

Note: Closing the Tax Gap: Encouraging Voluntary Compliance Through Mass-Media Publication of High-Profile Tax Issues

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LexisNexis Summary

... For someone like Snipes, whose income is not reported by a third party as a wage or salary, the opportunity for evasion is considerable. ... Limitations of the Mass-Media Approach Despite the potential for huge returns in terms of influencing norms to encourage people to want to pay their taxes, the mass-media approach is nonetheless a limited approach to tax compliance. ... As a supplement to actual legal punishment, influencing social norms and values can be a valuable tool in combating noncompliant behavior and improving compliance among marginal taxpayers. ... The mass-media approach focuses on the use of mass media to publicize the prosecution of high-profile individuals as a way to change attitudes and behavior.

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Introduction

Taxes and tax policies affect every American, young and old, rich and poor. Because of their pervasive effect, it is only natural that in a world increasingly consumed by celebrity obsession, important issues arising from celebrity tax evasion, whether criminal or not, are brought to the fore. Recently, this has been true of well-known individuals such as Wesley Snipes, Joe Francis, and Richard Hatch.¹ However, the publication of high-profile tax prosecutions is not a new phenomenon. In the 1920s the Internal Revenue Service (IRS) prosecuted Al Capone; in the 1970s Vice President Spiro Agnew faced tax evasion charges; and in the 1980s Leona Helmsley was forced to spend time in jail for tax evasion.² The difference between modern tax evaders and those of the late 1900s is that in the last two decades, the rise of the Internet and celebrity gossip magazines has made celebrities both more visible and more obvious embodiments of social values and norms. In an environment of loose morals and perceived legal privilege, this is potentially problematic. However, in the context of tax policy, the visibility of celebrities can be used to the IRS's advantage.

The American tax system is almost wholly dependent on taxpayers choosing to file returns and accurately reporting their income. The IRS receives over 1.5 billion returns per year³ but performs audits on less than 1% of

¹ See Stephanie Fontanez, Tax-Troubled Celebrities, Politicians, Outlaws, CNN.com, Apr. 15, 2008, <http://www.cnn.com/2008/LIVING/wayoflife/04/15/famous.tax/index.html>.

² See id.

³ Office of Tax Policy, U.S. Dep't of the Treasury, A Comprehensive Strategy for Reducing the Tax Gap 9 (2006).

those returns.⁴ Therefore, at the end of the day, it is up to the [*1508] individual taxpayer to choose either to file or to evade. That choice, as studies have shown, is influenced by a number of factors, including the individual taxpayer's fear of punishment and reaction to social norms and values.⁵

To the extent that norms and other nonpecuniary elements factor into a taxpayer's decision to comply with or evade taxes, mass media and celebrities, as embodiments and reflections of social values and norms, may aid in the enforcement efforts of the IRS. As discussed in further detail below, when coupled with threat of punishment, this tactic can have a two-pronged effect on compliance.⁶ On the one hand, publication of high-profile prosecutions informs and reinforces social norms in favor of compliance by signaling social disapproval of evaders. On the other hand, the fact that even celebrities and other famous people are readily prosecuted buttresses the IRS's enforcement measures by emphasizing the idea that no taxpayer is immune or exempt from his tax obligations. As examined below, publicity surrounding high-profile tax issues has the further benefit of efficiency.⁷ Where the IRS makes strategic assessments on who to prosecute and who to settle with, choosing to prosecute trials implicating high-profile taxpayers will most often result in free advertisement. Therefore the IRS is able to publicly encourage enforcement at no added cost.

Part I of this Note provides a brief background on the tax gap, explaining its implications for compliance and why it is a problem that must be addressed. This Part also details various methods the IRS has employed and plans to employ in an effort to close the tax gap. Although some of those measures have been effective, there is certainly room for improvement and implementation of more radical approaches to reducing the gap.

Part II lays a foundation for taxpayer behavior. In order to create and implement effective procedures, it is imperative to understand how the taxpayer thinks about the Internal Revenue Code ("the Code"). Furthermore, in a heterogeneous society, there are a variety of taxpayer types, and understanding their motivations can be valuable in structuring compliance methodologies to appeal to more than one group at a time.

Part III examines the effect of the media on taxpayer attitudes through a comparison to the effect of mass media on the electoral process.

Finally, Part IV lays out the approach proposed above in more detail. Combining taxpayer attitudes and the effect of the media on [*1509] behavior, the mass-media approach suggests that the IRS should utilize media publicity to its advantage in altering taxpayer attitudes toward voluntary compliance by prosecuting high-profile individuals. This approach has great potential for influencing taxpayer attitudes and persuading them to want to comply.

I. The Tax Gap Problem

This Part provides background on the tax gap. Specifically, it addresses why the gap is a problem and the role of voluntary compliance in the system. It suggests that to the extent voluntary compliance is one way to close the gap, the tax policy of the IRS as expressed in the Code is a key element. This Part concludes with a discussion of measures employed by the IRS to close the gap.

A. What Is the Tax Gap, and Why Does It Matter?

⁴ See *id.* at 12-13. In 2005, the IRS sent 3.2 million notices to taxpayers who made clerical errors and 3.5 million notices to taxpayers who either underreported or failed to file a return. *Id.* at 13. However, only 1.2 million returns were individually examined. *Id.*

⁵ See *infra* Part II.C.3.

⁶ See *infra* Part IV.B.

⁷ See *infra* Part IV.B.3.

Each year, the IRS estimates the amount of the gross tax gap in order to gauge compliance.⁸ The tax gap measures the difference between the amount of projected revenue from federal income tax dollars and the amount actually collected.⁹ In 2001, the IRS estimated that the gross tax gap was between \$ 312 and \$ 353 billion.¹⁰ In the same year, within the tax gap, underreporting of individual income tax represented 71% of the overall tax gap,¹¹ and the highest proportion of noncompliant taxpayers were those not subject to third-party reporting.¹² Where taxpayers are not subject to third-party reporting of wages, they have increased discretion to underreport income which, along with overstatement of deductions, are the two most common forms of noncompliant behavior.¹³ This emphasizes the role of voluntary compliance in efforts to close the tax gap.

Why is the tax gap a problem? The government's gross revenue in 2006 exceeded \$ 2.4 trillion.¹⁴ Within such unimaginable amounts, the IRS generates approximately 95% of the revenue through collection of income, transfer, and excise taxes.¹⁵ Further broken down, federal [*1510] income tax is the primary source of all tax revenue collected by the IRS.¹⁶ The tax gap represents the loss of revenue and corresponding decrease in federal funds to spread through federal aid and other public benefit programs. Although it is unlikely that individuals will, as a group, stop paying taxes altogether, increased evasion increases the tax gap. Should evasion replace the current norm of compliance, the decrease in compliance could have drastic implications for the federal government. The federal government relies on revenue to pay its international debt, provide for its citizens through Medicare, social security, and other welfare plans, and provide for the general defense of the nation.¹⁷ Without income, each of those activities would be impossible, leaving the government crippled and useless. Currently, the tax gap presents problems because the loss of revenue represents a decrease in the amount of overall federal revenue and, therefore, less money to be spread around through federal aid and other public benefit programs. Although it is unlikely that individuals will, as a group, stop paying taxes altogether, increased evasion increases the tax gap.

Furthermore, evasion by one taxpayer simply places the burden of decreased revenue onto other taxpayers. The decreased revenue could lead the government to raise tax rates in order to generate the income needed to operate the federal system. This shifts the burden from the noncompliant taxpayer to the honest and compliant taxpayer, who is then punished by higher rates for choosing to be a responsible member of society. In terms of fairness alone, the tax gap represents a valid concern for regulators seeking to make the administration of the federal income tax an equitable system. Therefore, goals for achieving compliance in filing tax returns and reporting income are paramount to the success and workability of the federal government.¹⁸

B. IRS Efforts to Reduce the Tax Gap

⁸ IRS, U.S. Dep't of the Treasury, Understanding the Tax Gap (2005), <http://ftp.irs.gov/newsroom/article/0,,id=137246,00.html>.

⁹ Id.

¹⁰ Id. This number does not include amounts collected late or through IRS enforcement efforts. Those included, the tax gap was between \$ 257 and \$ 298 billion. Id.

¹¹ IRS, U.S. Dep't of the Treasury, Reducing the Federal Tax Gap: A Report on Improving Voluntary Compliance 12 (2007), available at http://www.irs.gov/pub/irs-news/tax_gap_report_final_080207_linked.pdf.

¹² Id.

¹³ Yankelovich, Skelly & White, Inc., Taxpayer Attitudes Study: Final Report (1984). These forms of noncompliant activity constituted as much as 80% of the gross tax gap in 2001. See Office of Tax Policy, *supra* note 3, at 6.

¹⁴ IRS, *supra* note 11, at 1.

¹⁵ See id.

¹⁶ In 2007, personal income tax constituted 45% of all federal revenue. Staff of Joint Comm. on Taxation, 110th Cong., Overview of the Federal Tax System as in Effect for 2008, at 16 (2008).

¹⁷ Budget of the United States Government: Browse Fiscal Year 2009, <http://www.gpoaccess.gov/usbudget/fy09/browse.html>.

¹⁸ The IRS has stated that it is committed to using aggressive strategies in an effort to close the tax gap. Office of Tax Policy, *supra* note 3, at 2.

The IRS has, since its inception, made an effort to encourage compliance and close the tax gap. The IRS has approached the problem from different perspectives. One measure is the withholding of wage and salary tax.¹⁹ Since 1954, certain employers have been required to remit payment of taxes on personal individual income of their employees directly to the IRS.²⁰ The taxpayer then files a return and may potentially [*1511] recover some of the taxes paid on his behalf to the IRS. By instituting the withholding program, the IRS eliminated the possibility of underreporting income for wage earners.²¹ In 2006, over 68% of personal income tax was collected in this manner.²² As an enforcement measure to close the tax gap, mandatory withholding and third-party reporting of wages by the employer have been successful.²³

Another attempt to decrease the tax gap began in the late 1990s, when the IRS decided to give itself a makeover and become the "kinder, friendlier IRS."²⁴ This move was motivated by the fact that taxpayers felt the IRS was too intrusive and was treating taxpayers unfairly, but that if they thought the opposite, taxpayers would be less likely to feel that they won something by cheating the IRS out of their tax dollars.²⁵ If people think well of the IRS, it is no longer the big bad monster stealing their money and then punishing them for trying to save a few tax dollars. In addition, the IRS created a better system of customer service.²⁶ The result was a resource for the taxpayer who failed to voluntarily comply because the forms were too complicated or who did not understand his tax obligations.²⁷

As part of this initiative, Congress shifted the burden of proof in tax cases from the taxpayer to the IRS and enhanced customer service.²⁸ A side effect of the "kinder" IRS was a corresponding decrease in enforcement activity.²⁹ Tax scholars claim that the decline in enforcement was a temporary result of the diversion of resources to re-organizational efforts, and also note that there are dangers in decreased enforcement.³⁰ [*1512] Where the likelihood of being subjected to an audit declines, balancing the risks and monetary benefits of evasion weighs heavier on the side of evasion. As a result, there has been some movement in recent years toward a sterner IRS

¹⁹ Joel Slemrod & Jon Bakija, *Taxing Ourselves: A Citizen's Guide to the Debate Over Taxes* 18 (2004).

²⁰ [I.R.C. § 3402](#) (2006).

²¹ Linda E. Stiff et al., U.S. Dep't of the Treasury, *IRS Data Book, 2007*, at 33 (2007), available at <http://www.irs.gov/pub/irs-soi/07databkrevised.pdf>.

²² See *id.* at 3 tbl.1. The plan for the new "kinder, friendlier" IRS was characterized by a focus on customer service and creating an open and accessible face for the Service. Slemrod & Bakija, *supra* note 19, at 183.

²³ See IRS, *supra* note 11. For amounts subject to third-party reporting and withholding, the net amount of income misreported in 2001 was 1.2%. *Id.* For amounts subject to third-party reporting, but not withholding misreporting, the net amount of income misreported was slightly higher, at 4.5%. *Id.* Not surprisingly, misreporting of amounts not subject to third-party reporting or withholding was 53.9%. *Id.*

²⁴ Slemrod & Bakija, *supra* note 19, at 183. In fact, customer service has remained a goal of the IRS through the present. See IRS, U.S. Dep't of Treasury, *Strategic Plan 2005-2009*, at 3-4 (2007), available at http://www.irs.gov/pub/irs-utl/strategic_plan_05-09.pdf.

²⁵ Slemrod & Bakija, *supra* note 19, at 183.

²⁶ *Id.* at 184.

²⁷ See IRS, *supra* note 24, at 12. Since 1999, satisfaction rates have increased from approximately 38% to nearly 60% *Id.*

²⁸ Slemrod & Bakija, *supra* note 19, at 183.

²⁹ *Id.* In 1999, 1260 tax investigations resulted in indictment. IRS, U.S. Dep't of the Treasury, *Enforcement Statistics - Criminal Investigation (CI) Enforcement Strategy* (2008), <http://www.irs.gov/compliance/enforcement/article/0,,id=108792,00.html>. By 2002, that number dropped to only 954. *Id.*

³⁰ See Slemrod & Bakija, *supra* note 19, at 184.

with a harder enforcement line.³¹ The benefits of this tactic to induce compliance has, therefore, had mixed results. Although taxpayers appreciate that the IRS has improved customer service and is more willing to explain the complex ins and outs of filing a return, decreased enforcement may have mitigated any benefit.³²

More recently, the IRS has decided to aggressively pursue the goal of voluntary compliance.³³ Proposed measures include increasing transparency of reporting in order to make evasion more difficult, enhancing taxpayer services, reforming and simplifying the law, and continuing to improve information technology to better detect deficient returns.³⁴ By simplifying the Code, the IRS has made it easier for taxpayers who are not opposed to paying taxes to do so. And by improving technology to detect deficient returns, the IRS is better able to collect income tax from individuals who did not completely comply in their income reporting. This means that individuals who made mistakes or innocently failed to comply will be notified of their deficiencies and able to correct them on future returns. Taxpayers who opportunistically underreported or overstated their deductions will be on notice that the IRS is aware of their actions. Additionally, the threat of audit for further noncompliant behavior should deter noncompliant taxpayers from continuing in opportunistic evasion. Overall, these are all laudable public tools to increase compliance. However, to really boost voluntary compliance, the IRS must persuade taxpayers that they want to comply. Taxpayers may choose to comply because they fear punishment, are conditioned to comply through education and social circumstances, or because they are led to believe that compliance is a civic duty. Why they comply is not as important as the fact that the end product of the IRS's efforts is a taxpayer who does not need to be strong-armed into filing a correct return.

Therefore, in addition to using more public measures, the IRS must to some extent engage in a campaign of public persuasion. As discussed in more detail in Part IV, by strategically choosing to pursue high-profile individuals once their returns have come up through the audit system, knowing that such people are already subject to intense media scrutiny, the IRS can directly influence taxpayer behavior through the mass-media reporting of such prosecutions.

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II. Why Do Taxpayers Choose to File Rather than Evade?

Voluntary compliance comes down to a choice on the part of the taxpayer to either accurately report her tax liability or to partially or wholly evade. Therefore, it is important to understand taxpayer motivations. In a heterogeneous society, individual taxpayers will have different, although sometimes overlapping, motivations. This Part considers various scholarly theories on taxpayer motivation, concluding that non-economic factors such as norms and social values may have the greatest impact on the decision to comply or evade.

A. Economic Theories of Tax Compliance

By far the most popular and widely examined model for taxpayer behavior is the traditional economic model.³⁵ This model essentially states that taxpayer behavior can be explained in purely economic terms.³⁶ According to the economic model, a taxpayer's decision to comply is a result of balancing the risk of detection and punishment

³¹ See IRS, *supra* note 24, at 3. This is exemplified by the 2005-2009 Strategic Plans' motto of "Service + Enforcement = Compliance." *Id.*

³² *Id.*

³³ Office of Tax Policy, *supra* note 3, at 1-4.

³⁴ *Id.*

³⁵ See, e.g., James R. Alm, Administrative Options to Close the Tax Gap, *117 Tax Notes* 495, 495-96 (2007).

³⁶ *Id.*

with the economic benefit derived from evading the tax.³⁷ This approach is essentially the "tax evasion gamble," whereby the taxpayer seeks to maximize profits while simultaneously avoiding punishment.³⁸ The implied basis for the tax evasion gamble is the risk of punishment. Therefore, an increase in enforcement, by either performing more audits per year or instituting more severe punishments, should result in a corresponding increase in voluntary compliance.³⁹ Where the risk of punishment is high, the balance of economic benefit will almost always be outweighed, especially when the economic benefit is slight, as with marginal taxpayers.⁴⁰

The economic model is flawed. Since there has been decreased enforcement over the past decade,⁴¹ and since the risk of audit is about 1%,⁴² one would expect a decrease in voluntary compliance. However, the average rate of voluntary compliance was as high as 86% in 2001.⁴³ The only explanation for this discrepancy is that there are factors not included in the gamble that influence a taxpayer's decision to comply or [*1514] evade.⁴⁴ Such factors may include demographics, social values, and norms of compliance.⁴⁵

B. Types of Taxpayers and Their Motivations

In 1984, the IRS commissioned a comprehensive study on taxpayer attitudes and motivations ("the 1984 study").⁴⁶ The study included an examination of social values and demographic information as factors influencing taxpayer attitudes toward cheating and voluntary compliance.⁴⁷ In grouping taxpayers according to their attitudes toward cheating, the study came up with five categories of taxpayers: strong compliers, the silent majority, rationalizers, scramblers, and the strategic noncompliers.⁴⁸ Each of the groups comprises anywhere from 16% to 23% of the overall taxpayer universe.⁴⁹

³⁷ *Id.* at 495.

³⁸ *Id.* For a mathematical explanation of the mechanics of the gamble, see *id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See *supra* note 29.

⁴² IRS, U.S. Dep't of the Treasury, Fiscal Year 2007 IRS Enforcement and Service Statistics 3 (2009), available at http://www.irs.gov/pub/newsroom/irs_enforcement_and_service_tables_fy_2007.pdf

⁴³ Office of Tax Policy, *supra* note 3, at 2.

⁴⁴ *Id.* at 2. While the rate of compliance may be flawed because it is estimated from the tax gap, wherein not all cheaters were caught, it must be considered a close estimate. The 86% figure represents the gross rate of compliance, including income recovered by the IRS through prosecutions and corrected returns. *Id.*

⁴⁵ Leandra Lederman, The Interplay Between Norms and Enforcement in Tax Compliance, [64 Ohio St. L.J. 1453, 1459 \(2003\)](#).

⁴⁶ Yankelovich, Skelly & White, Inc., *supra* note 13. The final report from this study was the result of the opinions of twenty focus groups led by a moderator and the in-person interview of 2200 taxpayers nationwide. *Id.* at i. The 1984 study is, unfortunately, the most recent study of the same size and scope conducted on taxpayer attitudes. To the extent that taxpayers studied in 1984 are now a full generation older, and significant changes to general tax rates have been enacted, an updated study would be beneficial in understanding current taxpayer attitudes.

⁴⁷ *Id.* at 69.

⁴⁸ *Id.* The study based the creation of these categories on an assessment of responses to thirteen attitudinal variables including flexible honesty, skepticism about human integrity, belief in beating the system, sympathy for tax protesters, patriotism versus self-interest, perceived honesty and fairness of the IRS, omnipotence of the IRS, strong fear of getting caught, belief that the tax system is too complex, objections to government spending, feelings of disenfranchisement, overall effectiveness of the IRS, and belief that the tax system is generally unfair. *Id.* at 56-58.

⁴⁹ *Id.* at 69.

"Strong compliers" are those taxpayers who are "philosophically opposed to all forms of and rationales for tax cheating."⁵⁰ The "silent majority" are those taxpayers who are generally opposed to cheating, but who are not as strongly against it as the strong compliers.⁵¹ The "rationalizers" are those who admit to cheating more often than the strong compliers and the silent majority, and who do not have a problem with most justifications for cheating.⁵² The "scramblers" are the taxpayers who are the most likely of the preceding groups to admit cheating.⁵³ They evade primarily by not reporting cash and other outside income.⁵⁴ Unlike [*1515] the previous groups, they do not justify their noncompliant behavior.⁵⁵ The "strategic noncompliers" include tax protesters and other individuals who refuse to pay taxes and subscribe to a range of rationalizations for cheating.⁵⁶ For the purposes of this Note, the five groups will be combined into three larger groups: the "compliant taxpayers" who, absent innocent mistake, comply; the "marginal taxpayers" who cheat to varying degrees where and when the opportunity arises (this includes the silent majority, the rationalizers, and the scramblers); and the "noncompliant taxpayers" who generally refuse on principle to file returns or otherwise comply with the tax system.

Of these groups, the largest by far is the marginal taxpayers⁵⁷ who, unlike the compliant and noncompliant taxpayers, do not take a hard line on any rationale.⁵⁸ Most are amenable to cheating when and where the opportunity arises.⁵⁹ Within this group, the most common noncompliant activities include underreporting income and overstating deductions.⁶⁰ These taxpayers cheat in small ways primarily with small amounts of money; they are opportunistic cheaters.⁶¹ Their primary justifications are based on the widely held perception that a good proportion of the population cheats on their taxes.⁶² These characteristics combine to make a group that is highly influenced by their perception of other taxpayer behavior. As such, they are the most susceptible to an IRS program focused on adjusting taxpayer attitudes. Because they are not ideologically or philosophically determined to cheat or to comply, their attitude is flexible and can be manipulated based on social values and other factors.

C. Non-Economic Factors Influencing Tax Compliance

1. Demographics

⁵⁰ Id.

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id. at 29-31. Underreporting constituted 29% of reported evasion and overstating deductions 25% of reported noncompliant activity. Id. at 31.

⁶¹ Taxpayers admitting to noncompliant activity report that they are not "veteran" cheaters. Id. at 33. About two-thirds claim to only have cheated once or twice (or, in other words, as the opportunity arose). See id.

⁶² Id. at 34. The 1984 study found that taxpayer perception of cheating was that approximately 41% of the population engages in noncompliant behavior. Id. at 30. In fact, only about 19% of taxpayers actually report having cheated on their returns, which is less than half of the perceived rate of noncompliance. Id.

The 1984 study examined the role of demographics in taxpayer attitudes. The demographic characteristics considered included age, race, gender, education, occupation, and income, among others.⁶³ The 1984 [*1516] study found that in terms of attitudinal variables,⁶⁴ one demographic group stands out. That group includes taxpayers under the age of twenty-five who earn \$ 25,000 or more.⁶⁵ That group is the most willing to engage in questionably noncompliant behavior and is less fearful of the IRS and punishment.⁶⁶ That being said, the study also found that, taken together, demographic variables as compared with reported behavior account for less than 5% of variance in behavior.⁶⁷ Furthermore, compared with attitudinal variables used in assigning the five categories of taxpayers, demographic factors have little to no effect.⁶⁸ Therefore, while demographics may influence a taxpayer's attitudes toward cheating and the acceptability of noncompliant behavior, those same factors have little actual effect on the taxpayer's decision to comply once classified within the appropriate taxpayer group.

2. Social Values

The 1984 study further examined the effects of social values on taxpayer compliance. The two most influential social values were those supporting a fluid definition of honesty and reflecting "cynicism about the human condition."⁶⁹ Flexible honesty refers to a willingness to stretch the truth in order to receive personal financial gain as long as the other party is an institutional player.⁷⁰ Cynicism about the human condition, with respect to taxes, is the idea that most Americans cheat on their taxes and that the only people who fail to cheat are those who had no opportunity to do so.⁷¹ Overall, taxpayers' social values were found to be "fundamental" to the question of compliance.⁷²

It is important to note that, implicit in the two social values identified by the study, there are other social values at work. For instance, within the definition of honesty is the idea of whether it is wrong, not wrong, or right to cheat on taxes. Those with a flexible definition of honesty would say that it is "not wrong" to engage in some [*1517] level of noncompliant behavior. Such individuals are those at issue in this Note, the marginal taxpayers who do not feel strongly either way about the moral character of a taxpayer who fails to comply. Additionally, within the idea of cynicism is the value of conformity. If other people do not comply, then you are conforming to a social standard of flexible honesty by deliberately evading taxes yourself.

3. Social Norms

⁶³ Id. at 55. Other demographic factors included length of time in the neighborhood, previous audit experience, marital status, use of a tax-preparer, opportunity, self-employed status, and type of tax form used. Id.

⁶⁴ See supra note 48 for a list of attitudinal variables considered in the 1984 study.

⁶⁵ Yankelovich, Skelly & White, Inc., supra note 13, at 17, 103-29.

⁶⁶ Id.

⁶⁷ Id. at 61-63.

⁶⁸ Id.

⁶⁹ Id. The 1984 study also considered the social value of "beating the system." Id. at 110-12. Individuals adhering to this particular value espouse the idea that it is "fun" to get around the law and cheat the government. Id. This attitude is generally associated with a loss of faith in our system of government. Id. This value is not relevant to this paper because, as the 1984 study found, the value is accepted and adhered to only by noncompliant taxpayers. Id.

⁷⁰ Id. at 107-08. This was determined in the study by asking questions about the acceptability of stretching an insurance claim or keeping money accidentally given as change at a department store. Id.

⁷¹ Id. Lack of opportunity generally results from not having any nonsalary or wage income that might avoid third-party reporting. Id.

⁷² Id. at 63.

Finally, in addition to social values, it has been widely suggested in scholarly literature that social norms play some part in influencing compliant behavior.⁷³ Social norms are closely linked to social values and may even reflect the same idea; however, they are distinct concepts. Both norms and values inform human behavior. Norms are generally entrenched in our value system and become akin to social laws, although they do not depend on the government for formal promulgation or enforcement.⁷⁴ Instead, norms are created through the emergence of a consensus among the public at large. For instance, there exists a norm against stealing. Everyone knows that, under most circumstances, taking something that does not belong to you is wrong.⁷⁵ The fact that there is a corresponding law has little influence on the effectiveness of the norm. Individuals who choose to steal are generally looked down upon as thieves, are viewed to be dishonest, and, to some extent, are shunned. As a result, unless and until the norm against stealing changes in the context of individualized, unjustified stealing, the absence of legal criminal sanctions would not result in an increase in the instances of thievery.

The violation of a norm is generally associated with particular nonpecuniary sanctions including, most importantly, guilt and shame.⁷⁶ Guilt and shame are closely related in that they are both products of formal and informal education.⁷⁷ The difference between the two is that where guilt is internal, shame is external.⁷⁸ Guilt relies only on the offender's internalized values and the knowledge that his action was wrong.⁷⁹ Shame, however, requires that others know that the offender [*1518] has acted in violation of the norm for punishment.⁸⁰ This is perhaps the more important sanction with respect to norms since, as in the case of the noncompliant tax return, the offender will not be sanctioned unless those who know the offender find out that he cheated on his taxes. Since returns are largely confidential, society is not likely to obtain such information unless the offender brags about it.⁸¹ A norm enforced only by shame may therefore be ineffective in the realm of tax policy since it encourages violation of the norm if the offender does not believe she will be caught.⁸²

⁷³ See IRS, *supra* note 8; Lederman, *supra* note 45, at 1460-61; Richard A. Posner & Eric B. Rasmusen, *Creating and Enforcing Norms, with Special Reference to Sanctions*, 19 *Int'l Rev. L. & Econ.* 369, 370 (1999); Joshua D. Rosenberg, *Narrowing the Tax Gap: Behavioral Options*, **117 Tax Notes 517, 517-18 (2007)**.

⁷⁴ Posner & Rasmusen, *supra* note 73, at 369.

⁷⁵ There are of course always exceptions to the general rule, such as looting during a riot when the riot mentality condones opportunistic stealing.

⁷⁶ Posner & Rasmusen, *supra* note 73, at 371. Other sanctions include automatic sanctions, informational sanctions, bilateral costly sanctions, and multilateral costly sanctions, which will not be discussed in this Note. See *id.* at 371-72

⁷⁷ *Id.* at 373-74. Informal schooling includes upbringing, intentional moral influence of parents and relatives, and the examples of peers and other adults. *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 373.

⁸⁰ *Id.* at 374.

⁸¹ With respect to state and local tax returns, many states have enacted provisions requiring the state's Department of Taxation (or the equivalent) to publish a list of delinquent taxpayers. Each state has different requirements with respect to the information publicly disclosed and for the types of delinquencies listed, which may limit the efficacy of the list as a shaming tactic. For instance, California only publishes the names of the 250 taxpayers who owe the most money. See [Cal. Rev. & Tax. Code § 19195](#) (West Supp. 2009). For examples of other state statutes requiring publication of delinquent taxpayer lists, see generally [Colo. Rev. Stat. § 24-35-117](#) (2008); Del. Code. Ann. tit. 30, § 359(b) (1997); [Fla. Stat. § 197.413](#) (2008); Va. Code. Ann. § 58.1-3 (2004); [Wash. Rev. Code § 82.32.330](#) (2008); and [Wis. Stat. § 73.03\(62\)](#) (2007).

⁸² See Posner & Rasmusen, *supra* note 73, at 374.

Because norms are generally created through the gradual formation of consensus, they are mutable.⁸³ They can be changed gradually through the standardization of a new norm or the reinforcement of an existing norm.⁸⁴ However, the process of reformation can be slow and difficult.⁸⁵ This is especially true of norms enforced through shame and guilt.⁸⁶ Such norms are the product of social conditioning, instilled in the individual by parents throughout the developmental process.⁸⁷ Therefore, they tend to be strongly rooted in the attitudes and values of the individual.

Norms are potentially extremely influential in the creation of a voluntarily compliant population because, for the most part, they interact well with laws and government.⁸⁸ The government can also help to create or reinforce norms.⁸⁹ For example, the California Franchise Tax Board, California's taxing authority, maintains a list of taxpayers who owe back taxes.⁹⁰ When an individual's name appears on the list, the agency is providing the public with the information necessary for the shame sanction to be effective. For a norm primarily enforced through guilt and shame, the government can reinforce the norm by providing sources of education on compliance and demonstrate that the norm is actual [*1519] compliance and not evasion.⁹¹ Through education, the government creates the basis for guilt and shame once the individual has violated the norm.⁹² Finally, the government certainly plays a large role in combating bad norms.⁹³ To the extent that the taxpayers perceive the norm to be one of evasion rather than cooperation and compliance, by punishing noncompliant taxpayers, the government is battling the norm of evasion.⁹⁴ It does so by decreasing the benefit of complying with such "bad" norms by providing legal remedies and sanctions.⁹⁵ The government can thus directly influence behavior. By showing people what they are supposed to think about compliance, through education and in reinforcing good norms and then punishing conformity with bad norms, the taxing authority is altering behavior through influence on norms.

Judge Richard Posner and Professor Eric Rasmusen doubt whether government influence of norms is efficient and effective, suggesting that sometimes it is better if government simply steps away, allowing private creation and enforcement of norms to proceed.⁹⁶ However, their primary goal is to suggest that if government cannot be completely left out, government regulation can supplement good norms and regulate bad norms.⁹⁷ Of course, it is important to note that norms alone cannot regulate behavior and enforce order.⁹⁸ Nonetheless, legal sanctions for violations of norms, like in the stealing example above, can be important. When considering the fact that there are five different types of taxpayers constituting a heterogeneous population, some enforcement tactics will work

⁸³ Id. at 377.

⁸⁴ Id. at 377-78.

⁸⁵ Id.

⁸⁶ Id. at 379.

⁸⁷ Id.

⁸⁸ Id. at 380.

⁸⁹ Id.

⁹⁰ See supra note 81.

⁹¹ Posner & Rasmusen, supra note 73, at 380-81.

⁹² Id. at 380.

⁹³ Id.

⁹⁴ See id. at 380-81.

⁹⁵ Id. at 381-82.

⁹⁶ Id. at 382.

⁹⁷ Id.

⁹⁸ Id. at 380.

better on some types than others. For noncompliant taxpayers, legal sanctions are important because with respect to tax compliance, they are unaffected by norms of cooperation.⁹⁹ These people may lack guilt and shame and may not care what other people think of them. However, they are not exempt from the "law's tangible sanctions."¹⁰⁰

III. Mass-Media's Effect on Human Behavior

This Part considers the effect of mass media on human behavior. It discusses mass media not only through demonstrations of social values on television, but also from the perspective of marketing strategies. This Part concludes that, as demonstrated through anecdotal evidence, what [*1520] people see in the media affects not only behavior, but also instills social values and potential norms as well.

A. Case Studies for the Influence of Mass Media on Human Behavior

Most lay people acknowledge the existence of the media effect. Through anecdotal evidence from school shootings and violence in children, for example, it is widely accepted that because of its pervasive nature, the mass media has an effect on social values and human behavior.¹⁰¹ There have been a number of studies indicating through anecdotal and empirical evidence that mass media affects the way individuals view their environment and the way they behave as a result.¹⁰²

Within the legal field, the most compelling case of mass-media influence on attitudes and behavior comes from a study of the effect of television judges on citizens participating in jury trials.¹⁰³ The study focused on syndicated television courtroom programs because they are the most popular reality legal shows.¹⁰⁴ The study found that, in general, individuals begin with a limited understanding of judges and the roles they are supposed to play.¹⁰⁵ As a result, mass-media courtroom reality programs inform the public's understanding of how the judge is supposed to behave.¹⁰⁶ Many jurors who were frequent viewers of courtroom reality programs reported that they tended to look to the judge for clues as to his opinion of the case and to interpret the judge's silence as indicating belief in one of the litigants.¹⁰⁷ The study concludes with the suggestion that reality courtrooms on television should make an effort to reflect the reality of the courtroom, showing impartial instead of tyrannical and rude judges.¹⁰⁸ To do so would perhaps have a positive effect on the overall opinion of the fairness and equity of the America legal system.¹⁰⁹

Outside of the legal arena, the most striking example of mass media's effect on human behavior arises in the context of anti-smoking campaigns. Since the 1960s, the U.S. government has used mass media to [*1521]

⁹⁹ See supra note 50 and accompanying text.

¹⁰⁰ Id.

¹⁰¹ A.O. Scott, Drawing a Line From Movie to Murder, N.Y. Times, Apr. 23, 2007, at E1, available at <http://www.nytimes.com/2007/04/23/movies/23movi.html>.

¹⁰² See generally Byoungkwan Lee et al., The Effects of Information Sources on Consumer Reactions to Direct-To-Consumer (DTC) Prescription Drug Advertising, 36 J. Advertising 107 (2007); Kimerlianne Podlas, Please Adjust Your Signal: How Television's Syndicated Courtrooms Bias Our Juror Citizenry, 39 Am. Bus. L.J. 1 (2001); Cheryl B. Preston, Baby Spice: Lost Between Feminine and Feminist, 9 Am. U. J. Gender Soc. Pol'y & L. 541 (2001).

¹⁰³ See Podlas, supra note 102, at 2.

¹⁰⁴ Id. at 1.

¹⁰⁵ Id. at 15.

¹⁰⁶ Id.

¹⁰⁷ Id. at 2.

¹⁰⁸ Id. at 22.

¹⁰⁹ Id.

broadcast a general campaign against smoking.¹¹⁰ In 1988, California voters passed Proposition 99, a tax on tobacco products, the proceeds of which would be used to fund activities promoting health and tobacco-control activities.¹¹¹ Beginning in 1990 and 1991, California spent \$ 28 million on an antismoking media campaign.¹¹² During the same time, cigarette consumption was 802 million packs lower than estimates based on pre-Proposition 99 historical trends.¹¹³ This marked a sharper decline in cigarette consumption in California compared to national numbers, despite similar price increases nationwide.¹¹⁴

The influence of mass media on consumer behavior is well recognized within the arena of marketing.¹¹⁵ Research on the interplay between advertising and attitudes indicate that there is a positive relationship between the two.¹¹⁶ Such a relationship results from the nature of mass media as a form of consumer socialization,¹¹⁷ the process through which individuals learn the "skills, knowledge, and attitudes" to function as consumers.¹¹⁸ As a socializing mechanism, mass-media advertising plays a role in conveying consumer norms, values, and behavior to individuals.¹¹⁹ Furthermore, this consumer socializing is not limited to an individual's childhood and developmental years, but, rather, extends throughout the individual's lifecycle.¹²⁰ To the extent that mass media does act as a mirror for social values, "it alternately functions as an instrument for social change and a tool for restabilizing ... the status quo"¹²¹ at all stages of life.

For example, the portrayal of women and their relationship to men in fashion and other advertisements affects subconscious understanding [*1522] of an individual's gender role within society.¹²² While women are continuously portrayed in vulnerable group poses, such as sleeping or giggling with girlfriends, males are portrayed as dominant and independent.¹²³ This leads to the creation of different body stereotypes between men and women.¹²⁴ Where men view their bodies "as a means of achieving mastery over the external environment,"

¹¹⁰ Encyclopedia of Public Health, Mass Media and Tobacco Control, <http://www.enotes.com/public-health-encyclopedia/mass-media-tobacco-control> (last visited June 10, 2009).

¹¹¹ Proposition 99, also known as the "Tobacco Tax and Health Protection Act of 1988," is codified at [Cal. Rev. & Tax. Code §§30121-30130](#) (West 2004 & Supp. 2009). The full text of Proposition 99 is available online at <http://www.cdph.ca.gov/programs/tobacco/Documents/CTCPProp99Initiative.pdf>.

¹¹² Stanton A Glantz, Changes in Cigarette Consumption, Prices, and Tobacco Industry Revenues Associated with California's Proposition 99, Tobacco Control, Dec. 1993, at 311, 313, available at <http://tobaccocontrol.bmj.com/cgi/reprint/2/4/311.pdf>.

¹¹³ Id.

¹¹⁴ Id. at 314.

¹¹⁵ See Lee et al., *supra* note 102, at 110 (stating that where "attitudes toward advertising have been" extensively researched, findings show a positive relationship between attitude and behavioral response).

¹¹⁶ See id.

¹¹⁷ See id. at 115.

¹¹⁸ See id. at 108, 115.

¹¹⁹ See id. at 108.

¹²⁰ See id.

¹²¹ Preston, *supra* note 102, at 549 (quoting Susan Bisom-Rapp, Introduction to Chapter II: Feminism, Law, and Popular Culture, in *Feminism, Media, and the Law* 87, 87 (Martha A. Fineman & Martha T. McCluskey eds., 1997)).

¹²² See id. at 551-58.

¹²³ See id. at 570-71.

¹²⁴ See id. at 571.

¹²⁵ women view the main purpose of their body as a means to "attract others." ¹²⁶ These stereotypes are reinforced throughout an individual's life through advertisements separately targeting children, adolescents, and adults, thus affecting individual and group attitudes toward, and social values in relation to, gender roles. ¹²⁷

B. Free-Advertising Marketing Strategies

As discussed above, marketing has an effect on the attitudes and behavior of individuals by acting as a socializing mechanism. Therefore, strategic placement can affect the utility of the advertisement in its role as a socializer. Nontraditional strategies include product placement, ¹²⁸ capturing people in "bottlenecks," ¹²⁹ and the use of Internet outlets. ¹³⁰ In the context of political campaigns, television remains the primary media outlet for advertisement. ¹³¹ A recent poll regarding the 2008 presidential campaign reported that 56% of respondents had seen an ad on television for the candidates, 51% had watched televised debates or news coverage of the debates, and 40% had seen the candidates on talk shows or other television programming. ¹³²

A study conducted on the 2000 electoral campaign between Al Gore and George W. Bush found that the marketing strategies of the candidates certainly took into account the value of free media. ¹³³ In terms [*1523] of actual appearances, candidates weigh the value of an in-person visit with the cost of taking the time and spending the money to visit a state. ¹³⁴ The value of network news was critical because appearances covered by local news allowed the public to witness and participate in the appearance regardless of whether they actually attended. ¹³⁵ Another factor in balancing is the fact that because small states have fewer electoral college votes, personal appearances around the state can be expensive compared to the value of the appearances. ¹³⁶ Therefore, as a campaign strategy in small states, candidates prefer short stops, covered by local media, to extended stays. ¹³⁷ In this way, they garner the benefit of free advertising through local coverage without wasting too much time or money on extensive in-state travel. Furthermore, by choosing local appearances carefully and submitting to the magnifying effect of media coverage, candidates raise visibility in a cost-effective manner.

¹²⁵ See *id.* (quoting Stephen L. Franzoi & Mary E. Herzog, Judging Physical Attractiveness: What Body Aspects Do We Use?, 13 *Personality & Soc. Psychol. Bull.* 19, 30 (1987)).

¹²⁶ See *id.*

¹²⁷ See *id.*

¹²⁸ See Lee et al., *supra* note 102, at 116.

¹²⁹ Bottlenecks include places where people are trapped for some amount of time and are therefore involuntarily subjected to advertising. See Paul F. Nunes & Jeffrey Merrihue, The Continuing Power of Mass Advertising, *MIT Sloan Mgmt. Rev.*, Winter 2007, at 63, 64-67.

¹³⁰ See Ken Wheaton, In Politics, Web Surpasses TV for Under-30 Voters, Advertising Age, Jan. 28, 2008, http://adage.com/campaigntrail/post?article_id=1233 98. Such outlets include candidate web pages, social networking media, and blogs. *Id.*

¹³¹ See *id.*

¹³² See *id.* In terms of respondents' interaction with media advertising, 69% said that television was their primary mode of interaction and 51% said talk shows were their primary mode of interaction, compared to 28% who named candidate web pages. *Id.*

¹³³ Michael Hagen, Presidential Campaign Strategy - And Its Effects 1-4 (Jan. 30, 2004) (unpublished manuscript, on file with the Hastings Law Journal). President George W. Bush's polling numbers, which reflect public support, were higher when he was portrayed favorably in the media and vice versa. See *id.* at 17-22, 27.

¹³⁴ See *id.* at 5, 27.

¹³⁵ See *id.* at 5-6, 27.

¹³⁶ See *id.* at 4-5, 27.

¹³⁷ See *id.*

C. Limitations on the Influence of Mass Media on the Public at Large

It is important to note that, although mass media can have an effect on attitudes and behavior, it is also limited by human interest.¹³⁸ News comes and goes and often becomes lost in the self-interest of daily life. One day President Bush's drug use is on the cover of every tabloid and online newspaper.¹³⁹ The next day, the public is shocked by Vice President Gore's slip of the tongue,¹⁴⁰ and outrage over President Bush is pushed out of sight and out of the public's mind. Specifically, in the context of the Bush-Gore presidential campaign, breaking news about Bush's arrest record resulted in a dip in polling for Bush.¹⁴¹ However, as the shock faded and the news became old news, Bush's popularity in polling results began to rise again.¹⁴² The old news of his arrest was replaced by new news of this candidate's statements or that candidate's appearance, which decreased exposure by refocusing attention elsewhere.

Put in technical terms, the effectiveness of mass media with respect to long-term changes relies on two factors: the reception factor¹⁴³ and the [*1524] yielding factor.¹⁴⁴ The reception factor is based on the finding that exposure is a necessary condition for individuals to receive a message through mass-media outlets.¹⁴⁵ Receiving the message is in turn a condition to public persuasion and attitude adjustment.¹⁴⁶ The yielding factor refers to the fact that repeated exposure builds the individual's stock of information.¹⁴⁷ The reception factor and the yielding factor are competing concerns and the importance of one over the other depends on the context.¹⁴⁸ With respect to voting, scholars contend that the individual's stock of information decreases responsiveness to marketing because it inoculates the individual to the persuasiveness of the advertisement.¹⁴⁹

Although the pressure of community norms can be influential in an individual's decision to vote for one candidate over another, choice of candidate is not a decision into which social values and norms truly factor. It is neither wrong nor right to vote for one candidate over the other in the same way that social values may term the decision to file taxes as wrong or right. Therefore, for the purposes of this Note, it is more appropriate to focus on the reception factor where exposure of the issue is key. From that perspective, the persuasiveness of mass media is limited to exposure.

IV. The Mass-Media Approach

The following final Part details the mass-media approach to closing the tax gap. Based on the preceding discussion, it is clear that the tax gap is a problem in the current system of tax collection, to which increasing

¹³⁸ See *id.* at 22-27.

¹³⁹ See, e.g., Bush Faces New Round of Drug Questions, CNN.com, Aug. 20, 1999, <http://www.cnn.com/ALLPOLITICS/stories/1999/08/20/president.2000/bush.drug/>.

¹⁴⁰ See, e.g., Chris Suellentrop, Is Al Gore Better Off Today Than He Was Eight Days Ago?, Slate, Aug. 21, 2000, <http://www.slate.com/id/1005921/>.

¹⁴¹ See Hagen, *supra* note 133, at 20.

¹⁴² See *id.*

¹⁴³ *Id.* at 23-24.

¹⁴⁴ *Id.* at 24.

¹⁴⁵ *Id.* at 23-24.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 24.

¹⁴⁸ *Id.* at 24-25.

¹⁴⁹ *Id.*

voluntary compliance is potentially the best solution.¹⁵⁰ Additionally, a taxpayer's decision to voluntarily comply is largely dependent on his social values and sanctions based on violation of social norms. Those social values, as discussed above, have been anecdotally shown to be affected by mass media, both through advertising, news reporting, and television shows.¹⁵¹ Taking all of those social values together, the following Part discusses the way the mass-media approach operates within the context of the current system and notes limitations on the approach.

[*1525]

A. What Is the Mass-Media Approach?

The most effective way to influence behavior is to show people what to do, make it easy for them to do it, and, at the end, punish noncompliance and reward cooperation.¹⁵² This method contrasts with the "command model," where, rather than showing people what to do, the government tells them what to do and enforces behavior with only punishment.¹⁵³ Such an approach is inefficient and ineffective in bringing about a lasting change in behavior¹⁵⁴ because it is not accompanied by any effort to change the attitudes and values of individuals, much less any associated social norm. Where the government threatens punishment for noncompliant behavior, most will go along because they fear punishment.¹⁵⁵ However, where the threat of punishment is low or the punishment itself is not severe, people will continue to disregard the command.¹⁵⁶ Take jaywalking tickets, for example. Even if a police officer were to catch an individual crossing the street against a red light, it is unlikely that the officer would stop to ticket the individual. And for most people, the forty-dollar ticket is not a huge deterrent, especially if that person is in a hurry and knows the likelihood of punishment is low. In this situation, there is no norm buttressing the government's command, and therefore the command is generally ineffective because it fails to alter the individual's attitude toward illegally crossing the street against a red light.

The mass-media approach is modeled after the Rosenberg approach. The IRS uses a secret formula to determine which returns to subject to individual audits.¹⁵⁷ Once the batch of audits is prepared, the IRS has a choice as to which evasive behavior to prosecute.¹⁵⁸ Hypothetically, in 2010, the IRS runs its regular audit formula and both Angelina Jolie and "Average Joe's" returns are audited. Unfortunately for both, there are problems with their returns and the IRS finds sufficient evidence to prosecute each for felony tax evasion. At that point, the IRS has a resource-allocation choice. The IRS can choose to expend the resources to vigorously prosecute each instance of tax evasion or it can settle out both violations.¹⁵⁹ The mass-media solution demands that in such a situation, the IRS allocate resources to the actual prosecution of Ms. Jolie. By choosing to prosecute Ms. Jolie rather than Mr. Joe, the IRS ensures media coverage of the prosecution because we are a celebrity- [*1526] centric society.¹⁶⁰ Where Mr. Joe's audit might garner interest within a limited circle of family and friends, Ms. Jolie's audit and criminal prosecution is likely to appear on the covers of celebrity tabloids as well as within serious news

¹⁵⁰ See supra Part 1.

¹⁵¹ See supra notes 115-27 and accompanying text.

¹⁵² Rosenberg, supra note 73, at 522.

¹⁵³ Id. This approach will hereinafter be referred to as the "Rosenberg approach."

¹⁵⁴ Id.

¹⁵⁵ See supra note 50 and accompanying text.

¹⁵⁶ See supra note 50 and accompanying text.

¹⁵⁷ Slemrod & Bakija, supra note 19, at 180-81.

¹⁵⁸ Id.

¹⁵⁹ Id.

¹⁶⁰ I want to note that in arguing that popular media sources like celebrity gossip columns are valuable sources of targeted publicity, I do not mean to imply that they are the only or the primary source of news information available to the public. In fact,

periodicals. And as demonstrated by Wesley Snipes's recent prosecution,¹⁶¹ even B-list actors can garner huge publicity for the IRS.

B. Why Is the Mass-Media Approach Effective?

The mass-media approach is a two-pronged approach to enforcement. On the one hand, for those taxpayers who are not affected by social norms and values, such as the protestors, publicity related to prosecutions of celebrities and other high-profile individuals sends the message that no one is exempt from federal income tax obligations. On the other hand, the approach encourages compliance by reinforcing good norms and discouraging competing bad norms through the use of actual legal sanctions. In employing a two-pronged approach, the mass-media solution addresses all types of marginal taxpayers, providing a multi-faceted answer to a heterogeneous taxpayer population.

1. Publicizing the Universal Threat of Punishment

When the IRS prosecutes a high-profile individual and media outlets report on the course of the trial, outcome, or sentencing, it draws attention to the legal punishment for choosing not to comply. By doing so, the IRS is taking the first step in changing behavior by showing the public what it is not supposed to do - namely, willfully evade tax obligations.¹⁶² For strategic, noncompliant taxpayers, this is perhaps the only way to deter noncompliance. For the rest, however, exposure of punishment in mass media sends the message that despite the existence of any sort of dichotomy between the rich and poor,¹⁶³ all tax evaders will be subject to the same punishment, without exception for celebrity, political power, or wealth.¹⁶⁴ Furthermore, by taking a hard line, as in the [*1527] Snipes case, the IRS further sends the message through the media that it takes the problem of noncompliance seriously and that evaders will be caught and prosecuted.¹⁶⁵

In reporting on punishment, mass media also implicitly signals social values. By focusing on the Wesley Snipes tax evasion and fraud trial, mass media refuted the idea of flexible honesty as a social value. As described above, flexible honesty as a value dictates that when it comes to taxes, it is okay to evade because it does not hurt anyone.¹⁶⁶ In conjunction with a balancing of value and potential for punishment, this often results in evasion when the opportunity arises. For someone like Snipes, whose income is not reported by a third party as a wage or salary, the opportunity for evasion is considerable.¹⁶⁷ Snipes was nonetheless held accountable for the total amount of

even if someone does not read those gossip columns, celebrity and high-profile-individual reporting appears in most legitimate news sources as well. This includes such "serious" periodicals as CNN.com, the Los Angeles Times, and the New York Post.

¹⁶¹ On October 12, 2006, Wesley Snipes was indicted for conspiracy, tax fraud, and six counts of tax evasion. See U.S. v. Wesley Snipes: Hollywood Actor Wesley Snipes Indicted on Tax Fraud Charges, FindLaw, Oct. 12, 2006, <http://news.findlaw.com/nytimes/docs/tax/ussnipes101206ind.html> [hereinafter U.S. v. Wesley Snipes].

¹⁶² See Rosenberg, *supra* note 73, at 522, 530-31.

¹⁶³ The perception that there are inequities between the rich and the poor is the most popular rationale for cheating on taxes. See IRS, *supra* note 11, at 15.

¹⁶⁴ Those who have been prosecuted for tax evasion include Wesley Snipes, a celebrity, Spiro Agnew, a former Vice President, and Leona Helmsley, a fabulously wealthy socialite. Fontanez, *supra* note 1.

¹⁶⁵ Associated Press, Wesley Snipes Receives Three-Year Jail Sentence on Tax Evasion Charges, Apr. 25, 2008, available at <http://www.foxnews.com/story/0,2933,352370,00.html> [hereinafter Snipes Receives Three-Year Jail Sentence].

¹⁶⁶ See *supra* notes 69-70 and accompanying text.

¹⁶⁷ The government alleged that Snipes failed to pay taxes on the over \$ 12 million he had earned from the Blade movie trilogy. See Snipes Receives Three-Year Jail Sentence, *supra* note 165.

income on which he opportunistically evaded paying taxes.¹⁶⁸ In addition to paying back-taxes and penalties on that amount, Snipes has been sentenced to three years in prison.¹⁶⁹ By publicizing his conviction and the corresponding punishment, mass media is sending the message that flexible honesty is not an acceptable social value. If a taxpayer ascribes to a flexible definition of honesty, when caught, he or she will be held liable for any noncompliant behavior arising therefrom.

2. Buttressing the Existing Norm of Cooperation

As discussed above, social values are reflections of the way that people think about the world and their interactions with their community.¹⁷⁰ When the values become so ingrained in the population's consciousness that they act as social laws, they become norms of behavior.¹⁷¹ By affecting norms, the IRS potentially influences long-term patterns of behavior just as with California's anti-smoking campaign. [*1528] Establishing a norm in favor of compliance and imposition of guilt-and shame-sanctions encourages individuals to align their behavior with the norms. In terms of tax compliance, this means an increase in complete compliance and a decrease in the tax gap.

In the Wesley Snipes case, by claiming to be a victim of poor tax advice rather than asserting that he did not evade payment of taxes legitimately due and owing, Snipes signaled acknowledgment that he violated social values in favor of honest reporting and cooperation.¹⁷² Making this statement was, perhaps, a bid to rehabilitate his reputation in the face of social sanctions resulting from what the media portrayed as intentional felony tax evasion.¹⁷³ By first portraying Snipes as a potential felon and then publishing his apology,¹⁷⁴ mass media served as a reflection of social values by condemning Snipes for violating common values of cooperation. The public condemnation allowed the application of shame as a social sanction in addition to the internal guilt sanction.

Snipes's repentance mitigated the effect of social sanctions. By apologizing, Snipes implicitly acknowledged both the norm and the punishment. Mass media in that situation played a part in the imposition of sanctions and, in so doing, buttressed the existing norm of compliance. By showing that individuals who choose not to act in accordance with the norm will be punished through the use of nonpecuniary social sanctions, mass media buttressed the idea of compliance as a socially valuable, or "good," behavior, and anything else as a violation of social laws.

¹⁶⁸ Mr. Snipes's sentence is currently stayed pending appeal and Mr. Snipes has been released on bail in the interim. Barbara Liston, Wesley Snipes Gets Bail Pending Appeal in Tax Case, Reuters UK, May 23, 2008, <http://uk.reuters.com/article/peopleNews/idUKN2253439> 120080523.

¹⁶⁹ Although the Snipes conviction was not a clear victory for the IRS since Snipes was found not guilty of the most serious charges against him, the overall perception in media reporting has been that he in no way was able to avoid payment of his personal income taxes. See, e.g., Luchina Fisher et al., Wesley Snipes Slammed with Three Years in Prison, ABC News, Apr. 24, 2008, <http://abcnews.go.com/Entertainment/FedCrimes/Story?id=4718482&page=1>; Rich Phillips, Snipes Gets the Max - 3 Years - In Tax Case, CNN.com, Apr. 24, 2008, <http://www.cnn.com/2008/CRIME/04/24/snipes.sentencing/>; Travis Reed, Wesley Snipes to Serve 3 Years in Prison for Tax Convictions, USA Today, Apr. 24, 2008, http://www.usatoday.com/life/movies/2008-04-23-64512220_x.htm.

¹⁷⁰ See supra Part II.C.2.

¹⁷¹ See supra note 84 and accompanying text.

¹⁷² One popular media source, People Magazine, reported that Snipes claimed to have been "duped" by his tax advisors into claiming up to \$ 12 million in deductions and credits. See Siobhan Morrissey, Wesley Snipes Tax Fraud Trial Begins, People.com, Jan. 16, 2008, <http://www.people.com/people/article/0,,20172048,00.htm?xid=rss-fullcontentcnn>.

¹⁷³ Based on the allegations, media outlets were reporting that Snipes was facing sixteen years in prison, listing the maximum possible punishment. See, e.g., id.

¹⁷⁴ See Travis Reed, Slammer for Snipes: 36 Months in Prison, Huffington Post, Apr. 24, 2008, http://www.huffingtonpost.com/2008/04/24/wesley-snipes-sentencing_n_98476.html; Snipes Receives Three-Year Jail Sentence, supra note 165; Wesley Snipes Gets 3 Years for Not Filing Tax Returns, N.Y Times.com, Apr. 25, 2008, http://www.nytimes.com/2008/04/25/business/25snipes.html?_r=1.

3. Satisfying Efficiency Concerns About the Most Effective Allocation of IRS Resources

Because the IRS does not have an unlimited budget, it must be careful in the allocation of resources. In 2008, the IRS received over 164 million individual income tax returns, 51 million phone calls to its automated Taxpayer Assistance Center, and over 2 billion page views on its website.¹⁷⁵ Yet in 2007, the IRS received approximately \$ 10.5 billion to run the entire operation, including personnel costs, administration of the federal income tax, the performance of audits, and the collection of income tax, both through voluntary compliance and enforcement [*1529] measures.¹⁷⁶ Compared to a tax gap of \$ 345 billion, \$ 10.5 billion is a paltry sum. Efficient allocation of resources is understandably a legitimate concern. In addition to budget concerns, increased efficiency and decreased costs generally save tax dollars and hopefully contribute to lower tax rates.

Mass media has a huge reach that is both targeted and specific. People Magazine has a circulation of 3.75 million readers per week and targets women from sixteen to forty-five.¹⁷⁷ Sports Illustrated, a periodical targeting young men, has subscriptions at over 3 million per issue.¹⁷⁸ Internet sites that are updated periodically throughout the day have even higher numbers of viewers. For instance, Perezhilton.com is visited by at least 10.1 million unique visitors per month.¹⁷⁹ Dlisted.com, a blog comparable to Perezhilton.com that also reports on celebrities and targets young women, gets about 1.2 million hits per month.¹⁸⁰ The Huffington Post focuses on political figures appealing to a more sophisticated audience, and has around four million unique visitors per month.¹⁸¹ Each of these media outlets has a specific readership and has the potential to reach segments of the population who do not read CNN.com or tune into their local news on a daily basis. In a world of celebrity obsession, readership of periodicals reporting on high-profile individuals of interest attracts individuals who might not otherwise care what is going on in traditional news.

Taking the Angelina Jolie and Average Joe hypothetical from above to its logical conclusion under the mass-media solution means that the IRS should choose to prosecute Ms. Jolie first. Given the chance, the IRS will offer to settle identical issues arising from Mr. Joe's noncompliant behavior as Ms. Jolie, rather than refer Mr. Joe's case to the U.S. Attorney's office for criminal prosecution. Like a political campaign manager, the IRS should weigh the value of free media coverage with the cost of the campaign or, in this case, the prosecution of tax evaders. Assuming that everything else is equal, Ms. Jolie will garner more publicity through her celebrity than Mr. Joe will. Nationwide reporting of Ms. Jolie's tax woes in People Magazine, Perezhilton.com, and the New York Times, as well as on television, means that the IRS is receiving free publicity of its enforcement policies and attitude toward tax evasion. In [*1530] this way, in the Jolie prosecution, the IRS saves the cost of publicizing enforcement action.

C. Limitations of the Mass-Media Approach

Despite the potential for huge returns in terms of influencing norms to encourage people to want to pay their taxes, the mass-media approach is nonetheless a limited approach to tax compliance. First, although high-profile cases certainly do arise, it is not clear how many occur in a given year. Since 2000, there have been relatively few

¹⁷⁵ IRS, U.S. Dep't of the Treasury, IRS Data Book, 2008, at 6 tbl.3, 47 tbl.19 (2008), available at <http://www.irs.gov/pub/irs-soi/08databk.pdf>.

¹⁷⁶ IRS Oversight Bd., FY 2008 IRS Budget Recommendation 3 (2007), available at <http://www.treas.gov/irsob/reports/fy2008-budget-report.pdf>.

¹⁷⁷ See Magazine Publishers of America, http://www.magazine.org/consumer_marketing/circ_trends/ index.aspx (last visited June 10, 2009) (follow "2008" hyperlink next to "Magazine Circulation for all ABC Magazines").

¹⁷⁸ See id.

¹⁷⁹ The 25 Most Valuable Blogs, 24/7 Wall St., Mar. 26, 2008, <http://www.247wallst.com/2008/03/the-twenty-five.html>.

¹⁸⁰ Id.

¹⁸¹ Id.

reported high-profile disputes.¹⁸² As mentioned above, this is in line with the statistics on voluntary compliance.¹⁸³ However, it limits the IRS's ability to take advantage of the mass-media approach. Because the approach depends heavily on the availability of high-profile individuals, IRS prosecutions will make fewer ripples in the arena of popular mass media in years in which there are few such individuals. The lack of exposure during those years affects the IRS's ability to evoke public interest and therefore to send any sort of message.

Of course, the mass-media solution also depends on the IRS winning the cases it pursues against high-profile individuals. If the IRS is trying to send any message to the public through the media, it should be that tax evaders will be caught and punished. Losing a case has the potential to send the opposite message. When the IRS loses a case, it can suggest that its prosecution was overzealous, that evasion within the letter of the law or tax avoidance is acceptable, or that a taxpayer can "beat the system" by deliberately evading taxes and then hiring a crack attorney to get him out of trouble. While such messages may be drawn from an unsuccessful prosecution, the IRS can avoid them in large part by making careful assessments of the cases before them. By choosing cases that are open and shut, the Service lowers its risk of loss and bad publicity. And while some losses are unavoidable, the IRS can counter bad publicity by making affirmative public statements with a tax-positive spin.

For instance, Wesley Snipes was acquitted of the most serious charges levied against him.¹⁸⁴ Some articles covering the outcome of the trial suggested that the mixed outcome of the trial was a stunning defeat and a setback in terms of publicized attitudes toward tax compliance.¹⁸⁵ [*1531] But the defeat referred to is only with respect to the tax-fraud allegations.¹⁸⁶ All articles admit that Snipes was convicted of tax evasion,¹⁸⁷ which is sufficient to meet the IRS's goal of publicizing the successful prosecution of tax evaders. In fact, a cursory review of the articles suggests that the majority of the coverage focused on Snipes's conviction for tax evasion with limited mention of his acquittal for tax fraud.¹⁸⁸ This largely tax-friendly coverage of the Snipes conviction may have been influenced by strategic news releases containing positive statements by the prosecuting attorneys and representatives from the IRS.¹⁸⁹

Along the same lines, in implementing the mass-media approach the IRS must be careful not to allow media coverage to suggest that tax evasion is common or, on the flip side, that celebrities are being singled out for harsher treatment. While this problem has no simple solution, the best response may be for the IRS to continue to manage public perception through the use of strategic press releases and other public statements.

Additionally, in implementing the mass-media approach, the IRS faces a challenge with respect to the potential for additional costs in prosecuting high-profile individuals. Many of the individuals prosecuted for tax evasion are

¹⁸² Since 2000, tax evaders mentioned in the news include Boris Becker, Ronald Isley, Luciano Pavarotti, Martha Stewart, Richard Hatch, Wesley Snipes, and Joe Francis. See Fontanez, *supra* note 1.

¹⁸³ See *supra* note 43 and accompanying text.

¹⁸⁴ David Cay Johnston, Wesley Snipes Cleared of Serious Tax Charges, *N.Y. Times*, Feb. 2, 2008, available at <http://www.nytimes.com/2008/02/02/business/02tax.html>.

¹⁸⁵ See, e.g., *id.*; Wesley Snipes Acquitted of Federal Tax Fraud, *MSNBC.com*, Feb. 1, 2008, <http://www.msnbc.msn.com/id/22955757/>; Martin Zimmerman, Actor Snipes Acquitted of Tax Fraud, Guilty of Failing to File a Return, *L.A. Times*, Feb. 2, 2008, available at <http://articles.latimes.com/2008/feb/02/business/fi-snipes2>.

¹⁸⁶ See Johnston, *supra* note 184; Zimmerman, *supra* note 185.

¹⁸⁷ Mr. Snipes was found not guilty of felony tax fraud under [section 7201 of the I.R.C.](#) See Johnston, *supra* note 184. He was found guilty of failing to file a tax return under section 7203 of the I.R.C, a misdemeanor statute. See *id.* Both are criminal statutes that require proof that an individual was required to file a return and willfully failed to do so. The details of the differences between the two are irrelevant for this discussion. The important point is that regardless of his acquittal, Mr. Snipes was found guilty of tax evasion under the general definition of the term, i.e., failure to report income subject to tax liability.

¹⁸⁸ See *supra* notes 165, 169, 172, 184, 185 .

¹⁸⁹ See Press Release, U.S. Attorney Robert E. O'Neill, U.S. Dep't of Justice, Wesley Snipes Sentenced to Three Years Imprisonment (Apr. 24, 2008), available at www.usdoj.gov/usao/flm/pr/2008/April/20080424_SnipesKahnRosile_OcTaxSent.pdf.

high-net-worth individuals and have the resources to hire lawyers to mount a defense not necessarily available to the average taxpayer. Applying the mass-media approach in such circumstances requires the IRS to weigh the advantages of the cases before it. Under the Code, however, attorney's fees can be awarded to the prevailing party in tax litigation.¹⁹⁰ And although the award is limited by what is "reasonable," the government has recovered significant attorney's fees in the past.¹⁹¹ In addition, the fines imposed by the courts in successful tax evasion prosecutions should be considered in offsetting the increased cost of litigation. For instance, in 1989, Leona Helmsley was ordered to [*1532] pay \$ 7.1 million in fines in addition to the \$ 1.7 million she owed in evaded taxes.¹⁹² By referring cases with a higher likelihood of success, the IRS can manage the risk of increased cost of prosecution.

Finally, as discussed above, some individuals will simply never choose to comply and will have to be prosecuted before fulfilling their tax obligations.¹⁹³ Tax protestors will likely not be influenced by social values, norms, or other nonpecuniary sanctions. Even facing nonpecuniary sanctions, individuals such as Wesley Snipes, Eddie Kay Kahn, and Douglas Rosile¹⁹⁴ will choose to present costly defenses rather than simply pay their tax obligations. Although this cannot be considered the norm,¹⁹⁵ part of the tax gap is certainly comprised of such strategic noncompliers who will never voluntarily comply and who will comply involuntarily only after caught. The mass-media solution targets only the marginal taxpayers, who are subject to influence because they have no strong ideological objection to cooperation and evade only occasionally when the opportunity presents itself.

The creation and reinforcement of "good" norms is a process that occurs over time. To reinforce norms, the IRS must be vigilant in continuing to send messages to the taxpaying public that evasion is bad and that the satisfaction of tax obligations is good. Beyond that, the creation of norms is a slow process. Through mass media, the public is faced with common social values. Embedding these values into the individual's sense of self and sense of community creates social norms. But doing so takes time. Telling someone that smoking cigarettes is bad will initially be met with resistance. Creation of a norm occurs only after a lengthy campaign to influence behavior through the dissemination of information and the eventual acceptance of specific values. The mass-media approach is therefore limited in its immediate efficacy and its ability to respond to changes in IRS compliance goals.

Conclusion

The issue of voluntary compliance is essential to any discussion of methods of closing the tax gap. Because of the size and scope of the American tax system, performing individual audits on even a majority of income tax returns is not feasible. Therefore, approaches to reducing the tax gap are more effectively focused on encouraging taxpayers to want to [*1533] honestly and completely report their income. As a supplement to actual legal punishment, influencing social norms and values can be a valuable tool in combating noncompliant behavior and improving compliance among marginal taxpayers. The mass-media approach focuses on the use of mass media to publicize the prosecution of high-profile individuals as a way to change attitudes and behavior. To the extent that mass media and advertising have a lasting effect on behavior, presenting an appropriate campaign for voluntary

¹⁹⁰ [I.R.C. § 7430](#) (2006).

¹⁹¹ In the Wesley Snipes case, the government was awarded attorney fees and costs totaling about \$ 217,000. Associated Press, Judge: Snipes Must Reimburse Government, USA Today, Aug. 5, 2008, http://www.usatoday.com/life/people/2008-08-05-snipes_N.htm.

¹⁹² Enid Nemy, Leona Helmsley, Hotel "Queen," is Dead at 87, N.Y. Times, Aug. 21 2007, available at <http://topics.nytimes.com/2007/08/21/nyregion/21helmsley.html?pagewanted=1>.

¹⁹³ See supra note 56 and accompanying text.

¹⁹⁴ Mr. Kahn and Mr. Rosile were co-defendants in the Snipes trial. See U.S. v. Wesley Snipes, supra note 161.

¹⁹⁵ In 2001, the IRS collected approximately \$ 50 billion in back taxes and corrected returns. Office of Tax Policy, supra note 3, at 13. This suggests a relatively high rate of post-audit success in collection.

compliance can have lasting effects on norms of behavior. Because it is limited in scope, however, the mass-media approach can only be viewed as a supplement to alternative and more traditional methods of encouraging compliance. Increased audits, increased punishment, simplification of the Code, and better customer services are therefore all still relevant considerations in creating a symbiotic approach to tax compliance.

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