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Tax Lessons From 'Biggest-Ever' $2 Billion Robert Brockman Tax Evasion Case

The Feds charged Texas businessman Robert T. Brockman with a $2 billion tax fraud scheme in what they say is the largest *ever* tax case against an American. The 39-counts in the vast indictment are still only accusations at this point, but most such cases do not end well for the accused. This huge case charges the Chairman and CEO of The Reynolds and Reynolds Company with conspiracy, tax evasion, failing to file foreign bank account reports, wire fraud, money laundering, evidence tampering, and destruction of evidence. The charges stem from an alleged decades-long scheme to conceal approximately $2 *billion* in income from the IRS, as well as defraud investors in Reynolds and Reynolds debt securities. The case also ensnared Robert Smith, another Texas billionaire who is chief executive of Vista Equity Partners. Smith signed a non-prosecution agreement and is paying $139 million as part of his cooperation deal. With an allusion to Enron, one of the prosecutors said, "We will not hesitate to prosecute the smartest guys in the room." But what are the basics?

The indictment alleges that Brockman used a web of offshore entities in Bermuda and Nevis to hide money and income from the IRS, directing untaxed profits to accounts in Bermuda and Switzerland. The indictment claims that between 1999 and 2019, Brockman backdated records and used encrypted communications and coded words to advance the scheme. In addition to the tax offenses, the indictment alleges that between 2008 and 2010, Brockman engaged in a fraudulent scheme to obtain $67.8 million in debt securities and used non-public information. He is even accused of persuading someone to alter, destroy, or mutilate documents and computer evidence to keep it from the grand jury. He has pleaded not guilty. Here are some basic rules that may come into play.

Hiding things nearly *always* looks bad, and the coverup is often worse than the crime. You might have good reasons to hide things from competitors or an ex-spouse, but don't hide from the *government*. Remember political fixer Paul

Manafort? Secret deals lead to his conviction. For Americans, and increasingly for just about everyone worldwide, the key is *transparency*. Few could have predicted the Armageddon that changed Swiss banking. In 2009, the IRS and Department of Justice sliced through the Gordian knot of bank secrecy, netting account holder names and a $780 million penalty from UBS. Credit Suisse's CS +1.7% $2.6 billion fine and U.S. felony tax charge was an astounding hit. All Swiss banks have fallen into line or closed. FATCA—the Foreign Account Tax Compliance Act—requires foreign banks to reveal American accounts holding over $50,000. Already in U.S. administrative cases with the IRS and tax prosecutions, trusts and shell companies are under fire, with hidden structures suggesting knowledge of guilt.

So report your income, and don't file falsely. You must file a tax return each year with the IRS if your income is over the requisite level. And remember, the U.S. taxes all income wherever you earn it. Filing false returns is even worse than failing to file. You have to file, but make sure your return is as complete and accurate as you can make it. That ties into intent and transparency count too. Don't be willful. Accountability and transparency are nearly universal lessons. Willfulness means you acted with knowledge that your conduct was unlawful. According to the IRS, willfulness is a voluntary, intentional violation of a known legal duty. Even willful blindness, a kind of conscious effort to *avoid* learning about reporting requirements, can be enough.

Report foreign accounts and assets too. The IRS requires worldwide reporting and disclosure, and the consequences of noncompliance can be severe. FATCA, the Foreign Account Tax Compliance Act, requires foreign banks to reveal American accounts holding over $50,000. Some asset disclosures may be duplicative with FBARs, but it is best to over-disclose. There is never a penalty for going overboard in disclosures. With a treasure trove of data, the IRS now has the ability to check. If you have an interest in any foreign bank, securities, or other financial accounts, pay attention. A signature power is enough, even if it is not your money. For all of these, you must file an annual FBAR if the aggregate value of the accounts at any time in the year tops $10,000. Penalties are huge. The Swiss bank controversy netted the IRS over $10 billion, and much of it came down to these little forms. FBAR penalties can swallow 100% of accounts, and criminal penalties can be up to 10 years in prison.

Finally, avoid lavish spending, especially publicly. It's bad enough if you are skirting your tax obligations, but, if you are doing that and simultaneously living lavishly, it can look even worse.

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