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Third Canadian Convicted In IRS Tax Refund Scam Could Face Five Years Prison

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Many Canadians who live or work in the U.S. have to deal with the IRS. And a common bone of contention is that the U.S. and Canadian tax rules are not always parallel. Add to that the vastly more complex U.S. tax system, and its web of foreign account reporting rules, and you can have a recipe for disaster. Many Canadians filing U.S. tax returns find it downright bizarre that they must report all their (to the IRS, “foreign”) accounts, being all of their accounts at home in Canada! In general anyone with non-U.S. bank accounts having an aggregate value over \$10,000 at any time during the year must report all of the accounts. One must report even if one has a signature interest only, without beneficial ownership. And the penalties are quite high.

The U.S. complexity may even cause some anger at the IRS. But complex tax rules certainly can't explain this one: a Canadian man has pleaded guilty to [conspiring to defraud the United States and commit theft of government funds](#). According to documents filed with the court, Timothy Johnston, 36, of Calgary, Alberta, Canada, along with other Canadian citizens, participated in a scheme to file fraudulent claims for refund with the IRS. In March 2009, Johnston filed a fraudulent nonresident alien income tax return seeking a refund of \$642,947.26. On this return, Johnston falsely claimed that the requested refund represented the amount of income taxes that had been withheld and paid to the IRS on his behalf. After the IRS issued the refund to Johnston, he entered the United States and opened a bank account in Rochester, New York to deposit the fraudulently obtained check. Between August 2009 and December 2011, Johnston caused funds to be transferred from this account to a bank account in Canada and accounts in the United States in the names of his co-conspirators.

Although Mr. Johnston has pleaded guilty, he has not yet been sentenced. In fact, he is scheduled to be sentenced on September 12, 2017. Johnston faces a statutory maximum sentence of five years in prison, a period of supervised release, and monetary penalties. As part of his plea agreement, Johnston agreed to pay restitution to the IRS in the amount of \$642,947.26.

Johnston is the third Canadian citizen to be convicted for his role in this scheme. In January 2016, Kevin Cyster of Burlington, Ontario, was [sentenced](#) to 135 months in prison after a jury convicted him of conspiring to defraud the United States and commit theft of government funds, making a false claim against the United States and transferring stolen money in foreign commerce. In June 2014, Renee Jarvis, also of Ontario, [pleaded guilty](#) to conspiring to defraud the United States and commit theft of government funds. She is awaiting sentencing.

FBARs weren't involved in this case, but where they apply, the potential FBAR penalties can be big. Civil penalties for a non-willful violation can range up to \$10,000 *per account per year*. With a six year statute of limitations, even non-willful violations can be expensive, especially with multiple accounts. Three accounts times six years could mean \$180,000 in penalties, and that is for *non-willful* violations. If the IRS says that your violation was *willful*, it is much worse. Civil penalties for a willful violation can range up to the greater of \$100,000 or 50% of the amount in the account. With up to a six year statute of limitations, that could total 300% of the account value. Fortunately, the IRS says that administratively it generally will only take 100%! And then there are potential *criminal* penalties too. Criminal FBAR violations can draw very serious penalties, including a \$500,000 fine, 10 years imprisonment, or both.

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