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MIRANDA AND THE INTERNAL REVENUE SERVICE

While serving a sentence in the Florida State Penitentiary, the petitioner was the subject of a civil tax investigation by the Internal Revenue Service. Subsequently, he was convicted in a United States court, under 18 U.S.C. § 287,¹ for knowingly filing false federal income tax refund claims against the government. Part of the evidence on which the conviction rested consisted of oral statements and documents given voluntarily by petitioner to the Internal Revenue agent who conducted the civil investigation.² This evidence was obtained without warning petitioner of his fifth amendment protection against self-incrimination.³

In *Mathis v. United States*,⁴ the Supreme Court rejected the contention that tax investigations are immune from the fourfold warnings required by the ruling in *Miranda v. Arizona*⁵ to be given in custody. In arriving at this decision, the Court noted that petitioner's confinement, i.e., on an unrelated charge, at the time of this investigation necessitated the aforementioned warnings at a time commensurate with the investigation by the Internal Revenue agent.

¹ See 18 U.S.C. § 287 (1964), which provides: "Whoever makes or presents to any person or officer in the civil, military, or naval services of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claims to be false, fictitious, or fraudulent, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

² See *United States v. Fiore*, 258 F.Supp. 435 (W.D. Pa. 1966), which held that requirements for warnings of constitutional rights of defendants in custody are not applicable to internal revenue investigations and that voluntariness remains the test of admissibility of evidence procured.

³ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁴ 391 U.S. 1 (1968).

⁵ 384 U.S. 456 (1966). In *Miranda* the Court said: "He must be warned prior to any questioning that he has the right

Prior to the Supreme Court's holding in *Mathis*, the rules for the conduct of interrogation set out in *Escobedo v. Illinois*⁶ and *Miranda* had been thought not to apply to interrogation of a taxpayer by Internal Revenue personnel. These decisions, unlike *Mathis*, dealt exclusively with incustody interrogation, rather, than with taxpayers who voluntarily came to the interview and were not in custody.⁷

Subsequent to *Mathis*, the Court of Appeals for the Eighth Circuit, refused to require that the *Miranda* warnings be given in a precustody Internal Revenue Service inquiry.⁸ Similarly, the Second Circuit held that the referral of a case to a special agent does not change the focus of the case enough to require the *Miranda* warnings.⁹ On the other hand, at least two district courts do require *Miranda* warnings when a special agent enters the investigation.¹⁰

It is suggested that both of the above positions fail to satisfy the *Miranda* requirements. The *Miranda* warnings are premised on the element of custody, and are set forth in clear and unequivocal language.

“(W)e hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected

to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of any attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” *Id.* at 479.

⁶ 378 U.S. 478 (1964).

⁷ See *United States v. Spinney*, 385 F.2d 908 (1st Cir. 1967); *Bohrod v. United States*, 248 F.Supp. 559 (W.D. Wis. 1965).

⁸ *United States v. Dawson*, 400 F.2d 194 (2d Cir. 1968); *Frohman v. United States*, 380 F.2d 832 (8th Cir. 1967).

⁹ *United States v. Mackiewicz*, 401 F.2d 219 (2d Cir. 1968).

¹⁰ *United States v. Wainwright*, 248 F.Supp. 129 (D. Colo. 1968); *United States v. Turzyuski*, 268 F.Supp. 847 (N.D. Ill. 1967).

to questioning, the privilege against self-incrimination is jeopardized.”

If the principles of *Miranda* are to be extended to criminal tax fraud cases, the obstacle of custodial interrogation and the requirement that the investigation be focused on a particular individual must be overcome.

In the usual tax investigation, the taxpayer is not reduced to physical confinement. Nevertheless, there exists the significant factor of confrontation between an individual and a representative of the Government.¹³ This confrontation can be very perplexing, subjecting the taxpayer to direct coercion. The danger of undue physical and psychological pressure demands that the rights of the individual be secured in compliance with *Miranda*.¹⁴

A lower New York state court in *People v. Allen*,¹⁵ held that the terms “focus” and “accusatory” stages are no longer relevant; but the new standard is “compulsion”.¹⁶ “Compulsion,” as defined by the New York Court, “is simply questioning in any setting where a criminal fact may be elicited.”¹⁷ Therefore, the use of psychological coercion or compulsion at any stage of the investigation commands the warnings of *Miranda* to be given. If the spirit of *Miranda* is to be upheld, such actions must be deemed a part of “custodial interrogation”.

¹¹ 384 U.S. at 478.

¹² Comment, *Constitutional Rights of a Taxpayer in a Criminal Tax Investigation*, 16 J. PUB. L. 403 (1967).

¹³ INBAR & REID, *CRIMINAL INTERROGATION AND CONFESSION* (1962). Contains a specific study of recommended techniques of investigation.

¹⁴ 50 Misc. 2d 897, 272 N.Y.S.2d 249 (Sup. Ct. 1966).

¹⁵ *Id.* at 903, 272 N.Y.S. 2d at 255.

¹⁶ *Id.*

¹⁷ Hewitt, *The Constitutional Rights of the Taxpayer in a Fraud Investigation*, 44 TAXES 660, 683 (1966).

The Supreme Court by defining "custodial interrogation" as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way,¹⁹ must have visualized future battlegrounds: the police car, the streets, public places, and even the home.²⁰

Thus, did the Supreme Court in *Mathis* limit the circumstances under which the *Miranda* warnings must be given to the particular fact situation and the custodial surrounding in which the questioning was conducted; or did the Court extend the warnings to any citizen whether interviewed at home, work, or in a governmental office by a Revenue agent?²¹

The majority in *Mathis* felt that: "tax investigations frequently lead to criminal prosecution."²² This language indicates that any in custody questioning, in the sense the phrase was used in *Miranda*, must be preceded by the four-fold warnings if it is within the broad area of investigation which frequently leads to criminal prosecution.

In conclusion, the principles set forth in *Mathis* could be made applicable to any governmental employee conducting a civil investigation: if the investigation is within the broad area which frequently leads to criminal prosecution. As stated by Justice Frankfurter, "Under our system society carries the burden of proving its charge against the accused not out of his own mouth."²³

¹⁸ 384 U.S. at 444.

¹⁹ Kamisar, A Dissent from the *Miranda* Dissents: Some Comments on the "New" Fifth Amendment and the Old "Voluntariness" Test, 65 MICH. L. REV. 59 (1966).

²⁰ See generally, Justice White's dissenting opinion in *Mathis v United States*, 391 U.S. 1 (1968).

²¹ 391 U.S. at 4.

²² *Watts v. Indiana*, 338 U.S. 49, 54 (1949).