

Governor's Aide Had 'Late-Filing Syndrome,' Lawyer Says

Gov. [David A. Paterson](#)'s top aide, who failed to pay income taxes or file returns from 2001 to 2005, was afflicted by "late-filing syndrome," a condition that made it difficult for him to fill out his tax returns, his lawyer said on Wednesday.

The lawyer, Richard S. Kestenbaum, said that he believed that the aide, Charles J. O'Byrne, despite an annual income of about \$100,000 and an [Ivy League](#) education, could not bring himself to undertake the task of filling out his tax forms every year. Mr. O'Byrne and his doctor have described him as clinically depressed during that period.

"Most times, with professionals, these are very high-functioning people who otherwise complete all the other ordinary tasks of their life," Mr. Kestenbaum said during a news conference in Manhattan.

Mr. Kestenbaum's assertion that Mr. O'Byrne suffered from late-filing syndrome was among several developments involving Mr. O'Byrne's tax problems on Wednesday. According to documents released by Mr. Kestenbaum, Mr. O'Byrne did not finish paying off his roughly \$300,000 tax debt until Tuesday, three days after his tax delinquency was revealed by [The New York Post](#).

That payment timetable contradicts statements by Mr. Paterson and Mr. O'Byrne that the debt had been settled. Mr. Kestenbaum said that the payment on Tuesday was made because an earlier payment had not been processed by the state tax department.

The Paterson administration described Mr. O'Byrne's tax delinquency by saying it was at least \$200,000 in federal and state tax debts. The documents released on Wednesday showed that, when penalties and interest were included, Mr. O'Byrne owed \$292,780.

In a statement released on Wednesday evening, Mr. Paterson revealed that he had asked the State Police in April to investigate Mr. O'Byrne's tax situation.

He said the inquiry had determined that the debts did not compromise his job.

Mr. O'Byrne has no plans to resign, said a person familiar with his thinking, who spoke on condition of anonymity because conversations about his status were private.

Mr. Kestenbaum, who specializes in tax matters, and Henry T. Berger, a politically prominent election lawyer, answered questions for more than an hour on Wednesday as they sought to calm the furor over Mr. O'Byrne's taxes. Mr. Kestenbaum said Mr. O'Byrne never directly contacted federal or state tax officials about his tax debts, and never sought to have his penalties reduced, a request taxpayers can make, even after he joined Mr. Paterson's staff as a speechwriter in 2004.

Mr. O'Byrne earned about \$100,000 annually in most of the years when he failed to file taxes, according to the documents, including compensation from charitable and nonprofit boards on which he sat during the five-year period.

For 2005, after he joined Mr. Paterson's State Senate staff and began receiving a salary, Mr. O'Byrne reported income of \$265,098. But he did not begin paying tax for the five years until February 2007.

Mr. O'Byrne and Mr. Paterson have both said that Mr. O'Byrne disclosed his problems with depression and his outstanding taxes during a meeting in September 2004, when Mr. O'Byrne was hired by Mr. Paterson, then the Senate minority leader. He told Mr. Paterson he was addressing the problem.

Still, he did not file a return for 2005, and he did not begin submitting any of his previous delinquent returns until June 2006. Mr. Kestenbaum said that it was often difficult and time-consuming to collect the information needed to complete old tax returns. He also said that someone who has not filed for several years is typically advised by tax lawyers to begin filing delinquent returns beginning with the oldest one due.

Mr. O'Byrne suffered three bouts of depression during the years he failed to file his taxes, according to Mr. Berger. In a statement issued on Wednesday, Mr. O'Byrne's psychiatrist, Howard Kremen, said he had treated Mr. O'Byrne with therapy and medication three times in that five-year period. Mr. O'Byrne is no longer suffering from depression, he said, and is no longer on medication for it.

To repay his taxes, Mr. O'Byrne sold tens of thousands of dollars in assets, took out bank loans and borrowed heavily from friends and relatives.

Two family members loaned him \$5,000 to \$20,000 each, while Jean Kennedy Smith, the sister of Senator [Edward M. Kennedy](#), and Brian Krisberg, a college classmate, loaned Mr. O’Byrne \$60,000 to \$100,000 each, according to his lawyers.

Mr. O’Byrne has formal repayment agreements for each loan and is paying interest on all of them, Mr. Berger said.

Questions about another aspect of Mr. O’Byrne’s finances arose on Wednesday based on a report in The Daily News that he had recently charged \$935 in restaurant meals in Manhattan to his state-issued credit card, including visits to Commerce in Greenwich Village and Cookshop in Chelsea.

Marissa Shorenstein, a spokeswoman for Mr. Paterson, said that Mr. O’Byrne occasionally used his state credit card for personal expenses, but always fully reimbursed the state.

But it was the lawyer’s suggestion that Mr. O’Byrne suffered from late-filing syndrome that raised the most eyebrows on Wednesday.

Late-filing syndrome, sometimes known as nonfiling syndrome or failure-to-file syndrome, is not listed in the Diagnostic and Statistical Manual of Mental Disorders. A spokeswoman for the [American Psychiatric Association](#) said that the group does not recognize it as a psychiatric condition.

But legal experts said that it is not uncommon for tax evaders to claim they suffer from such a syndrome, because it can shield them from criminal penalties.

“If the I.R.S. is going to pursue more serious sanctions, they’re going to have to demonstrate a voluntary and intentional decision not to file,” said Gerald Kafka, a lawyer with Latham & Watkins in Washington, who specializes in tax law. “The burden is on the I.R.S. to demonstrate it was intentional.”

Mr. Paterson’s office later issued a second follow-up statement saying that Mr. O’Byrne had given the Spitzer administration a letter in January 2007 about his tax delinquencies and his problems with depression.

And late Wednesday, after several news blogs reported Mr. Kestenbaum's description of the syndrome, the governor's aides were seeking to play down that explanation, emphasizing Mr. O'Byrne's depression instead.

"The lawyer was referring generally to a condition he has had experience with, both in private practice and while he worked at the I.R.S.," Ms. Shorenstein said. "Charles O'Byrne has never been diagnosed with that syndrome. He was diagnosed with major depressive disorder."