Liberty’s drip-drip-drip of bad news

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It’s weird when an anonymous source becomes a regular pen pal, but such is the case with Liberty Tax. On one recent day, he or she even provided a handy summary, with links to news stories including these:

27 Liberty Tax offices in California were raided by the IRS and FBI.

These are in addition to the 28 shut down last week in New York, said Marketwired.

And the 9 people criminally indicted in Baltimore, according to WBAL-TV.

And the 15 offices shut down in California and Nevada in March, said Justia.

And the 23 offices shut down in Maryland in February, said the Baltimore Sun.

And the 12 offices in California.

And the three (additional) offices in South Carolina, all according to www.justice.gov.

And the 5 offices in Detroit…

And that’s just for 2016 alone. The links to news stories go back to 2015 and 2014 as well.

The comptroller’s office in Annapolis, Maryland, has been especially active, saying on February 2 that “effective immediately,” the comptroller “has suspended processing electronic and paper tax returns from 16 additional Liberty Tax Service franchise locations and three other private preparers at four locations due to a high volume of questionable returns received.”

Allegations against the franchisees include: business income reported when taxpayers did not own a business; refund amounts requested much higher than previous year tax returns; inflated and/or undocumented business expenses; dependents claimed when taxpayer did not provide required 50 percent support or care; inflated wages and withholding information.

What's going on? Liberty Tax's CEO John Hewitt said in a statement after the Maryland announcement there are always bad operators. Liberty Tax created a separate compliance group, and named a chief compliance officer last year, "in order to be able to respond quickly to compliance concerns."

But why such high numbers? Sounds like Jim Wheaton, chief compliance officer at Liberty Tax, has plenty of work to do. But when I called him July 5 and left a message on his voicemail, another VP at Liberty, Vanessa Szajnoga, who is also general counsel, responded that Wheaton was no longer with the company, and asked to see my questions in writing.

She emailed in part: "It is unfortunate that some franchisees, tax preparers or their customers may engage in behavior that Liberty doesn't condone and will not tolerate."

She said about Wheaton's departure, "we are currently working with former IRS Commissioner Fred Goldberg of the law firm Skadden Arps. We plan on filing the chief compliance officer position prior to the start of the tax season."

Her closing: "Liberty has been proactive in addressing what is an industry-wide problem. The few cases from months ago stem from a small number of Liberty's more than 4,000 offices operated by hardworking, ethical small-business owners." For their sake, let's hope the drip-drip-drip of bad news is taken care of soon.

Non-competes for sandwich makers?

Plenty of people scoffed when Jimmy John's non-competition agreements were brought to light in 2014 and 2015. Whoever heard of non-competes for sandwich makers?

Aren't they supposed to be for bigwigs in the corner offices who receive consideration for signing, not fast-food workers?

Now, the Illinois attorney general has waded in, filing suit in early June and claiming the agreements are "unreasonable, unconscionable and unenforceable" under Illinois law. Jimmy John's Enterprises, which owns and operates eight units in the state, and franchisor Jimmy John's based in Champaign, Illinois, "have no legitimate business interest that can justify the use of a non-competition agreement for store employees in Illinois," the state said.

The complaint seeks a penalty of $50,000 per violation. There are about 274 Jimmy John's sandwich shops in Illinois, the complaint says, and more than 2,000 in 43 states throughout the U.S.

No one at Jimmy John's agreed to an interview, but the franchisor did issue a statement, saying it was "disappointed" to learn of the filing. When the AG's office approached Jimmy John's in September 2015 to discuss concerns about non-compete agreements, "we were nothing but cooperative and transparent throughout the process," the statement said. "Though the attorney general never indicated to us that any worker had ever reported a concern about the agreements, we made clear to the attorney general that we would never enforce a non-compete agreement against any hourly employee that might have signed one…We remain committed to resuming productive discussions with the attorney general."

Within two weeks of the Illinois AG's action, the sandwich chain agreed to stop including non-compete agreements in its hiring documents in New York. Jimmy John's said it was "pleased to reach an agreement with the New York AG."

Regardless of the eventual outcome in Illinois, attorney Kimberly Myers believes franchisors should pay attention. The Greensfelder, Hemker & Gale lawyer in St. Louis emphasizes she is not involved with the case, and so doesn't know Jimmy John's reasons for the non-competes. "But in my personal experience I have never come across a scenario when I would have thought such a broad non-compete was warranted," she said. "That's the part of the case that is unique and novel."

Franchisors typically require their franchisees to sign non-competes, "but that's because the franchisee has substantial access to trade secrets and proprietary information," Myers said. "It's also possible in some circumstances that a franchisor might require top-level managers of a franchisee to sign a non-compete. But a franchisor should be careful…it's usually reserved for the top-level employees."

Myers recommends hiring an attorney who knows the law in the states where you do business. And if you're a sandwich maker, watch out for documents you're asked to sign, especially if they effectively bar you from getting another job.

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