



**Robert W. Wood**  
THE TAX LAWYER

---

TAXES | 2/16/2014

## Feds Push Jail For Tax Crimes: Like Your Cell, Keep Your Cell

Does jail **work** is a large and complex question. But prosecutors are trained to want it and to push hard, in some sectors more than others. Tax charges are not violent but the tax system works on self-reporting and honesty.

That's one reason indictments, prosecutions and convictions are trumpeted during tax filing season. In the run-up to April 15, the government wants to remind you to fly right. You sign tax returns under penalties of perjury. The numbers you report must be true—[they're not an opening offer](#).

A report by the Transactional Records Access Clearinghouse, a Syracuse University research group, says the government is cracking down hard. It reports that average tax crime prosecutions sought by the Justice Department have grown to 1,568 annually. While IRS offshore account efforts continue to rake in money, the government keeps pushing hard for jail time. Cash isn't enough.

After Beanie Babies founder [H. Ty Warner](#) plead guilty to tax evasion, he was sentenced on January 13th to [2 years of probation](#) and 500 hours of community service, but not to jail. So the feds have appealed to the Seventh Circuit. Prosecutors say Warner, Forbes' 209th richest American worth \$2.6 billion, should be jailed.

Warner agreed to pay penalties of over \$53 million after evading taxes. Judge Charles Kocoras cited Warner's charity work in choosing probation so his good works could continue. Mr. Warner opened an account with [UBS](#) in 1996. In 2009, the IRS launched its first Offshore Voluntary Disclosure Program ([OVDP](#)), a variant of which is still open today.

It encourages people to come forward and avoid prosecution. [UBS paid \\$780 million to the U.S. government](#) and the banking world will never be the same. Some Swiss banks have closed, some are still working out deals, and FATCA now promises worldwide tax transparency. But when Warner applied for amnesty in 2009, he was rejected because the IRS already had his identity.

Few people are turned down, but the IRS policy is not to accept taxpayers who are already being investigated. Mr. Warner ([#209 on Forbes 400 list](#)) is not the first Forbes 400 member to draw tax charges. Leandro Rizutto ([#296](#)), founder of Conair, had his own run in. So did Igor M. Olenicoff ([#184](#)), a California real estate developer with a net worth of \$2.9 billion.

Mr. Warner still paid considerable tax on the nearly \$50 million of 2002 income he did report. But he shorted the IRS by about \$1.2 million. That was a painful omission, not only drawing the tax evasion charge, but huge [FBAR penalties](#) too. It was the FBAR penalties that topped \$53 million.

The staggering figures tie into criminal penalties. A tax evasion conviction carries up to 5 years in prison and a \$250,000 fine. Tax convictions even draw prosecution costs on top of all the back taxes, interest and penalties. And the penalties can be huge. Civil fraud penalties alone can add another 75%.

When it comes to penalties, FBARs—even *civil* penalties—are the real gravy train. An annual report of foreign accounts in the law since 1970, FBARs target money laundering. They were not widely known—or widely enforced—until the UBS scandal of 2008 and 2009. Now they are ubiquitous, requiring reporting of foreign accounts even by those with mere signature authority but no beneficial interest.

A willful failure to file an annual FBAR can trigger a civil penalty of up to 50% of the account balance at the time of the violation. More garden-variety taxpayers can find themselves facing the awkward combination of failing to report foreign account interest and failing to file FBARs. Even if unreported income is small, the combination of amending tax returns to report it plus quietly filing past-due FBARs is a classic “quiet disclosure.”

The IRS advises against them and says it can prosecute taxpayers who do it anyway. The IRS wants taxpayers to join the [Offshore Voluntary Disclosure Program](#). As under the 2009 and 2011 programs preceding it, taxpayers must file up to 8 years of amended returns and up to 8 FBARs. It isn't perfect, but for many, it's a way to know you've resolved a potentially explosive situation.

*You can reach me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com). This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*