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Carlos Mencia Criminal Tax Case Shows Harsh California Tax Collector



Most criminal tax charges are federal. Even in tax-tough California, state criminal tax charges are rare, but that could be changing with LA prosecutors' charges against comedian Carlos Mencia. He was arrested on 12 felony tax counts, alleging that he failed to report \$8.7 million in personal and corporate income. Mencia faces six felony counts related to personal taxes and six related to corporate taxes. LA District Attorney Nathan Hochman noted that Mencia [could face up to 11 years and 4 months in prison](#) if convicted as charged.

Beware Tax Notices

The charges against Mencia, whose real name is Ned Arnel Holness, relate to taxes for 2019 through 2024, during which prosecutors say he failed to file tax returns or pay taxes, despite allegedly being sent 78 notices by California's Franchise Tax Board (FTB). The FTB usually has up to six years from the commission of an offense to initiate criminal proceedings. But in many cases, the state resorts to criminal tax charges when the non-filing taxpayer is engaged in other potential financial crimes.

Tax Planning Isn't Criminal

The allegations against Mencia may seem unusual, but attempts to avoid paying taxes to the Golden State are nothing new. Many people lawfully move out of California, voting with their feet, [leaving high taxes behind](#). For that and other reasons, California tax administration is thorough, and audits [California tax disputes can be difficult](#). Sometimes, people fail to file returns that are due, whether or not they live in California.

Indeed, given the Golden State's strict tax rules and aggressive enforcement, many [California non-residents face California tax](#) filing and payment

obligations. For example, the state [is taxing nonresidents who sell stock and interests in LLCs](#). California [also taxes options and restricted stock, even after you move away](#).

Some Violations Are Criminal

As Mencia's case reveals, there are criminal statutes for failing to file required California income tax returns. It is a misdemeanor if you fail to file a tax return for a two or more years that results in an estimated tax delinquency of \$15,000 or more. You can be charged even if you did not intend to evade taxes. The state can seek fines, imprisonment or both.

Another part of California tax law authorizes either misdemeanor or felony charges at the discretion of the prosecutor. It applies to any person who willfully fails to file even a single return. Again, the state can seek fines, imprisonment or both. For a felony conviction, the State must prove the failure to file was willful, meaning a voluntary, intentional violation of a known legal duty.

There are plenty of aggressive tax planning moves by Californians seeking to reduce or skip the state's sky-high rates, but it's hard to imagine them being criminal. Still, apart from Mencia, the state does occasionally bring--and win--criminal tax cases, and not always involving a great deal of money.

Even Small Cases Can Be Criminal

Take *Hudson v. Superior Court of Orange County*, 7 Cal.App.5th 1165 (Ct. of App., 4th Dist., Div. 3, Jan. 26, 2017). Blake Hudson failed to timely file tax returns for 2007, 2008, and 2009. He owed \$21,974, \$27,205, and \$6,505 in taxes for the three years. He eventually filed the 2007 and 2008 returns five

years late but failed to pay his taxes due. He filed his 2009 return three years late, and paid only \$400 of what he owed.

The FTB sent him letters and numerous notices, and eventually charged him with felony willful failure to file returns. The prosecutors argued--successfully--that they did not have to prove he was willful, that fact that he failed to file returns was enough for a criminal violation on its own. Mr. Hudson argued that intent to evade was required, and some additional overt act was necessary to show that intent.

But the court ruled against Mr. Hudson and found that the mere failure to timely file returns was sufficient to establish support a felony charge under California law. The relevant California law makes the failure to file returns the criminal act, not the attempt to evade taxes. Simply by not filing, prosecutors could prove his intent to not file without any additional overt act related to an intention to evade taxes. The court seemed to recognize that this was harsh, but said the California tax statute was unambiguous.

In short, despite the rareness of these cases, the failure to file a California state tax return exposes a taxpayer to potential criminal jeopardy. Repeated failures, as allegedly occurred with Mencia, compounds it. California appears to pursue criminal charges mainly as an addition to other crimes. But as these examples show, sometimes it pursues criminal investigations when the case is about failing to file tax returns.