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Cheat On Your Taxes, Get IRS Penalties; Obstruct IRS, Get Jail

No one likes paying taxes, and no one likes being audited. If you are audited, you should hire someone to represent you as there are risks in handling it yourself. For one thing, most criminal IRS cases come out of regular old civil audits and even simple interactions can go south. A good example of how to land yourself in hot water is if you engage in deceptive or obstructionist behavior with the IRS. Some people think they can outsmart the IRS and cover something up. The coverup can be worse than the crime. Take the case of James Brassart of Bentonville, Arkansas, who was sentenced to three years in prison for income tax evasion.

According to court documents, he filed his 2006 tax return reporting adjusted gross income of $1,502,749 and taxes due the IRS of $486,438. He did not pay all of the taxes, so was assessed penalties and interest. That hardly sounds criminal, right? Well, Mr. Brassart took extensive steps to conceal his income and assets. He used three nominee corporations, Eagle Creek Construction and Development Inc., Mono Pro LLC, and Sierra Madre Contracting LLC, to conduct business and to purchase assets. He went out of his way to try to avoid paying the IRS. In fact, between 2010 and 2016, Brassart filed four false bankruptcy petitions trying to discharge his tax debt.

In those bankruptcies, Brassart made false statements and filed fraudulent documents in which he concealed his ownership interests in the nominee corporations. Through his actions, Brassart caused a total tax loss to the IRS of approximately $1,360,682. He was sentenced to three years in prison, another three years of supervised release, plus an order to pay over $1.3M in restitution.

His is not the only example of evasive behavior drawing fire. Minnesota chiropractor Donald Gibson was [convicted of five counts of tax evasion, plus one count of presenting a fake financial instrument to the U.S]. Treasury Department. Gibson failed to file his 2004 through 2014 tax returns. Not only that, but he attempted to evade his tax liabilities for years. Prosecutors showed that Dr. Gibson diverted money to a warehouse bank called MYICIS. Warehouse banks can conceal ownership of funds in part by commingling funds with those of other individuals.

This warehouse bank was eventually shut down. By using the warehouse bank, Gibson cashed over $800,000 in business checks at a check-cashing facility. He also submitted fake money orders and bogus financial instruments to the IRS. Apart from his antics with the warehouse bank and failing to file tax returns, Gibson also formed Sovereign Christian Mission. He claimed that this was a *bona fide* religious organization. But the feds claimed that this was merely a way to further hide his chiropractic income and pay for his personal expenses.

Gibson used his Sovereign Christian Mission to pay for his own groceries, entertainment, dinners, and car repairs. The IRS calls that 'private inurement,' when money that is *supposed* to be devoted to religious or charitable purposes ends up benefiting private individuals. As you might expect, founders and insiders of charitable organizations are particularly scrutinized. Dr. Gibson's private church activities were bad enough, claimed prosecutors.

Gibson was eventually sentenced to 33 months in prison plus two years of supervised release. It could have been worse. If you look at the *potential* prison terms, what was arguably worst for Dr. Gibson is how he responded when the IRS was auditing. As the IRS was auditing his tax returns, and later during the ensuing criminal investigation, Dr. Gibson presented a fake financial instrument purporting to be worth $300 million to the IRS, claiming that it paid off his income tax liabilities.

Time and again, in serious tax cases, a person may *think* that preparing false invoices, fake receipts, and made up expenses can get them *out* of trouble.

Usually, the reverse is true. It is one reason why talking to the IRS in an audit or investigation can be dangerous. What if you misspeak? Curiously, *claiming* Fifth Amendment protection in tax cases can be a mistake. One of the biggest issues involves books and records. You must keep them in order to fulfill your tax filing obligations. If those records are incriminating, can you refuse to hand them over? You can, but it may not help. Even if you claim the Fifth Amendment protection against self-incrimination, the IRS can hand you an "information document request" to produce your records.

You can refuse, but the IRS will then issue a summons. If you refuse to answer that, the IRS will take you to court, and the court will probably order you to comply. But doesn't your constitutional right to take the Fifth trump the IRS? Not always. Ironically, you can refuse to *talk*, but you may not be able to refuse to produce documents. Your own private papers are personal records, and if they might incriminate you, they are protected by the Fifth Amendment. But the Required Records doctrine says you *must* still hand over documents no matter how incriminating. The government requires you to keep certain records, and the government has a right to inspect them.

In most cases, a tax audit is civil and there is little risk that it will become otherwise. Yet most criminal tax cases come directly out of civil tax audits. The IRS civil auditors 'refer' a case to the IRS Criminal Investigation Division. The IRS civil auditor will not tell you this is occurring, so the first time you hear about it, your case may have gone from bad to worse.

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