



Wood LLP

Tax Alert



Robert W. Wood

THE TAX LAWYER

TAXES 7/23/2014

10 Signs Your Tax Missteps Are 'Willful' Triggering IRS Penalties Or Jail

“Gee, I didn’t know,” can get you off the hook in a variety of circumstances. Sometimes it can even work with the IRS. But it is hardly a Get Out of Jail Free card. Everyone has heard that ignorance of the law is no excuse.

Besides, on many key tax subjects, the IRS says that with hardly any effort, you could easily learn the IRS requirements. Surprisingly, some tax knowledge is attributed, and that’s true with intent too. In fact, your overall actions and conduct may reveal your intent, and that can trip you up. Your actions may spell the difference between an innocent mistake and one that is willful and therefore far more serious.

Willfulness involves a voluntary, intentional violation of a known legal duty. In taxes, it applies for civil and criminal violations. This definition causes many people to think they are home free. If you didn’t *know* you had a legal duty to report income or a foreign bank account, how can you be prosecuted? It’s not that simple.



Even civil penalties, you might figure, can't be imposed if you weren't actually trying to cheat anyone. Unfortunately, willfulness can be shown by your knowledge of reporting requirements and your conscious choice not to comply. But some knowledge is assumed.

You may not have *meant* any harm or to cheat anyone, but that may not be enough. One area rife with concern these days is reporting offshore income and bank accounts. The failure to learn of filing requirements, coupled with efforts to conceal the existence of the accounts, can spell willfulness.

IRS says any person with foreign accounts *should* read government tax forms and instructions. And failing to follow-up or get professional advice can provide evidence of willful blindness. See [Excerpt From Internal Revenue Manual, 4.26.16.4.5.3, Paragraph 6.](#)

If you knew you had a duty to file FBARs, you knew it was illegal *not* to file them. But even if you *didn't* know about FBARs, are you off the hook? Not necessarily. Your conduct is relevant. And this is where evaluating your facts and conduct can be tough.

A purpose to disobey the law can be inferred by conduct meant to conceal. Think about your facts critically, and take into account how any of these might look:

1. Setting up trusts or corporations.
2. Filing some forms and not others.
3. Reporting one account but not another.
4. Using another passport.
5. Telling your bank not to send statements.
6. Using code words in communications.
7. Visits in person.
8. Cash deposits and withdrawals.
9. Moving money from one bank or country to another.
10. Not telling your return preparer.

Any of these can indicate willfulness, and it's hardly an exhaustive list. Some of these, like moving money from one bank or country to another may be because the banks put you in this tough spot. Your advisers may have told you to follow these protocols, saying that everyone's doing it.

But a "they made me do it" defense generally won't absolve you. If you're considering the two IRS programs known as the OVDP and the Streamlined program, remember that the latter requires a certification of non-willfulness. You may believe you were non-willful, and you may be. But consider how the *IRS* may view your facts.

The IRS can and does audit, and you may be more vulnerable than you think. Be realistic about the evidence that could be mounted against you. Remember, the stakes are high, not just dollars but much more.

If Streamlined is right for you, there's one Streamlined program for [U.S. Taxpayers Residing Outside the United States](#). There's another for [U.S. Taxpayers Residing in the United States](#). But the IRS and Justice Department have suggested that the latter is sometimes being used by people who probably should go for the more expensive but much more secure program known as the OVDP.

So be careful. You can get some help from the IRS' [Offshore Voluntary Disclosure Program Frequently Asked Questions](#). And consider getting professional advice, even if it doesn't tell you exactly what you want to hear.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.