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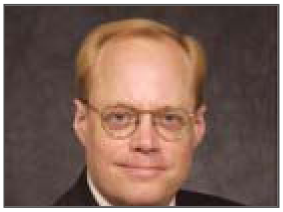

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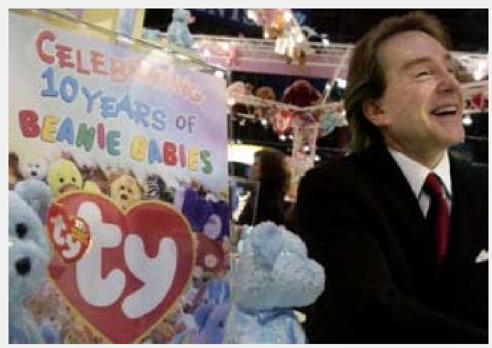
Beanie Babies Founder Ty Warner To Pay $53M For Offshore Tax Evasion



H. Ty Warner

H. Ty Warner, age 69, created Beanie Babies and spawned a generation of collectors. He created wealth for himself and others, since some of the plush stuffed animals became collector's items worth thousands. But he did some of it in secret Swiss accounts and the IRS now stands to collect a $53 million fine. Charged with tax evasion, Mr. Warner has already said he'll plead guilty. See DOJ Press Release.

Mr. Warner (#209 on Forbes 400 list) is not the first Forbes 400 member to draw tax charges. Leandro Rizutto (#296), founder of Conair, had his own run in with tax crimes. See The Richest Tax Cheats. And another is Igor M. Olenicoff (#184), a California real estate developer with a net worth of $2.9 billion. See Stay Out Of Jail For $52 Million?

According to the charging document, Mr. Warner opened a secret UBS account in 1996. In late 2002, he moved $93 million to Zürcher Kantonalbank. That account produced over $3 million of income in 2002 alone, which he failed to mention on his Form 1040. He even amended his 2002 return in 2007, but once again omitted the offshore income. See Beanie Babies Creator Ty Warner to Admit Tax Evasion.

Mr. Warner still paid considerable tax on the nearly $50 million of 2002 income he ***did*** report. But he shorted the IRS by about $1.2 million. All these years later, that's a painful omission, not only drawing the tax evasion charge but huge FBAR penalties too. Mr. Warner's attorney Gregory Scandaglia reports that his client's FBAR penalty will exceed $53 million.

All of the numbers are staggering. And that ties into criminal penalties. A tax evasion conviction carries up to 5 years in prison and a $250,000 fine. Tax convictions even draw prosecution costs on top of all the back taxes, interest and penalties. And the penalties can be huge. Civil fraud penalties alone can add another 75%.

But when it comes to penalties, FBAR charges and penalties—even ***civil*** penalties—are the real gravy train for the government. An annual report of foreign accounts in the law since 1970, FBARs target money laundering. They were not widely known—or widely enforced—until the UBS scandal of 2008 and 2009.

But now they are ubiquitous, requiring reporting of foreign accounts even by those with mere signature authority but no beneficial interest. A willful failure to file an annual FBAR can trigger a civil penalty of up to 50% of the amount in the account at the time of the violation. Mr. Warner's attorney indicated that his client tried unsuccessfully to join the IRS Offshore Voluntary Disclosure Program in 2009. Few taxpayers are turned down, but the IRS policy is not to accept taxpayers who are already being investigated.

Although Mr. Warner's numbers are huge, many more garden-variety taxpayers find themselves facing the awkward combination of failing to report interest on foreign bank accounts and failing to file FBARs. Even if the unreported income is small, the combination of amending tax returns to report it plus quietly filing past-due FBARs is a classic "quiet disclosure." The IRS advises against them and says it can prosecute taxpayers who do it anyway. See Despite Offshore Haul, IRS Hunts Quiet Disclosures, First Time FBARs.

What the IRS wants is taxpayers to join the Offshore Voluntary Disclosure Program. Like the 2009 and 2011 programs that preceded it, taxpayers must file up to 8 years of amended returns and up to 8 FBARs. Taxes on the unreported income, interest and a 20% penalty on the taxes seem reasonable.

But the sticking point for many is the IRS program's counterpart to the FBAR penalty. Currently, the program's penalty is 27.5% of the highest aggregate account balance in the undisclosed offshore accounts. For many, that is a crushing penalty, causing some taxpayers to enter the program but then "opt out" at its conclusion to try to negotiate—or even litigate—more digestible penalties. See FATCA Blues? Opt Out Of IRS Offshore Program.

Yet charges like Mr. Warner's stratospheric bubble-bursting Beanie Baby tax and FBAR consequences are reminders that the dollars in question can get worse—catastrophically worse—than 27.5%. As for jail time, with sentencing guidelines based on the dollars involved, Mr. Warner may well face that too, despite his cooperation.

As for Beanie Babies, their star has also fallen: How Much Beanie Babies Were Predicted To Be Worth Vs. How Much They're Really Worth.

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.