Forbes

Robert W. Wood
THE TAX LAWYER

TAXES 9/5/2017

Hiding Assets To Thwart IRS Tax Collection Can Be Criminal

Criminal tax charges are not common, and not every charge ends in a conviction. Still, any tax charge is serious, and charges for obstructing the IRS certainly are. For example, a federal grand jury in the District of Hawaii has [indicted a businessman and his accountant with tax crimes](), including allegedly concealing income and assets to obstruct IRS collections. The [indictment]() charges Wagdy A. Guirguis and Michael H. Higa, his CPA, with conspiring to defraud the IRS. The indictment further charges Guirguis with filing false corporate tax returns, failing to file a corporate tax return, evading individual income tax liabilities, corruptly endeavoring to obstruct the IRS, and tampering with a grand jury witness. Higa was also charged with aiding and assisting in the filing of false corporate and individual tax returns.

According to the indictment, the IRS assessed approximately $812,000 in GMP's unpaid employment taxes against Guirguis personally. The indictment alleges that the IRS attempted to collect the unpaid employment taxes—filing notices of federal tax liens, levying bank accounts and serving notices of levy to third parties who owed money to Guirguis. To thwart the IRS's collection activity, Guirguis and Higa allegedly transferred funds from GMP to a nominee entity that Guirguis secretly controlled through Higa.

The indictment further alleges that Guirguis fraudulently transferred ownership of a luxury condominium to his wife, and used the nominee entity to divert approximately $1.5 million for his and his wife's personal benefit. After an IRS revenue officer questioned the condominium transfer, Guirguis and Higa allegedly instructed a bookkeeper to alter the books and records of the nominee entity to conceal that he had diverted funds for his personal benefit. The indictment further charges that Guirguis did not report more than $3 million of GMP's gross receipts and filed false individual tax returns that did not report approximately $465,000 of the income he diverted through the nominee entity.

He is also charged with attempting to tamper with a witness during the course of the grand jury's investigation, and corruptly endeavoring to obstruct and impede the IRS, by among other things, making false statements to an IRS revenue officer and special agents. If convicted, Guirguis and Higa each face a statutory maximum sentence of five years in prison for engaging in the conspiracy. Guirguis also faces a statutory maximum prison sentence of five years for each of the tax evasion counts, three years for each of the false returns counts, three years for the corrupt endeavor count, one year for the failure-to-file count, and 20 years for the witness tampering count. Higa also faces a statutory maximum prison sentence of three years for each of the aiding and assisting counts. In addition, Guirguis and Higa each face a period of supervised release, restitution, and monetary penalties.

It is worth stressing that these charges have not been proven. Individuals charged in indictments are presumed innocent until proven guilty beyond a reasonable doubt. Still, the indictment reads like a how-to for bad missteps.

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