



Robert W. Wood

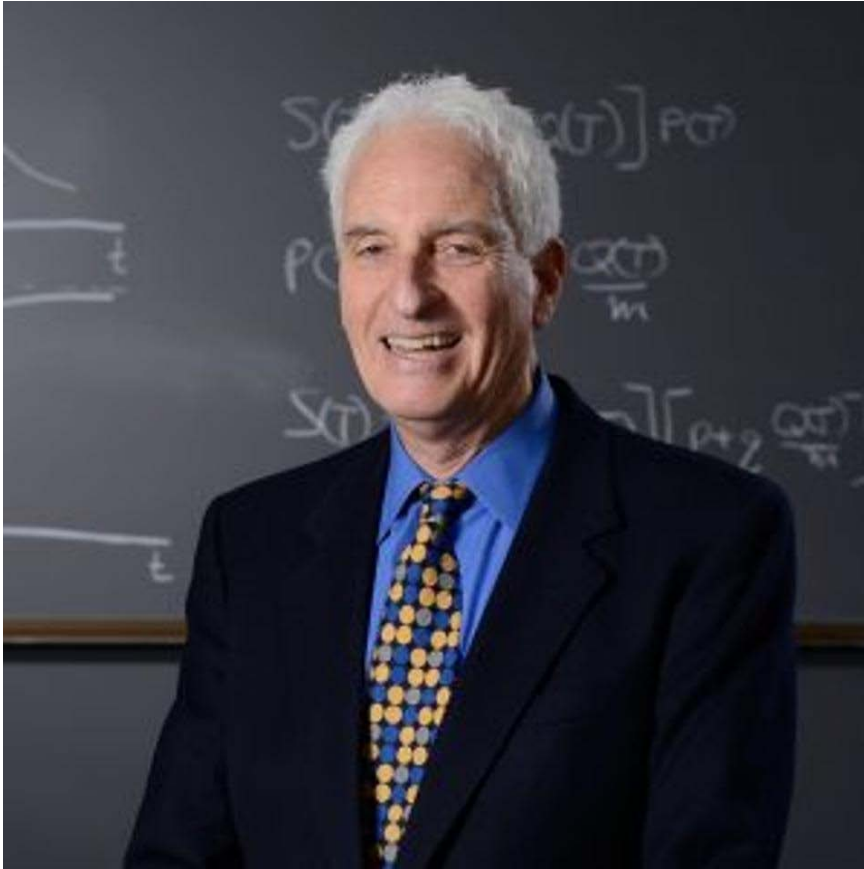
THE TAX LAWYER

TAXES 11/05/2016

Leaving U.S. Over Election? Hiding Assets On Exit Is Criminal, Draws \$100 Million Fine

Several people in the public eye have been saying that they will move out of the U.S. if the election does not go their way. “Breaking Bad” star Bryan Cranston says he will [“absolutely” move to Canada if Donald Trump is elected President](#) on November 8. Cranston joins other celebrities, including Lena Dunham, Chelsea Handler, and Barbara Streisand, who have said they would leave the U.S. if the Republican nominee wins. Even retiring Congressman Charles Rangel (D-N.Y.) says he’s [“out of here” if Trump wins](#). Perhaps these are just temporary moves, not permanent.

But if you plan to *really* leave the U.S. for good over the election—or for any other reason—don’t lie about your assets. It is a crime. An expensive example is a Rochester, New York [emeritus professor of business administration](#) who pleaded guilty to conspiring to defraud the U.S. and submitting a false expatriation statement to the IRS. Citizens and long-term green card holders must file an IRS Form 8854 to square with the IRS if they expatriate. And they may have to pay an [exit tax](#). But don’t lie about how many assets you have.



Dan Horsky

The guilty plea was made by Professor [Dan Horsky](#), 71, a citizen of the U.S., U.K, and Israel. For more than 30 years, he was a professor of business administration in New York. Beginning in approximately 1995, Horsky began investing in numerous start-up businesses through financial accounts at various offshore banks, including one bank in Switzerland. Horsky Holdings and other accounts kept it all hidden from the IRS.

Horsky made investments and eventually amassed a 4% interest in a company that, in 2008, was acquired for \$1.8 billion in cash. That was a cool \$80 million for Horsky, but he reported only \$7 million to the IRS. He kept investing, and his secret bankroll kept growing until his offshore nest egg grew to about \$200 million in 2013. Horsky directed the activities in his Horsky Holdings and other accounts even though it was readily apparent that he was an American. But he tried to cover that up too.

By 2011, Horsky caused another individual to have signature authority over his Zurich-based bank accounts. This individual assumed the responsibility of providing instructions as to the management of the accounts at Horsky's direction. This arrangement was intended to conceal Horsky's interest in and control over these accounts from the IRS. The next plan was for Horsky to relinquish the nominee person's U.S. citizenship. That way, he and Horsky must have thought, everything would look OK, like strictly foreign holdings.

So in 2014, Horsky's compatriot filed a false IRS Form 8854, failing to disclose his net worth, failing to disclose his ownership of foreign assets, and falsely certifying under penalties of perjury that he was in compliance with his tax obligations for 5 years. If you have a net worth greater than \$2 million, or have average annual net income tax for the 5 previous years of \$160,000 or more, you pay an [exit tax](#). It is a capital gain tax, calculated as if you sold your property when you left. A long-term resident giving up a Green Card can be required to pay the exit tax too. Sometimes, planning and valuations can reduce or eliminate the tax, but it is nothing to ignore. In 2015, there were approximately [4,300 expatriations](#), and 2016 is on pace to exceed it.

Horsky also [willfully](#) filed false 2008 through 2014 individual income tax returns which failed to disclose his income from, and beneficial interest in and control over, his Zurich-based bank accounts. Horsky agreed that for purposes of sentencing, his criminal conduct resulted in a tax loss of at least \$10 million. In addition, Horsky failed to file Reports of Foreign Bank and Financial Accounts ([FBARs](#)) up and through 2011, and also filed false FBARs for 2012 and 2013.

Horsky's sentencing is scheduled for February 10, 2017. He faces a statutory maximum sentence of five years in prison, as well as a period of supervised release and monetary penalties. As part of his plea agreement, Horsky paid a penalty of \$100 million to the U.S. Treasury for failing to file and filing false FBARs. That whopping fine is separate from any restitution the court may order. Keep in mind that [FATCA](#), the Foreign Account Tax Compliance Act, is up and running. The IRS says it is now swapping taxpayer data reciprocally with other countries. One more law adding to the mix? The [IRS now has the power to revoke passports](#).

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