Forbes

Robert W. Wood
THE TAX LAWYER

For Joint Tax Returns, This Couple Got Three Years In Prison — Each

Taxes 6/28/2017

IRS statistics show that some 95% of all married couples file joint income tax returns. Joint tax returns usually save some money over the total taxes paid by a married couple who file two separate returns. But that tax savings can be more than offset by some big potential liabilities. For one, many people don't know that by filing jointly, each spouse is 100% liable for all taxes due. That is so even if the other spouse did not earn any income, and didn't know what his or her spouse was doing. So it can lead to some tense times and bitter fights when the IRS comes calling.

What's more, both spouses are 100% liable if the tax return under-reports income or contains other errors. If your spouse has big secrets, and the joint tax return you filed omits millions, both spouses are liable. Against that background, what about IRS *criminal* liability? The stakes can be even higher then. And although both spouses can be held liable for understatements, etc., the IRS and prosecutors usually come after one spouse much more than the other. Sometimes they prosecute only the one that seems to be the real wrongdoer. But not always, as the case of a Brentwood, Tennessee doctor and his wife demonstrates. Dr. Jeff McCoy Jr., 70, and Andra McCoy, 68 were *each* sentenced to serve 36 months in prison for conspiring to defraud the IRS. Yes, each.

According to documents filed with the court, they had quite a tax history. From 2002 through 2014, Jeff and Andra McCoy conspired to defraud the IRS by impeding the collection of their income taxes. The McCoys filed 2003 through 2007 income tax returns with the IRS on which they claimed fake income tax withholding amounts, and sought approximately $2,620,208 in fraudulent tax refunds. They submitted false documents to the IRS, and placed their assets in the names of nominees and in nominee bank accounts.

For example, they established a bank account for a purported nonprofit business and directed Jeff McCoy's employer to deposit his income into the nominee account. In addition to seeking fraudulent refunds, the McCoys also failed to pay more than $500,000 in taxes owed for tax years 2001 through 2008, despite earning more than $2 million during that time. They ended up pleading guilty. In addition to the term

of prison imposed, Jeff and Andra McCoy were also ordered to each serve three years of supervised release and to pay $913,595 in restitution to the IRS.

Although the tax dollars here were significant, arguably the most egregious facts were the McCoys' conduct during the IRS audit. That series of actions (lying, creating false documents, hiding their ownership, etc.) may well have spurred prosecutors to push harder for a conviction and for jail time. Without question, false statements to auditors are a huge mistake. Clearly, creating false documents is a terrible idea too. In fact, in many ways, conduct during the audit itself can be pivotal. This is one reason to hire professionals to handle it. Another big issue in the case was the use of entities, and kind of shell game, using entities, nominees, etc. to try to make it hard for the IRS to figure out who owned–and who earned–what. In short, don't try to emulate the example of these taxpayers.

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