



## Robert W. Wood

THE TAX LAWYER

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### Tax Tip From Hunter Biden: Report Gifts, Income

The news that [Hunter Biden says he's under tax investigation](#) tells us very little. We know there is a criminal investigation underway involving the President Elect's son, but not much more. Hunter Biden said in a [statement](#) that he is under investigation by the U.S. Attorney's Office in Delaware for his "tax affairs." The whole matter may blow over without any serious repercussions. However, any criminal tax investigation is serious business, is not to be taken lightly, and makes many people start thinking about their own tax filings. Did I remember to report that payment or transaction? In Mr. Biden's case, some of the speculation predictably centers around foreign activities and receipts. For example, NBC News has said that an [email to Hunter Biden raised questions](#) whether he reported a \$400,000 payment from Burisma. There may be questions about gifts too, including whether they are really gifts or income, a line that is often confused. In a business context, something labeled as a gift might be viewed as income by the IRS.

In 2019, Hunter Biden explained that he received a 2.8-carat diamond in 2017 as a gift from Ye Jianming, the former chairman of CEFC China Energy. Mr.

Biden said he was uncomfortable and gave it to other associates, but the tax reporting and value of the item seem unclear. That is merely one incident, and it may not even be one of particular interest, but are taxes amiss based on the story fragments? It is hard to say.



During divorce proceedings, attorneys for his ex-wife suggested that the diamond was worth \$80,000, while Biden had said it was worth \$10,000. Of course, such disputes are common. Whether it was a gift or income could be questioned too, and even passing the gift on to someone else can also raise tax

issues. In any event, it is unclear precisely what government investigators are looking at. But the reporting of gross income is surely going to be one of them. Silence from investigators is standard procedure as they sift through the information they have. Taxes are famously complex, of course, but that does not mean that one cannot enunciate some basic rules.

In fact, a few of the fundamental rules in tax reporting can be boiled down to some simple principles. For example, report your income, and don't file falsely. You must file a tax return each year with the IRS if your income is over the requisite level. And remember, the U.S. taxes all income wherever you earn it. Filing false returns is even worse than failing to file. You have to file, but make sure your return is as complete and accurate as you can make it. That ties into intent and transparency count too. Another basic rule is about accountability and transparency. You don't want to be—or even appear to be—willful. Willfulness means you acted with knowledge that your conduct was unlawful. According to the IRS, willfulness is a voluntary, intentional violation of a known legal duty. Even willful blindness, a kind of conscious effort to *avoid* learning about reporting requirements, can be enough.

Foreign income and assets need to be disclosed too, and it's much harder to claim ignorance of these rules than it was in the past. Even gifts from foreign persons can face special tax disclosures, for there are special tax rules about foreign gifts and inheritances, including filing [IRS Form 3520](#). The IRS instructions [here](#) say you should file a Form 3520 if you receive: (1) more than \$100,000 from a nonresident alien individual or a foreign estate (including foreign persons related to that nonresident alien individual or foreign estate) that you treated as gifts or bequests; or (2) more than \$16,649 from foreign corporations or foreign partnerships (including foreign persons related to such foreign corporations or foreign partnerships) that you treated as gifts. You are required to report bequests on Form 3520 when you actually

or [constructively receive](#) them. Penalties can be severe, the *greater of* \$10,000 or 35% of the gross reportable amount. For returns reporting gifts, the penalty is 5% of the gift per month, up to a maximum penalty of 25% of the gift.

Hunter Biden may come through his investigation just fine. But he is likely not to be terribly comfortable as he waits. And he and his tax advisers are likely to be working through his tax records and filing as they try to anticipate what might happen next.

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