

How Not To Deal With IRS? Just Ask DMX

By Robert W. Wood

When it comes to taxes, you might want to emulate Warren Buffett, or perhaps even Donald Trump, if you think either made a tax savvy move you can copy. You are less likely to want to emulate Wesley Snipes, DMX, or even Floyd Mayweather. Snipes followed a kind of tax protester strategy that landed him in prison for three years, and cost him millions.

Even long after his prison time, he was in litigation with the IRS over large civil amounts. After a criminal tax case, that is a less-publicized but common occurrence. More recently, DMX (also known as Earl Simmons), still has a great deal of tax trouble ahead of him to try to resolve. He stands accused of 14 separate criminal counts.

In fact, if they are proven, the charges against DMX could land him in prison for up to 44 years. Beginning in 1997, Simmons released a series of hip-hop albums that sold millions, and some went platinum. He performed at venues across the United States and around the world, and has acted in motion pictures.

But that was then. Now, the charges against DMX include corruptly endeavoring to obstruct and impede the due administration of Internal Revenue Laws, evasion of payment of income taxes, evasion of assessment of income tax liability, and failure to file a U.S. individual income tax return. DMX has pleaded not guilty, but these cases are tough to win against the kind of evidence prosecutors are likely to have. In the past, DMX served time in jail for drug possession, felony theft, dog fighting, reckless driving and failing to pay child support.

But the new tax charges are big, and they are rooted in tax scuffles he had with the IRS many years ago. They involve \$1.7 million in alleged tax liabilities that I'll bet DMX now wishes he had paid. The indictment alleges that Simmons' earnings from recordings and performances from 2002 through 2005 meant that he owed federal income tax liabilities of approximately \$1.7 million. Those early liabilities went unpaid.

Then, in 2005, the IRS began efforts to *collect* on these unpaid tax liabilities. That's when Simmons' alleged conduct went from bad to worse. From 2010 through 2015, Simmons earned over \$2.3 million, yet prosecutors say he did not file tax returns for those years.

Instead, prosecutors claim he orchestrated a scheme to evade paying his outstanding tax liabilities. He maintained a cash lifestyle, and avoided using personal bank accounts. He even used the bank accounts of nominees, including business managers to pay personal expenses.

Simmons would get his managers to accept the royalties, and then give Simmons cash, the feds allege. Any kind of duplicity is likely to hurt his defense badly. Of course, at this point the indictment is only an accusation. But these charges are as serious as they come.

Prosecutors claim that he received hundreds of thousands of dollars of royalty income from his music recordings, but managed to skate on taxes. Simmons would get his managers to accept the royalties, and then give Simmons cash. Simmons was also on the "Celebrity Couples Therapy" TV show in 2011 and 2012, for which he was paid \$125,000.

Prosecutors cite his conduct about that TV show as a telling example. When taxes were withheld from Simmons' check for the first installment by the producer, Simmons refused to tape the remainder of the show until the check was reissued *without* withholding taxes. Prosecutors claim that he took other steps to conceal his income too.

For example, he allegedly filed a false affidavit in U.S. Bankruptcy Court that listed his income as "unknown" for 2011 and 2012. Then, Simmons allegedly claimed he made \$10,000 for 2013. In reality, say prosecutors, Simmons received hundreds of thousands of dollars of income in *each* of those years.

None of these charges has been proven, but it seems likely that DMX has some serious explaining to do. Count One carries a maximum sentence of three years. Counts Two through Eight carry a maximum sentence of five years — each. Counts Nine through Fourteen carry a maximum sentence of one year — each. If you assume the worst — that the feds succeed in convicting him on all counts — the potential prison time could be up to 44 years.

That probably isn't likely, but it is staggering possibility. By comparison, Floyd Mayweather is on easy street. His case may be more cash mismanagement than anything else. His tax case is civil, and appears to only be about taxes that he *admits* he owes.

Yet, Mayweather's public statements say he gave the IRS \$26 million, but seems to ask how the IRS could possibly want more. The timing suggest that these are not tax bills after an audit. Mayweather presumably filed his 2015 tax return in 2016, but only sent the IRS part of the money. It is easy to understand a surprise and a shortfall where the IRS says you owe *additional* taxes. It is less easy to understand when your tax return reports all the taxes due, and you simply can't pay.

Most of Mayweather's income is probably via contract, without tax withholding, and maybe he was somehow surprised at the size of his 2015 tax bill. However, you would think that his team of advisers and professionals would make sure that the amounts anticipated for that's year's taxes would be reserved for that purpose. If you are investing, you arguably shouldn't tie up money you must pay the IRS soon.

The math would not seem to be that difficult. Athletes and entertainers often have people who do these sorts of things for them, but here, someone must have missed something. And often, as we saw with soccer stars Lionel Messi and with Cristiano Ronaldo, 'my advisers did that,' does not always work.

If you want to read how *not* to behave with the IRS, try reading the DMX indictment in full. These are only unproven allegations at this point. But it is worth reading for what *not* to do when it comes to your taxes. See Indictment, *U.S. v. Earl Simmons*, Case No. 1:17-cr-00172, U.S. District Court for the Southern District of New York.

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