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Here's the Tax Beat broadcast for January 22

Subject Line: Membership Has Its Privileges

In 1966, American Express rolled out the first Gold Card for big spenders and created a yuppie talisman. In 1984, they added a Platinum card for even bigger spenders. (Patrick Bateman carried one in *American Psycho*.) In 1987, they introduced a new tagline designed to attract even more users: "Membership has its privileges." (Never mind the irony of spending millions on national television to attract "members" to an "exclusive" club.) Finally, in 1999, they introduced their most exclusive tier yet: the invitation-only black card that comes with a $10,000 initiation fee, a $5,000 annual fee, and a reported $500,000 minimum annual spending expectation.

It all sounds so bougie and polished, doesn't it? Who wouldn't want to join the 21st-century equivalent of those old-school clubs where stuffy men sit around in leather chairs reading the *Wall Street Journal* while white-jacked waiters keep them stocked with gin-and-tonics? But make no mistake about it, American Express is a business, and a profitable one at that. That means, behind the scenes, they sometimes cut a corner or two, including a little light tax fraud.

Banking and cash management, at Amex's level, is a game of inches. Margins are incredibly slim, which means banks have to make it up on volume. Amex solves that problem by charging higher processing fees than Visa, MasterCard, and Discover. The difference is enough that many vendors refuse to take Amex—in fact, in the late 80s, Visa ran a series of ads highlighting stores and other venues where "they don't take American Express."

Most of the time, the battle rages out of sight. Occasionally, though, one of the contenders overplays its hand. In September, the DOJ filed an antitrust suit against Visa. Last week, it was Amex's turn in the hot seat. On Thursday, the company announced they would pay $230 million to settle civil and criminal charges that they used deceptive tactics to sell small-business cards and wire transfer services.

The first set of charges involved allegations that company sales teams misrepresented benefits and fees to sell cards to small businesses. Violations included lying about credit checks, submitting false information on behalf of customers, and even tricking their own bank into issuing cards to businesses without proper employer identification numbers.

How about the tax charges? From 2018 to 2021, Amex sold wire transfer services called Payroll Reserve and Premium Wire. The company charged a percentage-based fee, ranging from 1.77% to 3.5%, for those transfers. That's a boatload higher than the competition—but the fees earned reward points that customers could use for travel expenses. Amex told customers that the fees were tax-deductible and the rewards nontaxable. However, the government contended the fees weren't deductible as an "ordinary or necessary" business expense because they were incurred solely to create a personal benefit.

How much is all of this costing the company? The settlement includes a $108.7 million civil payment. There's also a $138 million payment and deferred prosecution agreement to settle the criminal investigation into the wire transfer programs. (A "deferred prosecution agreement" is the technical term for giving Little Rabbit Foo Foo *three* chances to screw up before turning him into a goon.) $230 million sounds like a lot to you and me. But it's probably pennies on the dollar compared to the profits the company made off the customers buying overpriced services.

There are lots of lessons in this week's story. For starters, be careful where you get your tax advice! You'd *think* a company the size of American Express would steer you straight. In this case, though, you'd be wrong. So call us with your questions—clients have privileges, too!

Kevin