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When Is Tax Enforcement Publicized?

Joshua D. Blank
NYU School of Law, joshua.blank@nyu.edu

Daniel Z. Levin
Rutgers Business School, levin@business.rutgers.edu

WHEN IS TAX ENFORCEMENT PUBLICIZED?

Joshua D. Blank[*] *and Daniel Z. Levin*[**]

Every spring, the federal government appears to deliver an abundance of announcements that describe criminal convictions and civil injunctions involving taxpayers who have been accused of committing tax fraud. Commentators have occasionally suggested that the government announces a large number of tax enforcement actions in close proximity to a critical date in the tax compliance landscape: April 15, "Tax Day." These claims previously were merely speculative, as they lacked any empirical support. This article fills the empirical void by seeking to answer a straightforward question: When does the government publicize tax enforcement? To conduct our study, we analyzed all 782 press releases issued by the U.S. Department of Justice Tax Division during the seven-year period of 2003 through 2009 in which the agency announced a civil or criminal tax enforcement action against a specific taxpayer identified by name. Our principal finding is that, during those years, the government issued a disproportionately large number of tax enforcement press releases during the weeks immediately prior to Tax Day compared to the rest of the year and that this difference is highly statistically significant. A convincing explanation for this finding is that

[*] Associate Professor of the Practice of Tax Law and Faculty Director of the Graduate Tax Program, New York University School of Law.

[**] Associate Professor, Management and Global Business Department, Rutgers Business School – Newark and New Brunswick.

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government officials deliberately use tax enforcement publicity to influence individual taxpayers' perceptions and knowledge of audit probability, tax penalties, and the government's tax enforcement efficacy while taxpayers are preparing their annual individual tax returns.

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I. INTRODUCTION

As winter's ice finally thaws, the first signs of spring appear: daffodils bloom, baby chicks hatch, and tax evaders go to prison. Every

February, March, and April, the government appears to deliver an abundance of announcements regarding criminal convictions and civil injunctions involving taxpayers accused of committing tax fraud. The subject of a typical government press release at this time of year may be a promoter of notorious tax schemes like Irwin Schiff, who was indicted on March 23, 2004, for advising nearly 5,000 clients to file "zero return tax returns."[1] Or the subject may be a taxpayer who utilized a third party's tax evasion services, such as Robert Moran, a UBS client who pleaded guilty on April 14, 2009, to hiding $3 million of assets in a secret Swiss bank account.[2] Sometimes the press release even describes a celebrity taxpayer like Joe Francis, creator of the "Girls Gone Wild" DVDs, who was indicted on April 11, 2007, on tax evasion charges for deducting more than $20 million in phony business expenses.[3] To the naked eye, these types of government announcements seem to occur in close proximity to a critical date in the tax compliance landscape: April 15, "Tax Day."[4]

Commentators have occasionally suggested that the government initiates and announces a disproportionately large number of tax enforcement actions around Tax Day. They have intimated, for example, that the government "seems to save some juicy fraud convictions for late March"[5] and "actively seeks to gain media attention on successful prosecutions, particularly around April 15."[6] Despite their provocative implications, however, these claims lack empirical support in the existing tax compliance literature. To date, no scholar has investigated whether the government actually does announce more tax enforcement actions in the weeks immediately prior to Tax Day than it does during the rest of the year and whether a statistically significant pattern of publicity indeed exists.

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1 Press Release, U.S. Dep't of Justice, Irwin Schiff and Two Associates Indicted for Tax Fraud (Mar. 24, 2004), *available at* http://www.justice.gov/tax/txdv04182.htm.

2 Press Release, U.S. Dep't of Justice, UBS Client Pleads Guilty to Filing False Tax Return Hid Assets Worth $3 Million in Secret Swiss Bank Account (Apr. 14, 2009), *available at* http://www.justice.gov/tax/txdv09344.htm.

3 Press Release, U.S. Dep't of Justice, Creator of Girls Gone Wild Indicted for Tax Evasion (Apr. 11, 2007), *available at* http://www.justice.gov/tax/txdv07237.htm.

4 *See* I.R.C. § 6072(a) (setting forth April 15 as due date for most individual tax returns). Throughout this article, we use the term "Tax Day" to refer to April 15 or the last day on which taxpayers may file an annual individual tax return without being subject to a late filing or late payment penalty.

5 John S. Carroll, *A Cognitive-Process Analysis of Taxpayer Compliance*, *in* 2 TAXPAYER COMPLIANCE 228, 244 (Jeffrey A. Roth & John T. Scholz eds., 1989).

6 Susan B. Long & Judyth A. Swingen, *Taxpayer Compliance: Setting New Agendas for Research*, 25 LAW & SOC'Y REV. 637, 637 n.1 (1991).

This article fills the empirical void by seeking the answer to a straightforward question: when does the government publicize tax enforcement?

To conduct our study, we collected all press releases issued by the Internal Revenue Service (Service) and the U.S. Department of Justice Tax Division from 2003 to 2009 that announced a civil or criminal tax enforcement action against any taxpayer that the agency identified by name.[7] We found that the Service issued a negligible number of press releases — only a handful or two per year — of this nature. The U.S. Department of Justice Tax Division, by contrast, issued many press releases of this nature during the seven-year test period. Our sample thus consisted of 782 such press releases issued by the U.S. Department of Justice Tax Division from January 1, 2003, through December 31, 2009. We calculated the average number of these tax enforcement press releases issued during the following three time windows:[8] (a) February 1 to Tax Day; (b) March 1 to Tax Day; and (c) April 1 to Tax Day. We then compared the frequency of press releases in our sample issued during each of these pre-Tax Day time windows to the frequency of those issued during the rest of the year.

Our study demonstrates that from 2003 through 2009, the U.S. Department of Justice Tax Division issued a disproportionately large number of tax enforcement press releases per week during each of the three windows described above compared to the rest of the year. Specifically, we found that on an average weekly basis the U.S. Department of Justice Tax Division issued: (a) 58% more tax enforcement press releases from February 1 through Tax Day than it issued during the rest of the year; (b) 71% more tax enforcement press releases from March 1 through Tax Day than it issued during the rest of the year; and (c) 128% more tax enforcement press releases from April 1 through Tax Day than it issued during the rest of the year.[9] Negative binomial regression analysis revealed that each of these differences is highly statistically significant.[10] Put differently, it is extremely unlikely that this pattern is random.

Why does the government issue so many press releases during the weeks immediately prior to Tax Day? A convincing explanation is that government officials are manipulating the timing of tax enforcement press releases in an effort to influence taxpayers' perceptions

[7] *See infra* Part III.A for a discussion of the methodology for our study.

[8] *See infra* Part III.A for a discussion of why we tested these three windows.

[9] *See infra* Part III.B for further discussion.

[10] *See infra* Part III.B for further discussion.

and knowledge of audit probability, tax penalties, and the government's tax enforcement efficacy at a time when they are in the process of preparing their annual individual tax returns.[11] The government may issue tax enforcement press releases in the weeks prior to Tax Day in an attempt to cause some taxpayers to conclude that the probability of an audit and the severity of a penalty for tax noncompliance are greater than they are in reality. In addition, because the government prevails in the vast majority of the cases described in its press releases issued prior to Tax Day, it may choose to publicize these tax enforcement efforts to cause compliant taxpayers to conclude that the government effectively detects and prosecutes tax evaders to a greater extent than it actually does.

Our study raises several important questions for future research. First, as a normative matter, should the government engage in this type of publicity strategy? Next, how does the timing of the government's tax enforcement publicity affect individual taxpayers' tax filing behavior? Last, what are the potential risks inherent in the government's apparent publicity strategy?

The remainder of this article proceeds as follows: Part II provides a brief overview of the discussion in the literature of how tax enforcement publicity relates to tax compliance. Part III presents the methodology and findings of our study of when the government publicizes tax enforcement. Part IV describes questions for future research. Part V concludes.

II. TAX COMPLIANCE AND TAX ENFORCEMENT PUBLICITY

A. Publicity and Perceptions

Commentators have often debated the impact of publicity surrounding criminal tax prosecutions and civil tax settlements on individual tax compliance.[12] While they do not concur completely on

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[11] *See infra* Part III.C for further discussion.

[12] For a representative sampling of this discussion, *see* Leandra Lederman, *The Interplay Between Norms and Enforcement in Tax Compliance*, 64 OHIO ST. L.J. 1453, 1493 (2003) ("Another relevant data point with the respect to the impact of enforcement is the effect on voluntary compliance of criminal convictions for tax evasion, which the IRS publicizes."); Robert Mason, *A Communication Model of Taxpayer Honesty*, 9 LAW & POL'Y 246, 256 (1987) (commenting that "fear of sanctions" impacts compliance and that "those with low fear levels admit they evade their taxpaying responsibilities"); Stephen W. Mazza, *Taxpayer Privacy and Tax Compliance*, 51 U. KAN. L. REV. 1065, 1076 (2003) ("One way in which publicity surrounding the IRS's enforcement efforts can affect tax compliance is by influencing taxpayers' be-

whether the effect is positive or negative, most commentators agree that this type of publicity may have some influence on individuals' willingness to comply with the tax system.

The literature contains several different justifications for the view that public reports of tax enforcement against specific taxpayers may encourage individuals to calculate their tax liabilities correctly and to file their tax returns on time. Some commentators have contended that publicity of successful tax enforcement actions may cause individual taxpayers to perceive that the "government is vigilant in collecting tax revenues"[13] and, as a result, "people greatly overestimate the probability of an IRS audit."[14] Similarly, others, such as Leandra Lederman, have asserted that frequent imposition of prison sentences in publicized tax enforcement actions may cause taxpayers to develop a fear of tax penalties and that the "fear of sanctions increases tax compliance."[15] And some commentators have concluded that when the government publicizes its criminal and civil tax enforcement efforts, it "promote[s] confidence in tax administration, which undergirds voluntary compliance."[16]

In contrast to the case for tax enforcement publicity as a means of preserving tax compliance, some commentators believe that public re-

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liefs about the possibility of detection and punishment."); Robert M. Melia, *Is the Pen Mightier Than the Audit?*, 34 TAX NOTES 1309, 1309 (Mar. 30, 1987) ("[A] good communications strategy amplifies enforcement activities and any other actions a revenue department might take to improve voluntary compliance, as well as being an effective tool in its own right."); Susan Cleary Morse, *Using Salience and Influence to Narrow the Tax Gap*, 40 LOY. U. CHI. L.J. 483, 507 (2009) ("Attention to salience and influence in communications might also improve audit publicity . . . ."); Alex Raskolnikov, *Revealing Choices: Using Taxpayer Choice to Target Tax Enforcement*, 109 COLUM. L. REV. 689, 708 (2009) ("Publicizing tax prosecutions, highlighting new and larger penalties, and trumpeting increased audit rates informs the public that the government is vigilant in collecting tax revenues."); Joshua D. Rosenberg, *The Psychology of Taxes: Why They Drive Us Crazy, and How We Can Make Them Sane*, 16 VA. TAX REV. 155, 199 (1996); Liezel Walker, *The Deterrent Value of Imposing Prison Sentences for Tax Crimes*, 26 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 1, 29 (2000) ("Communication of the threat of detection, prosecution, and punishment is a more arduous task than is initially perceived, but if successfully conveyed to average citizens and potential offenders, the deterrent value will presumably increase compliance with tax laws, reduce the tax gap, and ensure the non-likelihood of future tax crimes.").

[13] Raskolnikov, *supra* note 12, at 708.

[14] James Andreoni, Brian Erard & Jonathan Feinstein, *Tax Compliance*, 36 J. ECON. LITERATURE 818, 844 (1998).

[15] Lederman, *supra* note 12, at 1489.

[16] Leandra Lederman & Stephen W. Mazza, *Addressing Imperfections in the Tax System: Procedural or Substantive Reform?*, 103 MICH. L. REV. 1423, 1441 (2005).

ports of tax enforcement may weaken tax morale.[17] The principal justification for this view is that by revealing that some taxpayers have engaged in abusive tax behavior, the government may cause individuals to believe that other taxpayers are probably engaged in the same activities, but they have not yet been detected.[18] As a result, proponents of this theory believe that individual taxpayers who hear reports of tax fraud cases may develop "a reciprocal motive to evade,"[19] leading to a decrease in overall tax compliance.

There are several responses to this latter account. First, at least one study of voluntary compliance in the United States found a correlation between the number of criminal tax convictions and individual tax compliance.[20] Another study has found that prosecution of criminal tax cases and the resulting publicity "has a highly significant impact on income reporting."[21] Second, as Leandra Lederman has noted, there is a distinction between public reports about the "tax gap," which is the difference between the amount of tax that taxpayers should pay and the amount that is paid voluntarily and on time, and criminal tax prosecutions of specific taxpayers.[22] News about the tax gap may cause some taxpayers to conclude that cheating is widespread, whereas reports of criminal convictions in tax fraud cases indicate that the government has been successful in detecting and punish-

[17] *See, e.g.,* Dan M. Kahan, *The Logic of Reciprocity: Trust, Collective Action and Law*, 102 MICH. L. REV. 71, 72 (2003).

[18] *See id.* at 83; *see also* Rosenberg, *supra* note 12, at 199 (theorizing that "when we hear about Leona Helmsley evading taxes and going to jail, some of us say to ourselves 'we had better pay our taxes,' but many others tend to engage in an internal dialogue that sounds more like 'this rich woman evaded her taxes; from what I hear, most other rich people do, and probably I should or I'll be losing out.'").

[19] Kahan, *supra* note 17, at 83.

[20] Alan H. Plumley, *The Impact of the IRS on Voluntary Tax Compliance: Preliminary Empirical Results*, NAT'L TAX ASS'N 95TH ANN. CONF. ON TAX'N NOV. 12–14, 2002, *available at* http://www.irs.gov/pub/irs-soi/irsvtc.pdf.

[21] Alan H. Plumley, *The Determinants of Individual Income Tax Compliance: Estimating the Impacts of Tax Policy, Enforcement, and IRS Responsiveness*, I.R.S. Pub. No. 1916, 36 (Nov. 1996), *available at* http://www.irs.gov/pub/irs-soi/pub1916b.pdf.

[22] *See* Lederman, *supra* note 12, at 1494 ("[P]ublicity about specific individuals does not seem to have the same negative effects as publicizing the 'tax gap,' which may imply to taxpayers that cheating is rampant."). The study on which Kahan relies is described in Steven M. Sheffrin & Robert K. Triest, *Can Brute Deterrence Backfire?*, *in* WHY PEOPLE PAY TAXES 193, 211–14 (Joel Slemrod ed., 1992) (demonstrating that taxpayers who read reports regarding the "tax gap" were less likely to comply with the tax system).

ing abuse.[23]

B. Sources of Information

Individuals develop beliefs about the government's tax enforcement capabilities as a result of information they receive from a variety of sources. Some of the most prominent sources are described below, along with an analysis of their likely impact on individual tax compliance.

1. Government

The government is a major source of information that may influence an individual taxpayer's compliance decisions. As discussed above, the U.S. Department of Justice Tax Division regularly issues press releases describing civil injunctions and criminal indictments issued against taxpayers who have engaged in tax fraud.[24] The fact that these press releases "name names" may further enhance their impact on taxpayers, making the negative consequences of noncompliance seem more vivid and real. The Service also issues statements that may affect tax compliance, such as announcing it is prepared to challenge any taxpayers who participate in any of its list of "dirty dozen" tax scams, which includes schemes involving hiding income offshore and filing false claims for refunds.[25] At least one study has demonstrated that this type of visible tax enforcement information has a highly significant and positive effect on individual taxpayers' reporting of income.[26]

2. Media

The media is a source of tax enforcement information that often complements the government's efforts. The media regularly parrots language in U.S. Department of Justice Tax Division press releases when describing criminal indictments or convictions.[27] One tax com-

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[23] *See* Lederman, *supra* note 12, at 1494.

[24] *See supra* notes 1–3 and accompanying text.

[25] Press Release, Internal Revenue Serv., *Beware of IRS' 2009 "Dirty Dozen" Tax Scams* (Apr. 13, 2009), *available at* http://www.irs.gov/newsroom/article/0,,id=206370,00.html.

[26] *See* Plumley, *supra* note 21, at 36.

[27] For example, consider the nearly identical language in Press Release, U.S. Dep't of Justice Tax Div., Creator of Girls Gone Wild Indicted for Tax Evasion (Apr. 11, 2007), *available at* http://www.justice.gov/tax/txdv07237.htm, and Amy Bonawitz,

pliance study has found that individual taxpayers who learn about the government's tax enforcement actions through the media are less likely to cheat than when they hear about them from friends or family.[28] One explanation offered for this result is that "the media tends to focus on cases where taxpayers go to prison or pay large fines."[29] Another study has found that criminal tax enforcement has significant general deterrence effects and that "the media plays a large role in fostering tax compliance."[30]

3. Personal Experience

Some individuals learn about the government's tax enforcement efforts as a result of personal experience with an audit. At least one study has found that personal experience with an audit has a positive impact on an individual taxpayer's compliance.[31] While this type of experience may deliver tax enforcement information in a way that encourages future tax compliance, very few individual taxpayers experience audits. In 2009, only 1.03% of all individual tax returns were subject to a field or correspondence audit.[32]

4. Friends and Family

Another source of tax enforcement information for many indi-

"Girls Gone Wild" Founder Indicted, CBSNews.com, Apr. 11, 2007, *at* http://www.cbsnews.com/stories/2007/04/11/entertainment/main2673413.shtml.

[28] *See, e.g.*, Melia, *supra* note 12.

[29] *See id.* at 1311, n.3.

[30] Jeffrey A. Dubin, *Criminal Investigation Enforcement Activities and Taxpayer Noncompliance*, 35 PUB. FIN. REV. 500, 502 (2007). Without the government's initiation of a public proceeding, such as a trial, the media would have great difficulty in reporting on the government's tax enforcement actions against specific taxpayers. The reason for this result is that the government is generally prohibited by federal taxpayer privacy rules from releasing tax return information, including enforcement actions, regarding any particular taxpayer. I.R.C. § 6103(a). When the government publicly pursues a criminal or civil action against a particular taxpayer, some courts have held that the government may issue a press release that contains information from the public record. *See*, *e.g.*, Lampert v. United States, 854 F.2d 335, 337 (9th Cir. 1988) (press release does not violate privacy rules "once tax return information is made a part of the public domain") (citing Thomas v. United States, 671 F. Supp. 15, 16 (E.D.Wisc. 1987)); Thomas v. United .States, 890 F.2d 18 (7th Cir. 1989).

[31] *See* Plumley, *supra* note 20, at 8.

[32] INTERNAL REVENUE SERVICE, FISCAL YEAR 2009 ENFORCEMENT AND SERVICE RESULTS (2009), *available at* http://www.irs.gov/pub/irs-drop/fy_2009_enforcement_results.pdf [hereinafter ENFORCEMENT AND SERVICE RESULTS].

viduals is friends and family. Individuals may learn about the audit process through a dinner conversation with a neighbor or coworker who has recently been audited. At least one study has found that this type of informal transfer of information has a negative impact on individual tax compliance and that "taxpayers who hear about IRS audit activities via word of mouth are more likely to evade [taxes] than are taxpayers who do not hear about audits in this fashion."[33] One explanation offered for this result is that when friends and family members discuss audits, the individual who has been audited may brag about dubious items on the individual's tax return that the Service agent failed to detect, rather than the items that the agent challenged.[34]

As this discussion shows, the sources of tax enforcement information that may have the most significant positive effect on an individual taxpayer's willingness to comply with the tax system are the government itself and the media.

C. Timing Suspicions

In light of the potential effects of tax enforcement information, commentators have occasionally theorized that the government releases a disproportionate amount of this information in the weeks immediately prior to Tax Day. For example, Susan Long and Judyth Swingen have commented that the "IRS chooses cases to prosecute in part because of their publicity value and actively seeks to gain media attention on successful prosecutions, particularly around April 15, to enhance any deterrent effects."[35] Others have taken this suggestion a step further by considering the government's intentions. As Andrew Carroll has written:

> [A] well-publicized conviction for tax fraud should make the perceived likelihood of punishment temporarily increase, and the same event can be made more salient with pictures and emphasis on connections to taxpayers living in the same city or having other similarities to the convicted person; the IRS seems to save some juicy fraud convictions for late March. . .[36]

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[33] Melia, *supra* note 12, at 1311, n.3.

[34] *See id.*; *see also*, Lederman, *supra* note 12, at 1495.

[35] Long & Swingen, *supra* note 6, at 637, n.1.

[36] Carroll, *supra* note 5, at 24; *see also* Frederick Schauer & Richard Zeckhauser, *Paltering*, in DECEPTION: FROM ANCIENT EMPIRES TO INTERNET DATING 38, 44 (Brooke Harrington ed., 2009) ("The Internal Revenue Service appears deliberately to initiate tax fraud criminal prosecutions and to send out routine press releases about

Without explicitly saying so, Carroll implies that the government attempts to mislead individual taxpayers into compliance right before Tax Day by creating unrealistic impressions of the likelihood of an audit or tax penalty.

III. THE TIMING OF TAX ENFORCEMENT PUBLICITY

Despite their rhetorical power, the statements described above regarding the government's timing of tax enforcement publicity[37] have never been substantiated by empirical analysis. Even though it may appear that the government issues press releases that report criminal and civil tax enforcement actions in the weeks prior to April 15, the existing tax compliance literature does not address whether the government actually issues more press releases during those weeks than during the rest of the year, and certainly does not explain whether the supposed increase in press releases is of any statistical significance.

In this Part, we resolve the question of when the government publicizes tax enforcement. We begin by describing the methodology for our study of the government's tax enforcement publicity; we then present our principal findings; and, finally, we offer several possible explanations.

A. Methodology

To conduct our study, we collected all press releases issued by the Service and the U.S. Department of Justice Tax Division from 2003 through 2009 in which either agency announced a criminal or civil tax enforcement action against any taxpayer that the agency identified by name. We limited our search to press releases in which the government named names, as these press releases contain precisely the type of visible image of tax enforcement that commentators have referenced in the tax compliance literature.[38] The sources of the press releases were databases on each agency's publicly available Web site.[39] These press releases first became regularly available on each agency's Web site starting in 2002,[40] so we compiled our data set starting with

audits in the weeks immediately preceding April 15 . . .").

[37] *See supra* notes 35–36 and accompanying text.

[38] For examples, *see supra* notes 13–18 and 24–26 and accompanying text.

[39] Service database of press releases, http://www.irs.gov/newsroom/article/0,,id=108500,00.html (last visited Feb. 10, 2010). U.S. Dep't of Justice Tax Div. database of press releases, http://www.justice.gov/tax/taxpress2010.htm (last visited Feb. 10, 2010).

[40] *See supra* note 38.

press releases issued on January 1, 2003. We gathered all press releases issued on this date through December 31, 2009.

We found that the Service issued a negligible number of press releases that named names, whereas the U.S. Department of Justice Tax Division issued many press releases of this nature. For example, the Service issued an average of less than eight press releases satisfying our criteria per year during the test period.[41] The U.S. Department of Justice Tax Division, by contrast, issued an average of more than 110 press releases satisfying our criteria per year during the test period.[42] The lack of Service press releases makes sense in retrospect, given that the U.S. Department of Justice Tax Division — and not the Service — is responsible for pursuing criminal and civil tax litigation. To avoid biasing our sample, we focused our analysis on tax enforcement press releases issued by the U.S. Department of Justice Tax Division, which are available on the Tax Division's publicly accessible Web site.[43]

Our sample, therefore, consisted of 782 press releases issued by the U.S. Department of Justice Tax Division during the seven-year period of 2003 through 2009.[44] About one-third (34%) of the press releases in our sample involved criminal tax enforcement actions, such as reports of individuals pleading guilty to charges of criminal tax evasion or receiving prison sentences for engaging in this activity. The remaining 66% of the press releases in our sample involved civil tax enforcement actions, such as a court's issuance of a civil injunction enjoining a particular individual to cease from advising taxpayers to claim tax positions the government considered fraudulent.

For each day that was not a Saturday, Sunday, or federal holiday from January 1, 2003 through December 31, 2009, we counted the number of tax enforcement press releases in our sample that were issued on that workday. (We excluded weekends and federal holidays because government offices are officially closed for business on those days.[45]) The number of press releases issued on a single workday

[41] *See* IRS News Release and Fact Sheet Archive, *available at* http://www.irs.gov/newsroom/article/0,,id=108500,00.html (last visited Feb. 10, 2010).

[42] *See* U.S. Department of Justice Tax Division, Tax Division Press Releases, *available at* http://www.justice.gov/tax/taxpress2010.htm (last visited Feb. 10, 2010).

[43] *See id.*

[44] The total number of U.S Department of Justice Tax Division press releases issued between Jan. 1, 2003 and Dec. 31, 2009 was 797. Thus, only fifteen of these press releases were excluded from our sample because they did not involve criminal or civil tax enforcement actions against specifically identified taxpayers.

[45] For the list of federal holidays during which the U.S. Department of Justice

ranged from a low of zero to a high of four during the 1,754 workdays in our sample. For ease of interpretation, we report our results on an average weekly basis, even though our statistical tests used a day-by-day analysis.[46]

After compiling the data set, we compared the frequency of press releases in our sample issued during a particular time window leading up to Tax Day to the frequency of press releases during the rest of the year. We defined "Tax Day" as April 15 or the last day on which taxpayers could file an annual individual tax return without being subject to a late filing or late payment penalty, such as April 16 if April 15 fell on a Sunday.[47] We performed our analysis for three different time windows: (a) February 1 to Tax Day; (b) March 1 to Tax Day; and (c) April 1 to Tax Day. We selected the time window of February 1 to Tax Day for two reasons. First, third-party institutions, such as employers and banks, are required to mail many types of information returns, such as Form W-2 or Form 1099-INT, to the Service and to individual taxpayers by January 31 of each year.[48] Since individual taxpayers must include these information returns with their annual individual income tax returns, most individual taxpayers cannot file their annual individual income tax returns until at least February 1 each year.[49] Second, the vast majority of annual individual income tax returns are filed with the Service between February 1 and Tax Day each year.[50] In 2008, for example, nearly 80% of all annual individual income tax returns were filed during this period.[51] To confirm the ro-

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was closed during the years in our sample, see U.S. Office of Personnel Management, 2010 Federal Holidays, http://www.opm.gov/Operating_Status_Schedules/fedhol/2010.asp (last visited Feb. 10, 2010). The U.S. Department of Justice Tax Division issued only one out of 782 press releases on one of those days (Sunday, July 12, 2009). For purposes of our analysis, we treated that particular press release as having been issued on the following Monday (July 13, 2009).

[46] Based on the concept of a five-day workweek, we computed the weekly averages by taking the daily averages and multiplying them by five.

[47] *See* I.R.C. § 7503 (providing special rules for years when April 15 falls on a Saturday, Sunday, or federal holiday).

[48] *See* IRS, General Instructions for Forms W-2 and W-3, *available at* http://www.irs.gov/instructions/iw2w3/ch01.html (last visited May 14, 2010) (stating that employers must furnish Form W-2 to employees by January 31).

[49] *See* U.S. Gen. Accounting Office, *IRS Modernization: Continued Progress Necessary for Improving Service to Taxpayers and Ensuring Compliance*, May 20, 2003, *available at* http://www.gao.gov/new.items/d03796t.pdf.

[50] *See* IRS Filing Season Weekly Reports, *available at* http://www.irs.gov/taxstats/article/0,,id=184855,00.html (last visited February 10, 2010).

[51] *Id.* According to the Service, 78.77% of all individual annual tax returns were filed between February 1, 2008 and April 15, 2008.

bustness of our study's findings, we also analyzed two alternative specifications for this time window, March 1 to Tax Day and April 1 to Tax Day.

The primary objective of our study was to determine whether there was a statistically significant difference between the frequencies of tax enforcement press releases issued during each time window and the frequency during the rest of the year. In other words, if a pattern emerged, we wanted to test whether the pattern was due to random chance. Because our data are "count data"[52] — i.e., the number of press releases issued each workday — they are not normally distributed — i.e., they do not result in a bell-shaped curve.[53] As a result, a simple statistical test such as the t-test would not have been an appropriate statistical technique.[54] We determined that for this type of data the appropriate statistical test is negative binomial regression. We analyzed the data in our sample using the software program Statistical Package for the Social Sciences (SPSS).[55] For every negative binomial regression analysis, the software computed a likelihood ratio chi-square ($df = 1$) and an associated p-value, which is an indicator of statistical significance.[56] The p-value reveals the likelihood that a difference occurred by random chance.[57]

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[52] Count data refers to data describing the number of times an event (in this case, a press release) occurs during a given time interval (in this case, each workday).

[53] In many situations, randomness means that a set of numbers is distributed in the familiar, symmetrical, bell-shaped curve, where the average — exactly in the middle — is the most commonly occurring number, and the farther away the other numbers are from the average, the less likely they are to occur. For example, adult female height follows this pattern, which is called a normal distribution. Randomly occurring count data, however, do not follow this pattern. Instead, they follow what is called a negative binomial distribution, which typically means a lot of instances when an event did not happen, some instances when an event happened once, fewer instances when it happened twice, fewer still when it happened three times, and so on. This is the pattern that occurred in our sample. For example, for the February 1 to Tax Day period, 55.9% of workdays had no press release, 30.0% had one, 10.1% had two, 3.5% had three, and 0.5% had four. This is a classic negative binomial distribution.

[54] Many statistical tests, such as the t-test, rely on the assumption that a sample is normally distributed. Since this statistical assumption is clearly violated for our sample, *see supra* note 53, more sophisticated statistical tests are required. Negative binomial regression is the appropriate technique for analyzing data that follow a negative binomial distribution, as in our sample.

[55] Specifically, we used Statistical Package for the Social Sciences (SPSS) for Windows, version 17 (2008).

[56] *See* ROXY PECK, CHRIS OLSEN & JAY DEVORE, INTRODUCTION TO STATISTICS & DATA ANALYSIS 576 (2d. ed. 2008).

[57] *See id.*

B. Findings

We found the following regarding the frequency of press releases in our sample issued during a particular time window leading up to Tax Day, versus during the rest of the year:

1. February 1 to Tax Day

For the largest of the three time widows we studied, February 1 to Tax Day, we found that the government issued 58% more tax enforcement press releases per week than during the rest of the year. Specifically, the government issued an average of 3.1 press releases per week during the February 1 to Tax Day window, compared to an average of only 2.0 press releases per week during the rest of the year.[58] This finding confirms the suspicion that the government issues more press releases describing criminal and civil tax enforcement against specific taxpayers in the weeks leading up to Tax Day than it does at other times of the year.[59]

This difference is highly statistically significant.[60] The negative binomial regression model's likelihood ratio chi-square is 21.69, with a p-value of only .0000032. This is equivalent to stating that there is a one in 311,656 chance that this difference in the government's issuance of tax enforcement press releases is due to random occurrence.

2. March 1 to Tax Day

When we changed the time window to March 1 to Tax Day, we found an even greater difference between the frequency of press releases issued during the time window and the rest of the year. In other words, when we narrowed the time window to approximately six weeks before Tax Day, the pattern of a disproportionate issuance of

[58] Some percentages in this article may appear off by a few percentage points due to rounding error, since we only report press releases per week to the nearest tenth. For example, the +58% figure is based on 3.147 press releases per week (rounded to 3.1 in our reporting) during the February 1 to Tax Day window, compared to 1.986 press releases per week (rounded to 2.0) during the rest of the year.

[59] *See supra* notes 35–36 and accompanying text.

[60] Statistical significance indicates that something is unlikely to have occurred by random chance. The standard cut-off for statistical significance is a p-value of less than .05, which means that the probability of something occurring by random chance is less than 5%, i.e., less than a one-in-twenty chance. In our sample, the p-value is dramatically lower than this standard cut-off; hence, it is extremely unlikely that the pattern we observe is due to random chance.

tax enforcement press releases grew even stronger.

For the March 1 to Tax Day time window, the government issued 71% more tax enforcement press releases per week during the time window than during the rest of the year. Specifically, the government issued an average of 3.5 press releases per week during the March 1 to Tax Day window, compared to an average of only 2.0 press releases per week during the rest of the year.

Again, this difference is highly statistically significant. The negative binomial regression model's likelihood ratio chi-square is 21.82, with a *p*-value of only .0000030. This is equivalent to stating that there is a one-in-333,427 chance that this difference in the government's issuance of tax enforcement press releases is due to random occurrence.

3. April 1 to Tax Day

When we changed the time window to April 1 to Tax Day, we found a dramatic increase in the difference between the frequency of press releases issued during the time window and the frequency during the rest of the year.

For the April 1 to Tax Day time window, we found that the government issued 128% more tax enforcement press releases per week during the time window than during the rest of the year. Specifically, the government issued an average of 4.8 press releases per week during the April 1 to Tax Day window compared to an average of only 2.1 press releases per week during the rest of the year. Put differently, our results show that during the two-week period immediately prior to Tax Day, the government issued more than double the number of tax enforcement press releases per week than it did during the rest of the year.

This difference is highly statistically significant. The negative binomial regression model's likelihood ratio chi-square is 23.48, with a *p*-value of only .0000013. This is equivalent to stating that there is a one in 791,637 chance that this difference in the government's issuance of tax enforcement press releases is due to random occurrence.

As our findings indicate, during the seven-year period of 2003 through 2009, the government issued a disproportionately large number of tax enforcement press releases on a weekly basis during each of the three windows described above, compared to the rest of the year. In each case, we determined that the difference is highly statistically significant.

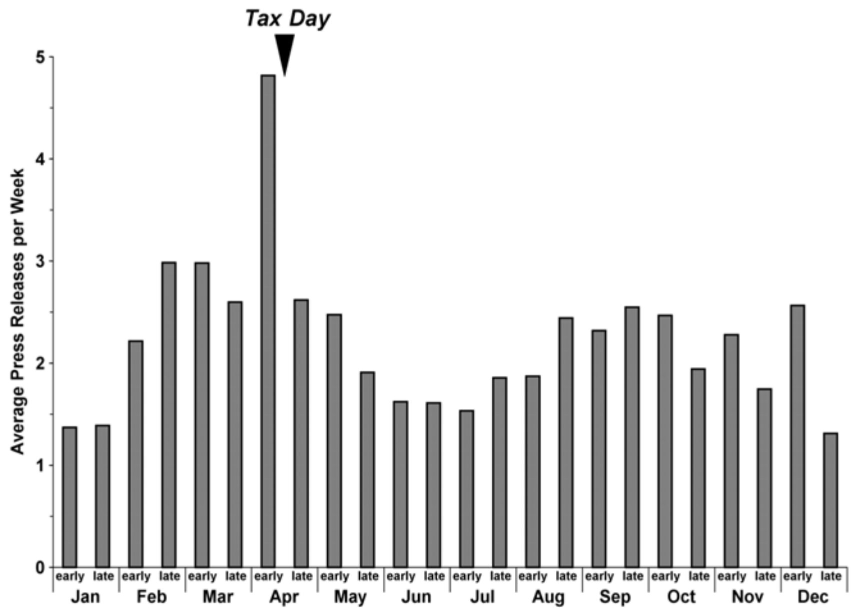
The table below summarizes the frequency of the government's issuance of tax enforcement press releases during each of the three windows we studied, versus the rest of the year, along with the magnitude of this difference and its statistical significance:

TABLE 1. COMPARISON OF TAX ENFORCEMENT PRESS RELEASES ISSUED IN TIME WINDOWS VS. REST OF YEAR (2003–2009)

	AVERAGE NUMBER OF PRESS RELEASES PER WEEK			PROBABILITY THAT DIFFERENCE IS RANDOM	
TIME WINDOW	REST OF YEAR	PERIOD BEFORE TAX DAY	% MORE	*P*-VALUE	CHANCE (1 IN X)
FEB 1ST TO TAX DAY	2.0	3.1	+58%	.0000032	311,656
MAR 1ST TO TAX DAY	2.0	3.5	+71%	.0000030	333,427
APR 1ST TO TAX DAY	2.1	4.8	+128%	.0000013	791,637

The chart below provides a graphic illustration of the average frequency of tax enforcement press releases issued throughout the year during 2003 through 2009. The chart reveals a striking increase in the frequency of press releases issued during the two weeks prior to Tax Day. We designated April 1 to Tax Day (usually April 15) as early April, and the day after Tax Day until April 30 as late April. For all other months, we divided the number of workdays in that month in half; if a month had an odd number of workdays, we made the early part of that month one day longer than the late part. For each half-month, we aggregated across the seven years of the sample to calculate the number of press releases per workday in that half-month. Based on the concept of a five-day workweek, we then multiplied this per-workday number by five to compute the average number of press releases per week, as shown in the figure below.

FIGURE 1. FREQUENCY OF TAX ENFORCEMENT PRESS RELEASES (2003–2009)



Last, we performed the same analysis described above, but limited our sample of press releases to only those press releases that involved criminal tax enforcement actions, such as indictments or prison sentences. We found that the timing of the government's issuance of criminal tax enforcement press releases revealed the same pattern as what we observed when we performed our analysis for all press releases in our sample.[61] As a result, we have reported the overall results for all press releases in our sample.

4. Individual Years

We found that the pattern described above occurred throughout the seven years that we studied. To illustrate this observation, the table below presents the difference between the average number of tax enforcement press releases issued per week during the April 1 to Tax Day window and the number issued per week during the rest of the

[61] In other words, when we segregated the press releases that described criminal tax enforcement actions, we observed a striking and statistically significant increase in the frequency of these press releases issued during each of the three time windows prior to Tax Day, versus the rest of the year.

year for each of the years in the 2003 through 2009 period.

TABLE 2. COMPARISON OF TAX ENFORCEMENT PRESS RELEASES ISSUED IN APRIL 1 TO TAX DAY WINDOW VERSUS REST OF YEAR (2003–2009)

	AVERAGE NUMBER OF PRESS RELEASES PER WEEK		
YEAR	REST OF YEAR	APRIL 1ST TO TAX DAY	% MORE
2003	1.3	5.5	+336%
2004	2.1	5.9	+175%
2005	2.3	5.5	+140%
2006	2.0	2.7	+37%
2007	1.8	4.2	+132%
2008	2.2	4.1	+83%
2009	3.1	5.9	+92%
OVERALL	2.1	4.8	+128%

As this table illustrates, the pattern that we have observed was consistent from year to year. With respect to the April 1 to Tax Day time window, it appears that in the later years of our study the disparity lessened.[62] However, the government still issued nearly twice the number of tax enforcement press releases per week (+92%) during the April 1 to Tax Day time window during 2009, for instance, than it issued during the rest of the year. Thus, the magnitude of this difference has remained large.

C. Discussion

As our findings reveal, it is highly unlikely that the tax enforcement publicity patterns that we observed were the result of random chance. This section considers possible reasons that the government has issued such a disproportionately large number of press releases in the weeks leading up to Tax Day compared to the rest of the year.

Below we examine three possible motivations for the timing patterns that we observed: (a) certain criminal tax procedure rules; (b) the government's effort to deter tax noncompliance; and (c) the government's effort to bolster confidence in compliant taxpayers. We believe that the first possibility, that the surge in publicity is due to criminal tax procedure rules, is the weakest of the three explanations. The second and third possibilities, that the government uses tax en-

[62] For example, the difference in 2003 was +336% and in 2009 it was +92%.

forcement publicity to achieve deterrence and confidence effects, are in our view, much stronger explanations.

1. Criminal Tax Procedure

It is possible that the surge in tax enforcement press releases that occurs prior to Tax Day is not strategic, but merely an artifact of a procedural aspect of the criminal tax law. This theory, however, is an unconvincing explanation for the results of our study.

For many tax crimes, the statute of limitations on prosecution is six years from the later of the last act of tax fraud or the statutory due date of the taxpayer's tax return (without extension).[63] In other words, if a taxpayer commits criminal tax fraud prior to April 15, then the statute of limitations runs for six years starting from April 15 of the year in which the taxpayer committed tax fraud and ending six years later on April 15.[64] The same rule applies in cases where a taxpayer who has committed criminal tax fraud has filed no tax return at all.[65] Either way, the government must indict a taxpayer accused of tax fraud by the expiration of the statute of limitations, which may be April 15.

It is possible, consequently, that the government issues so many press releases describing tax enforcement actions prior to April 15 because of the statute of limitations on criminal tax fraud. Since some criminal tax fraud cases are no longer viable after April 15 as a procedural matter, perhaps criminal prosecutors seek many indictments during this time of year. If this assumption is correct, then perhaps criminal tax procedure plays a role in the timing of the government's tax enforcement publicity.

This explanation, however, should be rejected for several reasons.

First, of the press releases in our data set that were issued between February 1 and Tax Day during 2003 through 2009, less than 10% involved criminal indictments for tax fraud.[66] More than 90% of

[63] I.R.C. § 6531(a). Congress enacted the statute of limitations for criminal tax fraud cases in order to encourage the government to pursue criminal charges without delay and to prevent taxpayers from having to defend themselves against criminal charges stemming from very old events. *See* Toussie v. United States, 397 U.S. 112, 114 (1970).

[64] I.R.C. § 6531(a).

[65] United States v. Williams, 928 F.2d 145, 149 (5th Cir. 1991); *see also* United States v. Winfield, 960 F.2d 970, 974 (11th Cir. 1992).

[66] Out of the 231 tax enforcement press releases issued by the U.S. Department of Justice Tax Division between February 1 and Tax Day during 2003 through 2009,

the press releases that the government issued during this period involved non-indictment actions, such as convictions, sentencings, guilty pleas, civil injunctions, settlements, and general descriptions of successful prosecutions.

Second, some of the high-profile indictments that the government announced in the weeks prior to Tax Day do not appear to involve statute-of-limitations issues. For example, in the case of Joe Francis, creator of the Girls Gone Wild DVDs, and Irwin Schiff, founder of the "We The People Foundation," the government appears to have had time left in the statute of limitations for tax fraud when it obtained criminal indictments.[67]

Last, even though the statute of limitations may expire on April 15 in some cases, prosecutors can obtain extensions during which they can seek indictments. If a prosecutor files a complaint with a U.S. magistrate within the period of the statute of limitations and certain other conditions are present, then the prosecutor may receive up to nine additional months in which to seek an indictment for tax fraud.[68] This exception debunks the theory that criminal prosecutors must seek an indictment right before April 15 in cases where the taxpayer filed a tax return early or did not file a tax return at all. As a result, the statute of limitations on criminal tax fraud is unlikely to be the motivating force behind the timing of the government's issuance of tax enforcement press releases.

2. Deterrence

A much more convincing explanation for the timing patterns that we observed is that, by announcing criminal tax convictions and civil tax injunctions at a time when most taxpayers (80%) are in the process of preparing their annual individual tax returns,[69] government officials are attempting to deter taxpayers who might otherwise be inclined to participate in tax avoidance or evasion schemes.

Government officials have indicated that they view tax enforce-

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only twenty-three of them involved criminal indictments for tax fraud.

[67] *See* Press Release, U.S. Dep't of Justice, Creator of Girls Gone Wild Indicted for Tax Evasion (Apr. 11, 2007), *available at* http://www.justice.gov/tax/txdv07237.htm; *see also* Press Release, U.S. Dep't of Justice, Irwin Schiff and Two Associates Indicted for Tax Fraud (Mar. 24, 2004), *available at* http://www.justice.gov/tax/txdv04182.htm.

[68] I.R.C. § 6531(a). For other instances in which the statute of limitations on criminal prosecutions for tax fraud may be suspended, see I.R.C. § 7609(e) (statute of limitations suspended during third-party summons proceeding).

[69] *See supra* note 51 and accompanying text.

ment press releases as key means of deterrence, even though they have not explicitly acknowledged a timing strategy. For example, in 2001, Mark Matthews, then-Chief of the Service's Criminal Investigation Division, commented that the Service and the Department of Justice Tax Division were in the process of developing a new Web site to "generate multiple press stories nationwide about particular cases and to target enforcement efforts to particular media outlets or other specialized websites that reach key audiences."[70] In describing the purpose of the initiative, Matthews stated, "We have to reach over 200 million Americans who encounter the tax system each year . . . to deter the potential cheaters"[71] and support the "general deterrence mission"[72] of the Criminal Investigation Division. Several years later, Eileen O'Connor, then the Assistant Attorney General of the U.S. Department of Justice Tax Division, testified before the U.S. Senate Finance Committee regarding the very press releases that we analyzed in our study, commenting:

> In our view, justice must not only be done, it must be seen to be done. . . . Our website publicizes our enforcement actions, and our cases have garnered substantial favorable press coverage in major local and national media outlets over the past five years. We continue to improve our website to ensure that *those who might otherwise be tempted by the latest tax scam* will easily be able to find information about our law-enforcement efforts against scam promoters and participants.[73]

O'Connor's underlying message was that by using real examples of tax enforcement efforts, the government would deter individual taxpayers from engaging in "the latest tax scam."[74] Under O'Connor's leadership, the U.S. Department of Justice Tax Division frequently issued press releases every April that contained language nearly identical to

[70] Mark E. Matthews, *New IRS Publicity Strategy*, 49 U.S. ATT'YS BULL. 15, 15 (2001). Matthews further commented that his agency would use the Web site in the following manner: "[E]very time we get a new conviction in a particular program, we steer the reporters to the relevant webpage. We tell the reporter, 'Here's a press release on a conviction regarding an abusive trust.'" *Id*. at 17.

[71] *Id.* at 16.

[72] *Id.*

[73] *Tax Division, Corporate and Partnership Enforcement Issues: Hearing Before the S. Comm. on Finance*, 109th Cong. 21 (2006) (statement of Eileen J. O'Connor, Assistant Att'y Gen. of the United States) (emphasis added).

[74] *Id*.

that quoted above.[75] In addition, other officials from the Service and U.S Department of Justice Tax Division have made similar statements.[76]

A reaction to the deterrence explanation may be one of skepticism. Each year, the government releases detailed statistics describing the percentages of tax returns audited, tax cases litigated, and tax revenue collected.[77] Why would government officials believe that tax enforcement press releases would have a different impact on general deterrence, given the quantity of publicly available tax enforcement data that is already available to taxpayers?

As behavioral researchers have shown, individuals often rely on cognitive biases — i.e., mental short cuts — when deciding whether to pursue various activities,[78] including paying their taxes.[79] Behavioral researchers have also demonstrated that outside actors can manipulate the decision-making processes of individuals by exploiting their reliance on these biases.[80] By presenting individual taxpayers with

[75] For example, compare the language in the following two press releases: Press Release, U.S. Dep't of Justice, Justice Department Notes Increase in Tax Enforcement (Apr. 6, 2005), *available at* http://www.usdoj.gov/tax/txdv05167.htm and Press Release, U.S. Dep't of Justice, Justice Department and IRS Highlight Tax Enforcement Efforts (Apr. 11, 2006), *available at* http://www.usdoj.gov/tax/txdv06212.htm.

[76] *See, e.g.,* Jeremiah Coder, *Conversations: Eileen Mayer*, 116 TAX NOTES 738, 740 (Aug. 27, 2007) (quoting then-Chief of the Service's Criminal Investigation Division as stating that "[o]ur efforts have shown that focused and direct contact with the local reporters does make an impact on media coverage of our compliance and enforcement efforts"); Kristen A. Parillo, *Korb: Tax Press Plays Crucial Role in IRS Communications Strategy*, 118 TAX NOTES 478, 478 (Jan. 28, 2008) (quoting the Service's then-Chief Counsel Donald Korb as commenting, "The tax press is really an important part of our business in a way that it wasn't, and what I've tried to do is take advantage of that in terms of tax administration. . . . It's a very effective way for us to get our message out and get our spin on things.").

[77] The Service provides detailed information regarding its tax enforcement practices to the public — without any references to specific taxpayers — on an annual basis. *See, e.g.,* 2008 IRS Data Book, *available at* http://www.irs.gov/taxstats/article/0,,id=205182,00.html. News and research organizations also seek tax enforcement data from the Service by filing requests under the Freedom of Information Act. 5 U.S.C. § 552 (2006).

[78] *See* AMOS TVERSKY & DANIEL KAHNEMAN, Judgement Under Uncertainty: Heuristics and Biases, *in* JUDGMENT AND DECISION MAKING 35, 35 (Terry Connolly, Hal R. Arkes & Kenneth R. Hammond eds., 1982).

[79] *See* Edward J. McCaffery, *Cognitive Theory and Tax*, 41 UCLA L. REV. 1861, 1862 (1994); *See also* Edward J. McCaffery and Jonathan Baron, *Heuristics and Biases in Thinking about Tax*, *in* Proceedings of the 96th Annual Conference on Taxation 434–43 (2003).

[80] *See* Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: The*

vivid images of tax enforcement involving real people, government officials may anticipate that they can affect beliefs of individuals that may influence their decision to comply with the tax system. Some of these beliefs include the following:

Beliefs About Tax Audits. The government's tax enforcement press releases may cause some individual taxpayers to overestimate the chance of being audited.

Individuals who are faced with uncertainty frequently make judgments based on accessible images or experiences, even though these examples may be rare exceptions to the usual occurrence.[81] As a result of the "availability" heuristic, individuals often draw conclusions regarding the probability that future events will occur by recalling highly memorable, and thus available, past events.[82] When individuals read in the newspaper that a fatal shark attack has occurred, they may avoid summer trips to the beach, even though the likelihood that they will be subject to a shark attack is extremely low.[83] Further, third parties can take advantage of the availability heuristic by strategically revealing certain memorable information to an intended audience.[84] As Jon Hanson and Douglas Kysar have written, for example, cigarette manufacturers regularly exploit the availability heuristic of individual smokers by "inundat[ing] public spaces with healthful images of smoking."[85]

Government officials may use their carefully timed press releases to attempt to manipulate the availability heuristic of individual taxpayers who might otherwise be inclined to participate in a tax-

Problem of Market Manipulation, 74 N.Y.U. L. REV. 630, 630 (1999); Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: A Response to Market Manipulation*, 6 ROGER WILLIAMS U. L. REV. 259, 262 (2000); Jon D. Hanson & Douglas A. Kysar, *Taking Behavioralism Seriously: Some Evidence of Market Manipulation*, 112 HARV. L. REV. 1420, 1422 (1999); *see also* RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS 6 (2008).

[81] Amos Tversky & Daniel Kahneman, *Availability: A Heuristic for Judging Frequency and Probability*, 5 COGNITIVE PSYCHOL. 207 (1973).

[82] *See id.*; *see also* TVERSKY & KAHNEMAN, *supra* note 78, at 11 ("[A] class whose instances are easily retrieved will appear more numerous than a class of equal frequency whose instances are less retrievable.").

[83] *See* TVERSKY & KAHNEMAN, *supra* note 78, at 14.

[84] *See supra* note 80.

[85] Hanson & Kysar, *supra* note 80, at 1516 ("It seems plausible that the availability heuristic has played a role in lowering smokers' estimates of personal risks of cigarettes, given that smokers are rarely, at least in their day-to-day use of the product, injured by smoking; the diseases caused by smoking (unlike, say, the harms caused by tornadoes, homicides, and airplane accidents) are not often depicted in the media or covered by the news.").

avoidance or evasion strategy. By presenting individual taxpayers with vivid examples in which the Service has detected tax fraud — whether it involves a popular celebrity's phony business deductions,[86] a high-profile banker's offshore bank account,[87] or a local tire salesman's underreporting of gross income[88] — the government may provide an individual taxpayer with available images that showcase the Service's detection capabilities. Because the government consistently provides more of these images to individual taxpayers during the weeks leading up to Tax Day than it does during other times of the year, individual taxpayers may draw upon these available images as they teeter on the decision to claim questionable tax positions on their annual individual tax returns, such as a fraudulent request for a refund or an inflated charitable contribution deduction. In reality, a rational individual taxpayer should recognize that the chance that the Service will detect and challenge a claim of an illegitimate tax position is very low.[89]

Beliefs About Tax Penalties. Publicity regarding criminal tax enforcement just before Tax Day may also cause some taxpayers to overestimate the severity of tax penalties.

Individuals often become mentally wedded to initial images and values as a result of a cognitive bias known as "anchoring."[90] As a result, even though individuals may eventually encounter new or conflicting data, they may find it difficult to detach themselves from an initial impression.[91] Daniel Kahneman and Amos Tversky have famously demonstrated that car salespeople take advantage of anchoring by placing a price sticker on the windshield of a used car.[92] A po-

[86] Press Release, U.S. Dep't of Justice, Creator of Girls Gone Wild Indicted for Tax Evasion (Apr. 11, 2007), *available at* http://www.justice.gov/tax/txdv07237.htm.

[87] Press Release, U.S. Dep't of Justice, UBS Client Pleads Guilty to Filing False Tax Return Hid Assets Worth $3 Million in Secret Swiss Bank Account (Apr. 14, 2009), *available at* http://www.justice.gov/tax/txdv09344.htm.

[88] Press Release, U.S. Dep't of Justice, Owner of Alabama Tire Store Sentenced to Prison for Tax Evasion (Oct. 10, 2009), *available at* http://www.justice.gov/tax/txdv091069.htm.

[89] The audit rate for individual taxpayers in 2009 was 1.03%. ENFORCEMENT AND SERVICE RESULTS, *supra* note 31. However, for income subject to information reporting, taxpayers may believe the chance of Service detection of abuse to be much higher than this figure. *See* Leandra Lederman, *Tax Compliance and the Reformed IRS*, 51 KAN. L. REV. 971, 974 (2003). For further discussion of taxpayer beliefs regarding audit probability, see Sarah B. Lawsky, *Probably? Understanding Tax Law's Uncertainty*, 157 U. PA. L. REV. 1017, 1023 (2009).

[90] Hanson & Kysar, *supra* note 80, at 1440.

[91] *See id.*

[92] *See id.*

tential consumer will often become anchored to that initial selling price and will begin negotiations with the salesperson by attempting to negotiate the price down from the original anchor.[93] As Kysar and Hanson have noted, "[a]lmost everyone knows that the eventual sale price will be less than the sticker price, but the dealer nonetheless gains an advantage from setting the initial price."[94]

The government's use of tax enforcement press releases may take advantage of individual taxpayers' anchoring biases, in addition to their availability heuristics. Images of taxpayers receiving lengthy prison sentences as a result of claiming fraudulent tax positions may cause some taxpayers to become anchored to the concept of prison as a penalty for tax noncompliance. Even though the number of instances in which taxpayers receive prison sentences as a result of tax offenses is infinitesimally small, reports of five-year prison sentences for tax evasion that appear in the mainstream media prior to Tax Day (fueled, in large part, by the government's press releases) may cause some taxpayers to assume that the tax penalties for a range of forms of tax noncompliance are much higher than they actually are. The government appears to exploit this confusion by frequently including statements in its tax enforcement press releases such as "[p]eople who willfully fail to meet their tax obligations risk criminal prosecution and must still pay their taxes, along with interest and civil penalties."[95] As a result, many individuals may respond to illustrations of such hefty consequences by believing that most tax penalties are significantly greater than they actually are.

Beliefs About Government Efficacy. Last, by issuing press releases regarding criminal tax enforcement actions in the weeks before Tax Day, the government may convince taxpayers that it is always successful when it challenges tax positions.

When the government issues tax enforcement press releases, especially those involving criminal tax enforcement, it almost always publicizes instances in which it has prevailed. Not only does the government have the ability to choose which enforcement actions to publicize, its success rate in criminal tax prosecutions is in excess of 90%.[96]

[93] *See id.*

[94] *See id.*

[95] Press Release, U.S. Dep't of Justice, North Carolina Attorneys Plead Guilty to Failing to File Tax Returns (Apr. 6, 2005), *available at* http://www.usdoj.gov/tax/txdv05168.htm (quoting Eileen O'Connor, then-Assistant Att'y Gen. of the U.S. Dep't of Justice Tax Div.).

[96] U.S. DEP'T OF JUSTICE, TAX DIV., FY 2009 CONGRESSIONAL BUDGET, TAX DIVISION 2 (2008), *available at* http://www.justice.gov/jmd/2009justification/pdf/

In addition, the government's press releases frequently include statements regarding its overwhelming success in combating abuse. For example, on April 11, 2006, Eileen O'Connor, then-Assistant Attorney General of the U.S. Department of Justice Tax Division, included the following language in the Division's press release regarding specific tax enforcement actions: "The government has successfully prosecuted hundreds of tax cheats and promoters of abusive tax schemes; it has sought and obtained civil injunctions to stop the promotion of tax scams and the preparation of false and fraudulent tax returns."[97]

After reading the government's tax enforcement press releases and their resulting coverage in the media, an individual taxpayer may become anchored to the impression that if the government detects and challenges an aggressive tax position, the government will win on the substantive legal merits. Decisions of the U.S. Tax Court, however, frequently demonstrate that the government also loses cases. Further, the Service's Appeals Division often reverses the decisions of Service agents who have challenged various aspects of taxpayers' tax returns.[98] But as a result of the government's tax enforcement press releases that highlight its victories using vivid and real examples, individual taxpayers may be deterred from claiming tax positions that could have even a small chance of a challenge by a Service agent.

3. Confidence

By publicizing their tax enforcement efforts at the height of tax season, government officials may believe that they can influence not only the behavior of taxpayers who would otherwise be inclined to evade taxes, but also the behavior of taxpayers who are inclined to pay their tax liabilities correctly.

Government officials have acknowledged that they use tax enforcement publicity as a way to bolster confidence among compliant taxpayers. When describing the government's initiative to publicize its tax enforcement activities, Mark Matthews, then-Chief of the Service's Criminal Division, commented that "we learned that in order to enhance compliance . . . and to instill public confidence in the integrity

fy09-tax.pdf ("The Tax Division's success rate in its litigation — more than 90% — has an enormous effect on voluntary tax compliance.").

[97] Press Release, U.S. Dep't of Justice, Justice Department and IRS Highlight Tax Enforcement Efforts (Apr. 11, 2006), *available at* http://www.usdoj.gov/tax/txdv06212.htm (quoting Eileen O'Connor, then- Assistant Att'y Gen. of the U.S. Dep't of Justice Tax Div.).

[98] *See* David M. Fogel, *The Inside Scoop About the IRS's Appeals Division*, 99 TAX NOTES 1503, 1503 (Jun. 9, 2003).

of the tax system (reach those who believe that *they* pay the price for others who cheat), we needed to do a better job of publicizing our enforcement efforts."[99] Similarly, in discussing tax enforcement press releases issued by the U.S. Department of Justice, Eileen O'Connor, then-Assistant Attorney General for the Tax Division, commented in 2007 that "[p]eople who pay what the law requires deserve the assurance that those who don't, and those who promote or facilitate tax evasion, will not get away with it."[100]

The message underlying these statements is that government officials acknowledge that many taxpayers are willing to calculate and pay their taxes correctly, but that this willingness is conditional. As reciprocity theory predicts, an individual will contribute toward a public good, but only on the condition that other individuals are doing so as well.[101] Thus, this theory posits that many individuals will comply with the tax system as long as they believe that other taxpayers are also fulfilling their tax obligations.[102] But if individuals begin to perceive that tax cheating is rampant, they may reconsider their own tax compliance.

Government officials may view tax enforcement publicity as a way to affect important beliefs held by taxpayers who are motivated by feelings of reciprocity. We discuss some of these beliefs below.

Beliefs About Government Detection. When the government publicizes its successful prosecution of taxpayers who have committed tax fraud, it may cause compliant taxpayers to believe that the government can detect abuse competently and efficiently, a belief that is important in light of reciprocity theory. Compliant taxpayers may as-

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[99] Matthews, *supra* note 70, at 16.

[100] Press Release, U.S. Dep't of Justice, Justice Department and Internal Revenue Service Highlight Tax Enforcement Results (Apr. 3, 2007), *available at* http://www.justice.gov/tax/txdv07216.htm (quoting Eileen O'Connor, then- Assistant Att'y Gen. of the U.S. Dep't of Justice Tax Div.); *see also* Internal Revenue Manual 9.3.2.2., http://www.irs.gov/irm/part9/index.html, (last visited Feb. 19, 2010) ("Criminal Investigation serves the American public by investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law. One of the most effective methods to encourage compliance is through publicity of the activities that CI undertakes to enforce the laws within CI's jurisdiction.").

[101] For discussion of reciprocity theory, see Ernst Fehr & Simon Gächter, *Reciprocity and Economics: The Economic Implications of Homo Reciprocans*, 42 EUR. ECON. REV. 845 (1998); Samuel Bowles & Herbert Gintis, *Is Equality Passé? Homo Reciprocans and the Future of Egalitarian Politics* (1998), *available at* http://time.dufe.edu.cn/wencong/gintis/isinequa.pdf; Kahan, *supra* note 17.

[102] *See* Kahan, *supra* note 17.

sume that the memorable examples of tax enforcement contained in government press releases and resulting news stories are indicative of the government's ability to detect abuse. In turn, compliant taxpayers may assume that tax evasion is rare, given the odds of government detection. While this assumption may be flawed,[103] the availability heuristic may cause compliant taxpayers to draw this conclusion at a time when they are in the process of preparing their annual individual tax returns. For this reason, one government official has commented that, in terms of the effect of tax enforcement publicity on compliant taxpayers, "[it] helps keep the honest taxpayers honest."[104]

Beliefs About Punishment of Tax Cheats. The government's press releases regarding criminal tax sanctions may also have reciprocity effects on compliant taxpayers. When the government announces that an individual who has promoted or pursued tax fraud has been sentenced to months or years in prison, compliant taxpayers may perceive that the government punishes instances of free-riding in the tax system harshly. They may make this assumption as a result of anchoring and the availability heuristic, just as individuals who would otherwise cheat are affected by these cognitive biases. Again, this assumption is incorrect, given that criminal tax sanctions are rare, and, in many cases, individuals pay no tax penalty at all. Nonetheless, vivid images in the weeks prior to Tax Day of celebrities or other prominent individuals marching off to federal prison may cause compliant taxpayers to assume, wrongly, that because tax penalties are so severe, few taxpayers cheat.

Beliefs About Identity of Tax Cheats. Last, the government's tax enforcement publicity efforts prior to Tax Day may affect the beliefs of compliant taxpayers regarding the type of individuals who engage in tax avoidance and evasion strategies.

The types of individual taxpayers whom the government highlights in its tax enforcement press releases are most likely not the typical peers of compliant taxpayers. Many of the cases that the government chooses to publicize during this period often involve tax protesters, such as individuals who write "nunc pro tunc" (Latin for

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[103] As of 2007, the net federal tax gap was approximately $290 billion per year. INTERNAL REVENUE SERV., REDUCING THE FEDERAL TAX GAP: A REPORT ON IMPROVING VOLUNTARY COMPLIANCE 3 (2007), *available at* http://www.irs.gov/pub/irs-news/tax_gap_report_final_080207_linked.pdf. Further, the tax noncompliance rate among small business owners is in excess of 50%. *Id.* at 11. For further discussion of the components of the federal tax gap, *see* Morse, *supra* note 12.

[104] Coder, *supra* note 76, at 740 (quoting Eileen Mayer, then-Chief of the Service's Criminal Division).

"now for then") on their tax returns as a basis for not paying any income tax liability,[105] and tax fraud promoters, such as the founders of the "We The People Foundation"[106] and the "Institute of Global Prosperity."[107]

Even though a compliant taxpayer's peers may have participated in much more common forms of tax noncompliance, such as inflating tax basis or failing to report cash income, the government's tax enforcement publicity efforts may foster a stereotype of tax cheating that is far more abusive than many forms of tax noncompliance. As a result of the "representativeness" bias, individuals often assume that one thing belongs to another group of things because it contains certain traits.[108] When the government publicizes highly memorable images of tax protesters and tax fraud promoters, it may succeed in convincing compliant taxpayers that their peers do not belong to the group of extreme outliers who cheat on their taxes. It sends the message: "People like you" do not cheat, and therefore you shouldn't either.

IV. Questions for Future Research

The principal finding of our study raises several important questions. The limited scope of this article, however, prevents us from fully addressing all of these questions. Below, we offer three questions that may be considered in depth in future research.

A. Should the Government Do This?

An important question that our study prompts is whether, from a normative perspective, the government should engage in its apparent tax enforcement publicity strategy. We have suggested that government officials issue more tax enforcement press releases at certain times of the year in order to deter taxpayers from cheating and to gain confidence from compliant taxpayers.[109] Should the government use

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[105] *See* Press Release, Internal Revenue Serv., IRS Announces "Dirty Dozen" Tax Scams for 2006 (Feb. 7, 2006), *available at* http://www.irs.gov/newsroom/article/0,,id=154293,00.html.

[106] Press Release, U.S. Dep't of Justice, Irwin Schiff and Two Associates Indicted for Tax Fraud (Mar. 24, 2004), *available at* http://www.justice.gov/tax/txdv04182.htm.

[107] Press Release, U.S. Dep't of Justice, "Global Prosperity" Principal Convicted of Tax Fraud (Apr. 12, 2005), *available at* http://www.justice.gov/tax/txdv05184.htm.

[108] *See* TVERSKY & KAHNEMAN, *supra* note 78, at 4.

[109] *See supra* notes 69–108 and accompanying text.

tax enforcement publicity in this manner?

There are several potential arguments against the government's publicity strategy. The following summarizes these arguments and offers possible responses.

Paltering. The first possible argument is that the government's tax enforcement publicity strategy represents a form of deception. Frederick Schauer and Richard Zeckhauser describe the government's timing of press releases to encourage tax compliance as "paltering,"[110] a term that literally means "acting insincerely or misleadingly."[111] As an example of paltering, the authors describe an advertising technique in which an advertiser sends a consumer an envelope that lacks a return address and is marked with a "government warning" about tampering with the mail.[112] Schauer and Zeckhauser describe this act as paltering, because the advertiser "intentionally attempt[s] to create the misimpression that the envelope contains an official letter from a government agency."[113]

Schauer and Zeckhauser also comment that the government engages in paltering by issuing tax enforcement press releases immediately prior to Tax Day. The purpose of these announcements, the authors note, is "to lead taxpayers to believe in a probability of audits and criminal prosecutions that is considerably higher than the actual objective probability of those occurrences."[114] They conclude their discussion of acts that they describe as paltering, including strategic tax enforcement publicity, by stating:

> [O]nce we understand paltering as involving the same intent as lying and the same effect as lying, and lacking only the exact mechanism of literal falsehood, it is hard to understand why the law, except for the obvious problems of proof involved, would be less concerned with paltering than lying.[115]

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[110] Schauer & Zeckhauser, *supra* note 36, at 39.

[111] *Id*. at 44. Schauer and Zeckhauser distinguish paltering from lying. According to the authors, "[a] lie in its full glory . . . involves elements of intent, literal meaning, and effect." *Id*. at 39. As a result, Schauer and Zeckhauser describe a liar as "someone who *intentionally* utters words that he or she knows to be false, where what is uttered is in fact *literally* false, and where utterance of the literally false words produces the *effect* of the listener believing or being likely to believe in the truth of something that is not in fact true." *Id.* at 39.

[112] *Id.* at 44.

[113] *Id.*

[114] *Id*.

[115] *Id*. at 45. Schauer and Zeckhauser take the argument further by concluding

Thus, Schauer and Zeckhauser suggest that paltering in the tax enforcement context is at least questionable on moral grounds.

Despite the power of Schauer and Zeckhauser's rhetoric, it is not clear why the government's use of tax enforcement publicity represents morally wrong behavior. The government does not appear to reveal misleading information to taxpayers while concealing contradictory facts. The actions of the advertisers that Schauer and Zeckhauser describe seem distinguishable from the government's tax enforcement press releases. When advertisers create the impression that an envelope marked with a government warning is a piece of mail from the government, the consumer does not have access to any contradictory information without opening up the letter. On the other hand, even though the government may issue press releases in the days before Tax Day that describe criminal prosecutions, the data regarding the government's tax enforcement capability, such as the overall 1.03% audit rate for individual taxpayers, is available to any individual taxpayer with access to the Internet.[116]

Paternalism. Another possible argument against the government's publicity strategy is that it is paternalistic — that is, that the strategy is an instrument of coercion that restricts people's freedom of choice.[117] One might argue that by causing taxpayers to believe that the likelihood of a tax audit and the severity of a tax penalty are much higher than they are, the government acts in a paternalistic manner.

While the government's use of tax enforcement publicity may influence taxpayer decisions, its actions do not necessarily rise to the level of coercion. Some have described a government policy as paternalistic if it intrudes upon people's freedom of choice to the point that they do not actually have a choice.[118] Government health insurance mandates are a better example of paternalism than the strategic use of information to affect perceptions.[119] In the latter case, Richard Thaler and Cass Sunstein might even describe the government's publicity strategy as an effort to "steer people's choices in directions that will

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that "paltering is in some sense worse than lying." *Id.* Their justification for this statement is that a palter is harder to detect than an outright lie. *Id.* Consequently, Schauer and Zeckhauser conclude that "if the harm of the palter is no less than the harm of the lie, then the very fact that it is safer to engage in one rather than another equally harmful act would suggest that it is the safer but equally harmful act — the palter — that is likely to become the greater social problem." *Id.*

116 ENFORCEMENT AND SERVICE RESULTS, *supra* note 31.

117 *See* THALER & SUNSTEIN, *supra* note 80, at 5.

118 *See id.*

119 See Francois Melese, *Government-Mandated Benefits, Taxes, and Wages*, 62 SO. ECON. J. 53 (1995) for a discussion of government mandates and paternalism.

improve their lives."[120] For example, the publicity strategy may prevent individual taxpayers from engaging in the specific types of risky, extreme tax offenses that are often the subject of the government's publicity efforts, as well as less egregious tax offenses. In addition, even if one were to characterize the government's publicity strategy as paternalistic, the subtle encouragement of people to be honest in filing their taxes can benefit society as a whole, thereby improving the lives of everyone. More generally, though, the charge of paternalism rings somewhat hollow in that tax evasion is illegal and thus is subject to coercion anyway.

Undemocratic. A final possible argument against the government's publicity strategy is that it is inconsistent with basic tenets of democracy. One might argue that by distorting the perceptions of individual taxpayers, the government prevents these individuals from participating fully in the legislative and regulatory process. For example, if tax enforcement publicity causes individuals to assume that the government is more effective at detecting abuse than it is in reality, these individuals may not support legislation that would increase funding for the Service or expand taxpayer disclosure of information requirements. A deliberate attempt to influence the beliefs of individuals through the use of strategically timed information may isolate these individuals from knowledge that is important to reform of the tax system.

It is not clear whether the government's publicity strategy has such an effect on individual taxpayers. Again, data regarding the government's limited detection capability is already publicly available.[121] And government officials often complain publicly that the Service needs more funding in order to pursue its mission effectively.[122] Further, if the government did not engage in its tax enforcement publicity efforts, there is no reason to believe that the public would become more interested in issues of tax administration and enforcement than it is currently.

This section is not meant to resolve any of these arguments against the government's selective use of tax enforcement publicity; rather, each of these arguments raises questions that merit deeper consideration.

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[120] *See* THALER & SUNSTEIN, *supra* note 79, at 5.

[121] *See supra* note 116 and accompanying text.

[122] Kahan, *supra* note 17, at 84–85 ("Usually timed to be reported on the media the week before personal income taxes are due, IRS-generated stories of the agency's own inefficacy in enforcing the law predictably generate resentment in those who routinely obey.")

B. How Does the Publicity Strategy Affect Taxpayers?

Another significant question that our analysis leaves unanswered is whether the government's tax enforcement publicity strategy has its apparent intended effect on individual taxpayers. Put differently, are individuals actually more inclined to comply with the tax system as a result of the government's publicity efforts?

Other research suggests that the answer to this question is yes. One empirical study shows that the government's criminal tax fraud convictions have a "highly significant and positive impact on income reporting, and an equally significant, but smaller, positive impact on offsets reporting."[123] Another study confirms this result and finds that "the significant magnitude of general deterrence [results] implies that media play a large role in fostering tax compliance."[124] Further, according to an annual study of taxpayer attitudes conducted by the Service's Oversight Board, in 2008, nearly 60% of individual taxpayers reported that "fear of an audit" had an effect on their decision to pay their taxes honestly.[125] This number appears to be especially high, given that for many taxpayers, such as wage earners, there is a nearly 99% chance that an individual taxpayer will not be subject to an audit.[126]

The effect of the government's issuance of tax enforcement press releases on individual taxpayers depends on the extent to which the media publicizes the information in these press releases. Our study does not track the number of instances in which the media reported on tax enforcement actions described in the press releases in our sample. There is reason to believe, however, that many of the press releases in our sample were subsequently publicized through national and local media sources. First, the media — and the public itself — may be especially attracted to tax-related stories in the weeks leading up to Tax Day, given the salience of paying taxes during that period. Second, the government strives to make news reporters aware of its tax enforcement press releases. According to a 2007 statement of the then-Chief of the Service's Criminal Investigation Division, the government has assigned experienced public information officers to serve as "the local media contact to provide public record information to

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[123] Plumley, *supra* note 21, at 36.

[124] Dubin, *supra* note 30, at 502.

[125] IRS OVERSIGHT BOARD, 2008 TAXPAYER ATTITUDE SURVEY 5 (2009), *available at* http://www.ustreas.gov/irsob/reports/2009/IRSOB_2008-TAS.pdf.

[126] ENFORCEMENT AND SERVICE RESULTS, *supra* note 31.

the media about the field office's cases."[127] The official further reported that between 2000 and 2007, the "publicity rate" on sentenced criminal tax enforcement cases grew from 54% to 78.1%.[128]

Future research should address the extent to which the media disseminates the information contained in the government's tax enforcement press releases to the general public.

C. What Are the Risks?

Finally, our study raises the question of whether there are risks inherent in the government's tax enforcement publicity strategy.

One possible risk is that the government's tax enforcement publicity may over-deter individual taxpayers. Taxpayers who have an exaggerated fear of a Service challenge or of tax penalties, perhaps as a result of tax enforcement publicity, may claim tax positions that are not in their best financial interest but that may enable them to face the lowest chance of an audit. For example, some taxpayers choose to claim the standard deduction rather than itemize their deductions in order to minimize the chance that the Service will audit their tax returns.[129] Other taxpayers may fail to seek tax refunds to which they are entitled.[130] In either case, the government's use of tax enforcement publicity in the weeks prior to Tax Day may have unintended effects on taxpayer behavior; how much is an open question.

The government's publicity strategy may also cause individual taxpayers to assume that "cheating" in the tax context only refers to extreme acts of tax evasion. The stream of news reports in the weeks prior to Tax Day regarding tax fraud cases may lead individual taxpayers to conclude that the government only detects and challenges tax returns that rely on tax-protester arguments or other abusive tax positions, rather than tax returns that reflect far more common forms of tax noncompliance, such as an inflated tax basis or unsubstantiated business deductions. In the words of the late Sen. Daniel Patrick Moynihan, the government's use of tax enforcement publicity may

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127 Coder, *supra* note 76, at 740 (quoting Eileen Mayer, then-Chief of the Service's Criminal Division).

128 *Id.*

129 *See* I.R.S. Pub. 501, Exemptions, Standard Deduction, and Filing Information, http://www.irs.gov/publications/p501/index.html (last visited May 14, 2010).

130 *See, e.g.,* Press Release, Internal Revenue Serv., IRS Has $1.2 Billion for People Who Have Not Filed a 2004 Tax Return (Mar. 19, 2008), *available at* http://www.irs.gov/newsroom/article/0,,id=180280,00.html.

"define deviancy down."[131]

Last, it is possible that the tax enforcement press releases could create a backlash against the government. If the government appears to issue too many press releases describing criminal sanctions, individual taxpayers may begin to view the Service as overly aggressive.[132] This effect could become especially pronounced if the subject of these press releases is a popular celebrity, public figure, or someone whose situation arouses sympathy.[133] For other taxpayers, those who appear to have an automatic, though unfounded, adverse reaction to any government action involving the Service, the issuance of tax enforcement press releases in the days prior to Tax Day could serve to fuel hatred of the agency.[134]

V. CONCLUSION

This article answers the question of when the government publicizes tax enforcement and offers explanations for the answer.

The principal finding of our study is that, from 2003 through 2009, the government issued a disproportionately large number of tax enforcement press releases during the weeks leading up to Tax Day compared to the rest of the year. Specifically, we found that on an average weekly basis, the U.S. Department of Justice Tax Division issued: (a) 58% more tax enforcement press releases from February 1 through Tax Day than it issued during the rest of the year; (b) 71% more tax enforcement press releases from March 1 through Tax Day than it issued during the rest of the year; and (c) 128% more tax enforcement press releases from April 1 through Tax Day than it issued

[131] Andrew Karmen, *"Defining Deviancy Down": How Senator Moynihan's Misleading Phrase about Criminal Justice is Rapidly Being Incorporated into Popular Culture*, 2 J. OF CRIM. JUST. AND POPULAR CULTURE 99, 99–100 (1994).

[132] *See* Raskolnikov, *supra* note 12, at 708 (commenting that too much tax enforcement publicity "raises the specter of an oppressive tax collector dead set on intervening in personal affairs of law-abiding citizens").

[133] Lederman, *supra* note 12, at 1493, n.219 (commenting that "Willie Nelson was the object of sympathy for his tax troubles").

[134] The Service has reported that as Tax Day approaches, angry threats against its agents and officers increase. *See* Martin Vaughan, *Threats Against IRS Employees On The Rise — Official*, WALL ST. J. BUSINESS NEWS, Feb. 19, 2010. For example, on February 19, 2010, Andrew Joseph Stack, a disgruntled taxpayer, deliberately flew his private plane into an office building that housed Service workers in Austin, Texas, killing himself and one Service employee and injuring over a dozen other individuals. *See id.*

during the rest of the year.[135] Each of these differences is highly statistically significant.[136]

We offer two explanations for the timing patterns that we observed. First, government officials may issue so many tax enforcement press releases in the weeks prior to Tax Day in order to deter tax noncompliance by causing some taxpayers to conclude that the probability of an audit and the severity of a penalty for tax noncompliance are greater than they actually are.[137] Second, government officials may use strategically timed tax enforcement publicity to increase confidence among compliant taxpayers that the government effectively detects and punishes tax cheats.[138]

Our study raises several important questions regarding the government's tax enforcement publicity strategy, including its normative appropriateness, its actual effect on individual taxpayer behavior, and its potential risks.[139] We leave these questions for future research.

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135 *See supra* notes 58–61 and accompanying text.

136 *See id.*

137 *See supra* notes 69–98 and accompanying text.

138 *See supra* notes 99–108 and accompanying text.

139 *See supra* Part IV.