

# "Hello Summer 2022"



**Dear Valued Clients, Friends and BTLG Family!**

Welcome to our inaugural Brager Tax Law Group quarterly newsletter.

Summer is a commemorative season, so it seems apt that we launch our newsletter as America celebrates its birthday!

We have all tried to navigate the new normal, following a 2-year global seemingly on-going pandemic, and so we felt it necessary to get in touch with you, all our valuable BTLG stakeholders to share news both related to tax and that of a more social nature. Lest we all forget, attorneys are human too.

Our quarterly newsletters will include tax law related articles, introduction to one or two Brager Tax Law Group team members, forthcoming event dates, and a personal message from *yours truly*.

Our newsletter will be responsibly distributed in digital format only as we aim to reduce our carbon footprint on our planet. As a token of thank you to our clients, we are proud to have partnered with the **Eden Reforestation Projects** and will donate 50 trees for every new review that we receive on social media including Google and Yelp. So let us know what we've done right and we will reward the planet. You can read more about this worthy initiative on Page 4.

Similarly, we are always seeking new ways for improvement. I invite you to email your suggestions to our director of communications, Ana-Paula Ferreira at [aferreira@bragertaxlaw.com](mailto:aferreira@bragertaxlaw.com) so that we may be of better service to our present and future clients.

I would like to wish you and your loved ones a happy summer and safe travels if you are going to be on the busy roads.

**Dennis Brager**



**Brager  
Tax  
Law  
Group**

Tax Controversy Law

## Summer 2022 E-Newsletter

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### Technically Speaking....

Stay connected as we relaunch our social media platforms. Like and follow us on Facebook, LinkedIn, and on our YouTube Channel, where we will upload short **FAQ's** videos and post noteworthy events such as our regular webinars and in person media appearances. We will also be updating our website, which will be launched towards the end of the summer!





## What to Do When the IRS' Criminal Tax Division Contacts You?

by Dennis Brager: Tax Law Specialist Attorney

Keep your mouth shut! Our criminal tax attorneys know it can be scary when the Internal Revenue Service contacts you for a tax audit, but even more so when a Special Agent from their Criminal Tax Division shows up.

Special Agents like to use the element of surprise, so more often than not, they will unexpectedly knock on your front door, usually early in the morning at either your home or place of business. They do this to catch you off guard and so you'll be unprepared, and spill your guts. Imagine that you're getting ready to leave for work, take your kids to school, or just having your morning cup of coffee. Then knock, knock, knock, two Special Agents (they always travel in pairs) are at your front door, flashing gold badges and carrying guns (yes, they are armed), telling you they need to ask you some questions. You begin to feel light-headed, your heart starts to pound and you may break into a cold sweat. Now what?

The investigation can be for a number of reasons, but is always because the IRS believes a criminal tax crime has been committed by you or someone else. A federal tax crime includes tax evasion, tax fraud, FBAR violations and more. Sometimes they believe you may be a witness against someone else they are investigating, or worse, that you are under criminal tax investigation. Regardless of why you are contacted, you need to know your rights and that you are entitled to be represented by a criminal tax attorney BEFORE you speak to the Special Agents. The Internal Revenue Manual states that Special Agents are required to advise you of your Miranda rights prior to asking you any questions. But even if they don't Mirandize you, you are still entitled to those rights.

Politely, and non-confrontationally, ask for their business card and tell the Special Agents that you are not comfortable speaking with them at this time and will have your criminal tax attorney contact them. Then do not say anything else and go back into your house, office, etc. Unless they have an arrest warrant, they cannot arrest you; and if they haven't shown you an arrest warrant at the beginning of the contact, odds are they don't have one.

Likewise for a search warrant; unless they have a search warrant, you are not obligated to provide any documents or other items (such as computers, etc.).

Do not provide any information, documents or other items, or ask any questions. Remember that anything you say can be used against you. Even if you are told you are only being contacted as a witness and not the subject or target of an investigation, you could inadvertently say something that incriminates you or makes the Special Agents want to investigate you too. While the Agents can appear friendly and may try to make it seem like they are there to help you, keep in mind they are investigating what they believe is a federal tax crime. At this point they may have already contacted other people, conducted interviews and/or surveillance and subpoenaed bank and other financial records. They may even already know the answers to the questions they are asking you. Based upon their investigation they can recommend the case be sent to a U.S. Attorney for criminal prosecution.

If you are found guilty, that could mean time in a federal prison in addition to the assessment of taxes, interest, penalties and fees! It is important to know that Special Agents are specially trained IRS agents who carry a firearm and can serve you with a search warrant or subpoena. That is why it is extremely important that you obtain a criminal tax attorney prior to speaking with the agents to protect your rights.

You may think that by speaking with the Special Agents you are appearing to be cooperative, and talk your way out of the problem, but remember, once you say something or turn over documents, you can't take it back.





## CHALLENGING MATTERS



Our client is challenging the net investment income tax ("NIIT") in district court, arguing that it is a Medicare tax, and that he is exempt from paying it under the 2000 South Korea-U.S. Social Security Agreement.

Brager Tax Law Group filed the complaint on behalf of our client with the U.S. District Court for the Central District of California in spring 2022. In it our client, who was a resident of South Korea until September 2015, seeks to recover hundreds of thousands of dollars in taxes, plus interest, related to the NIIT paid to the IRS for the 2015 tax year.

In 2017 our client filed an amended return with a statement asking for a refund in which he argued that because he was subject to the Korean National Pension Law for most of 2015, the NIIT should not catch the income he earned in Korea before becoming a California resident. In 2020 an IRS examiner proposed to disallow the refund claim, asserting that the NIIT was an income tax and not a Medicare tax that could benefit from the exemption under the Social Security Agreement. The examiner also concluded that foreign tax credits ("FTCs") could not offset the tax.

The IRS' Independent Office of Appeals sustained the examiner's determination in 2021.

In the complaint our client asserts that the NIIT was designed to fund a larger Medicare, noting it was implemented along with an increased Medicare tax.

The complaint states that the objective of the NIIT "was to ensure that individuals with similarly high levels of income who derived income from nonwage sources contributed to the newly expanded health care program in a similar manner as wage earners. The [NIIT] is described as a Medicare tax in the legislative text and its location in the Internal Revenue Code is consistent with that status. In fact, the full name of the [NIIT] as referenced in the legislative text is 'Unearned Income.'"

Further, our client argues that even if the NIIT is an income tax, under the 1976 South Korea-U.S. tax treaty, FTCs should be allowed to offset the tax he paid.

Although it isn't mentioned in the complaint, a recent Tax Court decision casts a long shadow over our client's FTC argument. In *Toulouse v. Commissioner*, 157 T.C. No. 4 (Aug. 16, 2021), the Tax Court held that U.S. tax treaties with France and Italy don't allow a U.S. citizen living abroad to use FTCs to offset the NIIT under section 1411.

The decision is not without its critics, with many practitioners arguing that the Tax Court's analysis was wrong. Since our case is in the district court, the Tax Court's decision is not binding, and only time will tell if our client will recover his funds.

*"The only difference  
between death and taxes  
is that death doesn't get worse  
every time congress meets!"*

**Will Rogers: American Actor  
1879-1935**

## BTLG is Proud to Partner With



Eden Reforestation Projects

The Eden Reforestation Projects works with local communities to restore forests on a massive scale, thereby creating jobs, protecting ecosystems, and helping mitigate climate change.

They are currently working in Kenya, Ethiopia, Madagascar, and Mozambique among other developing countries, where combined the project donors have planted over 980 million trees. The project has also created 11,500 jobs globally at their 266 project sites.

If you would like to help with global reforestation and save lives then join the program that restores the environment through reforestation and support communities for the long-term by becoming a partner, a donor, or a carbon project sponsor.

Visit [www.edenprojects.org](http://www.edenprojects.org) to learn more.



## Have You Met Erika Assayag?



There is a tongue in cheek joke that circulates within corporate corridors, that goes: ***"I don't want to speak to the boss, I want to talk to the lady who actually knows what's going on!"*** Well, at Brager Tax Law Group (BTLG), **Erika Assayag** is just that person.

As BTLG's Firm Administrator and Paralegal, Erika knows the *'ins and outs'* of our law firm and she is the glue that keeps everything together while making it look like a breeze.

Erika joined BTLG as Dennis Brager's *'wing lady'* almost 25 years ago, which in today's work ethos is a remarkable achievement all in itself. We hope that this is a positive reflection of our company's culture, and therefore our valuable team members like to stick around.

A devoted wife and mom of two teenagers (and 2 dogs, 2 cats and a 5 year old goldfish), Erika enjoys cooking and traveling, but is at her happiest just enjoying family time.

Do you have tax law related information or a personal happy story that you would like to share with us for our next newsletter's fall issue?

Email the editor at:

[aferreira@bragertaxlaw.com](mailto:aferreira@bragertaxlaw.com)



*"Worried about an IRS audit?  
Avoid what's called a red flag.  
That's something the IRS  
always looks for.*

*For example, say you have  
some money left in your bank  
account **after** paying taxes.*

*That's a red flag!"*

**Jay Leno: Late-night show host**