

Pasquantino supreme court case 2005

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CRS and CARF expert. No, truly.

April 5, 2024

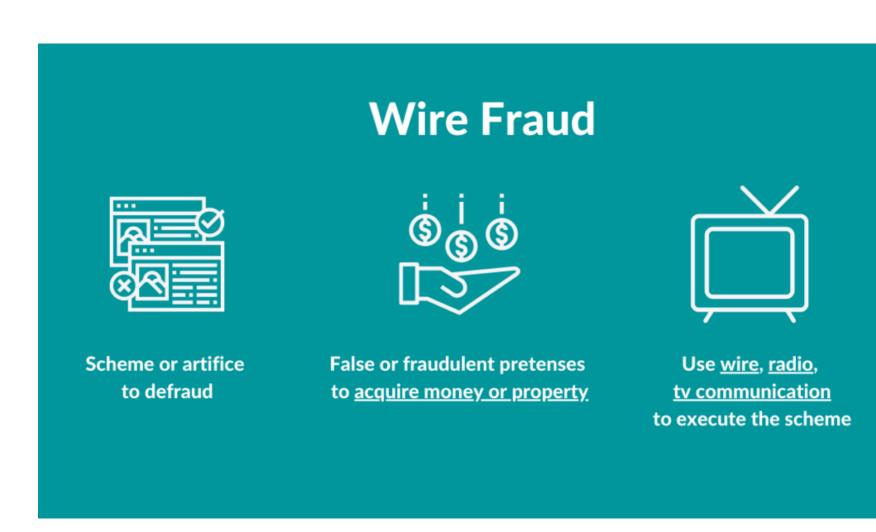
- Supreme court convicted two Canadian brothers of using the US mail and wire
- infrastructure to avoid taxes in Canada by paying for alchohol in US and then smuggling it to Canada to avoid excise taxes. The case is noticable for two reasons. • The US can ignore the centuries old revenue rule and penaluise foreigners for evading tax
- in their own country. Also, the convictions were based on Federal wire and mail fraud. • US advisors and professionals involved in setting up structures to assist foreigners evade
- tax can also be convicted, along with money laundering. Unkowingly, US advisors are taking the same risks as their clients to avoid tax, for very
- little emuneration, considering the risk.



What's the Difference Between Mail Fraud and Wire Fraud?

- Mail and wire fraud are two of the most common crimes charged by federal prosecutors. Both mail and wire fraud require a scheme to defraud the victim of money or property. In other words, the defendant must have deployed a means of deception or deceit – for example, false statements, misrepresentations, or concealment – to deprive the victim of money or property.
- The main difference between mail and wire fraud is the "jurisdictional hook" that allows the Department of Justice to prosecute this conduct as a federal crime. Under the mail fraud statute, the defendant must use the U.S. Postal Service or any private or commercial interstate carrier (like FedEx or UPS) to further the commission of the fraud. In contrast, the wire fraud statute requires the use of an interstate wire transmission such as an email, a fax, a phone call, a text message, or the use of an internet chat room.
- The differing jurisdictional hooks are a reflection of the different sources of constitutional authority that allowed Congress to enact the mail and wire fraud statutes. The mail fraud statute is a product of Congress's power to establish post offices and post roads under the Postal Clause. The wire fraud statute, on the other hand, is an exercise of Congress's authority under the Commerce Clause.
- That distinction is important. Because of its roots in the Postal Clause, the mail fraud statute can reach **any** use of the mails – even a mailing that occurs entirely within a single state. A wire fraud prosecution, however, requires an interstate wire transmission because the Commerce Clause gives Congress the authority to regulate only interstate commerce. So, to violate the wire fraud statute, a wire transmission must have crossed a state line.
- Wire fraud is a favorite of prosecutors and has been charged with increasing frequency given the ubiquity of wire communications in modern American life. Wire fraud is a particularly common charge in cases involving public corruption and financial crimes. For example, former Virginia Governor Bob McDonnell – whose conviction was later overturned by the Supreme Court – was charged with wire fraud related to payments and gifts that he had accepted from a local businessman. And wire fraud was among the charges initially levied against Bernie Madoff arising from his billion-dollar Ponzi scheme.

Wire Fraud



- Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20
- years, or both. • If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a Presidential declared major disaster or emergency, or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.



• Thus, anyone trying to scam another individual or group through items of value, e.g., money, through the US mail system or a private mail delivery service and those knowingly participating in that scam will be punished with a fine and/or prison sentence that cannot be longer than 20 years. However, for such acts during a Presidential declared major disaster or emergency, the prison sentence can be as long as 30 years and the fine as great as \$1,000,000.

Mail Fraud

- Mail Fraud (18 U.S.C. §§1341 and 1343) is also a general fraud statutes. • The elements are (1) voluntary and intentional participation in a scheme to defraud others; (2) an intent to defraud; (3) reasonable foreseeability that interstate mail would be used in furtherance of the scheme; and (4) actual use of mail communications as part of the scheme.
- Now using wire and mail fraud for domestic and international tax crimes
- Historically, the U.S. authorities did not charge mail and wire fraud based on tax crimes but recently the Tax Division has begun to take a different view in these charging decisions.



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