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Fudging Your Taxes? Prosecutions Are Way Up, But The Big Push Now Is Against Identity Thieves

If you're starting to think about tax filing season, you're not alone. As always occurs in the run-up to April 15th, the government wants to remind you to fly right. You must sign tax returns under penalties of perjury. The numbers you report must be true—they're not an opening offer.

A new report by the Transactional Records Access Clearinghouse or TRAC, a Syracuse University research group would seem to provide proof the government, under President Obama, is cracking down hard.

TRAC reported that the average tax crime prosecutions sought by the Justice Department has grown to 1,568 per year. During the George W. Bush administration, the annual tally was only 1,303. The watchdog report says some of the uptick in criminal tax cases is for tax refund fraud.

Indeed, depending how you read the data, with the huge spurt in identity theft and refund fraud, you might actually be *less* likely now to face tax prosecution than in the past. See the IRS's own [Current Fiscal Year Statistics – Criminal Investigation \(CI\)](#).

During President Obama's years in office, case recommendations brought by the IRS to the DOJ have unquestionably soared. But since 2011, much of the stepped up enforcement activity has centered on identity theft. In 2013, 1267 of the 2,422 "tax" prosecutions recommended related to tax refund fraud and identity theft, up from 404 refund fraud cases out of 1,610 tax cases in 2011.

Anyone who is hiding income or assets from the taxman should consider how long they need to be looking over their shoulder. Even if you aren't actively hiding anything and did your best with your taxes, you might be worried. Taxes are complex, and the line between creative tax planning and tax evasion can be less clear than you might think.

How long is the IRS statute of limitations? The IRS usually has three years after you file to audit you. If you omit more than 25% of your income, the IRS gets double that time, six years. But frequently the IRS says it needs more time and asks you to sign a form extending the statute, usually for a year.

Most tax advisers generally tell clients to agree. However, get some professional advice about your own situation. You may be able to limit the time or scope of the extension.

But what if you file a false return under-reporting income or willfully fail to file? Section 6531(2) of the tax code says the statute is six years commencing once the return is filed, or from the time you willfully failed to file a return. In a case of alleged criminal tax evasion, that means the statute hasn't run if the taxpayer is indicted within six years after "willfully attempting in any manner to evade or defeat any tax or the payment thereof."

In some cases, though, the statute is "tolled"—so stops running. For example, the statute stops running if the target is outside the U.S. or is a fugitive. Even when the alleged tax crime is committed can be hard to pinpoint.

Does filing a false return start the six year clock? What about failing to file by the due date? How about covering it up later, hiding money, or lying about it?

This might occur many years after the tax return was (or should have been) filed. That means you may have to worry for many years beyond six. Some courts have concluded that the six year statute doesn't even start to run until the last act of tax evasion.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.