



Robert W. Wood

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With Endorsement, Will Bernie's Wife Prepare Hillary's Taxes?

This election cycle sometimes seems more like reality television than real life. It's an odd mashup of America's Next Top Model, Survivor, and Hell's Kitchen, but you *can't* just turn it off. Donald Trump has faced the biggest tax return backlash. Still, Bernie held back releasing his too, even noting that his wife Jane did his taxes, and they had been busy.

You have to hand it to Bernie. Releasing tax returns is a feature of every presidential election, but Bernie responded to CNN questions about his transparency, snapping to CNN that '[my wife does our tax returns](#)' and they've been busy. Then, he released his 2014 return, but not returns from prior years. His wife Jane—who could probably line up many tax return preparation clients of her own if she wanted to—said she would hand over the prior year returns when Hillary releases transcripts of her speeches! But that was then.



Sometimes, as Hillary famously noted, it takes a village. And having more helpers might just make Hillary less “extremely careless.” The FBI Director's [remarks](#) about Hillary's emails will be debated for months, but

“careless, not criminal” has a nice ring. Hillary and Bill could say that about their own taxes. And maybe having Jane Sanders preparing them would create even more distance.

Taxpayers often claim their tax gaffes are innocent mistakes. Yet in the tax world—apparently unlike with top secret national security issues—conduct can be considered *criminal* even if you didn’t know or didn’t have a bad intent. It is sometimes called willful blindness. Willful blindness—a kind of conscious effort to *avoid* learning about reporting requirements—can be enough for criminal charges.

The FBI Director [said that](#) there is a difference between carelessness and willful misconduct. Maybe, but with taxes, not everything can be called an innocent mistake. The tax law draws a line between non-willful and willful. Big penalties, and in some cases even prosecution, can hang in the balance. And the courts may side with the IRS.

The test is whether there was 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.

It applies for civil and criminal violations. You may not have *meant* any harm or to cheat anyone, but that may not be enough. The failure to learn of filing requirements, coupled with efforts to conceal the existence of the income or the tax issue, can mean that a violation was willful. 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. Yes, we are talking about taxes here, but it is worth asking whether any of Mrs. Clinton’s conduct was meant to conceal.

With taxes, conduct meant to conceal might include filing some forms and not others, taking inconsistent positions, cash transactions, double invoicing or two sets of books, and more. Advisers may tell you that everyone’s doing it, but that may not absolve you. Even if it can explain one failure, repeated failures to comply can turn inadvertent neglect into reckless or deliberate disregard.

“I didn’t know,” can still work in some cases. But with hardly any diligence, the IRS says that taxpayers *could* learn of these requirements quite easily. IRS says that you *should* read government tax forms and instructions. According

to this [excerpt from the Internal Revenue Manual](#), failing to observe the rules can be evidence of willful blindness. You may have the burden of proving that your mistakes were innocent. The IRS can say you were willful in circumstances that you might think are innocent.

You may not have meant any harm or to cheat anyone, but that may not be enough. So if your excuse is that you were just trying to use one device for your emails? The IRS might be expected to say, that's tough.

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