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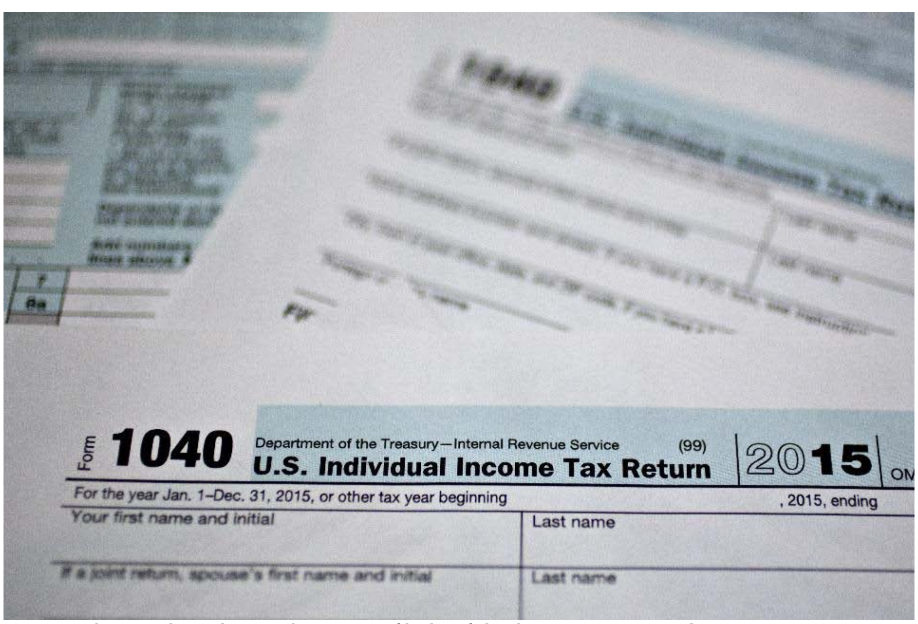
IRS And Justice Department Push Tax Prosecutions

If you’re starting to think about tax filing, you’re not alone. The IRS and Justice Department *want* you to think about it. In the run-up to April 15th, the government wants to remind you to fly right.

Taxes are complex, and the line between creative tax planning and tax evasion can be less clear than you might think. What is good planning, what is over the line? What is fraud, and how long do you have to worry?

You must sign tax returns under penalties of perjury. The numbers you report must be true—they’re not an opening offer. During President Obama’s years in office, case recommendations brought by the IRS to the DOJ have soared. Many criminal prosecutions are really about identity theft today rather than traditional tax crimes. But still, the uptick is notable.



Taxpayers have until Monday, April 18, 2016 to file their federal 2015 tax returns and pay any tax. (Photographer: Andrew Harrer/Bloomberg)

The government issues press releases about convictions and about indictments. Even an indictment is serious. As a recent example, Donald Gibson has been indicted for failing to file federal income tax returns for 2004 through 2010 for his work as a chiropractor in Minnesota. The IRS claims that Gibson owes $330,000 in taxes. The feds claim that he tried to skip out on taxes by cashing his business checks at a check-cashing facility, purchasing money orders, and directing his income onto stored-value debit cards.

The indictment claims that he also used Sovereign Christian Mission, a nonprofit corporation he registered with the Oregon Secretary of State, to hide his income and pay his personal expenses. If he is convicted, he could get up to 25 years in prison. Contrast that kind of prison term with the three years Wesley Snipes received.

Any discussion of tax crimes may raise questions about the IRS statute of limitations. The IRS generally has three years after you file to audit you. If you omit more than 25% of your income, the IRS gets double that time, six years. But frequently. the IRS says it needs more time and asks you to sign a form extending the statute, usually for a year.

Most tax advisers generally tell clients to agree. However, get some professional advice about your own situation. You may be able to limit the time or scope of the extension.

But what if you file a false return under-reporting income or willfully fail to file? Section 6531(2) of the tax code says the statute is six years commencing once the return is filed, or from the time you willfully failed to file a return. In a case of alleged criminal tax evasion, that means the statute hasn't run if the taxpayer is indicted within six years after "willfully attempting in any manner to evade or defeat any tax or the payment thereof."

In some cases, though, the statute is "tolled"–so stops running. For example, the statute stops running if the target is outside the U.S. or is a fugitive. Even when the alleged tax crime is committed can be hard to pinpoint.

Does filing a false return start the six year clock? What about failing to file by the due date? How about covering it up later, hiding money, or lying about it? This might occur many years after the tax return was (or should have been) filed. As you might expect, some of these circumstances can keep you worrying for more than six years. Some courts have concluded that the six year statute doesn't even start to run until the last act of tax evasion.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.