

# LAW OFFICES OF SANFORD I. MILLAR

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## Deportation Ordered for Immigrant Tax Evader

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A case that was decided February 21, 2012 by the United States Supreme Court should send shock waves through the resident alien community. Those persons, who are non-citizen U.S. resident taxpayers, face the prospect of deportation if they are convicted of tax crimes which are now to be considered as "aggravated felonies".

The case is *Kawashima v. Holder* 565 U.S. \_\_\_\_ (2012). The case arose on appeal from the Ninth Circuit Court of Appeals and holds that aliens who are U.S. taxpayers, are subject to deportation if they are convicted of tax evasion involving \$10,000 or more. In this case the defendant taxpayer was convicted of violating 26 U.S.C. §§7206(1) and (2) tax evasion and making a false statement, which are crimes involving fraud or deceit. Therefore, the court held that such crimes constitute aggravated felonies under 8 U.S.C. §1101(a)(43)(M)(i) and as such constitute aggravated felonies as defined in the Immigration and Nationality Act. The government sought their deportation, and a deportation order was sustained.

This case bring up the importance of filing timely and accurate Income tax returns, and related schedules and information returns (such as Reports of Foreign Gifts and Bequests or Trust transfers) and Reports of Foreign Bank Accounts ([FBAR](#)'s). The case also underscores the importance of and value of making a truthful and accurate voluntary disclosure under the Offshore Voluntary Disclosure Initiative.

Form 8938 now required with Form 1040, for all taxpayer's with specified foreign financial assets of \$50,000 or more may yet prove to be a trap for the unwary revealing unfiled information returns and offering the government an opportunity for prosecution when the facts warrant. An inaccurate return (such as a willfully incomplete Form 8938 or [FBAR](#)) by an alien taxpayer may now result in criminal charges and deportation actions. Just what affect this case will have on chilling immigration or compelling compliance remains to be seen.

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