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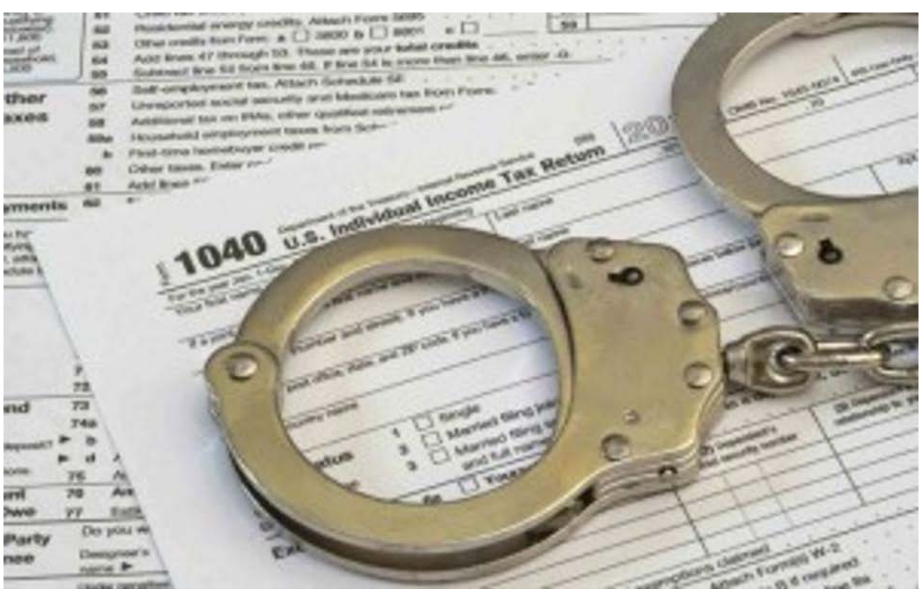
Man Guilty Of Tax Evasion Over Fake Church Could Face 25 Years

A jury in Minnesota has convicted a Minnesota chiropractor of five counts of tax evasion, plus one count of presenting a fake financial instrument to the U.S. Treasury Department. Donald Gibson was convicted following a five-day trial. According to the evidence presented at trial, Gibson failed to file his 2004 through 2014 individual income tax returns. The trial laid out how Gibson attempted to evade his tax liabilities for years. Prosecutors showed that Dr. Gibson diverted money to a warehouse bank called MYICIS. Warehouse banks can conceal ownership of funds in part by commingling funds with those of other individuals.

This particular warehouse bank was eventually shut down. But using the warehouse bank, Gibson cashed over $800,000 in business checks at a check-cashing facility. He also submitted fake money orders and bogus financial instruments to the IRS. The MYICIS warehouse bank also featured in the recent trial of Richard Thomas Grant, 63, of Point Richmond, California. Grant was found guilty of three counts of tax evasion following a jury trial. He was sentenced to 33 months in prison.



But Dr. Gibson could face an even longer prison term. Apart from his antics with the warehouse bank and failing to file tax returns, he also formed Sovereign Christian Mission. He claimed that this was a *bona fide* religious organization. But the feds claimed that this was merely a way to further hide his chiropractic income and pay for his personal expenses. Gibson used his Sovereign Christian Mission to pay for his own groceries, entertainment, dinners, and car repairs. The IRS calls that 'private inurement,' when money that is *supposed* to be devoted to religious or charitable purposes ends up benefiting private individuals. As you might expect, founders and insiders of charitable organizations are particularly scrutinized.

Dr. Gibson's private church activities were bad enough, claimed prosecutors, and these alone could send him to prison. However, if you look at the *potential* prison terms, what was arguably worse for Dr. Gibson is how he responded when the IRS was auditing. As the IRS was auditing his tax returns, and later during the ensuing criminal investigation, Dr. Gibson presented a fake financial instrument purporting to be worth $300 million to the IRS, claiming that it paid off his income tax liabilities. You could call this a cover up–or attempted cover up–being worse than the crime.

Time and again, in serious tax cases, the taxpayer may *think* that preparing false invoices, fake receipts, made up expense, and so on, can get them *out* of trouble. Usually, the reverse is true. It is one reason why talking to the IRS in an audit or investigation can be dangerous, especially if you might be tempted to misspeak. Answering IRS questions in an audit or investigation can be nerve-wracking. Do not speak up without your lawyer present, and ask your lawyer what to is fair to discuss. But *claiming* Fifth Amendment protection in taxes cases can be a mistake.

One of the biggest issues involves books and records. You must keep them in order to fulfill your tax filing obligations. If those records are incriminating, can you refuse to hand them over? You can, but it may not help. Even if you claim the Fifth Amendment protection against self-incrimination, the IRS can hand you an "information document request" to produce your records. You can refuse, but the IRS will then issue a summons. If you refuse to answer that, the IRS will take you to court, and the court will probably order you to comply.

But, doesn't your constitutional right to take the Fifth trump the IRS? Not always. Ironically, you can refuse to *talk*, but you *cannot* refuse to produce the documents. Your own private papers are personal records, and if they might incriminate you, they are protected by the Fifth Amendment. But the Required Records doctrine says you *must* hand over documents no matter how incriminating. The government requires you to keep certain records, and the government has a right to inspect them.

In most cases, a tax audit is civil and there is little risk that it will become otherwise. Still, a majority of criminal tax cases come directly out of civil tax cases. The IRS civil auditors ‘refer’ a case to the IRS Criminal Investigation Division. The IRS civil auditor will not tell you this is occurring, so the first time you hear about it, your case may have gone from bad to worse. Apart from the financial costs, penalties and potential restitution, Dr. Gibson’s prison term could be harsh. When he is sentenced, Dr. Gibson could face a statutory maximum sentence of 25 years in prison for presenting a fake financial instrument to the Department of Treasury. He also faces five years in prison for each count of tax evasion.

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