PERSPECTIVE

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Should Lawyers Keep 2 Sets Of Books? Probably Not

By Robert W. Wood

Lawyers are often good at compartmentalizing. They have to keep legal matters separate, personal and business separate, and more. But should they have two different sets of books for different purposes? It is hard to think of a case in which this is ever a good idea.

It certainly isn't when it comes to taxes. In fact, two sets of books is one of the classic red flags for the Internal Revenue Service. If can be awfully difficult to explain them. Take Jeffrey Nowak, a Las Vegas, Nev., liquor store owner. He was recently sentenced to 41 months in prison for conspiring to defraud the United States and tax evasion.

Mr. Nowak, 67, and Ramzi Suliman, jointly owned and operated liquor stores in Las Vegas. At Super Liquor Store South Strip, Nowak and Suliman skimmed cash receipts and maintained two set of books in order to under-report income to the IRS. One set of books accurately reflected the store's sales.

A second set of books fraudulently omitted nearly $4 million in cash receipts. Nowak and Suliman provided the phony set of books to their accountant, causing him to create corporate tax returns that significantly under-reported the liquor store's gross receipts and income. The pair under-reported their personal income, too.

Trying to explain that this was actually innocent can be tough. In this case, Suliman pleaded guilty in July 2014 to conspiring with Nowak to defraud the United States and was sentenced to serve 12 months in prison, three years of supervised release and to pay $428,003 in restitution to the IRS. As for Nowak, he was convicted in August 2016, of conspiring to defraud the United States, assisting in the filing of false corporate tax returns and tax evasion.

In addition to the prison term, Nowak was ordered to serve three years of supervised release and pay restitution to the IRS. For another double books and cash skim case, consider the 2015 case involving the president and founder of Detroit-based Happy's Pizza. Happy Asker was found guilty of 32 tax crimes and conspiracy to defraud the U.S.

The jury took 4½ hours to convict on 3 counts of filing false returns, 28 counts of aiding and assisting the filing of false returns for Happy's Pizza franchises, and one count of engaging in a corrupt endeavor to obstruct and impede the administration of the Internal Revenue Code. Mr. Asker was sentenced to 50 months in prison, plus 3 years of supervised release. He was also ordered to pay $2.5 million in restitution to the IRS.

In another case, a father and two sons ran two Oregon strip clubs. David G. Kiraz, his father George D. Kiraz, and David's brother Daniel Kiraz, ran the Cabaret Lounge I and the Cabaret Lounge II. They too kept two sets of books, a classic indicator of tax evasion or fraud. When an undercover IRS agent posed as a buyer for the clubs, the owners even revealed the second set of books, explaining how their scam worked.

The business activity of the strip clubs was reported each year on the individual income tax return of David Kiraz. However, the defendants gave their tax return preparers the false financial records maintained at the strip clubs, intentionally causing the return preparers to create tax returns for David Kiraz that did not report substantial amounts of cash obtained through cover charges, stage fees and fines. The under-reporting was substantial.

The jury found the three men guilty of conspiracy to defraud the United States, and guilty of filing false tax returns. In 2016, they were sentenced to prison on tax charges. You might at this point be convinced that two sets of books for most any business can lead to big trouble.

But how does any of this relate to lawyers, you might ask? Surely no lawyer would do a skim of fees and keep two sets of books, right? You might well assume that, but there are some reported cases that suggest to the contrary. One recent one involved a number of serious tax problems that landed the lawyer in prison.

Michael Thiel was a Louisiana criminal defense attorney. In April of 2017, he was sentenced to 30 months in prison for tax evasion. In addition to the term of prison imposed, Thiel was ordered to serve two years of supervised release and to pay restitution to the IRS in the amount of $998,352. He also faced taxes, interest, and penalties.

The sentencing came after Thiel pleaded guilty in December 2016 to evading the payment of federal income and employment taxes. According to court documents, Thiel, 66, a resident of Baton Rouge, Louisiana, operated a criminal defense practice in Hammond, Louisiana. He earned substantial income through his law practice.

However, Thiel evaded paying approximately $1 million in income and employment taxes. From 2003 through 2013, Thiel did not timely file income or employment tax returns and did not make timely payments of the taxes he owed. Though Thiel had the ability to make payments towards his tax obligations, he concealed his income and assets using trusts and nominees.

In 2001, he created the Thiel Family Trust, of which he was the beneficiary, fiduciary and trustee. He created two additional trusts in 2008 in the names of family members. Thiel used these three trusts to evade the payment of federal income and employment taxes.

In January 2007, Thiel used nominees to purchase his primary residence for $435,000. He also entered into a phony lease agreement with the nominees to conceal his ownership of the property, and to shield it from IRS collection efforts. Between January 2007 and January 2014, Thiel deposited $416,283 into the nominee account that was used to secure and pay the mortgage on the property.

These funds came from the nominee trusts and other accounts not held in his name. Bottom line? Having multiple legal entities can make sense, and can help to protect your assets. But when it comes to multiple sets of books, be careful.

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