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DISSEMINATE ONLY PURSUANT TO RULE 6(e), FED.R. CRIM.P.

GERARD C. MARCHELLETTA
Alpharetta, GA 30004
SSN:

REDACTED

Years: 1999 2000 2001

Violations:

REDACTED

THERESA L. KOTTWITZ
Alpharetta, GA 30005
SSN:

REDACTED

Years: 1999 2000 2001

Violations:

REDACTED

GERARD C. MARCHELLETTA, SR.
Alpharetta, GA 30005
SSN:

REDACTED

Years: 1999 2000 2001

Violations:

REDACTED

WITH RESPECT TO PROPOSED DEFENDANTS THERESA L. KOTTWITZ AND GERARD C. MARCHELLETTA SR., THIS IS A REQUEST FOR EXPANSION OF THE GRAND JURY AS WELL AS A RECOMMENDATION FOR PROSECUTION.

Special Agent: Patricia Bergstrom
Revenue Agent: Jack Lesso

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Internal Revenue Service

Department of the Treasury
Criminal Investigation
2888 Woodcock Boulevard, Suite 303
Atlanta, GA 30341

Rebecca A. Sparkman
Special Agent in Charge
401 W. Peachtree Street, N.W.
Atlanta, GA 30308

Person to Contact:
Patricia Bergstrom
Telephone Number:
(404) 338-7540
Refer Reply to:
CI:FO:SE:ATL
Date:

IN RE: GERARD C. MARCHELLETTA



REDACTED

REPRESENTATIVE: Bruce Maloy
75 Fourteenth Street
Atlanta, GA 30309
Ph. (404) 875-2700

IN RE: THERESA L. KOTTWITZ



REDACTED

REPRESENTATIVE: Jerome Froelich
1349 West Peachtree Street
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Ph. (404) 881-1111

IN RE: GERARD C. MARCHELLETTA, SR.



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REPRESENTATIVE: Bruce Maloy
75 Fourteenth Street
Atlanta, GA 30309
Ph. (404) 875-2700

FINAL: Prosecution

INTRODUCTION

Recommended Charges and Prosecution Years

REDACTED

Returns Filed and Statute of Limitations

GERARD C. MARCHELLETTA

False Returns

<u>Periods</u>	<u>Forms</u>	<u>Returns</u>	<u>Transcript of Account</u>	<u>Prosecution Barred After</u>
1999	1040	(W1-2)	(W1-1)	12-18-2007
2000	1040	(W1-6)	(W1-5)	12-18-2007
0103	1120	(W1-4)	(W1-3)	12-06-2007

THERESA L. KOTTWITZ

False Returns

<u>Periods</u>	<u>Forms</u>	<u>Returns</u>	<u>Transcript of Account</u>	<u>Prosecution Barred After</u>
1999	1040	(W1-2)	(W1-1)	12-18-07
0103	1120	(W1-4)	(W1-3)	12-06-07
2000	1040	(W1-6)	(W1-5)	12-18-07
2000	1040	(W1-8)	(W1-7)	04-15-07

GERARD C. MARCHELLETTA, SR.

False Returns

<u>Periods</u>	<u>Forms</u>	<u>Returns</u>	<u>Transcript of Account</u>	<u>Prosecution Barred After</u>
2000	1040	(W1-8)	(W1-7)	04-15-2007
0103	1120	(W1-4)	(W1-3)	12-06-2007

Conspiracy: The statute of limitations for the conspiracy involving all three subjects will expire on April 11, 2010, six years from the last overt act (#10), on page 11 of this report (W8-15).

Venue

GERARD C. MARCHELLETTA

26 U.S.C. § 7206(1):

MARCHELLETTA filed both his 1999 and 2000 Forms 1040 at the IRS Atlanta Campus, located in the Northern District of Georgia (W1-2)(W1-6).

18 U.S.C. § 371 (Klein):

Overt acts of the conspiracy occurred in the Northern District of Georgia, including the filing of the false Form 1120 of Circle Industries for the year ended March 31, 2001 (W1-3)(W1-4).

MARCHELLETTA was President of Circle Industries USA Inc. (Circle), located at 2555 Marconi Drive, Alpharetta, GA 30005, which is located in the Northern District of Georgia. He devoted 100 percent of his time to Circle (W1-4, page 2)(W4-6, page 3).

26 U.S.C. § 7206(2):

Circle's Form 1120 for the year ended March 31, 2001, was filed at the IRS Atlanta Campus (W1-3)(W1-4).

THERESA L. KOTTWITZ

18 U.S.C. § 371 (Klein):

Overt acts of the conspiracy occurred in the Northern District of Georgia, including the filing of the false Form 1120 of Circle Industries for the year ended March 31, 2001 (W1-3)(W1-4).

KOTTWITZ was employed since 1999 as Controller of Circle, located at 2555 Marconi Drive, Alpharetta, GA, 30005, which is located in the Northern District of Georgia (W5-2, page 3, paragraph 4)(W14-4, page 2).

26 U.S.C. § 7206(2):

Schwartz worked with KOTTWITZ to conduct annual certified audits at the offices of Circle located at 2555 Marconi Drive, Alpharetta, GA, which is located in the Northern District of Georgia (W4-2, paragraphs 7 and 8). Schwartz prepared the Form 1120 for Circle for year ending March 31, 2001, filed with the IRS Atlanta Campus on December 6, 2001, which is located in the Northern District of Georgia (W1-4)(W4-2, paragraph 10).

Schwartz worked exclusively with KOTTWITZ to prepare the 1999 and 2000 Forms 1040 for MARCHELLETTA, and the 2000 Form 1040 of MARCHELLETTA SR. (W4-2, paragraph 21). The 1999 and 2000 Forms 1040 of MARCHELLETTA were filed at the IRS Atlanta Campus, which is located in the Northern District of Georgia (W1-1)(W1-2)(W1-5)(W1-6)

GERARD C. MARCHELLETTA, SR.

18 U.S.C. § 371 (Klein):

Overt acts of the conspiracy occurred in the Northern District of Georgia, including the filing of the false Form 1120 of Circle Industries for the year ended March 31, 2001 (W1-3)(W1-4).

26 U.S.C. § 7206(2):

MARCHELLETTA SR. was a 75 percent shareholder of Circle. The offices of Circle were located at 2555 Marconi Drive, Alpharetta, GA 30005, which is located in the Northern District of Georgia. The books and records of Circle which were falsified were maintained at the offices of Circle. During the year ending March 31, 2001, MARCHELLETTA SR. devoted 75 percent of his time to Circle (W1-4, page 2).

Circle's Form 1120 for the year ended March 31, 2001, was filed at the IRS Atlanta Campus (W1-3)(W1-4).

Beginning on or about October 2000, MARCHELLETTA SR. lived in an apartment at [REDACTED] located in the Northern District of Georgia (W26-1)(W27-1)(W29-1, paragraph 17)(W36-1, paragraph 8)(W36-6).

On January 18, 2001, MARCHELLETTA SR. signed a contract in Georgia to construct a new home located at 320 Newport Bay Cove, Alpharetta, GA 30005, which is located in the Northern District of Georgia (W29-2).

Investigative Contact(s) with Subject(s) and/or Representative(s)

GERARD C. MARCHELLETTA

Power of Attorney	September 26, 2002 (W2-2)
Other Contact	September 18, 2002 (W2-4)
	January 21, 2003 (W2-5)
	May 13, 2003 (W2-6)
	November 9, 2005 (W2-7)
	January 17, 2006 (W2-8)

THERESA L. KOTTWITZ

Power of Attorney	December 9, 2005 (W2-9)
Other Contact	February 12, 2003 (W2-10)
	September 6, 2005 (W2-11)

GERARD C. MARCHELLETTA, SR.

Power of Attorney	September 26, 2002 (W2-3)
Other Contact	September 18, 2002 (W2-4)
	January 21, 2003 (W2-5)
	May 13, 2003 (W2-6)
	November 9, 2005 (W2-7)
	January 17, 2006 (W2-8)

Other Pertinent Data

GERARD C. MARCHELLETTA

No Pertinent Data

THERESA L. KOTTWITZ

No Pertinent Data

GERARD C. MARCHELLETTA, SR.

Other Notable Information - Date of Birth - December 13, 1934

THEORY OF THE INVESTIGATION

REDACTED

REDACTED

Background

The investigation originated from an information item by the U.S. Customs Service in Atlanta, GA. On March 16, 2001, U.S. Customs, located in Memphis, Tennessee (TN), seized a Federal Express package containing three endorsed checks totaling \$1,515,523.13. These checks were being mailed from TERRI KOTTWITZ, of The Circle Group, LLC, located at 2555 Marconi Drive, Alpharetta, GA, to Zarina Fitzgerald at H&J Corporate Services, located in the Bahamas. The three checks, payable to Circle Group Limited, were endorsed by MARCHELLETTA and attached to a letter from KOTTWITZ, with instructions to Fitzgerald to deposit the checks into a Turks and Caicos bank account. The letter also advised that KOTTWITZ would begin to address profile data sheets for JERRY and JERRY SR. The matter was referred to U.S.

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Customs Special Agent Kimberly Sellers, located in Atlanta, GA, to investigate the possible illegal source of the monetary instruments (W5-1, pages 2 to 8).

On July 25, 2001, Agent Sellers interviewed KOTTWITZ and Circle attorney Marianne Boston at the offices of Circle, located at 2555 Marconi Drive, Alpharetta, GA 30005. During the interview, KOTTWITZ and Boston explained to Agent Sellers that the checks seized by U.S. Customs were for drywall installation for the construction of the Atlantis Casino in the Bahamas. During the course of the interview, the Circle attorney repeatedly asked Agent Sellers if she was going to contact the IRS (W5-2)(W5-3).

U.S. Customs returned the seized funds to Circle on or about December 2002 (W5-6).

Circle Industries USA Inc. (Circle) was incorporated in the State of Georgia on August 28, 1997. At the time, the officers listed included JERRY MARCHELLETTA JR., and JERRY MARCHELLETTA SR., among others (W7-2, pages 1, 5 and 6).

TCG Holdings Ltd., a nominee company, was incorporated in Turks and Caicos on April 10, 2000. TCG Holdings Limited maintained a bank account at the Turks and Caicos Banking Company Limited. Correspondence and statements were addressed to TERRI KOTTWITZ at 2555 Marconi Drive, Alpharetta, GA 30005 (W7-3)(W7-4)(W7-5)(W7-6)(W7-7).

Circle Industries USA Inc. later changed names to The Circle Group, LLC (W5-2, page 3, paragraph 5).

Prior to 1999, MARCHELLETTA SR. was a 30 percent partner in the New York based drywall company Nastasi & Associates (Nastasi). At the end of 1998, Nastasi and MARCHELLETTA SR. decided to separate their business interests (W32-3)(W33-1, paragraph 3).

BOOKS AND RECORDS AND PREPARATION OF TAX RETURN(S)

CIRCLE INDUSTRIES USA INC.

Circle maintained a fiscal year-end accounting period of March 31 and utilized the percent of completion method of accounting. A summary of the accounting system was prepared by IRS Revenue Agent Jack Lesso. Lesso reconciled the books and records of Circle to the Form 1120 of Circle for the year ending March 31, 2001 (W3-1)(W3-3)(W4-2, paragraph 20).

The main operating bank account for Circle was maintained at Bank of America. The account was established as a sweep account, thus, most daily deposits and all checks written from the account were listed as summarized debits or credits. As a result, the monthly bank statements did not identify specific checks written from the Circle bank account (W12-1)(W12-2).

KOTTWITZ was the Controller of Circle, and was responsible for maintaining the books and records of Circle (W5-2, page 3, paragraph 4)(W4-2, paragraphs 5,7 and 8) (W14-4, page 2). Prior to her employment at Circle, she was employed as a secretary with Nastasi & Associates, Inc., in New York (W4-2, paragraph 3).

Gary Schwartz, a C.P.A. located in New York, was hired by KOTTWITZ in 1998 to perform certified audits, prepare financial statements and prepare corporate income tax returns for Circle beginning with the fiscal year ending March 31, 1999. Schwartz subsequently prepared the corporate tax returns of Circle for fiscal years ending March 31, 2000 and 2001. He also prepared financial statements and a draft corporate tax return for fiscal year ending March 31, 2002, however, he never finalized this return as he was fired by KOTTWITZ on or about July 2003 (W4-2, paragraphs 5 to 10) (W4-9)(W4-10).

Schwartz performed certified audits at the offices of Circle each year. At the conclusion of the audit for the year ending March 31, 2001, Schwartz prepared the Financial Statements and Auditor's Report of Circle Industries, USA Inc. for the year ended March 31, 2001. Schwartz worked with KOTTWITZ at the offices of Circle to conduct the audit and relied on her representations and explanations in resolving any issues (W4-2, paragraphs 5 to 10)(W4-4).

GERARD C. MARCHELLETTA

Schwartz prepared the 1999 Form 1040 for MARCHELLETTA. He never met with MARCHELLETTA about the matter, rather, he coordinated with KOTTWITZ to obtain all the information he needed to prepare the return (W4-2, paragraph 21).

Schwartz prepared financial statements for MARCHELLETTA as of August 31, 2001, and August 31, 2002. The financial statements for each period listed the net worth of MARCHELLETTA as \$1,288,450.00 and \$1,425,200.00 respectively (W4-7)(W4-8).

THERESA L. KOTTWITZ

KOTTWITZ worked with Schwartz exclusively in the preparation of the Circle corporate returns as well as the individual income tax returns of MARCHELLETTA and MARCHELLETTA SR. (W4-2, paragraph 21).

GERARD C. MARCHELLETTA, SR.

Schwartz prepared the 2000 Form 1040 for MARCHELLETTA SR. According to Schwartz, each year MARCHELLETTA SR. provided him, via KOTTWITZ, with a neat package of documents such as Forms 1099, Forms W-2, and any other receipts needed to prepare the tax returns. Schwartz dealt with KOTTWITZ in preparing this return (W4-2, paragraph 21)(W4-3, paragraph 3).

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According to Schwartz, MARCHELLETTA SR. was very astute in tracking revenue and expenses of Circle. He described MARCHELLETTA SR. as an accounting type, who prepared and maintained a financial report on Circle that KOTTWITZ referred to as the "JM report." Schwartz reviewed the report and observed that the JM report was a periodic compilation of Circle's revenues and expenses. Schwartz used the JM report to reconcile with Circle's computer generated billing reports (W4-3, paragraph 2).

ELEMENTS OF THE OFFENSE(S)

GERARD C. MARCHELLETTA, THERESA KOTTWITZ, GERARD MARCHELLETTA SR.

ELEMENTS OF 18 U.S.C. §371 (Klein-Type)

1. Existence of an agreement by two or more persons: The following evidence will prove that GERARD C. MARCHELLETTA, THERESA KOTTWITZ, and GERARD C. MARCHELLETTA SR., conspired to defraud the United States by concealing from the IRS taxable individual income of MARCHELLETTA, MARCHELLETTA SR. and CIRCLE INDUSTRIES U.S.A. INC.:

- MARCHELLETTA, MARCHELLETTA SR., and KOTTWITZ's agreement to defraud the United States Government by actively impeding and impairing the IRS in the ascertainment, assessment and collection of their income tax liabilities is inferred from the totality of the circumstances.

SUPPORTING EVIDENCE: See Overt Acts in Furtherance of the Conspiracy

2. To commit an offense against the United States or to defraud the United States:

- MARCHELLETTA, MARCHELLETTA SR., and KOTTWITZ' agreement to defraud the United States Government by actively impeding and impairing the IRS in the ascertainment, assessment and collection of their income tax liabilities is inferred from the totality of the circumstances.

SUPPORTING EVIDENCE: See Overt Acts in Furtherance of the Conspiracy

3. Commission of an overt act by one or more of the parties in furtherance of the conspiracy:

THE CRABAPPLE PROJECT

1. On January 29, 1999, MARCHELLETTA acquired 1,000 shares in G & C Enterprises Limited, a Turks and Caicos Company, witnessed by attorney Thomas DeBerry.

SUPPORTING EVIDENCE: (W8-7)(W8-8)(W8-9)

2. On January 29, 1999, George Gorman, President of G & C, authorized a discretionary loan of not more than \$300,000.00 to MARCHELLETTA.

SUPPORTING EVIDENCE: (W8-7)

3. On March 3, 1999, MARCHELLETTA signed a purchase and sale agreement for the purchase of 6.8 acres of land in the Tullamore subdivision in Fulton County, GA, at the price of \$250,000.00. The contract contained a handwritten provision that the seller agrees to allow buyer (MARCHELLETTA) the option of closing on the eight acre Lot 23 at a price of \$400,000.00 should his father relocate to Georgia and decide to live in Tullamore.

SUPPORTING EVIDENCE: (W10-2, pages 1,4 and 6)

4. On April 10, 1999, MARCHELLETTA signed a loan agreement with G & C to borrow \$250,000.00, due as a balloon note of \$352,649.65 on April 11, 2004.

SUPPORTING EVIDENCE: (W8-10)(W8-11)

5. On April 13, 1999, \$250,000.00 was wired from ScotiaBank Bahamas Limited account of C & G, to closing attorney Wilson, Brock & Irby LLC, in Atlanta, GA.

SUPPORTING EVIDENCE: (W10-4)

6. On April 14, 1999, MARCHELLETTA closed on Lot 9A in the Tullamore Subdivision in Fulton County, GA.

SUPPORTING EVIDENCE: (W10-3)(W14-1)(W14-2)

7. On November 30, 1999, MARCHELLETTA signed a contract to construct a 5,700 square foot Italian Villa style home at the initial cost of \$729,120.00. The home was to be built in an area of metropolitan Atlanta referred to as "Crabapple."

SUPPORTING EVIDENCE: (W11-3)(W11-1, paragraphs 4 and 6)(W4-7, page 2)

8. On April 6, 2000, MARCHELLETTA SR. discussed openly with MARCHELLETTA the use of Circle checks to pay for construction expenses on MARCHELLETTA's new home. Immediately after this discussion, MARCHELLETTA gave his builder, Bob Seay, Circle check #23041, payable to Lummus Supply Company, in the amount of \$49,803.64.

SUPPORTING EVIDENCE: (W11-2, paragraphs 3 and 4) (W12-29)

9. On April 6, 2000, KOTTWITZ posted the Circle check to Lummus Supply Company as a direct material expense for Crabapple project #00999.

SUPPORTING EVIDENCE: (W7-16, page 1)

10. On April 30, 2004, Gorman extended the April 11, 2004, due date for the \$250,000.00 loan to MARCHELLETTA to April 11, 2005. The loan has never been repaid.

SUPPORTING EVIDENCE: (W8-15)(W8-2)

THE NEWPORT BAY PROJECT

11. On February 11, 1999, the Bank of America account for Circle in Atlanta, GA, received a \$250,000.00 wire transfer from Nastasi & Associates, Inc. (Nastasi). The payment was for the exchange of stock pursuant to an agreement among Nastasi, Circle, Frank Nastasi and MARCHELLETTA SR. The amount was a capital gain to MARCHELLETTA SR.

SUPPORTING EVIDENCE: (W12-3, page 4)(W32-3)(W32-4)
(W33-1, paragraphs 5 and 6)(W33-2)

12. On February 19, 1999, KOTTWITZ posted the \$250,000.00 wire transfer from Nastasi to the books of Circle as an increase to cash and a credit to the liability account "Due to Nastasi."

SUPPORTING EVIDENCE: (W3-4, Event #1)

13. On September 14, 1999, MARCHELLETTA SR. signed a purchase and sale agreement for the purchase of a lot located at 320 Newport Bay Cove, Alpharetta, GA, at a price of \$275,000.00. An addendum to the contract reduced the price of the lot to \$269,000.00 and assigned the contract from MARCHELLETTA SR. to Circle.

SUPPORTING EVIDENCE: (W16-3)(W16-4)

14. On October 4, 1999, a check drawn on the bank account of Circle in the amount of \$270,000.00 was used to purchase a \$270,000.00 cashiers check payable to Circle Industries, USA. The check, among others to MARCHELLETTA and on his behalf, was posted to the books of Circle as a reduction to cash and established a debit balance in the "Notes Payable to Officer" account.

SUPPORTING EVIDENCE: (W3-4, Event #2)

15. On October 5, 1999, Circle closed on the property located at 320 Newport Bay

Cove, using the \$270,000.00 cashiers check payable to Circle, to pay for the property.

SUPPORTING EVIDENCE: (W14-5)(W16-7)(W16-11)

16. On January 18, 2001, MARCHELLETTA SR. signed a contract with Marc Dorman to build a new home located at [REDACTED] at the initial cost of 574,677.79. MARCHELLETTA SR. gave Dorman Circle check #26878, as earnest money of \$15,000.00.

SUPPORTING EVIDENCE: (W29-1, paragraph 9)(W29-2)(W29-3)

17. On January 18, 2001, KOTTWITZ posted the \$15,000.00 check to Dorman as a Subcontract Labor expense for Newport Bay project #00998.

SUPPORTING EVIDENCE: (W7-25, page 4)

18. On March 31, 2002, Circle deeded the property located at [REDACTED] to MARCHELLETTA SR. The deed was executed by MARCHELLETTA, as President of Circle, and was witnessed by KOTTWITZ.

SUPPORTING EVIDENCE: (W14-6)(W18-1)

19. On July 15, 2002, MARCHELLETTA SR. executed a quitclaim deed of gift on the property at [REDACTED] from himself (MARCHELLETTA SR.) to both he and his wife, Margaret Marchelletta. The event was witnessed by KOTTWITZ.

SUPPORTING EVIDENCE: (W14-7)

THE NASTASI CONSULTING INCOME SCHEME

20. On January 1, 2000, MARCHELLETTA SR. signed a payment guarantee with Nastasi & Associates Inc. and Frank Nastasi, which provided that Nastasi would pay MARCHELLETTA SR. \$1,300,000.00 in consulting fees pursuant to a consulting agreement. The payments were to be made in weekly increments of \$6,000.00.

SUPPORTING EVIDENCE: (W32-5, page 1)

21. On January 1, 2000, a consulting agreement between Nastasi, Circle and MARCHELLETTA SR. was executed whereby Nastasi agreed to hire Circle and MARCHELLETTA SR. as consultants in an advisory and consulting capacity.

SUPPORTING EVIDENCE: (W32-5, page 4)

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22. On or about January 6, 2000, MARCHELLETTA SR. directed Stanley Schleger, the C.P.A. for Nastasi, to make the checks for consulting fees payable to Circle.

SUPPORTING EVIDENCE: (W33-1, paragraph 8)

23. On January 6, 2000, a Circle invoice in the amount of \$6,000.00 for Consulting Fees for the week of January 7, 2000, was sent by facsimile from Circle to Nastasi.

SUPPORTING EVIDENCE: (W32-57, page 1)

24. On March 31, 2001, Schwartz recorded the fiscal year total of \$300,000.00 received from Nastasi as "Other Income" to Circle. On that same date, KOTTWITZ directed Schwartz to reclassify the "Other Income" to instead "Note Payable to Officer."

SUPPORTING EVIDENCE: (W3-4, Events # 8 and 9)(W4-2, paragraph 14)

25. On April 15, 2001, MARCHELLETTA SR. filed a fraudulent Form 1040 for 2000 by omitting from income a total of \$321,156.53, which included \$311,566.53 in consulting fees from Nastasi.

SUPPORTING EVIDENCE: (W1-7)(W1-8)(Appendix D)

26. On August 21, 2001, pursuant to a certified audit of Circle by Schwartz for year ending March 31, 2001, MARCHELLETTA signed a letter which represented that all financial records were made available, no fraudulent financial reporting occurred, all related party transactions were disclosed and there were no material transactions improperly recorded.

SUPPORTING EVIDENCE: (W4-6)

27. On December 6, 2001, a fraudulent Form 1120 for Circle for the fiscal year ending March 31, 2001, was filed with \$314,671.22 in fraudulent expenses.

SUPPORTING EVIDENCE: (W1-3)(W1-4)(Appendix B)(Appendix B-1)

28. On December 18, 2001, MARCHELLETTA filed a fraudulent Form 1040 for 1999 by omitting from income a total of \$263,146.70.

SUPPORTING EVIDENCE: (W1-1)(W1-2)(Appendix C-1)

29. On December 18, 2001, MARCHELLETTA filed a fraudulent Form 1040 for 2000 by omitting from income a total of \$167,304.96.

SUPPORTING EVIDENCE: (W1-5)(W1-6)(Appendix C-2)

4. Intent to defraud or to commit the substantive offense:

- In a civil lawsuit filed by MARCHELLETTA against builder Seay, KOTTWITZ filed an affidavit which stated that she was responsible for making payments for the MARCHELLETTA home, which was partly paid by the company as a form of compensation to MARCHELLETTA.

SUPPORTING EVIDENCE: (W14-4, page 2, paragraph 2)

- In the same civil lawsuit filed against Seay, MARCHELLETTA also filed an affidavit which stated that he made payments directly to contractors because Seay was not paying them.

SUPPORTING EVIDENCE: (W14-3, page 4, paragraph 12)

- In a civil lawsuit deposition on May 20, 2002, MARCHELLETTA stated that the Circle checks used to pay for the construction of his new home were treated as an employee loan.

SUPPORTING EVIDENCE: (W15-2, pages 13 and 14)

- In the same deposition on May 20, 2002, MARCHELLETTA admitted that he knew his new home cost up to \$1,400,000.00.

SUPPORTING EVIDENCE: (W15-2, page 26, lines 21 to 23)

- In a civil lawsuit deposition on May 23, 2002, MARCHELLETTA admitted that Circle was going to pay for part of the construction cost of his new home.

SUPPORTING EVIDENCE: (W15-3, page 10, lines 5 to 12)

- In the same deposition on May 23, 2002, MARCHELLETTA admitted that KOTTWITZ, at Circle, was paying the invoices for the costs of the new home.

SUPPORTING EVIDENCE: (W15-3, page 111, lines 18 and 19)

- KOTTWITZ coordinated with Schwartz on the preparation of the individual tax returns of both MARCHELLETTA and MARCHELLETTA SR.

SUPPORTING EVIDENCE: (W4-2, paragraph 21)

- KOTTWITZ never provided Schwartz the separation, payment guarantee and consulting agreements between Nastasi, Circle and MARCHELLETTA SR. Schwartz did not see the separation agreement until Ted Robertson showed it to

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him after the initiation of the criminal investigation.

SUPPORTING EVIDENCE: (W4-2, paragraph 16)(W4-3, paragraph 3, page 2)

- Circle sent weekly \$6,000.00 invoices to Nastasi for consulting fees from April 1, 2000 through March 31, 2001. These payments were deducted as consulting expenses on the books of Nastasi.

SUPPORTING EVIDENCE: (W33-59 through 71)(W33-1, paragraph 8)
(W33-5, page 9)(W33-6, page 8)

- KOTTWITZ told Schwartz that the weekly checks from Nastasi were a loan from MARCHELLETTA SR. to Circle. Schwartz asked KOTTWITZ to produce a promissory note, but she never provided one.

SUPPORTING EVIDENCE: (W4-2, paragraph 14)

- When conducting the audit of Circle for fiscal year ending March 31, 2002, Schwartz found some costs on Circle's books for the construction of MARCHELLETTA SR.'s new home. When questioned, KOTTWITZ admitted that Circle had provided the labor for the drywall construction in the home. KOTTWITZ drove Schwartz to see MARCHELLETTA SR.'s new home. Schwartz advised KOTTWITZ to either treat the labor costs as compensation to MARCHELLETTA SR. or issue a promissory note to MARCHELLETTA SR. and have him actually pay the funds back to Circle.

SUPPORTING EVIDENCE: (W4-2, paragraph 15)

- Schwartz never knew that MARCHELLETTA also built a new home.

SUPPORTING EVIDENCE: (W4-2, paragraph 17)

- KOTTWITZ fired Schwartz in July 2003, and advised him the Circle income tax return for the year ending March 31, 2002, was being delayed because of the accounting issues discovered by him. She also advised him that Circle was hiring a Georgia accountant to correct the accounting issues, and a revised Form 1120 for fiscal year ending March 31, 2002, would be prepared to reflect the corrected amounts. KOTTWITZ told Schwartz that she wanted to do everything the right way.

SUPPORTING EVIDENCE: (W4-2, paragraph 18)

- A total of \$1,024,173.81 was posted to Crabapple project #00999 by December 31, 2001.

SUPPORTING EVIDENCE: (W7-8A, W7-8B and W7-8C, page 19)

- A total of \$1,039,396.00 was posted to Newport Bay Project #00998 by March 2002.

SUPPORTING EVIDENCE: (W7-10A and W7-10B, page 26)

- Nastasi paid Circle a total of \$929,566.68 through December 31, 2002.

SUPPORTING EVIDENCE: (W32-6, page 7) (Appendix B-1)

Intended Conspiracy

- On July 2, 2002, an attorney representing Circle contacted U.S. Customs Assistant Chief Counsel Thomas Brooks to determine if the IRS was involved in the U.S. Customs investigation of Circle. Brooks confirmed to Abbey that the IRS was involved in the investigation. On July 3, 2002, the same attorney representing Circle contacted Agent Sellers in an attempt to determine if the IRS was involved in her investigation of Circle. On August 7, 2002, Circle attorney Marianne Boston advised Agent Sellers that they had confirmed her criminal investigation of Circle and/or the MARCHELLETTA's.

SUPPORTING EVIDENCE: (W6-1, paragraphs 3 and 4)(W5-4)(W5-5)

- By September 18, 2002, Defense counsel Bruce Maloy and retired IRS Special Agent Ted Robertson advised his clients not to file any additional tax returns.

SUPPORTING EVIDENCE: (W2-4, paragraph 4)

- The investigation documented that the intended scheme was to file a fraudulent Form 1120 for Circle for fiscal year ending March 31, 2002, with false expenses totaling \$1,427,913.47; a fraudulent 2001 Form 1040 for MARCHELLETTA with unreported from personal expenses paid by Circle of \$768,202.75; and fraudulent 2001 and 2002 Forms 1040 for MARCHELLETTA SR. with unreported income from personal expenses paid by Circle and consulting fees from Nastasi totaling \$869,650.75 and \$379,657.88, respectively.

SUPPORTING EVIDENCE: See Appendix E and E-1

- Schwartz prepared a draft 2001 Form 1040 for MARCHELLETTA which reported an adjusted gross income of \$200,175.00. A revised 2001 Form 1040 was prepared by Randy Brown, C.P.A., which reported an adjusted gross income of \$1,315,373.00. This return has not yet been filed.

SUPPORTING EVIDENCE: (W60-8)(W60-10)(W1-11)

- On February 23, 2004, Brown prepared a revised 2001 Form 1040 for MARCHELLETTA SR. The 1040 prepared by Brown reported an adjusted gross income of \$1,552,905.00, and was filed on March 9, 2004. Brown's work papers document additions to the Schwartz return as follows: (Note: This original tax

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return was ordered but was not received as of the date of this report.)

Home Construction (Per TR*):	\$812,455.00
Credit Cards:	76, 591.00
Weekly expense payments:	30,000.00
Nastasi consulting income to LTCG (Per TR*):	\$312,000.00

* (ex-IRS Special Agent Ted Robertson)

SUPPORTING EVIDENCE: (W60-16)(W60-11)(W1-12)

- Prior to his being fired, Schwartz prepared an adjusted trial balance for Circle for the period ending March 31, 2002, which reported executive salaries at \$379,352.00. The Circle Form 1120 for the year ending March 31, 2002, prepared by Brown reported executive salaries at \$2,413,422.00. The return prepared by Brown was filed on May 30, 2004. (Note: This original tax return was ordered but had not been received as of the date of this report.)

SUPPORTING EVIDENCE: (W4-10, page 5)(W60-3, page 3)

GERARD C. MARCHELLETTA

ELEMENTS OF 26 U.S.C. §7206(1)

1. The person made or subscribed a return, statement, or other document which was false as to a material matter:

1999 Form 1040

- MARCHELLETTA omitted \$263,146.70 from line 21 on his 1999 Form 1040.

SUPPORTING EVIDENCE: (Appendix C-1)

- MARCHELLETTA did not disclose the existence of a foreign bank account on his 1999 Form 1040.

SUPPORTING EVIDENCE: (W1-2)(W4-2, paragraph 21)(W8-7)(W8-8)(W8-9)(W8-44)(W8-45)(W8-51)

2000 Form 1040

- MARCHELLETTA omitted \$167,304.96 from line 21 on his 2000 Form 1040.

SUPPORTING EVIDENCE: (Appendix C-2)

- The below computation shows the resulting criminal tax due for the 1999 and 2000 Form 1040 for GERARD C. MARCHELLETTA:

<u>Particulars</u>	<u>1999</u>	<u>Exhibit No.</u>	<u>2000</u>	<u>Exhibit No.</u>
Taxable Income Per Returns	\$127,897.00	W1-2	\$ 94,753.00	W1-6
Add:				
Bogus Loan	\$250,000.00	App. C-1		App. C-2
Expenses pd. by Circle	\$ 13,146.70	W3-6	\$167,304.96	W3-6
Totals	\$391,043.70		\$262,057.96	
Less Additional Deductions	\$ 18,894.00	W3-6	\$19,019.00	W3-6
Corrected Taxable Income	\$409,938.00	W3-6	\$281,077.00	W3-6
Correct Tax	\$133,331.00		\$83,648.00	
Tax Per Return	\$ 29,715.00	W1-2	\$20,536.00	W1-6
Additional Tax Due and Owing	\$103,616.00	W3-6	\$63,112.00	W3-6

2. The return, statement, or other document contained a written declaration that it was made under the penalties of perjury:

1999 Form 1040

- MARCHELLETTA identified his signature on his 1999 Form 1040.

SUPPORTING EVIDENCE: (W2-7, paragraph 1)

2000 Form 1040

- MARCHELLETTA identified his signature on his 2000 Form 1040.

SUPPORTING EVIDENCE: (W2-7, paragraph 2)

3. The maker did not believe the return, statement, or other document to be true and correct as to every material matter:

1999 Form 1040

- On or about December 10, 1998, G & C Enterprises Limited (G & C) was incorporated in the Turks and Caicos Islands. On or about January 29, 1999, the Directors of G & C, George Gorman and Christobal Risher, transferred 500 shares each of G & C stock to MARCHELLETTA.

SUPPORTING EVIDENCE: (W8-5)(W8-7)(W8-8)(W8-9)

- G & C was set up in Turks and Caicos to transfer profits from C & G Enterprises Limited (C & G), located in the Bahamas.

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SUPPORTING EVIDENCE: (W8-1, paragraph 15)

- C & G maintained a bank account at ScotiaBank in the Bahamas as early as February 1999 to service Circle's drywall construction project at the Atlantis Casino on Paradise Island. The monies deposited into the C & G account were from Circle in payment for drywall work on the Atlantis Casino.

SUPPORTING EVIDENCE: (W8-1, paragraph 15)(W8-16)

- During January through April 1999, C & G's ScotiaBank bank account received at least \$268,819.98 from Circle.

SUPPORTING EVIDENCE: (W2-12)

- On January 29, 1999, in a G & C stockholder meeting, Gorman presented a business resolution that as President, he was authorized to make a discretionary loan of not more than \$300,000.00 to MARCHELLETTA, which would be secured by a pledge of real property.

SUPPORTING EVIDENCE: (W8-7)

- On March 3, 1999, MARCHELLETTA signed a purchase and sale agreement for the purchase of 6.8 acres in the Tullamore Subdivision in Alpharetta, GA, for the price of \$250,000.00. The sales agreement noted that there would be a cash closing.

SUPPORTING EVIDENCE: (W10-2, pages 1, 4 and 6)

- On April 10, 1999, a loan agreement was executed between G & C and JERRY MARCHELLETTA, whereby G & C agreed to lend MARCHELLETTA \$250,000.00, which was due in the form of a balloon note of \$352,649.65 on April 11, 2004.

SUPPORTING EVIDENCE: (W8-10)(W8-11)

- From February 1999 through April 1999, C & G invoiced Circle at least \$565,767.67 for work on the Atlantis Casino in the Bahamas. Circle paid C & G at least \$636,822.07 for the work.

- SUPPORTING EVIDENCE: (W2-12)

- On April 13, 1999, \$250,000.00 was wired from ScotiaBank Bahamas Limited account of C & G, to closing attorney Wilson, Brock, & Irby LLC, in Atlanta, GA.

SUPPORTING EVIDENCE: (W10-4)(W8-51)

- On April 14, 1999, MARCHELLETTA closed on Lot 9A in the Tullamore Subdivision, Fulton County, GA with the funds wired from C & G to the closing attorney Wilson,

Brock & Irby, LLC.

SUPPORTING EVIDENCE: (W10-3)(W14-1)(W14-2)

- Shawn McBride, a bodyguard hired by Gorman, was present in the planning of the loan from G & C to MARCHELLETTA. The planning took place at the offices of attorney Thomas DeBerry, located adjacent to Gorman's company. During the meeting, McBride described how they all laughed about the scenario. DeBerry told MARCHELLETTA that he would make the loan disappear, and perhaps even turn it into a tax loss for him.

SUPPORTING EVIDENCE: (W9-1)

- On December 1, 1999, MARCHELLETTA, under penalty of perjury, signed a residential loan application form to obtain a construction loan for his new home. On the form, MARCHELLETTA stated that the source of the down payment included his "equity in lot" and claimed he had no mortgage or lien on the lot.

SUPPORTING EVIDENCE: (W13-3, pages 1 and 3)

- On October 5, 2005, attorney Bruce Morris advised on behalf of Gorman that MARCHELLETTA had never repaid the loan from G & C.

SUPPORTING EVIDENCE: (W8-2)

Gorman read on 8-12-05

REDACTED

2000 Form 1040

- During the construction of his new home, MARCHELLETTA began insisting to his builder, Bob Seay, be paid with checks from Circle in lieu of draws from his construction loan. This began in April 2000, when MARCHELLETTA gave Seay a Circle check payable to Lummus Supply Company in the amount of \$49,803.64. On the occasion when Seay received this check, MARCHELLETTA SR. told MARCHELLETTA that 'we could pay those ourselves because we do business with them.'

SUPPORTING EVIDENCE: (W11-1, paragraph 8)(W11-2, paragraphs 3,4)

- On December 28, 2000, MARCHELLETTA faxed Seay a list of items which he

intended to pay on his own. The list detailed items totaling \$212,668.00.

SUPPORTING EVIDENCE: (W11-4, pages 1 to 6)

- MARCHELLETTA used salaried employees of Circle to oversee the construction of his home.

SUPPORTING EVIDENCE: (W7-9)

4. Willfulness:

1999 Form 1040

- MARCHELLETTA knew that if the loan to G & C were not repaid, it would be taxable income to him.

SUPPORTING EVIDENCE: (W8-1, paragraph 15)

- On April 30, 2004, well after the start of the criminal investigation, Gorman signed a one year extension on the loan repayment from MARCHELLETTA.

SUPPORTING EVIDENCE: (W8-15)

- On October 5, 2005, attorney Bruce Morris advised on behalf of Gorman that MARCHELLETTA had never repaid the loan from G & C.

SUPPORTING EVIDENCE: (W8-2)

- Shawn McBride, a bodyguard hired by Gorman, was present in the planning of the loan from G & C to MARCHELLETTA. The planning took place at the offices of attorney Thomas DeBerry, located adjacent to Gorman's company. During the meeting, McBride described how they all laughed about the scenario. DeBerry told MARCHELLETTA that he would make the loan disappear, and perhaps even turn it into a tax loss for him.

SUPPORTING EVIDENCE: (W9-1)

- In early 1999, MARCHELLETTA contracted with architect Cameron Padgett Inc. to design an Italian Country home with approximately 5,700 square feet. The initial cost of the design was \$4,080.00.

SUPPORTING EVIDENCE: (W23-1, paragraph 2)(W11-8)

- On November 30, 1999, MARCHELLETTA contracted with Bob Seay, a residential builder, to build the home designed by Cameron Padgett, at a cost of \$729,120.00.

SUPPORTING EVIDENCE: (W11-3)(W11-1, paragraph 6)

- On or about December 1, 1999, MARCHELLETTA applied for a construction loan at First Colony Bank for the construction of a new home on the lot in Tullamore. On the application he listed the value of the unimproved lot at \$300,000.00.

SUPPORTING EVIDENCE: (W13-3)

- On an Officer's Loan Committee memorandum regarding the construction loan to MARCHELLETTA, it was noted that the appraised value of the improved property was \$1,100,000.00. It was also noted that the "borrower" would collect funds from a variety of sources to have a permanent loan of not more than \$300,000.00. The memo also noted that approximately \$125,000.00 would come from the sale of his current residence with the balance of funds coming in from funds in corporate accounts in the Bahamas.

SUPPORTING EVIDENCE: (W13-4)

- MARCHELLETTA had several conversations with the loan officer at First Colony Bank during which MARCHELLETTA discussed using funds from his Bahamian bank accounts to pay for the construction of the new home.

SUPPORTING EVIDENCE: (W13-1, paragraph 2)

2000 Form 1040

- On or about July 2001, MARCHELLETTA fired Bob Seay as the builder of his new home. Seay, in turn, sued MARCHELLETTA for non-payment of his builder's fees. MARCHELLETTA countersued, and during the course of the civil lawsuit, MARCHELLETTA filed an affidavit in which he claimed during December 2000 and May 2001, one or more contractors for Mr. Seay indicated they were not being paid, and thus he (MARCHELLETTA) made direct payments to them.

SUPPORTING EVIDENCE: (W14-3, page 4)

- The same civil lawsuit resulted in recorded depositions taken from MARCHELLETTA on May 20, 2002 and May 23, 2002. During the deposition taken on May 20, 2002, MARCHELLETTA was questioned if some form of compensation was given him by Circle from the checks paid from the Circle bank account. MARCHELLETTA responded that he believed that it was shown as an employee loan.

SUPPORTING EVIDENCE: (W15-2, pages 13 and 14)

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- During the same deposition on May 20, 2002, when questioned about the cost of his new home, MARCHELLETTA responded that the home cost between \$700,000.00 and \$1,400,000.00.

SUPPORTING EVIDENCE: (W15-2, page 26, lines 21 to 23)

- During the deposition on May 23, 2002, when questioned about how he was going to pay for the new home MARCHELLETTA responded that he had financed \$400,000.00, and the balance was going to be paid by Circle Industries.

SUPPORTING EVIDENCE: (W15-3, page 10, lines 5 to 12)

- During the same deposition on May 23, 2002, MARCHELLETTA stated that he had advised Seay during the pricing exercise, that he would be doing some of the finishes on the home.

SUPPORTING EVIDENCE: (W15-3, page 15, lines 6 to 8)

- During the same deposition on May 23, 2002, MARCHELLETTA admitted that KOTTWITZ, at Circle, was paying the invoices for the home.

SUPPORTING EVIDENCE: (W15-3, page 111, lines 18 and 19)

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ELEMENTS OF 26 U.S.C. §7206(2)

1. The person aided or assisted in, or procured, counseled, or advised the preparation or presentation of a return, affidavit, claim, or other document which involved a matter arising under the Internal Revenue laws:

Form 1120, Circle Industries USA Inc., Fiscal Year Ending March 31, 2001

- In connection with the audit performed by Schwartz for fiscal year ending March 31, 2001, MARCHELLETTA signed a letter to Schwartz which represented that all financial records were made available, no fraudulent financial reporting occurred, all related party transactions were disclosed and there were no material transactions improperly recorded.

SUPPORTING EVIDENCE: (W4-6)

2. The return, affidavit, claim, or other document was fraudulent or false as to a material matter:

- False deductions totaling \$314,671.22 were deducted from the Form 1120 of Circle for the fiscal year ending March 31, 2001.

SUPPORTING EVIDENCE: (Appendix B)(Appendix B-1)

- The balance sheet of the Form 1120 contained a false loan from shareholder balance of \$280,932.00.

SUPPORTING EVIDENCE: (W1-4, page 4)

- The below computation shows the resulting criminal tax due for the Form 1120 for Circle Industries, USA, Inc. for the fiscal year ending March 31, 2001:

Particulars	<u>0103</u>	<u>Exhibit No.</u>
Taxable Income Per Return	\$1,090,354.00	W1-4
Add:		
False Expenses	314,671.22	W3-5, App. B
Totals	\$1,405,025.00	
Less Additional Deductions	0.00	
Corrected Taxable Income	\$1,405,025.00	W3-5
Correct Tax	477,708.00	W3-5
Tax Per Return	370,720.00	W1-4

Additional Tax Due and
Owing \$106,988.00 W3-5

3. Willfulness:

- During 2000, Circle paid personal expenses of MARCHELLETTA totaling \$167,304.96.

SUPPORTING EVIDENCE: (Appendix C-2)

- MARCHELLETTA used Circle employees to manage the construction of his home and pay the subcontractors with Circle checks.

SUPPORTING EVIDENCE: (W7-9)(W15-4, pages 186-190, 206)

- MARCHELLETTA's personal financial statement as of August 31, 2001, disclosed the market value of his residence in Crabapple at \$1,400,000.00 and the mortgage on the residence at \$400,000.00.

SUPPORTING EVIDENCE: (W4-7, page 2)

- In 2001, MARCHELLETTA and MARCHELLETTA SR. were each using the same builder, Marc Dorman, on their respective homes.

SUPPORTING EVIDENCE: (W29-1, paragraphs 2-7)

- In 2001, MARCHELLETTA received personal benefit from the Nastasi consulting fees to Circle when Bob Seay, his builder, was paid \$53,680.00 with a Circle check. This amount reduced the "Note Payable to Officer" account on the books of Circle.

SUPPORTING EVIDENCE: (W3-4, Event #12)(W11-6)(W12-128)

THERESA L. KOTTWITZ

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DISSEMINATE ONLY PURSUANT TO RULE 6(e), F.E.D.R, CRIM.P.

ELEMENTS OF 26 U.S.C. §7206(2)

1. The person aided or assisted in, or procured, counseled, or advised the preparation or presentation of a return, affidavit, claim, or other document which involved a matter arising under the Internal Revenue laws:

1999 Form 1040 for GERARD C. MARCHELLETTA

- KOTTWITZ coordinated with Schwartz on the preparation of the 1999 Form 1040 of MARCHELLETTA.

SUPPORTING EVIDENCE: (W4-2, paragraph 21)

Form 1120 for Circle Industries USA Inc. for Year Ended March 31, 2001

- When conducting the audit of Circle for fiscal year ending March 31, 2002, Schwartz found some costs related to the construction of MARCHELLETTA SR.'s home. When questioned by Schwartz, KOTTWITZ admitted that Circle had provided the labor for the drywall construction in the home. KOTTWITZ drove Schwartz to see the new home.

SUPPORTING EVIDENCE: (W4-2, paragraph 15)

- KOTTWITZ never told Schwartz that MARCHELLETTA was also building a home.

SUPPORTING EVIDENCE: (W4-2, paragraph 17)

- KOTTWITZ never provided Schwartz the corporate separation agreement with Nastasi, nor the payment guarantee and consulting agreement between Nastasi, Circle and MARCHELLETTA SR. Instead, each year KOTTWITZ directed Schwartz reclassify the amounts as a loan from MARCHELLETTA SR.

SUPPORTING EVIDENCE: (W4-2, paragraph 16)

- KOTTWITZ told Schwartz the weekly checks from Nastasi were a loan from MARCHELLETTA SR. to Circle. Schwartz asked KOTTWITZ to produce a promissory note, but she never provided one to him.

SUPPORTING EVIDENCE: (W4-2, paragraph 14)

- KOTTWITZ fired Schwartz in July 2003, and advised him that Circle was hiring a Georgia accountant to correct the accounting issue he had discovered. KOTTWITZ told Schwartz she wanted to do everything the right way.

SUPPORTING EVIDENCE: (W4-2, paragraph 17)

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- KOTTWITZ never disclosed to Schwartz the existence of any foreign bank accounts for Circle until the Circle checks were seized by U.S. Customs in March 2001.

SUPPORTING EVIDENCE: (W4-2, paragraphs 11 and 12)

2000 Form 1040 for GERARD C. MARCHELLETTA

- KOTTWITZ coordinated with Schwartz on the preparation of the 2000 Form 1040 of MARCHELLETTA.

SUPPORTING EVIDENCE: (W4-2, paragraph 21)

- KOTTWITZ never told Schwartz that MARCHELLETTA was also building a home.

SUPPORTING EVIDENCE: (W4-2, paragraph 17)

2000 Form 1040 for GERARD C. MARCHELLETTA SR.

- KOTTWITZ coordinated with Schwartz on the preparation of the 2000 Form 1040 of MARCHELLETTA SR.

SUPPORTING EVIDENCE: (W4-2, paragraph 21)

- KOTTWITZ never provided Schwartz the corporate separation agreement with Nastasi, nor the payment guarantee and consulting agreement between Nastasi, Circle and MARCHELLETTA SR. Instead, each year KOTTWITZ directed Schwartz reclassify the amounts as a loan from MARCHELLETTA SR.

SUPPORTING EVIDENCE: (W4-2, paragraph 16)

- KOTTWITZ told Schwartz the weekly checks from Nastasi were a loan from MARCHELLETTA SR. to Circle. Schwartz asked KOTTWITZ to produce a promissory note, but she never provided one to him.

SUPPORTING EVIDENCE: (W4-2, paragraph 14)

- KOTTWITZ recorded the checks for MARCHELLETTA SR.'s new home on the books of Circle as costs of Newport Bay project #00998.

SUPPORTING EVIDENCE: (Appendix B)(W7-10)

2. The return, affidavit, claim, or other document was fraudulent or false as to a material matter:

1999 Form 1040 for GERARD C. MARCHELLETTA

- A total of \$263,146.70 was omitted from Line 21 of the 1999 Form 1040 for MARCHELLETTA.

SUPPORTING EVIDENCE: (Appendix C-1)

- See tax computation on page 19 of this report.

Form 1120 for Circle Industries USA Inc. for Year Ended March 31, 2001

- False deductions totaling \$314,671.22 were deducted from the Form 1120 of Circle for the fiscal year ending March 31, 2001.

SUPPORTING EVIDENCE: (Appendix B)(Appendix B-1)

- See tax computation on pages 25 and 26 of this report.

2000 Form 1040 for GERARD C. MARCHELLETTA

- A total of \$167,304.96 was omitted from line 21 of the 2000 Form 1040 for MARCHELLETTA.

SUPPORTING EVIDENCE: (Appendix C-2)

- See tax computation on page 19 of this report.

2000 Form 1040 for GERARD C. MARCHELLETTA SR.

- A total of \$321,156.53 was omitted from line 21 of the 2000 Form 1040 for MARCHELLETTA SR.

SUPPORTING EVIDENCE: (Appendix D)

- See tax computation on page 34 of this report.

3. Willfulness:

1999 Form 1040 for GERARD C. MARCHELLETTA

- On November 23, 1999, KOTTWITZ provided employment verification to First Colony Bank for MARCHELLETTA's construction loan.

SUPPORTING EVIDENCE: (W13-2)

- KOTTWITZ used Circle checks and paid personal American Express credit card expenses for MARCHELLETTA including strip club visits and purchase of expensive tailored suits and recorded the amounts on Circle's books as either vehicle expense or travel expense.

SUPPORTING EVIDENCE: (Appendix B)

Form 1120 for Circle Industries USA Inc. for Fiscal Year Ended March 31, 2001

- KOTTWITZ posted Circle checks for the construction of MARCHELLETTA's new home as expenses for Crabapple project #00999.

SUPPORTING EVIDENCE: (Appendix B)

- In a civil lawsuit filed by MARCHELLETTA against his builder, KOTTWITZ filed a sworn affidavit which stated that she was responsible for making payments for the home, which was partly paid by the company as a form of compensation to MARCHELLETTA.

SUPPORTING EVIDENCE: (W14-4, page 2, paragraph 2)

- KOTTWITZ posted Circle checks for the construction of MARCHELLETTA SR.'s new home as expenses for Newport Bay project #00998.

SUPPORTING EVIDENCE: (Appendix B)

- During the fiscal year ending March 31, 2001, Circle received a total of \$300,000.00 in consulting fees from Nastasi.

SUPPORTING EVIDENCE: (Appendix B-1, page 18)

- KOTTWITZ designed a series of complicated journal entries which were recorded on the books of Circle at the direction of KOTTWITZ. These entries ultimately resulted in the consulting fees being converted to a Note Payable to Officer.

SUPPORTING EVIDENCE: (W3-4, pages 1 to 3, Events #8-9)(W4-2, paragraph 14)

- After the Notes Payable to Officer Account was established, the account was reduced when two Circle checks in amounts of \$12,966.00 and \$49,122.00 were written for the payment of personal income taxes for MARCHELLETTA SR. for the year 2000.

SUPPORTING EVIDENCE: (W3-4, pages 1 and 3, Events #10-11)(W1-8, page 8)

- The Note Payable account was further reduced when a Circle check in the amount of \$53,680.00 was written to MARCHELLETTA's builder.

SUPPORTING EVIDENCE: (W3-4, Event #12) (W11-6)(W12-128)

2000 Form 1040 for GERARD C. MARCHELLETTA

- KOTTWITZ recorded the construction and other expenses for MARCHELLETTA's new home as Circle expenses for Crabapple project #00999.

SUPPORTING EVIDENCE: (W7-8)(W7-16 to 27)

- MARCHELLETTA's builder on his new home picked up checks for payment from KOTTWITZ at the offices of Circle.

SUPPORTING EVIDENCE: (W29-1, paragraph 6)

- On February 25, 2002, KOTTWITZ filed an affidavit which stated that she was responsible for paying the bills of MARCHELLETTA's home which was partly being paid by Circle as compensation to MARCHELLETTA.

SUPPORTING EVIDENCE: (W14-4, page 2, paragraph 2)

- On May 22, 2002, KOTTWITZ was deposed as part of a civil lawsuit between Seay and MARCHELLETTA. In the deposition, KOTTWITZ admitted she provided MARCHELLETTA invoices she had paid.

SUPPORTING EVIDENCE: (W15-4, page 283)

2000 Form 1040 for GERARD C. MARCHELLETTA SR.

- KOTTWITZ recorded the expenses for MARCHELLETTA SR.'s new house to Circle project Newport Bay, #00998.

SUPPORTING EVIDENCE: (W7-10)(W7-25 to 27)

- KOTTWITZ either mailed or handed Circle checks to some vendors for the construction of MARCHELLETTA SR.'s home.

SUPPORTING EVIDENCE: (W29-1, paragraph 14)(W36-1, paragraph 6)(W36-7)

- KOTTWITZ recorded other personal expenses for MARCHELLETTA SR. as well on the books of Circle, including fees to an architect, rent on his apartment in Alpharetta, GA, and landscaping costs at his home in Oyster Bay, NY.

SUPPORTING EVIDENCE: (Appendix B-1)

GERARD C. MARCHELLETTA, SR.

ELEMENTS OF 26 U.S.C. §7206(2)

1. The person aided or assisted in, or procured, counseled, or advised the preparation or presentation of a return, affidavit, claim, or other document which involved a matter arising under the Internal Revenue laws:

Form 1120, Circle Industries USA Inc., Fiscal Year Ending March 31, 2001

- MARCHELLETTA SR. prepared a report referred to as the JM report. This report was a periodic compilation of Circle's revenues and expenses. When conducting audits at Circle, Schwartz used the JM report to reconcile with Circle's computer generated billing reports.

SUPPORTING EVIDENCE: (W4-3, paragraph 2)

2000 Form 1040 for GERARD C. MARCHELLETTA SR.

- On January 1, 2000, MARCHELLETTA SR. signed a payment guarantee with Nastasi & Associates and Frank Nastasi, which provided that Nastasi would pay MARCHELLETTA SR. \$1,300,000.00 in consulting fees pursuant to a consulting agreement. These payments would be made in weekly increments of \$6,000.00.

SUPPORTING EVIDENCE: (W32-5, page 1)

- On January 1, 2000, a consulting agreement between Nastasi, Circle and MARCHELLETTA SR. was executed whereby Nastasi agreed to hire Circle and MARCHELLETTA SR. as consultants in an advisory and consulting capacity.

SUPPORTING EVIDENCE: (W32-5, page 4)

- MARCHELLETTA SR. never gave Schwartz copies of the payment guarantee or consulting agreement with Nastasi when Schwartz was preparing his 2000 Form 1040.

SUPPORTING EVIDENCE: (W4-3, paragraph 3)

- MARCHELLETTA SR. instructed Schleger to make the consulting fees checks payable to Circle. Schleger told MARCHELLETTA SR. that if the checks were payable to Circle, Circle would have to invoice Nastasi for the amount.

SUPPORTING EVIDENCE: (W33-1, paragraph 8)

2. The return, affidavit, claim, or other document was fraudulent or false as to a material matter:

Form 1120, Circle Industries USA Inc., Fiscal Year Ending March 31, 2001

- False deductions totaling \$314,671.22 were deducted from the Form 1120 of Circle for the fiscal year ending March 31, 2001.

SUPPORTING EVIDENCE: (Appendix B)(Appendix B-1)

- See tax computation table on pages 25 and 26 of this report.
- The Balance Sheet on page 4 of the Form 1120 of Circle for the fiscal year ending March 31, 2001, falsely reported a year-end balance of Loans from Shareholders in the amount of \$280,932.00.

SUPPORTING EVIDENCE: (W1-4, page 4)

2000 Form 1040 for GERARD C. MARCHELLETTA SR.

- MARCHELLETTA SR. omitted \$321,156.53 from line 21 on his 2000 Form 1040.

SUPPORTING EVIDENCE: (Appendix D)

- The below computation shows the resulting criminal tax due for the 2000 Form 1040 for GERARD C. MARCHELLETTA SR.:

Particulars	2000	Exhibit No.
Taxable Income Per Returns	\$312,197.00	W1-7
Add:		
Consulting Fees	\$300,000.00	Appendix D
Expenses pd. By Circle	\$ 21,156.53	App. D, W3-7
Totals	\$633,353.53	
Less Additional Deductions	9,635.00	W3-7
Corrected Taxable Income	\$642,989.00	
Correct Tax	\$222,794.00	W3-7
Tax Per Return	91,801.00	W1-7
Additional Tax Due and Owing	\$130,993.00	W3-7

3. Willfulness:

Form 1120, Circle Industries USA Inc., Fiscal Year Ending March 31, 2001

- On January 1, 2000, MARCHELLETTA SR. signed a payment guarantee with Nastasi & Associates and Frank Nastasi, which provided that Nastasi would pay MARCHELLETTA SR. \$1,300,000.00 in consulting fees pursuant to a consulting

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agreement. These payments would be made in weekly increments of \$6,000.00.

SUPPORTING EVIDENCE: (W32-5, page 1)

- On January 1, 2000, a consulting agreement between Nastasi, Circle and MARCHELLETTA SR. was executed whereby Nastasi agreed to hire Circle and MARCHELLETTA SR. as consultants in an advisory and consulting capacity.

SUPPORTING EVIDENCE: (W32-5, page 4)

- During the fiscal year ending March 31, 2001, Circle sent Nastasi weekly invoices of \$6,000.00 for consulting fees, which totaled \$300,000.00.

SUPPORTING EVIDENCE: (W32-60; W32-61; W32-62; W32-63; W32-64; W32-65; W32-66; W32-67; W32-68; W32-69; W32-70; W32-71)

- During the fiscal year ending March 31, 2001, Circle received a total of \$300,000.00 in consulting fees from Nastasi.

SUPPORTING EVIDENCE: (W3-4, page 2, Event #8)(Appendix B-1, page 18)

- A series of complicated journal entries were entered on the books of Circle, which ultimately resulted in the amounts posted as a Note Payable to Officer.

SUPPORTING EVIDENCE: (W3-4, pages 1, 2 and 3, Events #8 and 9)

- After the Notes Payable to Officer Account was established, two Circle checks were written for payment of personal income taxes for MARCHELLETTA SR. for the year 2000.

SUPPORTING EVIDENCE: (W3-4, pages 1 and 3, Events #10 and 11)
(W1-8, page 8)

- On April 6, 2000, MARCHELLETTA SR. openly discussed with MARCHELLETTA using Circle checks to pay the expenses for the construction of MARCHELLETTA's new home.

SUPPORTING EVIDENCE: (W11-2, paragraphs 3 and 4)

- During the construction of the home for MARCHELLETTA, the owner of Stone Age Designs, one of the vendors used for the home, once questioned MARCHELLETTA SR. why Circle was paying for the work done at MARCHELLETTA's residence. MARCHELLETTA SR. told him to just deposit the check.

SUPPORTING EVIDENCE: (W34-1, paragraph 7)

- On January 18, 2001, MARCHELLETTA SR. signed a contract with Marc Dorman to build a new home located at 320 Newport Bay Cove, Alpharetta, GA. MARCHELLETTA gave Dorman Circle check #26878, as earnest money of \$15,000.00.

SUPPORTING EVIDENCE: (W29-2)(W29-3)

- The contract with Dorman provided that MARCHELLETTA SR. would be providing all the marble and tiles for the home. In addition, Dorman was advised by MARCHELLETTA SR. at some point during the construction, that MARCHELLETTA SR. would be obtaining and installing the sheetrock in the home.

SUPPORTING EVIDENCE: (W29-2, page 1)(W29-1, paragraph 10)

- During the construction of MARCHELLETTA SR.'s home, Dorman submitted invoices to MARCHELLETTA to get paid. Dorman received Circle checks from MARCHELLETTA SR. or KOTTWITZ at the offices of Circle as payment of his invoices.

SUPPORTING EVIDENCE: (W29-1, paragraphs 14,15 and 16)

2000 Form 1040 for GERARD C. MARCHELLETTA SR.

- On January 1, 2000, MARCHELLETTA SR. signed a payment guarantee with Nastasi & Associates and Frank Nastasi, which provided that Nastasi would pay MARCHELLETTA SR. \$1,300,000.00 in consulting fees pursuant to a consulting agreement. These payments would be made in weekly increments of \$6,000.00. SUPPORTING EVIDENCE: (W32-5, page 1)

- On January 1, 2000, a consulting agreement between Nastasi, Circle and MARCHELLETTA SR. was executed whereby Nastasi agreed to hire Circle and MARCHELLETTA SR. as consultants in an advisory and consulting capacity.

SUPPORTING EVIDENCE: (W32-5, page 4)

- During the calendar year 2000, Circle received a total of \$311,566.68 in consulting fees from Nastasi.

SUPPORTING EVIDENCE: (Appendix B-1, page 15)

- A series of complicated journal entries were entered on the books of Circle, which ultimately resulted in the amounts posted as a Note Payable to Officer.

SUPPORTING EVIDENCE: (W3-4, pages 1 and 2, Events #5 to 7)

- MARCHELLETTA SR. never gave Schwartz copies of the payment guarantee or

consulting agreement with Nastasi when Schwartz was preparing his 2000 Form 1040.

SUPPORTING EVIDENCE: (W4-3, paragraph 3)

- MARCHELLETTA SR. instructed Schleger to make the consulting fees checks payable to Circle. Schleger told MARCHELLETTA SR. that if the checks were payable to Circle, Circle would have to invoice Nastasi for the amount.

SUPPORTING EVIDENCE: (W33-1, paragraph 8)

- Schleger did not issue any Forms 1099 for the payments to Circle, as they were not required by the IRS for payments to corporations.

SUPPORTING EVIDENCE: (W33-1, paragraph 9)

- Invoices from Circle were issued every week to coincide with the consulting payment from Nastasi. The amounts were deducted as consulting expenses on the books of Nastasi.

SUPPORTING EVIDENCE: (W32-57 to 68)(W33-2)(W33-5, page 9)

- On January 7, 2000, MARCHELLETTA SR. paid architectural firm Cameron Padgett Inc. with a Circle check in the amount of \$1,050.00 to design a new home for him in Alpharetta, GA. Padgett worked with the MARCHELLETTA's through August 2001 in revising the design of the home. On different occasions, MARCHELLETTA SR. sent someone driving the Circle limousine to either drop off checks or pick up design plan revisions.

SUPPORTING EVIDENCE: (W12-8)(W23-1, paragraphs 4 and 5)

- On September 15, 2000, Circle started paying for an apartment for MARCHELLETTA SR., located at 46015 Gardner Drive, Alpharetta, GA.

SUPPORTING EVIDENCE: (Appendix B)

- On several occasions during 2000, Circle paid for landscaping services at the home of MARCHELLETTA SR. in Oyster Bay, NY.

SUPPORTING EVIDENCE: (Appendix B)

LIST OF APPENDICES

Appendix A: Summary of False Tax Returns, Criminal Tax Adjustments and Criminal Tax

Appendix B: Specific Items of False Expenditures and Unreported Income

Appendix B-1: Summary of Consulting Fees from Nastasi & Associates
Appendix C-1: Summary of False Material Items for 1999 Form 1040 of GERARD C. MARCHELLETTA
Appendix C-2: Summary of False Material Items for 2000 Form 1040 of GERARD C. MARCHELLETTA
Appendix D: Summary of False Material Items for 2000 Form 1040 of GERARD C. MARCHELLETTA SR.
Appendix E: Summary of Intended False Tax Returns
Appendix E-1: Summary of Specific False Items Intended for Form 1120 for Circle Industries USA Inc. for fiscal year ending March 31, 2002

DISPOSITION OF PROCEEDS

See Appendix B-1

RELEVANT CONDUCT

GERARD C. MARCHELLETTA No Relevant Conduct

THERESA L. KOTTWITZ No Relevant Conduct

GERARD C. MARCHELLETTA, SR. Relevant Conduct Applicable

MARCHELLETTA SR. did not report to the IRS the exchange of stock with Nastasi on his 1999 Form 1040, resulting in unreported capital gain income of \$250,000.00.

SUPPORTING EVIDENCE: (W1-13)(W1-14)(W12-3, page 4)(W32-3)(W32-4)(W33-1, paragraphs 5 and 6)(W33-2)

EXPLANATION AND DEFENSE OF SUBJECT

GERARD C. MARCHELLETTA

MARCHELLETTA established a \$250,000.00 loan from G & C Enterprises Ltd. which paid for his residential land in 1999.

At the beginning of the investigation, defense counsel for MARCHELLETTA and MARCHELLETTA SR. stated a position that any Circle monies used to construct the personal residences of MARCHELLETTA and MARCHELLETTA SR. were intended to be a loan to each of them; however, the loan documents were never drawn up (W2-5).

The Circle Form 1120 for fiscal year ending March 31, 2002, was filed on May 30, 2004. Based on documents subpoenaed from the C.P.A. who prepared the revised return, it is evident that the personal expenses paid by Circle during that year were recorded as compensation to the Officers, MARCHELLETTA and MARCHELLETTA SR. (W1-10)(W60-3, page 3)

THERESA L. KOTTWITZ

No stated defense.

GERARD C. MARCHELLETTA, SR.

No stated defense.

Rebuttal

The loan from G & C Enterprises to MARCHELLETTA has never been repaid (W8-2).

MARCHELLETTA, Gorman and attorney Thomas DeBerry laughed about the scenario when they were setting up the loan from G & C. DeBerry even spoke to MARCHELLETTA about turning the amount into a tax loss for him (W9-1).

Circle had an officer loan account established on the books of Circle as early as April 1999, which could have been used to record loans to MARCHELLETTA and MARCHELLETTA SR. (W7-43)

KOTTWITZ and MARCHELLETTA SR. used the Note Payable to Officer Account to disguise the consulting income from Nastasi (Appendix B-1).

C.P.A. Schwartz was fired after he discovered the accounting issues and when it came time to file the Form 1120 for Circle for the fiscal year ending March 31, 2002. He could have easily amended the tax returns (W4-2, paragraph 17).

CONCLUSIONS AND RECOMMENDATIONS

REDACTED

REDACTED

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Patricia A. Bergstrom ^E

Patricia Bergstrom
Special Agent

Approved:

Thomas J. Holloman

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