



Robert W. Wood

THE TAX LAWYER

TAXES 10/17/2017

Lessons From Dentist's Tax Evasion: Cover-Up Is Worse Than Crime

No one wants to be accused of tax evasion. And most people who end up in the situation probably did not think a criminal prosecution, much less a criminal conviction, was a serious or even a remote possibility. Recently, a Tennessee dentist named Andrea M. Henry [pleaded guilty to tax evasion](#). Dr. Henry, 45, owned The Henry Polk Dental Group D.P.C. and The Smile Spa LLC. These dental practices were located in Cordova, Tennessee. Dr. Henry filed personal income tax returns for 2005, 2006, 2008 and 2010 to 2013, but did not pay

\$113,781 in income and self-employment taxes due to the IRS.



Dr. Henry also failed to pay over the employment taxes withheld from her employees' paychecks for numerous quarters between 2006 and 2015. Given this failure to pay employment taxes, the IRS assessed over \$160,000 in trust fund recovery penalties

against Dr. Henry, making her [personally liable](#) for the unpaid employment taxes. Up to now, these were serious tax problems, but here is where things truly went off the rails. Instead of paying the taxes owed, Dr. Henry spent hundreds of thousands of dollars on personal expenses, including private school tuition, expensive housing and luxury cars.

And that wasn't all. After the IRS assessed penalties against her, Dr. Henry stopped using her personal bank accounts. Instead, she began using business accounts to pay for her personal expenses. In early 2011, prior to her home being foreclosed on, Dr. Henry transferred \$130,000 to a nominee buyer, and entered into a sham lease arrangement with the nominee to create a false explanation as to the source of the funds in the nominee's bank account. She even caused the nominee to repurchase the home for her. Dr. Henry later used that same nominee and other nominees to purchase and lease exotic cars, including a Dodge Viper and a Porsche Panamera.

Dr. Henry admitted to causing a tax loss of \$528,882.07. Sentencing is scheduled for Jan. 12, 2018, before U.S. District Court Judge John T. Fowlkes Jr. These are serious charges, and Dr. Henry's guilty plea means that only sentencing remains. Dr. Henry faces a statutory maximum sentence of five years in prison, a period of supervised release, restitution and monetary penalties. There are numerous lessons here. One is certainly that the IRS takes payroll taxes seriously. 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 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 you 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.

Another lesson relates to evasive and obstructionist behavior during an IRS audit, or similar behavior designed to avoid paying the IRS. Arguably, this is the bigger lesson of the case. It is surprising how consistently this theme arises in criminal tax cases. Time and again, taxpayers in a civil audit seem to think they can outsmart the IRS or cleverly manipulate the government to come out ahead. And understandably, where the government sees this kind of behavior, they may want to crack down, harshly.

This doesn't mean that one has to agree with everything the IRS says in an audit. Yet, there is an established way of proceeding, and an above-board way to communicate with the IRS. And deception and obstruction are not the way. With a potential prison term of up to five years in this case, that is a painful lesson.

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