



Robert W. Wood

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What IRS Calls 'Willful'--Even A Smidgen-- Can Mean Penalties Or Jail

As the end of the year draws near, there's plenty of year-end tax planning. After that, Forms 1099 and W-2 arrive in January, and tax return preparation will be right around the corner. It pays to remember that even a smidgen of fraud or intentional misstatements on your taxes can land you in jail. The burden can be placed on you to prove you're right or that your mistakes were innocent.

In short, the IRS can say you're willful in a variety of circumstances that you might think are pretty innocent. Conversely, it may take *a lot* to show willfulness on the part of the IRS.

Remember President Obama's remark [to Fox News in February](#) that there was "not even a smidgen of corruption" at the IRS? Now we're waiting for all those ~~lost not lost~~ recovered emails and wondering if they will [link the White House to confidential taxpayer data](#).

It's a little different when your tax returns are under a microscope. Even *stupid* mistakes can often be forgiven, but intentional wrongdoing is different. Taxes are complex, so you might assume that just about *anything* can be called an innocent mistake. Actually, the tax law draws a line between non-willful and willful, and steep penalties or even prosecution can hang in the balance.

According to the IRS, willfulness involves a voluntary, intentional violation of a known legal duty. Willfulness is shown by your knowledge of reporting requirements and your conscious choice not to comply. Willfulness means you acted with knowledge that your conduct was unlawful—a voluntary, intentional, violation of a known legal duty.

Examples might include reporting 100 when you actually received 200, failing to declare of offshore account, deducting your family vacation, etc. The concept applies for civil and criminal violations. You may not have meant any harm or to cheat anyone, but that may not be enough.

"Gee, I didn't know," can work in some cases. However, the failure to learn of filing requirements, coupled with efforts to conceal the income or the true facts may mean a violation was willful. Your conduct is relevant too. Some courts say willfulness is a purpose to disobey the law, but one that can be inferred by conduct. Watch out for conduct meant to conceal. Setting up trusts or corporations? Filing some forms and not others?

Using cash, keeping deposits below \$10,000, using travelers checks, under-reporting business income, inflating your expenses can all spell trouble. Even if it can explain one failure, repeated failures to comply can morph conduct from inadvertent neglect into reckless or deliberate disregard. Even willful blindness may be enough, a kind of conscious effort to *avoid* learning about reporting requirements.

Willfulness is much in the news, from [Lionel Messi to Dolce & Gabanna](#) and [Beanie Babies](#). In one recent case, the question was whether excessive spending alone manifests a willful attempt to evade or defeat taxes. The IRS recently argued that big spending alone—in the face of unpaid taxes—was willful.

The lower court agreed with the IRS but the appeals court did not. The court in [Hawkins v. Franchise Tax Board](#) said spending alone isn't willful. Will the decision impact willfulness analysis in other tax contexts? It isn't clear. It could, but it seems unlikely to mean the IRS will stop arguing willfulness. And since big dollars and even one's freedom can turn on what's willful, be careful out there.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.