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THE TAX LAWYER

TAXES 10/10/2017

Forest Whitaker Loses Tax Case, Provides IRS Handling Tips

No one *wants* to owe the IRS, or to have to ask the powerful tax collection agency for extra time to make payments. But it happens, even to wealthy and famous people. In [*Forest Whitaker v. Commissioner, No. 16-73450 \(9th Cir. 2017\)*](#), the Ninth Circuit Court of Appeals has dealt actor and director Forest Whitaker a blow about his own taxes. The case says the IRS did not abuse its discretion in rejecting Whitaker's request for installment payments. The IRS instead demanded full payment, enforcing collection. The decision in favor of the IRS and against the actor and his wife should hardly be a surprise. Yet installment

payments are often quite possible with the IRS. So why did Whitaker lose?



As with so many tax cases, the root of the problem goes back to some seemingly simple rules. Mr. Whitaker or his representatives failed to produce credible evidence to the IRS that they could or would pay. Yes, that is fundamental. Although

Whitaker had previously had tax issues, this dispute started with his company, Salako, Inc., which paid him wages in 2013 and 2014. Whitaker's joint income tax return for 2013 with spouse Keisha reported adjusted gross income of \$1,491,974, and tax liability of \$426,812. But his wage withholding only sent in \$10,579 for taxes for the whole year! To that, he added estimated tax payments of only \$4,500.

So on December 1, 2014, the IRS assessed the taxes of \$426,812. This was not an audit. This was the amount Whitaker's own 2013 tax return admitted that he owed. In early 2015, the IRS sent notices of intent to levy. Whitaker's representative requested a Collection Due Process hearing, and an installment agreement calling for monthly payments. Citing a down movie trend and a need to project an extravagant lifestyle, Whitaker's representative said the actor could not pay, but would pay monthly.

The IRS made clear that financials had to be filled out, that Whitaker's 2014 return had to be filed, and that estimated taxes were also due. Whitaker and his representative failed to comply, but asked for an extension of time. The IRS checked on Whitaker's 2014 wages, and found that Whitaker had 2014 wages of \$1,865,077, but tax withholding of only \$2,267. To the IRS, matters seemed to be getting worse, not better. The IRS said there could be no installment deal without better tax withholding.

Now, Whitaker wanted to make installment payments for his 2013 *and* 2014 IRS liabilities of \$1.2 million. Whitaker proposed 72-months at \$20,000 per month. The IRS countered with \$20,000 monthly for a year, then increasing to \$40,000 a month. But this deal required that Whitaker's 2014 tax return had to be filed, and that estimated payments had to fix the massive withholding problem. Whitaker's representative did not agree, and Whitaker was evidently away on a movie shoot.

In June 2015, Whitaker filed his 2014 return showing income of about \$2.5M, and tax due (just for 2014) of over \$800K. His wage withholding for all of 2014 was only \$17K. Ten days later, the IRS made an assessment for the \$800K it was owed for 2014. The IRS officer considering the installment proposal was not even aware that this return was filed, and Whitaker's representative evidently did not let him know. Ultimately, the IRS rejected the installment plan for Whitaker's 2013 taxes, wanting the \$474,000 it was *still* due for 2013 taxes.

Whitaker went to court asking for relief. The Tax Court sided with the IRS, noting that Whitaker had failed to do what was required. The taxes due were not in dispute, so the only question was whether the IRS abused its discretion. The big taxes due, and the almost complete lack of wage withholding and estimated tax payments, made the case a clear one. The Tax Court agreed that the lack of estimated tax payments alone was enough reason for the IRS to say no, and that the IRS had not abused its discretion.

If Whitaker had shown that more withholding was being taken out, and made a modicum of effort to get back on track with the IRS payments, it might have been different. The Tax Court did not fault the IRS for failing to take Whitaker's representative's unsupported statements—for example that the tax withholding had been fixed—as true. At numerous times, the IRS asked for substantiation and yet Whitaker failed to provide it.

Finally, Whitaker appealed to the Ninth Circuit, which upheld the IRS's actions. The case is vaguely reminiscent of boxing great Floyd [Mayweather's suit against the IRS to await his McGregor fight so he could pay his taxes](#). The IRS does like to get paid, but they are pretty used to granting installment agreements. Before applying for any payment agreement, of course, you must file all required tax return and cooperate. Taxpayers who need time can apply by filling out and submitting an IRS [Form 9465, Installment Agreement Request](#) and [Form 433-A](#), and sometimes a [Form 433-B](#). The Form 433 series of forms are basically financial statements that list all your income, expenses, and assets.

Hindsight is 20/20 of course. But a review of these facts suggests that a realistic deal might well have been possible. The IRS would have been better off, and Whitaker would probably have been *vastly* better off. Ultimately, there is no substitute for good communication, which was at least part of the problem here.

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