was supposed to be a showcase takedown of users of Swiss bank secrecy, a whopper indictment involving a well-heeled resident of Palm Beach, Fla., who failed to report to the IRS that she held \$43 million at UBS, the Swiss bank giant, and other foreign banks.

Instead, her case unexpectedly turned into a black eye for the Justice Department, as a sympathetic judge last Thursday gave Curran five seconds' probation and excoriated the prosecutors, who had originally sought a jail term of up to six years. The judge, Kenneth Ryskamp of Federal District Court in West Palm Beach, even urged prosecutors to seek a presidential pardon for Curran, a homemaker who said she had relied on advisors and rushed to disclose the accounts she inherited from her deceased husband.

Tax experts say the ruling could prompt a shift in how prosecutors choose to build cases against American clients of foreign offshore banks as part of a widening crackdown on Swiss and Swiss-style banks.

"The government should stop bringing these silly prosecutions against people who made a good-faith effort to make a voluntary disclosure," says Cono Namorato, a tax lawyer at Caplin & Drysdale and a former senior IRS official.

Prosecutors have charged more than four dozen American clients of offshore banks in recent years, a crackdown that has also ensnared foreign bankers. In January, the government indicted Wegelin, the oldest Swiss bank, which put it out of business. Around a dozen foreign banks, including Credit Suisse, HSBC, and several Israeli banks, are under grand jury investigation.

Curran inherited the UBS accounts from her husband, Mortimer Curran Sr., a self-made financier who died in 2000 and once painted Impressionist landscapes in Paris. In February 2009, Curran tried to enter an IRS amnesty program that would have allowed her to pay reduced fines and penalties of \$8 million and avoid prosecution. Some 38,000 Americans have entered the program since its start in 2009.

Unbeknownst to Curran, UBS had turned over her name to the IRS three weeks earlier as part of its \$780 million deferred-prosecution agreement for enabling wealthy Americans to evade taxes. Curran, one of 285 names disclosed, was not admitted to the program. The reason? If the IRS finds out your identity before you come forward, you're not eligible for the amnesty. Curran was indicted in November 2012 and pleaded guilty in January, making her a convicted felon.

Her accounts evaded U.S. taxes of \$667,700, but under stiff U.S. penalties for failing to report the accounts, she had to pay a civil penalty of more than \$26.6 million.

Unlike other tax evaders indicted in recent years, Curran did not add money to the accounts, receive cash in paper bags, use secret credit cards, skim profits from businesses, arrange sham loans, or make extravagant purchases. She still lives in the house, with green and white Formica kitchen countertops, that she and her deceased husband bought in 1982, court papers show. A blind niece, Dawn, offered to serve Curran's sentence if given jail time, court records show.

"This is a tragic situation," Ryskamp said in a transcript of the Thursday sentencing. "It seems to me the government has a lot of discretion, and the government decided they wanted to make a felon out of this woman."

Prosecutor Mark Daly told the judge that "there is a certain level of randomness to the level of government prosecution," court papers show. Dena Iverson, a Justice Department spokeswoman, declined to comment on the decision or its impact.

The ruling could put pressure on Kathryn Keneally, the top criminal tax official at the Justice Department who oversees the prosecutions.

Tax lawyers representing clients whose cases they call similar to Curran's point to a previously undisclosed 2010 letter signed by Keneally when she was in private practice at Fulbright & Jaworski. The letter urged the IRS to show leniency to clients of offshore banks who came forward in good faith.