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THE TAX LAWYER

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### The Truth About Lying On Your Tax Return

This is a touchy subject and one worth underscoring this time of year. Often, the IRS and Justice Department will time indictments and arrests during tax season. They can put fear into millions of Americans hovering over their tax forms and computers. Some who are about to file may think a little bit harder. That is good because, as with your resume, making up something on your tax return is a terrible idea.

Criminal enforcement of the tax laws is way up. Some of the uptick is about offshore accounts, and no bank account anywhere can be considered safe. In addition to tax returns, the larger foreign account liability is over FBARs, carrying civil and criminal fines worse than tax evasion. FBAR violations can bring ten years in prison and fines more than the entire account balance.

Yet even simple tax crimes from failing to report income to making up deductions are nothing to mess with. Tax journalist [Lee Sheppard](#) once quipped that tax returns are documents filed under penalties of perjury, not an opening offer. It's good to remember, since some people seem to believe that on tax returns, anything goes. It doesn't. Simple reporting problems can lead to [crippling mistakes that can cost big](#).



Of course, if your affairs are complex, you and your tax adviser will have to make judgment calls. Our tax system is complex, and not everything is black or white. There is a great deal of grey. But *do not* makes things up. If you earned \$50,000, don't report \$5,000. For one thing, the law has elaborate Form W-2 and Form 1099 reporting rules to serve as checks and balances.

But even if you think you won't be caught in an information return mismatch, it truly isn't worth the risk. If you misstep, you may have problems even if you do not think you were willful. And if your number comes up, the consequences can be quite devastating. Willfully evading federal income taxes is a felony. See [26 U.S.C. § 7203](#).

“Willful” usually means voluntary or with intent. You are willful if you intentionally violate a legal duty of which you are aware. Yet [what the IRS calls willful](#) can be tough to predict. Even if you're ignorant, the IRS can say you are guilty of “willful blindness”—where you *intentionally* remain ignorant. Getting acquitted is not easy. Yet some people manage to avoid the taint of willfulness in tax matters based on a genuine misunderstanding of the tax law.

In fact, the misunderstanding can even be *unreasonable* as long as it's genuine. Another way of not being willful is having a good-faith (even if unreasonable) belief that no tax was due. For example, in [United States v. Kokenis](#), a jury found Chris Kokenis guilty of tax evasion. Asking for a new trial, Kokenis claimed the trial court had erred by excluding evidence of his good faith misunderstanding of the tax law.

The court denied his motion for a new trial, and suggested that this defense would require the defendant to take the stand to testify. Had Kokenis testified in his trial? No, not according to this [order](#). You can't hold it against a criminal defendant who chooses not to testify in his own defense. For that reason, the court in [Kokenis](#) noted in its [order](#) that it instructed the jury *not* to draw negative inferences from Kokenis' failure to take the stand in his own defense.

Still, said the court, how else could Mr. Kokenis have established his own good faith belief? On appeal to the Seventh Circuit, Mr. Kokenis argued that the district court erred in ruling that he could not present evidence of good faith unless he waived his Fifth Amendment rights and testified. Nevertheless, the Seventh Circuit affirmed Mr. Kokenis' convictions and sentence.

The appeals court did say that the district court applied the wrong standard in determining whether Mr. Kokenis could assert good faith. Nevertheless, the court ruled that the error was harmless given the overwhelming evidence of a lack of good faith. See [United States v. Kokenis, 662 F.3d 919 \(7th Cir. 2011\)](#).

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