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Despite DMX Tax Evasion Guilty Plea, Feds Want 5 Years Prison

DMX, the recording artist, performer, and actor whose real name is Earl Simmons, was charged last year with 14 counts of federal income tax evasion involving \$1.7 million in alleged tax liabilities. The list of charges was very long, potentially entitling prosecutors to seek a whopping 44 years in prison. Facing that kind of potential punishment, and with the kind of evidence it appeared the government had, in December, DMX wisely pleaded guilty to just one count. That meant a maximum of 5 years. His sentencing is set for March 29, 2018. The one-count deal was surely a savvy one, and the potential five-year prison term could end up being much less. But now, the feds want it all.



The Manhattan U.S. Attorney's Office has asked Judge Jed Rakoff to sentence DMX from 57 months to the maximum prison term of five years. Prosecutors have called for the sentence "to send the message to this defendant and others that star power does not entitle someone to a free pass, and individuals cannot shirk the duty to pay their fair share of taxes." Prosecutors point to what they call an "extensive" criminal history, including 29 convictions over the past three decades. Prosecutors even said that DMX had been "on a one-man crime spree for the past 30 years." If you want a sense of the list of charges, read the [U.S. v.](#)

[Earl Simmons Indictment.](#)

Beginning in 1997, Simmons released a series of hip-hop albums that sold in the millions. Many of his albums went platinum, and occupied top positions on

musical charts. He performed at venues across the United States and around the world, and has acted in motion pictures. The 14 count indictment included: one count of corruptly endeavoring to obstruct and impede the due administration of Internal Revenue Laws, one count of evasion of payment of income taxes, six counts of evasion of assessment of income tax liability, and six counts of failure to file a U.S. individual income tax return.

Guilty pleas are common in tax cases, in part because the government usually has plenty of evidence before they charge a tax crime. As is typical in cases of high profile defendants, prosecutors made much of DMX's financial success and public acclaim. His alleged actions were hard to explain without using the word "willful." The [Indictment](#) claims that for years, he made millions. Part of tax cases is about intent or willfulness, and prosecutors claimed that he did not just have sloppy records or was forgetful about handling taxes. Prosecutors alleged that DMX went *out of his way* to evade taxes. They claim he avoided personal bank accounts, set up accounts in other people's names, and paid personal expenses in cash.

The indictment alleges that Simmons' earnings from musical recordings and performances from 2002 through 2005 meant that he owed federal income tax liabilities of approximately \$1.7 million. Those early liabilities went unpaid. Then, in 2005, the IRS began efforts to *collect* on these unpaid tax liabilities. That's when Simmons' alleged conduct went from bad to worse. Plus, from 2010 through 2015, Simmons earned over \$2.3 million. Even so, prosecutors say he did not file tax returns for those years. Instead, he orchestrated a scheme to evade payment of his outstanding tax liabilities. He maintained a cash lifestyle, and avoided using personal bank accounts.

He even used the bank accounts of nominees, including business managers to pay personal expenses. He received hundreds of thousands of dollars of royalty income from his music recordings, but managed to skate on taxes, prosecutors claim. Simmons would get his managers to accept the royalties, and then give Simmons cash. Simmons was also on the "Celebrity Couples Therapy" TV show in 2011 and 2012, for which he was paid \$125,000. Prosecutors cite that TV show as a telling example. When taxes were withheld from Simmons' check for the first installment of that fee by the producer, Simmons refused to tape the remainder of the show until the check was reissued *without* withholding taxes.

DMX may well get much less than the five years prosecutors want. And whatever happens at his sentencing, he is doubtless better off with a one count guilty plea than he would have been trying to fight all fourteen counts of the indictment-- and risking up to 44 years.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.