Forbes

Robert W. Wood
THE TAX LAWYER

TAXES 10/9/2017

False IRS Tax Returns — Personal Or Business — Can Mean Prison

You might think of criminal exposure for tax returns primarily with personal returns, not business. But here's a reminder about business tax returns too. A Dublin, California man was sentenced to prison for filing a false corporate tax return. Shiv D. Kumar, 60, was [sentenced to serve 30 months in prison](), after previously pleading guilty. According to documents filed with the court, Kumar was the sole shareholder and president of A-Paratransit Inc. (API), a company that provided transportation services to disabled individuals. Kumar filed false corporate returns with the IRS for tax years 2009 and 2010, which underreported API's gross receipts by $2,229,216 and $2,412,435, causing a tax loss of $1,584,055. Kumar deposited API's receipts into three separate bank accounts held at different banks. To conceal API's true income, Kumar provided his accountant with false books and records from which he had omitted gross receipts relating to two of API's accounts. Kumar used the unreported funds for personal expenditures, including purchasing property in the Vallejo, California area.

In addition to the term of prison, Kumar was sentenced to serve one year of supervised release. Restitution will be decided at a later date. In another case this year, a mother son duo were sentenced to prison over corporate tax returns. San Francisco residents, Howard Hsu and his mother, Tracy Chang. They were sentenced to prison after being convicted of tax fraud charges. Hsu was ordered to serve 33 months in prison, and Chang was ordered to serve 12 months and one day in prison. Hsu and Chang were found guilty by a jury of conspiring to file fraudulent corporate income tax returns, filing false tax returns, and aiding the preparation of false tax returns.

These are useful reminders that you must sign under penalties of perjury, so don't lie on your tax return. You may never be audited, but you *might* be. The vast majority of tax audits are civil, and have little risk of criminal liability. Still, a majority of criminal tax cases start with a civil audit.

A claim that you do not know what is in the return may not work. In fact, the courts have consistently ruled that taxpayers have a duty to read their tax returns, to ensure that all income items are included. Since as early as 1928, courts have held that even if all data is furnished to the return preparer, the taxpayer still has a duty to read the return and make sure all income items are included. See *Mackay v. Commissioner*, 11 B.T.A. 569 (1928).

The feds take payroll taxes seriously too. Although most payroll tax cases do not turn criminal, the IRS views using tax money withheld from employees as stealing from the U.S. Treasury. Being an officer or director usually means you are a responsible person, so the IRS can pursue you personally for payroll taxes if the company fails to pay. When a tax shortfall occurs, the IRS can make personal assessments against all responsible persons with ownership in or signature authority over the company. The IRS can assess a Trust Fund Recovery Assessment against every responsible person under Section 6672(a). You can be liable even if have no knowledge the IRS is not being paid. The penalty can be assessed against multiple responsible persons, allowing IRS to pursue them all to see who coughs up the money first.

The IRS also wants to make sure this kind of bad tax situation doesn't occur again. The government can move to shut down the business so the situation doesn't get worse. In extreme cases the government may seek criminal penalties. More commonly, if the government thinks the situation is getting worse, it can seek an injunction. Where a business gets deeper and deeper into tax debts, the practice is sometimes referred to as pyramiding.

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