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7 IRS Tax Lessons From John McAfee's Tax Evasion Indictment

Colorful tech figure and sometimes taunter of the IRS John David McAfee has been indicted for federal income tax evasion. Given his profile, particularly such antics as proclaiming that he isn't filing tax returns but the IRS can come find him, it may not seem a surprise that McAfee is in some serious hot water. He has long been completely out of the antivirus company that bears his name, but he has still been in the news in numerous controversial ways over the last decade. Everyone has to file tax returns of course, even McAfee, and failing to file can be criminal. The indictment dates from June 15, 2020, but it was just unsealed following McAfee's arrest in Spain where he is awaiting extradition to the U.S. This is an indictment, so the charges have yet to be proven. But it may be hard for McAfee to explain himself after he once colorfully admitted to not paying taxes in a [video](#) posted on Twitter. According to the indictment, McAfee earned millions from promoting cryptocurrencies, consulting, speaking, and selling the rights to his life story. From 2014 to 2018, the feds allege that McAfee failed to file tax returns despite receiving considerable income. How could he not file returns or report income?



The indictment alleges that McAfee directed that payments due him should instead go into bank accounts and cryptocurrency exchange accounts in the names of nominees. Hiding things, after all, doesn't change the tax impact, and can actually make matters worse. The indictment also claims that he tried to evade the IRS by putting other names on real estate, a yacht and more. These are only allegations, but if he is convicted, McAfee faces a maximum sentence of five years in prison on *each* count of tax evasion, and a maximum sentence of one year in prison on each count of willful failure to file a tax return. He can also expect to pay taxes, big penalties, and interest. McAfee is presumed innocent unless and until he is proven guilty beyond a reasonable doubt, but as McAfee and his legal team mount a defense, here are some key lessons:

Report your income, and always file. You must file a tax return each year with the IRS if your income is over the requisite level. Don't forget, and don't be

late either, even if you can't pay what you owe. File anyway, and you can work out payments later. The statute of limitations on audit—usually three years and sometimes six years—can't even *begin* to run until you file your return. So file, and remember, the U.S. taxes all income wherever you earn it.

Be accurate too. Failing to file is bad, but filing false returns is arguably worse. The criminal law seems to set that pecking order. Remember, Wesley Snipes was [convicted of three misdemeanor counts](#) of failing to file tax returns, and misdemeanors carry lower penalties than felonies. Filing falsely is a felony. You have to file, but make your return as complete and accurate as you can.

Transparency is good, secrecy is bad. Hiding things nearly *always* looks bad. You might have good reasons to hide things from competitors, an ex-spouse, etc. But don't hide from the *government*. Even if there is a good reason to hide ownership from the public, make sure the ownership is not hidden from the *government*. Report your entities on your tax return, and file returns for them where required.

Don't obstruct the IRS. Don't engage in evasive or obstructionist behavior on your returns, or during an IRS audit. Many taxpayers in a civil audit seem to think they can outsmart the IRS or manipulate the government to come out ahead. That doesn't mean you have to agree with everything the IRS says in an audit. However, there is an established way of proceeding, and an above-board way to communicate with the IRS. Deception and obstruction are not the way.

Don't be willful. According to the IRS, willfulness is a voluntary, intentional violation of a known legal duty. You may not have *meant* any harm or to cheat anyone, but that may not be enough. Besides, in some cases mistakes are hard to argue were truly innocent. Can McAfee argue that he didn't know he had to file returns? It is hard to see how. The failure to learn of filing requirements,

efforts to conceal, etc., may mean that a violation was willful. Even willful blindness, a kind of conscious effort to avoid learning about reporting requirements can be enough.

Report foreign accounts and assets too. This was one of the big lessons from Paul Manafort's conviction, and it commonly features in tax cases. If you have an interest in any foreign bank, securities, or other financial accounts, pay attention. Even a signature power is enough, even if it is not your money. You must file an annual FBAR if the aggregate value of the accounts at any point in the calendar year exceeds \$10,000. Penalties are huge, and can swallow entire accounts (yes, 100%). Criminal penalties can include up to 10 years in prison. Remember Form 8938 (for FATCA) and 5471 (for foreign companies) too. If you [forget these forms, your IRS audit statute of limitations never runs.](#)

Watch Your Lifestyle. It's bad enough if you are skirting your tax obligations. But, if you are doing that and simultaneously living lavishly, it can look even worse.

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