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Defense: Evidence destroyed

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LOS GATOS — Defense attorneys in the Harry Margolis tax fraud case say Internal Revenue Service agents destroyed evidence on three separate occasions rather than turn it over to the defense.

In addition, the defense says, government evidence in the Margolis case was obtained illegally.

In motions filed in U.S. District Court in response to the defense accusations, the government has denied any misconduct.

Margolis, 56, a Los Gatos tax lawyer, has been charged in a 23-count indictment with conspiring to cheat the U.S. government out of taxes due on \$1.4 million in fictitious deductions. Also charged in some of the counts is Margolis' associate, Quentin Breen and Banco Popular Antillano, a bank in the Netherland Antilles.

The government says the scheme involved the use of phony interest payments and fictitious loans in the preparation of 23 fraudulent tax returns.

Besides the destruction of evidence and illegal seizure issues, the defense is pressing another matter: It wants to see what the government has in its computers. U.S. Atty. Martin Schainbaum reportedly

has been using a computer to plot his strategy in this extremely complicated case, and the defense would like to see what he has on file.

U.S. District Judge William Ingram of San Jose has scheduled hearings for Feb. 9 and 10.

"We have first-hand knowledge of the destruction of evidence," claims defense attorney Richard Gladstein. "Three different IRS agents have admitted in signed affidavits that they destroyed documents pertaining to this investigation after they were asked for them by the government trial attorneys."

According to Gladstein, one IRS agent has said he was told by a government attorney he may have "blown the case" because he destroyed certain documents.

"What is really strange is the fact that the attorneys for the government in this case claim they were told about the destruction of documents in mid-December 1975, but they didn't tell the judge, or us, about it until the end of January 1976," Gladstein said. Now, a year later, he says he is getting internal memoranda concerning the matter from the IRS.

The material was destroyed, in at least two cases, with the knowledge of the

agents' superiors, Gladstein alleges. Government affidavits confirm his charge.

Schainbaum's response reads: "The material in question was not destroyed in bad faith or connivance by the government nor has the lost of the destroyed material prejudiced the defendant." It also states that copies of some of the documents have been found in other places.

The defense also is attacking the manner in which the government has obtained evidence. Gladstein claims that evidence being used in the Margolis case came from a controversial seizure of a banker's briefcase in Miami in 1973. The briefcase contained the records of account-holders at an offshore bank, Castle Bank of Nassau.

Whether that evidence was obtained legally makes no difference, the government has countered, claiming that evidence from the briefcase incident is not being used in this case.

IRS agents from around the country will be flown to San Jose Feb. 9 to testify at hearings on both defense motions. They will include agents involved in the alleged destruction of documents and agents running all major tax investigations into offshore operations.