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# Breaking Bad's Tax Problems

*Breaking Bad* is concluding its run of the periodic table of the elements and its deep and fascinating journey into the changeable nature in all of us. There are big messages and even some tax law embedded in this complex and nuanced story.



(Photo credit: Wikipedia)

**Illegal Income is Still Income.** It is worth remembering that [Al Capone](#) was convicted not of murder, graft or racketeering, but of income tax evasion. No matter how you make your living, the tax laws apply.

**Deductions Are a Problem.** We generally pay tax on net income, not gross income. But for criminals, claiming expenses can be a problem. If you report your illegal income—which may be admitting to a crime—tax deductions can be limited.

Illegal payments—like paying a hitman—generally aren't deductible. And as the medical marijuana industry is learning, [Section 280E](#) of the tax code denies even plain vanilla tax deductions for those dealing in controlled substances. Even that industry is being pushed underground, the [leading trade publication for the marijuana industry reports](#).

**Money Laundering Too.** Criminal tax charges are often combined with money laundering, mail fraud or other charges. But criminal enterprises need a way to wash their cash. That's where Skyler and Walter White's Car Wash

comes in. Even in a business as tame and legal as medical marijuana, many dispensaries now resort to deducting **other** expenses distinct from dispensing marijuana (for example, the **separate** business of care-giving).

**Tax Losses Effect Sentencing.** The amounts matter in tax crimes, which is where Mr. White's barrels of cash come in. Check out [United States v. Hoskins](#), a criminal case involving a Salt Lake City Escort service. Failing to account for over \$1 million in income led to [criminal charges](#).

Mr. Hoskins plead [guilty](#) to tax evasion. Mrs. Hoskins claimed she was innocent but she too was convicted. When it came time for sentencing, the amount of taxes they had failed to pay became important. The precise extent of the tax evasion would have a direct impact on the length of the prison sentence.

**Tax Evasion.** Tax evasion is intentional conduct to defeat the income tax laws, and Mr. White would probably face it if he lives that long. Tax evasion is a felony, carrying prison up to five years plus fines. Any sort of tax scheme to cheat the government can fall into this broad category.

**Filing False Returns.** Filing false returns usually involves numbers, but might be other false statements. Saying you work at a car wash when you are a drug kingpin? The government does not have to prove intent to evade the income tax laws, only an intent to file a false return. Filing a false return is still a felony, but the prison term is only up to three years, plus a fine.

**Failure to File.** Intentionally failing to file a return when you were obligated to is a misdemeanor. The maximum prison sentence is one year for each violation. Remember Wesley Snipes? He beat the more serious charges and was [convicted of three misdemeanor counts](#) of failing to file tax returns in 2008.

**FBAR Violations.** When Mr. White starts selling abroad, you wonder if he had any foreign bank accounts. These days among the easiest charges to make stick are failing to file FBARs. Technically they are not even tax charges. The penalties are even worse than tax penalties.

Failing to file an FBAR can carry a civil penalty of \$10,000 for each non-willful violation. If willful, the penalty is the greater of \$100,000 or 50% of the amount in the account for **each** violation. Each year you didn't file is a separate violation.

Criminal penalties are even more frightening, including a \$250,000 fine and 5 years imprisonment. If the FBAR violation occurs while violating another law (say tax law, which it often will) the penalties are increased to \$500,000 in fines and/or 10 years of imprisonment. Many violent felonies are punished less harshly.

Sure, Walter White has bigger problems than taxes, but so did Al Capone.

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