



## Robert W. Wood

THE TAX LAWYER

---

TAXES 02/07/19

# Trying To Trick IRS During Audit Can Mean Criminal Tax Charges

Our tax system is complicated, and even bad mistakes are common. But criminal tax cases are still rare. Yet experienced tax lawyers will tell you that a common way of turning a regular tax case into a criminal one is obstructive or evasive behavior with the IRS. A regular civil tax audit can turn into a criminal tax case with the risk of jail time just for how you behave during the audit. Most criminal tax cases come out of plain old civil audits, and that fact alone is frightening. If an IRS auditor discovers something suspicious in a civil audit, the auditor can notify the IRS's Criminal Investigation Division. Notably, the IRS is not obligated to tell you that this criminal referral is occurring. In fact, normally, the civil auditors will suspend the audit without explanation. You might be pleased, thinking that the audit is over, or at least mercifully stalled so that it might not ever resume. Meanwhile, the IRS can be quietly building a criminal case against you.

False statements to auditors are a huge mistake. Conduct during the audit itself can be pivotal, and is one reason to hire professionals to handle it. Some people end up in criminal tax trouble because they mishandle a *civil* IRS audit. Whether it is the FBI or the IRS asking questions, don't lie. And don't engage in evasive or obstructionist behavior during an IRS audit. Some taxpayers in a civil audit may think they can outsmart the IRS or manipulate the government to come out ahead. That doesn't mean you have to agree with everything the IRS says in an audit. But, there is an established way of proceeding, and an above-board way to communicate with the IRS. Deception and obstruction are not the way. Consider the case of John D. Petrig of Tulsa, age 49, who [pleaded guilty](#) to one count of tax evasion in federal court in Oklahoma. He is scheduled to be sentenced on May 7, 2019.



Clearly, this case was not just involve a regular civil tax audit that went awry. Still, some of Petrig's problems appear to have blossomed directly out of trying to outsmart the IRS and hide the ball. According to court documents, for twelve years from 2000 to 2012, Petrig worked for a company as an independent contractor installing ATM machines inside casinos. The company paid him commissions based on the number of transactions executed at the ATMs. Petrig wasn't exactly prompt in his tax filings--that's another no-no if you're trying to avoid tax problems. In 2012, Petrig *finally* filed his 2005 federal income tax return, quite late. He reported that he had income of \$394,317. Based on that income, he should have paid the \$110,372 in taxes the return said he owed.

Did he pay the taxes with his late tax return? Nope. Well, did he at least *start* paying the taxes in installments to the IRS? No again. Instead, from January 2012 to December 2012, Petrig attempted to evade payment of the \$110,372. The IRS sent a levy to his employer directing that Petrig's commission payments be forwarded to the IRS to pay his tax debt. Levies are a collection device for the IRS to get tax money from third parties like banks and employers. However, Petrig sought to thwart the levy and outsmart the IRS. He sent a letter to his employer instructing that his future commissions should be paid to a fictitious corporation.

The IRS does not take kindly to that sort of thing. You might think of it as another example of the cover-up sometimes being worse than the crime. You can have a serious tax case, even a criminal tax case, without this kind of evasive and obstructive behavior. But time and again, evasive or obstructive behavior *during a tax audit* seems to be a pretty reliable way of landing in very hot water. So be careful out there. It can backfire in a very big way. As for Mr. Petrig, he faces a maximum sentence of five years imprisonment, a fine of up to \$250,000, or both, and up to three years supervised release.

*This is not legal advice. For tax alerts or tax advice, email me at [Wood@WoodLLP.com](mailto:Wood@WoodLLP.com).*