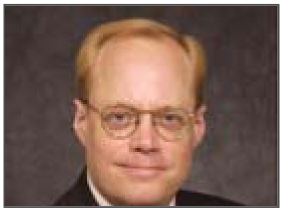

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THE TAX LAWYER

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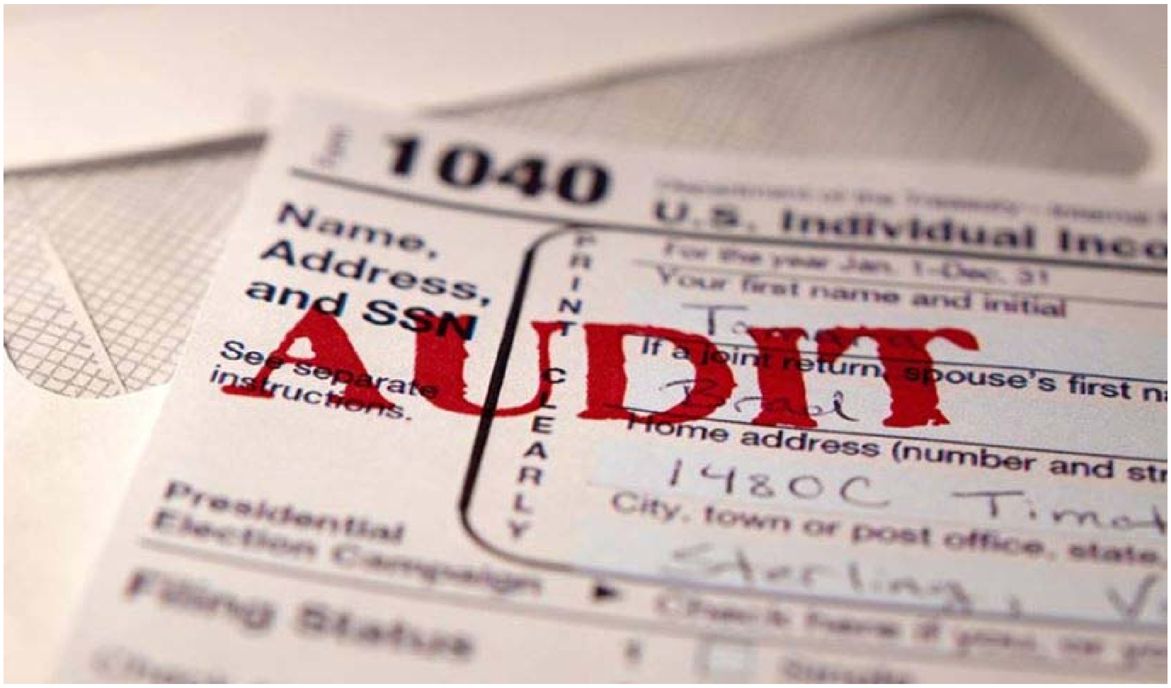
700 Year Sentence For Tax Fraud, While Failing To File Is A Misdemeanor

Two women in Georgia faced charges punishable with up to an astounding 700 years in prison arising out of an alleged tax fraud scheme. The women, Shanese Lewis and Shelronda Bingham, claimed prosecutors charged them to get to their brother, Shannon Bradley. If that's true, it seems to have worked. Mr. Bradley has now plead guilty to stealing the private tax records of thousands of taxpayers.

When Mr. Bradley plead guilty, the charges against his two sisters were dismissed. He even declared that his sisters were innocent of any involvement. Yet the identity and tax refund thefts were so pervasive that the feds had amassed an aggregate potential 700-year prison sentence.

Mr. Bradley has been imprisoned before for similar ID theft crimes. Even so, his sisters claimed they knew nothing about their brother's latest tax refund fraud. The case involved a whopping 1,800 victims, and that's one reason the potential prison term could be so long. Nevertheless, Mr. Bradley ended up drawing a 12-year prison term.



Timing is also relevant to how long you need to be looking over your shoulder. Even if you aren't actively hiding anything from the taxman and did your best with your taxes, taxes are horribly complex. The line between aggressive tax planning and tax evasion is sometimes less clear than you might think. Even innocent activities can sometimes be interpreted as suspect.

How long can you be asked to prove income, expenses, bank deposits and more? Start with the basic rule that the IRS usually has three years after you file to audit you. If you omit more than 25% of your income, the IRS gets double that time, six years. But statutes are often extended, sometimes voluntarily.

Frequently, the IRS says it needs more time to audit and asks you to sign a form extending the statute, usually for a year. Most tax advisers generally advise clients to agree. However, get some professional advice about your own situation. You may be able to limit the time or scope of the extension.

But what if you file a false return under-reporting income or willfully fail to file? The rules for how long you must worry–and the stakes–go up materially, including potential criminal charges and prison. The tax code says the statute is six years commencing once the return is filed, or from the time you willfully failed to file a return.

Failing to file a return is a misdemeanor, while filing falsely is a felony. Wesley Snipes didn't file a false tax return, but was convicted of three misdemeanor counts of failing to file tax returns. He was sentenced to McKean Federal Correctional Institution, and finished his three-year sentence at the adjacent minimum security Club Fed. His sentence could have been worse.

For criminal tax evasion, the statute doesn't run if the taxpayer is indicted within six years after "willfully attempting in any manner to evade or defeat any tax or the payment thereof." In some cases, though, the statute stops running. For example, the statute stops running if the target is outside the U.S. or is a fugitive.

Even when the alleged tax crime is committed can be hard to pinpoint. Does filing a false return start the six year clock? What about failing to file by the due date? How about covering it up later, hiding money, or lying about it?

All are potential problems that might occur many years after the tax return was filed or should have been filed. That means you may have to worry for many years beyond six. The issue is especially important if any later act keeps the statute open. Some courts have concluded that the six year statute doesn't even start to run until the last act of tax evasion.

For example, in *United States v. Irby*, the court held the six year statute began to run on the last act of evasion. Mr. Irby used nominee trusts to conceal his assets. He may have *thought* he only had to worry for six years, but using nominee accounts delayed when his six years commenced. That meant he could still be indicted, prosecuted and convicted.

Timing may not be everything, but it's terribly important in tax cases. No one wants to be in the position of lying low and worrying about being caught. Fortunately, sometimes these issues can be resolved in less painful and less expensive ways than you might think. Plan ahead, run the numbers, and get some professional advice. After all, 700 years is a long time!

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.*