



## Robert W. Wood THE TAX LAWYER

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# Hunter Biden & Wesley Snipes Both Have Misdemeanor Tax Convictions



Most high profile and widely reported tax charges involve felonies, but not all of them. And sometimes prosecutors go for felony convictions but fall short. As has been widely reported, Hunter Biden only ended up with misdemeanor charges, to which he plead guilty. These days, few people talk about or remember another high profile case that ended up with misdemeanor convictions: Wesley Snipes. The cases and their facts are quite different, but they are still interesting to consider in tandem.

Biden agreed to plead guilty to two charges of failure to pay taxes under [section 7203 of the Internal Revenue Code](#). That section covers a wide variety of offenses, including: failure to pay estimated tax or tax; failure to file a return; failure to keep records; and failure to supply information. Given the dollars involved, many people find it surprising that Biden ended up only with this misdemeanor, not a felony. Yet court documents revealed a combined income of \$3 million for the two years involved.

In 2021, Biden claimed to have paid the IRS what he owed, but he was quite late, since the payments were due on April 17, 2018 and April 15, 2019. Paying late can be a crime, and an even more serious one if you obstruct the IRS in its collection efforts, or commit some act of evasion. That can elevate the matter to a felony. Perhaps that is another example of the old adage that in some cases, the coverup can be worse than the crime.

Most regular audits, and most regular efforts by the IRS to collect overdue taxes from someone, never become criminal. The IRS has a whole division devoted to collecting money from taxpayers. There are liens, levies, installment agreements, and even offers in compromise. Taxpayers have to cooperate with the IRS, and can benefit by working out a payment plan. But if you lie, move money around to new accounts, hide assets, misstate your income, etc., that kind of action can be criminal. With tax and criminal

lawyers helping him, Biden avoided all the more serious issues, although many observers think it was a sweetheart deal compared to what the average Joe might have ended up with, including over the gun charge.

How did Wesley Snipes end up? Wesley Snipes was not the one who invented this tax rule, but he's the best-known example of it. It's about the difference between *skipping* tax filings—not to be recommended—and filing *falsely*, which is even worse. In the run-up to April 15th, the IRS and Justice Department *want* you to think about tax filings. That's why there are so many criminal tax cases in the media this time of year.

Everyone with income above a certain level must file a return. And you must sign tax returns under penalties of perjury. Yet, taxes are complex, and the line between creative tax planning and tax evasion can be less clear than you might think. That's where Mr. Snipes came in. The U.S. taxes all income wherever you earn it. So, do not argue that only foreign-source income is taxable, making your domestic income exempt. It was a variation of this bogus theory that got Mr. Snipes in trouble.

In fact, if you are so off the charts that your tax return would be considered of the tax protester variety, you might have smaller criminal exposure by not filing at all. Curiously, that was a key tax lesson from Wesley Snipes. You can be prosecuted for failure to file, or for filing falsely. Mr. Snipes was [convicted of three misdemeanor counts](#) of failing to file tax returns. Filing falsely is a felony. As Snipes' misdemeanor convictions show, failing to file carries smaller penalties than filing fraudulently. In 2008, Snipes was [convicted](#) of failing to file tax returns. He was one of the more high profile criminal tax defendants in recent memory, facing prosecution on multiple serious felony tax evasion counts.

It was a partial victory for Mr. Snipes, since he defeated the more serious felony counts. But he got prison time, reporting to jail on December 9, 2010. He was released in April 2013. His tax case could have come out much worse. During 1999 through 2001, Snipes avoided \$7 million in taxes. Snipes followed an accountant and an anti-tax advocate down a dangerous path. The advisers [claimed](#) they did not legally have to pay taxes.

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