# FROM TAX COURT JUDGE TO TAX FRAUD DEFENDANT

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Arsenio Hall, a late night TV talk show host from the early 1990s, had a segment he called, "Things That Make You Go 'Hmmmmm'". This past Monday, an indictment handed down by a federal grand jury in Minnesota definitely made criminal tax lawyers across the country go 'Hmmmmm."

The indictment, brought against a 60-year-old woman and her 62-year old husband, alleges that the couple conspired to defraud the United States, evaded their federal taxes, filed false tax returns, and obstructed the Internal Revenue Service in its administration of the federal income tax laws. Those allegations are interesting to lawyers, like me, who handle these types of cases. But the allegations are not what made us go "Hmmmmm."

What did make us go 'Hmmmmm" was the identity of the female defendant, Diane Kroupa. Between June, 2003 and June, 2014, Ms. Kroupa served as a judge. A federal judge.

### A federal judge on the . . . . United States Tax Court.

**That's right.** A retired United States Tax Court judge has been charged with having committed half a dozen federal tax felonies. If convicted of all the counts set forth in the indictment, Ms. Kroupa and her husband could each be imprisoned for 24 years, although my back-of-the-envelope calculations say that a sentence in the two- to five-year range would be far more likely in the event of a conviction.

## Tax Fraud Timeline

The indictment alleges that Ms. Kroupa and her husband, Robert Fackler, cheated on their taxes for tax years 2004 through 2010. During that time period, Mr. Fackler worked as a self-employed lobbyist and political consultant. The alleged cheating consisted mostly of the claiming of improper deductions on the couple's tax returns, although the indictment also includes some allegations relating to the underreporting of income.

Specifically, the indictment charges that Ms. Kroupa and Mr. Fackler fraudulently claimed that personal expenses were deductible business expenditures of Mr. Fackler's lobbying and consulting business.

**These expenses included such things as:**

- rent and other expenses associated with a house in Maryland in which Ms. Kroupa stayed while fulfilling her duties on the Tax Court in Washington, D.C.;
- expenses associated with the couple's Minnesota home such as cleaning and remodeling;
- pilates classes;
- spa and massage fees;
- jewelry and personal clothing;
- wine club fees and purchases at wineries;
- expenses for vacations to places such as Australia, China, Greece, Hawaii and Thailand;
- Chinese tutoring;
- music lessons;
- Christmas cards;
- groceries;
- and others.

The indictment also charges that Ms. Kroupa falsely reported that certain personal expenses constituted "Unreimbursed Employee Expenses" in connection with her employment as a United States Tax Court judge. These expenses included personal grooming services for family members; purchases at Barnes & Noble for family members; personal meals; and household decorations.

As to unreported income, the indictment accuses Ms. Kroupa of failing to report $44,520 that she received in 2010 from the sale of land in South Dakota. The indictment alleges that in September, 2012, Ms. Kroupa sent an email to her tax preparer claiming that a deposit into her bank amount in the approximate amount of $44,520 in July 2010 came from an inheritance and was not the proceeds of the South Dakota land sale, "when in fact and as knew, the $44,520 payment was from the South Dakota land sale."

In addition to not reporting income and claiming false deductions, the indictment also accuses Ms. Kroupa and Mr. Fackler of various types of misconduct during IRS audits of their tax returns.

- The indictment accuses the couple of concealing certain records and documents and claiming that they had not kept records as to certain matters.
- The indictment further claims that Ms. Kroupa and Mr. Fackler fed their tax preparer false information, causing him in turn to make false representations to the IRS auditors.

For example, Ms. Kroupa and Mr. Fackler allegedly told the preparer, who then told the IRS, that the Maryland home was used by Mr. Fackler as a business office and that Ms. Kroupa did not stay there while in Washington, D.C.

**All in all, according to the indictment, Ms. Kroupa and Mr. Fackler**

> *"purposely understated their taxable income by approximately $1,000,000 and purposely understated the amount of tax owed by at least $400,000" for the period from 2004 through 2010.*

An indictment is merely an accusation and does not constitute evidence that any crimes were committed.  Both Ms. Kroupa and Mr. Fackler are presumed innocent unless and until proven guilty. Both Ms. Kroupa and Mr. Fackler have pled not guilty to the charges.

At this point no one can say how the case will turn out, but one observation does come to mind. Criminal tax cases often turn on issues involving "willfulness," as the law generally requires the Government to prove that a criminal tax defendant acted "willfully," that is, that the defendant voluntarily and intentionally violated a known legal duty.

Criminal tax defendants often claim that, if they omitted something from their reported income, or claimed as a deduction something that did not qualify as a deduction, they did so by mistake, rather than willfully, and so their conduct was not criminal.  Ms. Kroupa may have a tough time making such an argument.

**In the words of the indictment,**

> *"As a Tax Court Judge, heard and decided cases involving a wide variety of tax law issues, including what is required to be reported as income and what constitutes proper business deduction."*