

Wednesday, March 5, 2008

IRS: Not so fast claiming tax evasion.

Â Bill of Rights.Â (From the public domain.)Â Kudos to the United States Supreme Court for unanimously reversing a conviction for tax evasion and filing a false income tax return, where defendant Michael Boulware claimed his company had no earnings or profits for the tax years in question, and asserted the defense of a return on capital (i.e., a return on his investment of his personal assets into his own company). Â As Justice Souter wrote for a unanimous Supreme Court in *Boulware v. U.S.*, U.S. (March 3, 2008): Â Sections [Internal Revenue Code] Â§Â§301 and 316(a) govern the tax consequences of constructive distributions made by a corporation to a shareholder with respect to its stock. A defendant in a criminal tax case does not need to show a contemporaneous intent to treat diversions as returns of capital before relying on those sections to demonstrate no taxes are owed. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.Â *Boulware v. U.S.*, U.S. . Â In footnote 7 of *Boulware*,Â the Supreme Court recognizes the legitimacy of finding legal ways to avoid paying taxes (which footnote hopefully will be a clear warning to the IRS not to jump the gun in prosecuting for tax evasion): Â Â We have also recognized that "[t]he legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted." *Gregory v. Helvering*, 293 U. S. 465, 469 (1935). The rule is a two-way street: "while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, . . . and may not enjoy the benefit of some other route he might have chosen to follow but did not," *Commissioner v. National Alfalfa Dehydrating & Milling Co.*, 417 U. S. 134, 149 (1974); see also *id.*, at 148 (referring to "the established tax principle that a transaction is to be given its tax effect in accord with what actually occurred and not in accord with what might have occurred"); *Founders Gen. Corp. v. Hoey*, 300 U. S. 268, 275 (1937) ("To make the taxability of the transaction depend upon the determination whether there existed an alternative form which the statute did not tax would create burden and uncertainty"). The question here, of course, is not whether alternative routes may have offered better or worse tax consequences, see generally *Isenbergh*, *Review: Musings on Form and Substance in Taxation*, 49 U. Chi. L. Rev. 859 (1982); rather, it is "whether what was done . . . was the thing which the statute[, hereÂ§Â§301 and 316(a),] intended," *Gregory*, *supra*, at 469. Â *Boulware v. U.S.*, U.S. . Â Michael Boulware should not have had to endure all this angst, oppression, and attorneys' fees to go to three courts finally to be vindicated. Considering such hardship he suffered, all the more congratulations go his way on this victory.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:30