



26 U.S.C.A. § 7203



I.R.C. § 7203

Effective: [See Text Amendments]

United States Code Annotated Currentness
 Title 26. Internal Revenue Code (Refs & Annos)
 Subtitle F. Procedure and Administration (Refs & Annos)
 Chapter 75. Crimes, Other Offenses, and Forfeitures
 ▣ Subchapter A. Crimes
 ▣ Part I. General Provisions (Refs & Annos)

→§ 7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

CREDIT(S)

(Aug. 16, 1954, c. 736, 68A Stat. 851; June 28, 1968, Pub.L. 90-364, Title I, § 103(e)(5), 82 Stat. 264; Sept. 3, 1982, Pub.L. 97-248, Title III, §§ 327, 329(b), 96 Stat. 617, 618; July 18, 1984, Pub.L. 98-369, Div. A, Title IV, § 412(b)(9), 98 Stat. 792; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7601(a)(2)(B), 102 Stat. 4504; Nov. 29, 1990, Pub.L. 101-647, Title XXXIII, § 3303(a), 104 Stat. 4918.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1954 Acts. House Report No. 1337, Senate Report No. 1622, and Conference Report No. 2543, see 1954 U.S.Code Cong. and Adm.News, pp. 4752, 5251, 5343, respectively.

1968 Acts. House Report No. 1104, Senate Report No. 1014, and Conference Report No. 1533, see 1968 U.S.Code Cong. and Adm.News, p. 2341.

1982 Acts. House Report No. 97-494, House Conference Report No. 97-760, and Statements by Legislative Leaders, see 1982 U.S.Code Cong. and Adm.News, p. 781.

1984 Acts. House Report No. 98-432, House Conference Report No. 98-861, Statements by Legislative Leaders,

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and Two Related Reports, see 1984 U.S.Code Cong. and Adm.News, p. 697.

1990 Acts. House Report No. 101-681 (I), see 1990 U.S.Code Cong. and Adm.News, p. 6472.

Amendments

1990 Amendments. Pub.L. 101-647 substituted in last sentence "substituting 'felony' for 'misdemeanor' and '5 years' for '1 year' " for "substituting '5 years' for '1 year' ".

1988 Amendments. Pub.L. 100-690, added sentence providing that in the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "5 years" for "1 year".

1984 Amendments. Pub.L. 98-369 struck out following "to make a return" parenthetical phrase "(other than a return required under authority of section 6015)".

1982 Amendments. Pub.L. 97-248 substituted "\$25,000 (\$100,000 in the case of a corporation)" for "\$10,000" and added provision that, in the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

1968 Amendments. Pub.L. 90-364 struck out reference to section 6016.

Effective and Applicability Provisions

1990 Acts. Section 3303(c) of Pub.L. 101-647 provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions, and failures to act, occurring after the date of the enactment of this Act [Nov. 29, 1990]."

1988 Acts. Amendment by Pub.L. 100-690 applicable to actions after Nov. 18, 1988, see section 7601(a)(3) of Pub.L. 100-690, set out as a note under section 6050I of this title.

1984 Acts. Amendment by Pub.L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a) of Pub.L. 98-369, set out as a note under section 6654 of this title.

1982 Acts. Amendment by Pub.L. 97-248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub.L. 97-248 set out as a note under section 7201 of this title.

1968 Acts. Amendment by Pub.L. 90-364, applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub.L. 90-364, set out as notes under sections 51 and 6154 of this title, see section 103(f) of Pub.L. 90-364.

CROSS REFERENCES

Failure to file returns--

DISC or FSC, see 26 USCA § 6686.

Partnerships, see 26 USCA § 6698.

Offenses begun in one district and completed in another, see 18 USCA § 3237.

FEDERAL SENTENCING GUIDELINES

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See Federal Sentencing Guidelines §§ 2S1.3, 2T1.2, 5E1.5, 18 USCA.

LAW REVIEW COMMENTARIES


Administration of criminal tax justice: Reading the process. 32 Loy.L.Rev. 921 (1987).

Consequences of failing to file N.Y. tax returns. Carlton M. Smith and Glenn Newman, 213 N.Y.L.J. 1 (Feb. 28, 1995).

Tax Evasion. Karen Iafe, John P. McGrail, Joseph McNabb, and Ellen Quattrucci, 31 Am.Crim.L.Rev. 875 (1994).

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Key Number System Topic No. 220.

Corpus Juris Secundum

CJS Internal Revenue § 848, Attempt to Evade or Defeat Tax.

CJS Internal Revenue § 849, Failure to Keep Records.

CJS Internal Revenue § 850, Failure to Make Returns.

CJS Internal Revenue § 851, Failure to Pay, or to Collect or Pay Over, Tax.

CJS Internal Revenue § 864, Other Particular Offenses.

CJS Internal Revenue § 877, Judgment, Sentence, Punishment, and Review.

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ALR Library

154 ALR, Fed. 233, Construction and Application of 26 U.S.C.A. § 6015(B)(1)(C) Requiring that Spouse Not Know of Understatement of Tax Arising from Erroneous Deduction, Credit, or Basis to Obtain Innocent Spouse Exemption from Liability...

152 ALR, Fed. 459, Attorney-Client Privilege and the Reporting of Cash Transactions in Excess of $10,000, as Required by § 60501 of Internal Revenue Code (26 U.S.C.A. § 60501).

145 ALR, Fed. 1, Exception from Discharge of Taxes Under § 523(A)(1) of Bankruptcy Code (11 U.S.C.A. § 523(A)(1)).

134 ALR, Fed. 415, Spouse's Receipt of "Substantial Benefit" as Condition Precluding Entitlement to "Innocent

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Spouse's" Relief Under 26 U.S.C.A. § 6013(E).

111 ALR, Fed. 295, Giving False Information to Federal Department or Agency as Violation of 18 U.S.C.A. § 1001 , Making it Criminal Offense to Make False Statements in Any Matter Under Jurisdiction of Department or Agency of United...

114 ALR, Fed. 377, Construction and Application of 26 U.S.C.A. § 6701 Imposing Civil Penalties on Persons Aiding and Abetting Understatement of Tax Liability.

102 ALR, Fed. 128, Propriety of Lesser-Included-Offense Jury Charge in Prosecution of Federal Tax-Crime Defendant.

102 ALR, Fed. 644, Sufficiency of Government's Proof of Taxpayer's Beginning Net Worth in Felony Prosecution for Income Tax Evasion, Under 26 U.S.C.A. § 7201 or Its Predecessor, Relying on "Net Worth" Method.

102 ALR, Fed. 828, Taxation of Costs Under 28 U.S.C.A. § 1918.

102 ALR, Fed. 887, What Constitutes "Forcible Rescue" of Property Seized Under Any Revenue Law of United States Under 18 U.S.C.A. § 2233.

88 ALR, Fed. 573, Construction and Application of 26 U.S.C.A. § 6673, Providing for Tax Court's Assessment of Damages Against Taxpayer in Certain Circumstances-Modern Cases.

84 ALR, Fed. 170, When Are Persons Other Than Owners, Directors, Officers, and Employees Potentially Liable for Penalties Under Irc § 6672 (26 U.S.C.A. § 6672), Concerning Failure to Collect and Pay Over Tax.

84 ALR, Fed. 433, Validity, Construction, and Application of Provisions for Assessment and Review of Civil Penalty Against Taxpayer Who Files Frivolous Income Tax Return (26 U.S.C.A. §§ 6702-6703).

76 ALR, Fed. 700, Evidence Offered by Defendant at Federal Criminal Trial as INAdmissible, Under Rule 403 of Federal Rules of Evidence, on Ground that Probative Value is Substantially Outweighed by Danger of Unfair Prejudice, Confusion...

71 ALR, Fed. 852, Anti-Injunction Provision of Internal Revenue Code (26 U.S.C.A. § 7421(A)) as Precluding Federal Court's Jurisdiction Over Taxpayer's Request for Return of Property in Possession of Federal Government.

67 ALR, Fed. 319, Award of Damages or Costs Under 28 U.S.C.A. § 1912 or Rule 38 of Federal Rules of Appellate Procedure, Against Appellant Who Brings Frivolous Appeal.

58 ALR, Fed. 220, Necessity of Proof of Intent for Conviction of Offense With Respect to Collected Taxes Under 26 U.S.C.A. § 7215.

60 ALR, Fed. 158, Tax Protester's Failure to Submit, or Submission of Erroneous or Incomplete, Federal Income Tax Returns as Violative of § 7203 of Internal Revenue Code of 1954 (26 U.S.C.A. § 7203), Prohibiting Willful Failure To...

60 ALR, Fed. 776, Corrupt or Forcible Interference With Administration of Internal Revenue Laws, Under 26 U.S.C.A. § 7212(a).

41 ALR, Fed. 10, Propriety and Prejudicial Effect of Prosecutor's Argument to Jury Indicating His Belief or Knowledge as to Guilt of Accused--Federal Cases.

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41 ALR, Fed. 350, Jurisdiction of United States District Court Under 28 U.S.C.A. § 1346(A) in Civil Action to Order Return of Fines, Forfeitures, and Costs Imposed After Criminal Conviction Subsequently Held to Have Been...

43 ALR, Fed. 128, Tax Preparers' Willful Assistance in Preparation of False or Fraudulent Tax Returns Under § 7206(2) of Internal Revenue Code of 1954 (26 U.S.C.A. § 7206(2)).

45 ALR, Fed. 732, What Constitutes Such Discriminatory Prosecution or Enforcement of Laws as to Provide Valid Defense in Federal Criminal Proceedings.

36 ALR, Fed. 177, Imputed Interest Provision of Internal Revenue Code (26 U.S.C.A. § 483).

38 ALR, Fed. 617, Availability, Under 28 U.S.C.A. § 1651, of Writ of Error Coram Nobis to Vacate Federal Conviction Where Sentence Has Been Served.

39 ALR, Fed. 479, Joinder of Offenses Under Rule 8(A), Federal Rules of Criminal Procedure.

31 ALR, Fed. 14, Validity, Construction, and Application of Innocent Spouse Statute (26 U.S.C.A. § 6013(E)), Under Which Innocent Spouse is Relieved of Federal Income Tax Liability in Certain Cases.

33 ALR, Fed. 393, Time of Commencement of Limitations Period for Criminal Violations of Internal Revenue Code Where Return is Filed Before Due Date.

29 ALR, Fed. 561, What Constitutes "Forcible Rescue" of Seized Property Under 26 U.S.C.A. § 7212(B).

22 ALR, Fed. 379, Determination of Materiality of Allegedly Perjurious Testimony in Prosecution Under 18 U.S.C.A. §§ 1621, 1622.

24 ALR, Fed. 754, Subscription, Mailing, and Customer Lists, Acquired by Taxpayer, as Amortizable Intangible Capital Assets Under 26 U.S.C.A. § 167(a).

25 ALR, Fed. 8, Accused's Right to Bill of Particulars in Criminal Prosecution for Evasion of Federal Income Taxes.

16 ALR, Fed. 542, Use and Admissibility in Evidence in Federal Tax Evasion Prosecutions, of Summaries Of, or Charts Summarizing, Testimony or Exhibits in Evidence.

11 ALR, Fed. 173, What Constitutes Lesser Offenses "Necessarily Included" in Offense Charged, Under Rule 31(C) of Federal Rules of Criminal Procedure.

6 ALR, Fed. 484, Construction and Application of § 7605(B) of Internal Revenue Code of 1954 (26 U.S.C.A. § 7605(B)), Prohibiting Unnecessary Examination or Investigation of a Taxpayer.

3 ALR, Fed. 665, Reliance on Advice of Attorney, Accountant, or Tax Expert as Defense in Criminal Prosecution for Attempt to Evade Federal Income Tax Under § 7201 of the Internal Revenue Code of 1954 (26 U.S.C.A. § 7201).

1 ALR, Fed. 794, What is a "Taxable Wager" Within the Meaning of the Federal Statute (26 U.S.C.A. §§ 4401 et seq.) Imposing a Tax on Wagers.

1 ALR 5th 874, Misconduct Involving Intoxication as Ground for Disciplinary Action Against Attorney.

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29 ALR 4th 413, What Constitutes "Reasonable Cause" Under State Statutes Imposing Penalty on Taxpayer for Failure to File Timely Tax Return Unless Such Failure was Due to "Reasonable Cause".

63 ALR 3rd 476, Federal Income Tax Conviction as Involving Moral Turpitude Warranting Disciplinary Action Against Attorney.

63 ALR 3rd 512, Federal Income Tax Conviction as Constituting Nonprofessional Misconduct Warranting Disciplinary Action Against Attorney.

22 ALR 3rd 8, Construction, Application, and Effect, With Respect to Withholding, Social Security, and Unemployment Compensation Taxes, of Statutes Imposing Penalties for Tax Evasion or Default.

22 ALR 3rd 1173, Test of "Wilfulness" in Prosecution for Wilful Failure to Pay Tax, File Tax Return, Etc., Under § 7203 of the Internal Revenue Code of 1954 (26 U.S.C.A. § 7203).

59 ALR 2nd 1398, State Court Disciplinary Action Against Attorney for Federal Income Tax Conviction.

30 ALR 2nd 452, Excuse for Failure to File Return Within Limitation Provisions of Internal Revenue Code.

22 ALR 2nd 972, Reliance on Attorney, Accountant, or Other Expert in Preparing Income Tax Returns as Defense Against Fraud Penalties.

3 ALR 2nd 647, Income Tax: Sufficiency of Return to Start Running of Statute of Limitations.

200 ALR, Fed. 173, Construction and Application of Paperwork Reduction Act of 1980 (Pra), 44 U.S.C.A. §§ 3501 et Seq.

198 ALR, Fed. 575, When Has Federal Prosecutor Breached Plea Agreement-- Promises Related to Upward Adjustment of Sentence in Fraud and Threat Cases.

194 ALR, Fed. 425, Construction and Operation of U.S.S.G. § 2T1.1(C), Providing Special Instructions for Guideline Pertaining to Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; and Fraudulent or False...

188 ALR, Fed. 1, Determination of Timely Filing of Tax Return, Claim, Statement, or Other Tax Document Under Internal Revenue Code § 7502 (26 U.S.C.A. § 7502).

171 ALR, Fed. 325, Reliance on Attorney, Accountant, or Other Expert as "Reasonable Cause" Excusing Failure to File Tax Return or to Pay Tax, Under § 6651(A) of Internal Revenue Code of 1986 (26 U.S.C.A. § 6651(a)).

168 ALR, Fed. 461, What, Other Than Reliance on Attorney, Accountant, or Other Expert, Constitutes "Reasonable Cause" Excusing Failure to File Tax Return or to Pay Tax, Under § 6651(A) of Internal Revenue Code of 1986...

161 ALR, Fed. 373, Construction and Application of 26 U.S.C.A. § 6015(B), Requiring that Spouse Not Know of Omission of Gross Income from Joint Tax Return to Obtain Innocent Spouse Exemption From...

150 ALR, Fed. 159, Debts Arising from Penalties as Exceptions to Bankruptcy Discharge Under § 523(A)(7) and 1328(A) of Bankruptcy Code of 1978 (11 U.S.C.A. §§ 523(A)(7) and 1328(a)).

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108 ALR, Fed. 380, Books, Papers, and Documents Subject to Discovery by Defendant Under Rule 16 of Federal Rules of Criminal Procedure.

103 ALR, Fed. 422, Propriety, Under 18 U.S.C.A. § 2517(5), of Interception or Use of Communications Relating to Federal Offenses Which Were Not Specified in Original Wiretap Order.

31 ALR, Fed. 375, Degree of Mental Competence, Required of Accused Who Pleads Guilty, Sufficient to Satisfy Requirement, of Rule 11 of Federal Rules of Criminal Procedure, that Guilty Pleas be Made Voluntarily and With Understanding.

23 ALR, Fed. 637, Form and Requirements of Certificate and Affidavit of Disqualification of Trial Judge Under 28 U.S.C.A. § 144.

93 ALR 5th 1, Free Exercise of Religion as Applied to Individual's Objection to Obtaining or Disclosing Social Security Number.

7 ALR 5th 852, Application of Statute of Limitations to Actions for Breach of Duty in Performing Services of Public Accountant.

26 ALR 4th 995, Mental or Emotional Disturbance as Defense to or Mitigation of Charges Against Attorney in Disciplinary Proceeding.

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5 Am. Jur. Proof of Facts 2d 89, Business Bad Debt.

7 Am. Jur. Proof of Facts 2d 477, Prejudice Resulting from Unreasonable Delay in Trial.

17 Am. Jur. Proof of Facts 2d 191, Status as "Innocent Spouse" Under the Internal Revenue Code.

13 Am. Jur. Trials 1, Defending Federal Tax Evasion Cases.

41 Am. Jur. Trials 349, Habeas Corpus: Pretrial Rulings.

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Am. Jur. 2d Federal Tax Enforcement § 1214, Two or More Tax Violations.

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Am. Jur. 2d Federal Tax Enforcement § 1222, Defendant's Election to be Tried in District of Residence at Time Offense Committed.

Am. Jur. 2d Federal Tax Enforcement § 1224, Plea.

Am. Jur. 2d Federal Tax Enforcement § 1226, Pretrial Hearing on Fifth Amendment Defense Not Required.

Am. Jur. 2d Federal Tax Enforcement § 1235, Net Worth Method.

Am. Jur. 2d Federal Tax Enforcement § 1238, Expenditures Method.

Am. Jur. 2d Federal Tax Enforcement § 1240, Bank Deposit Method.

Am. Jur. 2d Federal Tax Enforcement § 1242, Willful Intent-Direct Evidence.

Am. Jur. 2d Federal Tax Enforcement § 1247, Computer Printouts.

Am. Jur. 2d Federal Tax Enforcement § 1248, Other Acts or Crimes.

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I. GENERALLY

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Constitutionality 1-4


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1. Constitutionality--Generally

Statute requiring taxpayers to "make" returns is not unconstitutionally vague, for failing to define the word "make." U.S. v. Dunkel, C.A.7 (Ill.) 1990, 900 F.2d 105, rehearing denied, vacated on other grounds 111 S.Ct. 747, 498 U.S. 1043, 112 L.Ed.2d 768, on remand 927 F.2d 955. Internal Revenue  4471

Statute providing for criminal sanctions for failure to file federal income tax returns [26 U.S.C.A. § 7203] was not void for vagueness due to failure to define "person required" to file tax returns; definition of "person required" to pay income tax is set forth in 26 U.S.C.A. § 1, which imposes tax on all individuals in accordance with detailed tables set forth in that section, and definition is again repeated explicitly in 26 U.S.C.A. § 6012 which governs persons required to make returns of income. U.S. v. Pederson, C.A.9 (Mont.) 1986, 784 F.2d 1462. Internal Revenue  5251

Statute proscribing willful failure to file federal income tax returns is not unconstitutionally vague. U.S. v. Parshall, C.A.8 (Iowa) 1985, 757 F.2d 211. Internal Revenue  5251

Sections 6012 and 7203 of this title specifying the persons who have to pay taxes and file returns are not unconstitutionally vague. U. S. v. Moore, C.A.10 (Wyo.) 1979, 692 F.2d 95. See, also, U.S. v. Eagen, C.A.Mich.1978, 587 F.2d 338; U.S. v. Russell, C.A.Ark.1978, 585 F.2d 368; U.S. v. Lachmann, C.A.R.I.1972, 469 F.2d 1043, certiorari denied 93 S.Ct. 1897, 411 U.S. 931, 36 L.Ed.2d 390. Internal Revenue  3561; Internal Revenue  4471

2. ---- Freedom of religion, constitutionality

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Defendant's argument that since he disagreed with Internal Revenue Service's definition of gross income filling out 1040 form in compliance with Service regulations would force him to violate his conscience and to lie in violation of his freedom of religion was frivolous. *U. S. v. Crowhurst*, C.A.9 (Or.) 1980, 629 F.2d 1297, certiorari denied 101 S.Ct. 587, 449 U.S. 1021, 66 L.Ed.2d 482. See, also, *Lull v. C.I.R.*, C.A.4, 1979, 602 F.2d 1166, certiorari denied 100 S.Ct. 664, 444 U.S. 1014, 62 L.Ed.2d 643. Constitutional Law ↩ 84.5(8)

3. ---- Involuntary servitude, constitutionality

Imprisonment of defendant for failure to file income tax returns or filing false withholding exemption certificates did not violate prohibition on involuntary servitude under U.S.C.A. Const. Amend. 13. *U.S. v. Drefke*, C.A.8 (Mo.) 1983, 707 F.2d 978, certiorari denied 104 S.Ct. 359, 464 U.S. 942, 78 L.Ed.2d 321. See, also, *U.S. v. Merritt*, C.A.5 (Tex.) 1981, 639 F.2d 254. Constitutional Law ↩ 83(2)

4. ---- Self-incrimination, constitutionality

Fact that one is entitled to claim constitutional privilege against self-incrimination in defense to prosecution for willful failure to pay excise tax imposed on wagering does not free him from liability for occupational tax. *Grosso v. U.S.*, U.S.Pa.1968, 88 S.Ct. 709, 390 U.S. 62, 19 L.Ed.2d 906, 43 O.O.2d 226. Internal Revenue ↩ 4246

In prosecution for willful failure to file income tax returns, defendant was not entitled to have jury told that 1040 form which provided no financial information, and, in lieu thereof, merely made claim of privilege under Fifth Amendment, could be construed as filing of proper return. *U.S. v. Wunder*, C.A.6 (Ohio) 1990, 919 F.2d 34. Internal Revenue ↩ 5317

Taxpayer's invocation of his Fifth Amendment right against self-incrimination based upon his belief that he was being criminally investigated by IRS was not defense to prosecution of taxpayer for failing to file income tax returns. *U.S. v. Poschwatta*, C.A.9 (Wash.) 1987, 829 F.2d 1477, certiorari denied 108 S.Ct. 1024, 484 U.S. 1064, 98 L.Ed.2d 989. Witnesses ↩ 297(13.1)

The Fifth Amendment privilege was no bar to prosecution and conviction of tax protester for failure to file income tax return where basis of claim of privilege was his fear of repercussions from filing of false W-4 forms and his belief that prior tax investigation was ongoing. *U.S. v. Malquist*, C.A.9 (Mont.) 1986, 791 F.2d 1399, certiorari denied 107 S.Ct. 445, 479 U.S. 954, 93 L.Ed.2d 394. Criminal Law ↩ 393(1)

Failure to file an income tax return is not protected by privilege against self-incrimination merely because taxpayer believes that a filing will call attention to his prior failures to file, thereby alerting the government to prior criminal conduct. *U.S. v. Callery*, C.A.9 (Nev.) 1985, 774 F.2d 1456. Criminal Law ↩ 393(1)

Where taxpayer filed income tax return grossly deficient in financial information, blanket assertion of Fifth Amendment privilege does not preclude conviction for failure to file the return. *Heitman v. U.S.*, C.A.6 (Tenn.) 1984, 753 F.2d 33. Criminal Law ↩ 393(1)

Even though defendant was not entitled to protection under U.S.C.A. Const. Amend. 5 for allegedly willfully failing to file income tax return, he could not be properly convicted for an erroneous claim of privilege asserted in good faith. *U.S. v. Smith*, C.A.9 (Or.) 1984, 735 F.2d 1196, certiorari denied 105 S.Ct. 574, 469 U.S. 1076, 83 L.Ed.2d 514. See, also, *U.S. v. Pilcher*, C.A.11 (Ga.) 1982, 672 F.2d 875, certiorari denied 103 S.Ct. 306, 459 U.S. 973, 74 L.Ed.2d 286. Internal Revenue ↩ 5261

Although source of defendant's income might arguably have been privileged, he was required to report amount and was not entitled to any hearing on claim of privilege under U.S.C.A. Const. Amend. 5. *U.S. v. Vance*, C.A.11 (Ga.) 1984, 730 F.2d 736, rehearing denied 736 F.2d 1528. Criminal Law ↩ 393(1)

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Taxpayer's failure to provide proper financial data on his tax returns from which tax liability could be calculated amounted to a total failure to file a return, and that could not be justified under the self incrimination clause of U.S.C.A. Const.Amend. 5. U.S. v. Heise, C.A.6 (Ohio) 1983, 709 F.2d 449, certiorari denied 104 S.Ct. 285, 464 U.S. 918, 78 L.Ed.2d 262. See, also, U.S. v. Drefke, C.A.8 (Mo.) 1983, 707 F.2d 978, certiorari denied 104 S.Ct. 359, 464 U.S. 942, 78 L.Ed.2d 321. Criminal Law ☞ 393(1); Internal Revenue ☞ 4477

Where defendant failed to make colorable claim that he was involved in activities for which he could be criminally prosecuted and that such activities would be revealed if he supplied data on his income tax form, defendant's blanket assertion of privilege against self-incrimination under U.S.C.A.Const. Amend. 5 on his income tax return was ineffective invocation of that privilege. U. S. v. Verkuilen, C.A.7 (Ill.) 1982, 690 F.2d 648. Criminal Law ☞ 393(1)

That completed corporate income tax return would incriminate defendant, principal owner and chief executive officer of taxpayer, did not relieve him of his duty to file return and, at a minimum, he must assert his right against self-incrimination under U.S.C.A.Const. Amend. 5 as to specific items of requested information on tax return. U. S. v. Civella, C.A.8 (Mo.) 1981, 666 F.2d 1122. Criminal Law ☞ 393(1)

Mere act of filing tax returns pursuant to probation condition would not provide incriminating evidence against taxpayer, and thus imposing condition that taxpayer file all past and future tax returns did not violate taxpayer's U.S.C.A.Const. Amend. 5 rights. U. S. v. Wolters, C.A.9 (Idaho) 1981, 656 F.2d 523. Criminal Law ☞ 393(1)

Good-faith defense was not available to defendant whose "Fifth Amendment [U.S.C.A. Const. Amend. 5]" income tax forms contained no income information and who thus made no return at all, where there was no evidence indicating that defendant believed that filing proper return would subject him to possible prosecution. U. S. v. Miller, C.A.8 (Iowa) 1980, 634 F.2d 1134, certiorari denied 101 S.Ct. 2026, 451 U.S. 942, 68 L.Ed.2d 330. Internal Revenue ☞ 5261

Defendant's privilege against self-incrimination under U.S.C.A.Const. Amend. 5 was not violated by this section requiring filing of tax returns and by government's use of filings as basis for criminal indictments. U. S. v. Crowhurst, C.A.9 (Or.) 1980, 629 F.2d 1297, certiorari denied 101 S.Ct. 587, 449 U.S. 1021, 66 L.Ed.2d 482. Criminal Law ☞ 393(1)

Holding that tax protester who claimed too many exemptions could not claim protection of U.S.C.A.Const. Amend. 5 on his federal tax return did not moot finding that taxpayer did not assert his claim in good faith in prosecution for wilfully failing a file a return, as assertion of even an invalid self-incrimination claim in "good faith" would defeat requirement of his section that the failure be "willful" and someone who thinks he is complying with the law cannot be said to be "willfully" violating it. U. S. v. Carlson, C.A.9 (Cal.) 1980, 617 F.2d 518, certiorari denied 101 S.Ct. 564, 449 U.S. 1010, 66 L.Ed.2d 468. Internal Revenue ☞ 5261

Defendant had no valid defense under U.S.C.A.Const. Amend. 5 to his prosecution for willful failure to file income tax returns, since questions asked of defendant on tax form did not, in themselves, suggest that responses would be incriminating, setting in which questions were asked did not alter the nonincriminatory nature of those questions, and the peculiarities of defendant's own case did not strengthen the claim, since the tax protest nature of the defense suggested that defendant's refusal to complete the forms was motivated by a desire to protest taxes, rather than a fear of self-incrimination. U. S. v. Neff, C.A.9 (Cal.) 1980, 615 F.2d 1235, certiorari denied 100 S.Ct. 3018, 447 U.S. 925, 65 L.Ed.2d 1117. Criminal Law ☞ 393(1)

Privilege against self-incrimination under U.S.C.A. Const. Amend. 5 was not a defense to charge of failing to file an income tax return. U. S. v. Brown, C.A.10 (Utah) 1979, 600 F.2d 248, certiorari denied 100 S.Ct. 233, 444 U.S. 917, 62 L.Ed.2d 172. Criminal Law ☞ 393(1)

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Defendant a tax protester who was charged with wilful failure to supply the Internal Revenue Service with information required by statute or regulation for the tax years 1974 and 1975, had no right to assert his privilege against self-incrimination in lieu of supplying the tax information required by this section. *U. S. v. Willis*, C.A.5 (Tex.) 1979, 599 F.2d 684, rehearing denied 603 F.2d 861. Criminal Law ☞ 393(1)

While source of some of defendant's income may have been privileged, assuming that the jury believed his uncorroborated testimony that he had illegal dealings in gold in 1970 and 1971, the amount of his income was not privileged and he was required to pay taxes on it, and thus he could have complied with the tax laws and exercised his U.S.C.A.Const. Amend 5 right by simply listing his alleged illgotten gains in space provided for "miscellaneous" income on his tax form. *U. S. v. Johnson*, C.A.5 (Tex.) 1978, 577 F.2d 1304, rehearing denied 584 F.2d 389. Internal Revenue ☞ 4477; Internal Revenue ☞ 5261

Defendant who mailed to Internal Revenue Service a form which was blank except for words: "Under protest, I plead the Fifth Amendment to the United States Constitution" and who filed no return at all for following year was not improperly convicted of failing to file federal income tax returns on theory of selective prosecution based on his expressed views, inasmuch as defendant had clearly violated law so that authorities had no choice but to prosecute him and he failed to show that others generally had not been prosecuted for similar conduct or that he had been selected for prosecution because of race, religion or exercise of right to free speech. *U. S. v. Gardiner*, C.A.9 (Or.) 1976, 531 F.2d 953, certiorari denied 97 S.Ct. 145, 429 U.S. 853, 50 L.Ed.2d 128. Criminal Law ☞ 37.10(2)

Taxpayer's blanket declaration in tax form regarding his U.S.C.A.Const. Amend. 5 privilege was not a valid assertion of U.S.C.A.Const. Amend. 5 privilege and thus, since incompleated forms did not constitute valid returns, taxpayer's assertion that he could not be prosecuted for failure to file an income tax return without first being given a hearing regarding his purported U.S.C.A.Const. Amend. 5 claim was without basis. *U. S. v. Jordan*, C.A.7 (Ill.) 1975, 508 F.2d 750, certiorari denied 96 S.Ct. 76, 423 U.S. 842, 46 L.Ed.2d 62, rehearing denied 96 S.Ct. 407, 423 U.S. 991, 46 L.Ed.2d 311. Internal Revenue ☞ 5280

Defendant's claim that requirement of filing income tax return violated privilege against self-incrimination because he would have had to report that his income came from selling heroin and cocaine could have been raised by objection in the return, but he could not on that account refuse to make any return at all. *U. S. v. Smith*, C.A.5 (Tex.) 1974, 493 F.2d 906. Internal Revenue ☞ 5261

Constitutional privilege against self-incrimination did not excuse taxpayer's blanket refusal to answer any questions on his returns relating to his income or expenses for years in question absent a reasonable showing as to how disclosure of amount of legal fees received by him during such years could possibly incriminate him. *U. S. v. Daly*, C.A.8 (Minn.) 1973, 481 F.2d 28, certiorari denied 94 S.Ct. 571, 414 U.S. 1064, 38 L.Ed.2d 469. Criminal Law ☞ 393(1)

Claim of defendant, who was convicted of wilfully failing to file United States income tax returns for the four years 1963-1966, that a truthful "No" answer to question on federal income tax return for each of the years 1963-1966 specifically asking whether taxpayer had filed a tax return in preceding year would have violated his privilege against self-incrimination by furnishing a link in chain of evidence needed to prosecute him for the crime was without merit. *U. S. v. Johnson*, C.A.9 (Or.) 1972, 460 F.2d 20. Criminal Law ☞ 393(1)

Defendant's failure to file tax returns that became due during time of ongoing criminal tax investigation was not protected by Fifth Amendment's privilege against self-incrimination, on ground that any information submitted on a tax return to the Internal Revenue Service (IRS) may have been incriminating. *U.S. v. Josephberg*, S.D.N.Y.2005, 418 F.Supp.2d 297. Criminal Law ☞ 393(1)

Defendants' failure to file federal income tax returns was not protected activity under the Fifth Amendment. U.S.

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v. Edgington, E.D.Tex.1989, 727 F.Supp. 1083, affirmed 897 F.2d 527, certiorari denied 110 S.Ct. 2217, 495 U.S. 952, 109 L.Ed.2d 542. Constitutional Law 286

5. Construction with other laws--Generally

Section 7201 of this title requires affirmative act of evasion while this section is an omission of a duty to make return. U. S. v. Ming, C.A.7 (Ill.) 1972, 466 F.2d 1000, certiorari denied 93 S.Ct. 235, 409 U.S. 915, 34 L.Ed.2d 176, rehearing denied 93 S.Ct. 514, 409 U.S. 1051, 34 L.Ed.2d 504.

Elements constituting violation of section 7201 of this title proscribing attempt to evade or defeat tax are willfulness, a tax deficiency, and an affirmative act constituting an evasion of a tax, such as the filing of a fraudulent tax return while elements constituting a violation of this section and section 7207 of this title are, in the one case, willfulness and failure to pay a tax due and, in the other case, willfulness and an affirmative act. U.S. v. Coppola, C.A.2 (Conn.) 1969, 425 F.2d 660. Internal Revenue 5263.15

Penalty provisions of this section respecting willful failure to pay tax are applicable to violations of §§ 4411 and 4412 of this title, imposing special occupational wagering tax and requiring registration of certain information with district director of internal revenue. U. S. v. Conforti, C.A.3 (N.J.) 1966, 360 F.2d 280. Internal Revenue 5319

6. ---- Felony and misdemeanor provisions, construction with other laws

Difference between misdemeanor offense of willful failure to pay taxes when due and felony offense of willful attempt to evade or defeat taxes is that the felony offense involves some commission in addition to willful omission. Sansone v. U.S., U.S.Mo.1965, 85 S.Ct. 1004, 380 U.S. 343, 13 L.Ed.2d 882. Internal Revenue 5262; Internal Revenue 5263.10

Where taxpayer has willfully failed to file tax return in violation of 26 U.S.C.A. § 7203, a prior, concomitant or subsequent false statement may elevate the § 7203 misdemeanor to level of felony under 26 U.S.C.A. § 7201, prohibiting attempts to evade or defeat tax. U.S. v. Copeland, C.A.7 (Ill.) 1985, 786 F.2d 768. Internal Revenue 5263.15



Words "true and correct" as used in printed declaration on income tax returns are not ambiguous and principle of narrow construction of penal statutes did not require that felony prosecution for falsely swearing under penalties of perjury that return was true and correct be precluded by this section creating misdemeanor for wilful failure to keep required tax records or supply required information. Siravo v. U.S., C.A.1 (R.I.) 1967, 377 F.2d 469. Criminal Law 29(3)


Distinction between criminality of misdemeanor of willfully failing to file federal income tax returns and criminality of felony of attempt to evade income taxes is found in additional misconduct which is essential to violation of § 7201 of this title and not in quality of willfulness which characterizes wrongdoing. U.S. v. Vitiello, C.A.3 (N.J.) 1966, 363 F.2d 240. Internal Revenue 5261; Internal Revenue 5263.35

Difference between felony of willful attempt to evade or defeat tax imposed upon business of accepting wagers and misdemeanor of failure to pay tax is found in affirmative action implied from term "attempt" and, therefore, willful but passive neglect of statutory duty may constitute lesser offense but, when combined with willful and positive attempt, offense is lifted to degree of a felony. Contreras v. U.S., C.A.5 (Fla.) 1954, 213 F.2d 96. Internal Revenue 5262; Internal Revenue 5263.35


Omissions denounced in this section consist of wilful failure to perform number of specified acts at time required, and commission of felony within § 7201 of this title cannot be made out by allegations limited to these omissions,

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but omissions within this section coupled with wilful, affirmative acts of commission designed to evade or defeat tax will constitute a felony. U.S. v. Donovan, W.D.Tex.1966, 250 F.Supp. 463. Internal Revenue  5263.15; Internal Revenue  5286

Defendant who allegedly prepared income tax returns for various taxpayers and kept money given him to pay the taxes, while not filing returns, was subject to felony prosecution under § 7201 of this title prohibiting willful attempt to evade or defeat tax, rather than as for a misdemeanor under this section relating to failure to pay tax or file return. U.S. v. Gase, N.D.Ohio 1965, 248 F.Supp. 704. Internal Revenue  5263.55


7. Purpose

Congressional intent, in enacting § 145(a) [I.R.C.1939] providing that any person required to pay any income tax who willfully fails to pay such tax at the time required by law or regulation shall, in addition to other penalties provided by law, be guilty of a misdemeanor, was to make failure to make timely payment of income tax a misdemeanor, regardless of the civil remedies available to insure prompt collection and the other penalties applicable in cases of late payment. U.S. v. Palermo, C.A.3 (Pa.) 1958, 259 F.2d 872. Internal Revenue  5262


8. Power of Congress


Congress has authority to require filing of returns reporting taxable income under its general power to levy taxes. U.S. v. Acker, C.A.6 (Ohio) 1969, 415 F.2d 328, certiorari denied 90 S.Ct. 553, 396 U.S. 1003, 24 L.Ed.2d 495, rehearing denied 90 S.Ct. 940, 397 U.S. 958, 25 L.Ed.2d 144. Internal Revenue  4470

9. Regulations



Federal income tax regulations governing filing of income tax returns do not require Office of Management and Budget control numbers because requirement to file tax return is mandated by statute, not by regulation. U.S. v. Bartrug, E.D.Va.1991, 777 F.Supp. 1290, affirmed 976 F.2d 727, certiorari denied 113 S.Ct. 1659, 507 U.S. 1010, 123 L.Ed.2d 278. Internal Revenue  4470

10. Selective prosecution

Criminal income tax defendant failed to support claim that he was vindictively prosecuted, even though defendant coauthored book which challenged validity of Sixteenth Amendment, where defendant was prosecuted for failing to report and evading taxes on approximately \$100,000 of income and prosecutions for unpaid taxes were not shown to be unusual. U.S. v. Benson, C.A.7 (Ill.) 1991, 941 F.2d 598, rehearing denied, mandate recalled and corrected 957 F.2d 301. Criminal Law  37.15(2)

Government's alleged policy of criminally prosecuting individuals who publicly and with attendant publicity asserted an alleged personal privilege not to pay federal income taxes as part of their protest against war and tax policies serves legitimate governmental interest in promoting public compliance with federal tax laws and does not constitute selection on an impermissible basis. U. S. v. Catlett, C.A.8 (Mo.) 1978, 584 F.2d 864. Criminal Law  37.10(2)

11. Election of remedies

Government has option to pursue civil or criminal remedies against persons who fail to file income tax returns. U. S. v. Catlett, C.A.8 (Mo.) 1978, 584 F.2d 864. Internal Revenue  4870; Internal Revenue  5261

12. Lesser included offense

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Because felony statute, § 7201 of this title, relating to willful attempt to evade or defeat any tax and misdemeanor statutes, § 7207 of this title and this section, relating to the willful filing of fraudulent or false return and to the willful failure to pay tax when due apply to income tax violations with obvious overlapping, lesser-included offense doctrine applies to them in appropriate case. *Sansone v. U.S.*, U.S.Mo.1965, 85 S.Ct. 1004, 380 U.S. 343, 13 L.Ed.2d 882. Criminal Law ☞ 795(2.26)

Where charges of attempted tax evasion and failure to file return involved the same tax years, the latter was a lesser included offense of the former and defendant could not be punished for both but only for the greater and, hence, conviction and sentence for the lesser offense were required to be vacated. *U. S. v. Buckley*, C.A.5 (Miss.) 1978, 586 F.2d 498, rehearing denied 589 F.2d 1114, certiorari denied 99 S.Ct. 1792, 440 U.S. 982, 60 L.Ed.2d 242. Double Jeopardy ☞ 162; Criminal Law ☞ 1184(4.1)

Misdemeanor of wilfully failing to file an income tax return is a lesser included offense of the felony of wilfully attempting to evade or defeat income taxes. *U. S. v. Cook*, C.A.5 (Fla.) 1974, 505 F.2d 659, rehearing denied 509 F.2d 576, certiorari denied 95 S.Ct. 2397, 421 U.S. 1000, 44 L.Ed.2d 667. Indictment And Information ☞ 189(1)

Government could charge defendant with violations of both 26 U.S.C.A. § 7201, making it a felony to wilfully evade any tax, and 26 U.S.C.A. § 7203, making wilful failure to file return a misdemeanor, as separate counts of same indictment, although § 7203 count was lesser included offense of § 7201 count 26 U.S.C.A. §§ 7201, 7203. *U.S. v. Overton*, W.D.Mich.1985, 617 F.Supp. 5. Indictment And Information ☞ 131

13. Merger of offenses

Offense of attempt to evade tax did not merge with offense of failing to pay tax, and same acts or omissions of taxpayer, who was obligated to pay gambler's tax, subjected him to prosecution for (1) willful attempt to evade or defeat tax, and (2) willful failure to pay over tax. *Reynolds v. U.S.*, C.A.5 (Fla.) 1961, 288 F.2d 78, certiorari denied 82 S.Ct. 127, 368 U.S. 883, 7 L.Ed.2d 83, rehearing denied 82 S.Ct. 197, 368 U.S. 917, 7 L.Ed.2d 133. Internal Revenue ☞ 5270

14. Persons liable--Generally

Husband and wife were "persons" under Internal Revenue Code, and thus, required to file income tax return despite their contention that they were not taxpayers because they were "free born, white, preamble, sovereign, natural individual common-law 'de jure' citizens of Kansas." *U.S. v. Dawes*, C.A.10 (Kan.) 1989, 874 F.2d 746, rehearing denied, certiorari denied 110 S.Ct. 284, 493 U.S. 920, 107 L.Ed.2d 264, error coram nobis granted 895 F.2d 1581, on remand. Internal Revenue ☞ 3053

Claim that court should have considered defendant's good-faith belief that he was not a "person" subject to prosecution under 26 U.S.C.A. § 7203, imposing obligation to file return on "any person" required to pay taxes, was frivolous, for purposes of criminal prosecution for willful failure to file income tax returns. *U.S. v. Karlin*, C.A.3 (N.J.) 1986, 785 F.2d 90, certiorari denied 107 S.Ct. 1351, 480 U.S. 907, 94 L.Ed.2d 522. Internal Revenue ☞ 5261

Despite defendant's contention that she was an absolute, freeborn and natural individual, she was a "person" under the Internal Revenue code and thus subject to prosecution for willful failure to file tax returns. *U.S. v. Studley*, C.A.9 (Cal.) 1986, 783 F.2d 934. Internal Revenue ☞ 5261

Income must be reported by, and is taxable to, taxpayer who earns it. *Mallette Bros. Const. Co., Inc. v. U.S.*, C.A.5 (Miss.) 1983, 695 F.2d 145, rehearing denied 701 F.2d 173, certiorari denied 104 S.Ct. 341, 464 U.S. 935, 78 L.Ed.2d 309. Internal Revenue ☞ 3560

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15. ---- Contractors, persons liable

Prime contractor and its sureties were not liable for unpaid taxes of sub-contractor which had deducted such taxes from its employees' wages but had failed to pay same over to government. *U.S. v. Zschach Const. Co.*, C.A.10 (Okla.) 1954, 209 F.2d 347. United States ¶ 67(9); Internal Revenue ¶ 4847

16. ---- Corporate officers or employees, persons liable

Person who organizes corporation in order to give boxing exhibitions under laws of state permitting license only to a corporation, and who assumes the technical position of agent and manager for the corporation, but who in fact gives exhibitions and collects the admission fees, may be guilty of failure to pay tax on fees and failure to make return to Collector of money so received under Revenue Act 1919, § 1308(b). *U.S. v. Johnston*, U.S.N.Y.1925, 45 S.Ct. 496, 268 U.S. 220, 69 L.Ed. 925.

Because corporate employer was required to remit amounts withheld from employees' wages, it was also required to file Form 941 employer's quarterly tax return, documenting withholding amounts, and responsible corporation officer could be held criminally liable for failing to carry out such duty on behalf of corporation. *U.S. v. Neal*, C.A.6 (Ky.) 1996, 93 F.3d 219, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 957, 519 U.S. 1115, 136 L.Ed.2d 843. Internal Revenue ¶ 5261

Defendant, who was president and sole operating officer of computer service company during period in question, who was responsible for filing tax returns, who never delegated this responsibility to another, and who admitted that he knew that he was ultimately personally responsible for the taxes, was the person who was under a duty to file all the required federal tax returns, and was subject to prosecution for willfully and knowingly failing to do so. *U. S. v. Ettore*, E.D.Pa.1975, 387 F.Supp. 582. Internal Revenue ¶ 5261

Corporate officer who admittedly was solely and personally responsible for supervising and managing all aspects of the corporate business was a "person" required by federal law to make and file employer's quarterly tax returns for the corporation and could thus be prosecuted for failure to do so. *U. S. v. Jasper*, D.C.Del.1972, 352 F.Supp. 254. Internal Revenue ¶ 4473; Internal Revenue ¶ 5261; Internal Revenue ¶ 5269

17. ---- Government agents, persons liable

Even though government agent who placed wagers with defendant was not risking any money, since he was to be reimbursed by government, government was risking its money and defendant could be convicted of failure to pay special wagering occupational tax on basis of taking such bets. *Leone v. U.S.*, C.A.1 (R.I.) 1965, 340 F.2d 317. Internal Revenue ¶ 5270

II. FAILURE TO FILE RETURN OR SUPPLY INFORMATION

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41. Offense malum prohibitum, failure to file return or supply information


Failure to file federal income tax return is offense malum prohibitum. *State v. Jones*, Utah 1965, 407 P.2d 571, 17 Utah 2d 190. Internal Revenue  5261

42. Elements of offense generally, failure to file return or supply information

Elements of offense of failure to file a tax return are proof of failure to file and willfulness in doing so. *U. S. v. Buckley*, C.A.5 (Miss.) 1978, 586 F.2d 498, rehearing denied 589 F.2d 1114, certiorari denied 99 S.Ct. 1792, 440 U.S. 982, 60 L.Ed.2d 242. Internal Revenue  5261

In order to sustain conviction for failure to file timely income tax returns, government need only show that defendant was required to file return, that he knew he was so required, and that he willfully or purposefully, as distinguished from inadvertently, negligently, or mistakenly, failed to file such return, and defendant's reasons for failing to so file are irrelevant. *U. S. v. Matosky*, C.A.7 (Ill.) 1970, 421 F.2d 410, certiorari denied 90 S.Ct. 1691, 398 U.S. 904, 26 L.Ed.2d 62. Internal Revenue  5291.1

Government, in prosecution for failure to file federal income tax returns, was required to show that defendant was required to file a return, that he did not do so, and that his failure to file was willful and was not required to prove that defendant owed government any tax. *U. S. v. Gorman*, C.A.7 (Ill.) 1968, 393 F.2d 209, certiorari denied 89 S.Ct. 102, 393 U.S. 832, 21 L.Ed.2d 103, rehearing denied 89 S.Ct. 1738, 395 U.S. 917, 23 L.Ed.2d 231. Internal Revenue  5291.1

Indictment which charged defendant with failure to file income tax return for 1997 calendar year by October 15, 1998 was not vague or lacking in definition, since indictment clearly put defendant on notice that her return was due on or before October 15, 1998, and only question remaining was whether United States could provide evidence at trial to prove that return was indeed due on that date. *U.S. v. Christensen*, D.Utah 2004, 344 F.Supp.2d 1294. Internal Revenue  5286

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In order to establish a failure to file a federal income tax return, it must be shown that taxpayer was required to file tax return for year in question, that defendant failed to make such a return, and that defendant's failure was willful. U.S. v. Grabinski, D.C.Minn.1983, 558 F.Supp. 1324, affirmed 727 F.2d 681. Internal Revenue ☞ 5261

Conviction for misdemeanor offense of willfully failing to file federal income tax withholding returns is obtained on a showing that defendant knew of requirement to file returns and willfully failed to do so. U. S. v. Klein, S.D.N.Y.1977, 438 F.Supp. 485. Internal Revenue ☞ 5261

The government charging wilful failure to make personal income tax returns had burden of proving (1) that defendant was required to make returns for taxable years in question, (2) that defendant failed to make timely returns, and (3) that defendant's failure to make timely returns was a "knowing" and "wilful" failure. U.S. v. Thompson, D.C.Conn.1964, 230 F.Supp. 530, affirmed 338 F.2d 997. Internal Revenue ☞ 5291.1

43. Income, failure to file return or supply information--Generally

Wages constituted income for purposes of this section under which defendant was charged with willful failure to file income tax return. U.S. v. Buras, C.A.9 (Cal.) 1980, 633 F.2d 1356. Internal Revenue ☞ 3150

Unrealized increases in net worth resulting from higher market value are not probative of gross income for purposes of prosecution for failure to file income tax return. U. S. v. Walker, C.A.9 (Wash.) 1973, 479 F.2d 407. Internal Revenue ☞ 5305

Only true income can be considered in determining whether a person was obliged to file an individual tax return for year. Clawson v. U.S., C.A.9 (Cal.) 1952, 198 F.2d 792, certiorari denied 73 S.Ct. 495, 344 U.S. 929, 97 L.Ed. 715, rehearing denied 73 S.Ct. 641, 345 U.S. 914, 97 L.Ed. 1348. Internal Revenue ☞ 4472

Defendants' wages were income for purposes of filing income tax return. U.S. v. Edgington, E.D.Tex.1989, 727 F.Supp. 1083, affirmed 897 F.2d 527, certiorari denied 110 S.Ct. 2217, 495 U.S. 952, 109 L.Ed.2d 542. Internal Revenue ☞ 3150

44. ---- Expenditures, income, failure to file return or supply information


Evidence that taxpayer made expenditures in each prosecution year far in excess of amount which, had figure been derived entirely from taxable income in that year, would have required him to file returns was sufficient, in face of taxpayer's silence, to support a finding of guilt under "cash expenditure" method of proof in prosecution for willful failure to file income tax returns. U. S. v. Bianco, C.A.2 (N.Y.) 1976, 534 F.2d 501, certiorari denied 97 S.Ct. 73, 429 U.S. 822, 50 L.Ed.2d 84. Internal Revenue ☞ 5301


Evidence tending to show that accused in prosecution for failing to file income tax return had maintained illicit relationship with woman which resulted in birth of illegitimate child to show defendant's expenditure for support and maintenance was relevant to establishment of defendant's financial position and income, and admission was not improper. Ayash v. U.S., C.A.10 (Utah) 1965, 352 F.2d 1009. Internal Revenue ☞ 5294




45. ---- Legal tender, income, failure to file return or supply information

In prosecution for failing to file income tax returns in which defendant said that he believed Federal Reserve notes were worthless and, therefore, that he did not have any real income, evidence that he had purchased expensive house and car during the relevant period was relevant and admissible as undercutting good faith or reasonableness of belief that dollars are worthless. U. S. v. Moore, C.A.7 (Ill.) 1980, 627 F.2d 830, certiorari denied 101 S.Ct. 1360, 450 U.S. 916, 67 L.Ed.2d 342. Internal Revenue ☞ 5294


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Taxpayer's motives in failing to file adequate income tax returns, involving protest against taxation or government use of paper money not backed by silver, were immaterial so long as government proved beyond reasonable doubt, in prosecuting taxpayer for willful failure to file income tax returns, that taxpayer was required to file return, that he knew such obligation, and that he willfully or purposefully failed to file such return. *U. S. v. Edelson*, C.A.3 (N.J.) 1979, 604 F.2d 232. Internal Revenue  5261

Both U.S.C.A. Const. Amend. 16 and this title deal with taxation of "income," not with "legal tender," and thus where taxpayer had received income during years in which he had not paid any income tax taxpayer was not exempt from taxation, notwithstanding contention that income he received was not immediately backed by gold or silver and did not constitute "legal dollars." *U. S. v. Whitesel*, C.A.6 (Ohio) 1976, 543 F.2d 1176, certiorari denied 97 S.Ct. 2924, 431 U.S. 967, 53 L.Ed.2d 1062, rehearing denied 98 S.Ct. 245, 434 U.S. 881, 54 L.Ed.2d 165. United States  90


Section 392 of Title 31, establishing federal reserve notes as legal tender for all debts, public and private, including taxes, is within constitutional authority of Congress; thus defendant could not overturn conviction on two counts of wilful failure to make an income tax return on theory that he did not receive money since checks he received as compensation for his services could be cashed only for federal reserve notes which were not redeemable in specie. *U. S. v. Wangrud*, C.A.9 (Cal.) 1976, 533 F.2d 495, certiorari denied 97 S.Ct. 64, 429 U.S. 818, 50 L.Ed.2d 79. Internal Revenue  3117; Internal Revenue  5261; United States  34

46. ---- Stock, income, failure to file return or supply information


Fact that 5000 shares of stock which defendant received was heavily restricted did not preclude determination that the stock represented income which should have been reported on an income tax return. *U. S. v. Garguilo*, C.A.2 (N.Y.) 1977, 554 F.2d 59. Internal Revenue  3162

Evidence of sale of 2,000 shares of corporate stock and receipt of \$17,000 for it plus distribution of these proceeds fell short of establishing that any part of these proceeds constituted sufficient income to require filing of a return. *U. S. v. Brewer*, C.A.10 (Okla.) 1973, 486 F.2d 507, certiorari denied 94 S.Ct. 1407, 415 U.S. 913, 39 L.Ed.2d 467. Internal Revenue  5301

47. ---- Miscellaneous income, failure to file return or supply information


In prosecution for failing to file an individual income tax return, evidence justified conviction on ground that money obtained by defendant from bank account of corporation which was a mere dummy created and controlled by defendant constituted constructive dividends which defendant was not obliged to repay, so that defendant had received true income in year involved in amount sufficiently large to obligate defendant to file individual income tax return. *Clawson v. U.S.*, C.A.9 (Cal.) 1952, 198 F.2d 792, certiorari denied 73 S.Ct. 495, 344 U.S. 929, 97 L.Ed. 715, rehearing denied 73 S.Ct. 641, 345 U.S. 914, 97 L.Ed. 1348. Internal Revenue  5301


48. Information within return, failure to file return or supply information--Generally


Taxpayer's use of wrong income tax form, which did not contain lines for all of the different kinds of income that taxpayer had, did not subject taxpayer to charge of filing false income tax return, on theory that taxpayer was impliedly representing that he qualified to use form and had no income other than that specified; proper charge was not filing false income tax return, but tax evasion and failure to supply information required by law. *U.S. v. Reynolds*, C.A.7 (Wis.) 1990, 919 F.2d 435, certiorari denied 111 S.Ct. 1402, 499 U.S. 942, 113 L.Ed.2d 457. Internal Revenue  5263.10

Bare act of submitting form 1040 lacking sufficient financial information to enable Service to determine


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individual's tax liability does not constitute filing of tax return for purpose of this section. *U.S. v. Vance*, C.A.11 (Ga.) 1984, 730 F.2d 736, rehearing denied 736 F.2d 1528. See, also, *U.S. v. Francisco*, C.A.8 (Iowa) 1980, 614 F.2d 617, certiorari denied 100 S.Ct. 1861, 446 U.S. 922, 64 L.Ed.2d 278. Internal Revenue  5261


Taxpayer could be charged with failing to file income tax returns even though he filed forms containing some income information, from which a tax could be calculated, absent honest and reasonable intent to supply the information required by the tax code. *U. S. v. Moore*, C.A.7 (Ill.) 1980, 627 F.2d 830, certiorari denied 101 S.Ct. 1360, 450 U.S. 916, 67 L.Ed.2d 342. Internal Revenue  5261


A failure to provide any information in income tax return is tantamount to the failure to file a return at all. *U. S. v. Brown*, C.A.10 (Utah) 1979, 600 F.2d 248, certiorari denied 100 S.Ct. 233, 444 U.S. 917, 62 L.Ed.2d 172. Internal Revenue  5261


49. ---- Constitutional objections or protest, information within return, failure to file return or supply information

Protest documents duplicating in part United States individual income tax return form 1040's but containing no financial data are not tax "returns" for purposes of this section. *U. S. v. Pilcher*, C.A.11 (Ga.) 1982, 672 F.2d 875, certiorari denied 103 S.Ct. 306, 459 U.S. 973, 74 L.Ed.2d 286. See, also, *Beatty v. C.I.R.*, C.A.5, 1982, 667 F.2d 501, rehearing denied 676 F.2d 150; *U.S. v. Booher*, C.A.5 (Fla.) 1981, 641 F.2d 218; *U.S. v. Edelson*, C.A.N.J.1979, 604 F.2d 232; *U.S. v. Wade*, C.A.Tex.1978, 585 F.2d 573, certiorari denied 99 S.Ct. 1264, 440 U.S. 928, 59 L.Ed.2d 484; *U.S. v. Pryer*, C.A.Mo.1978, 574 F.2d 440; *U.S. v. Radue*, C.A.Ala.1973, 486 F.2d 220, rehearing denied 487 F.2d 1401, certiorari denied 94 S.Ct. 1615, 416 U.S. 908, 40 L.Ed.2d 113; *U.S. v. Grabinski*, D.C.Minn.1983, 558 F.Supp. 1324, affirmed 727 F.2d 681. Internal Revenue  4477

Defendant's income tax return which contained defendant's name, address, and an entry indicating that defendant was entitled to refund of \$4,694 and which otherwise showed only defendant's constitutional objections to questions asked constituted no return at all under this section prohibiting willful failure to make income tax return. *U. S. v. Irwin*, C.A.10 (Wyo.) 1977, 561 F.2d 198, certiorari denied 98 S.Ct. 725, 434 U.S. 1012, 54 L.Ed.2d 755. Internal Revenue  5261

Income tax return which contained no information from which taxpayer's tax liability could be calculated but instead merely contained taxpayer's statements of constitutional objection was inadequate. *U. S. v. Silkman*, C.A.8 (N.D.) 1976, 543 F.2d 1218, certiorari denied 97 S.Ct. 2185, 431 U.S. 919, 53 L.Ed.2d 230 See, also, *U.S. v. Porth*, C.A.Kan.1970, 426 F.2d 519, certiorari denied 91 S.Ct. 47, 400 U.S. 824, 27 L.Ed.2d 53. Internal Revenue  4477

Defendant's failure to file tax returns that became due during time of ongoing criminal tax investigation was willful, although he believed it was protected by the Fifth Amendment because information on returns may have been incriminating, where it was not the first prosecution for failure to file brought against an individual who failed to file tax returns while being investigated for tax crimes. *U.S. v. Josephberg*, S.D.N.Y.2005, 418 F.Supp.2d 297. Internal Revenue  5261

Failure of Court of Appeals to adjudicate claim by tax evasion defendant, that trial court erroneously instructed jury to disregard his belief that the Fifth Amendment privilege entitled him to file federal income tax returns without financial information, did not entitle defendant to coram nobis relief given that issue could have been but was not raised on direct appeal, appeals court determined that issue did not merit discussion, and defendant's argument was considered and rejected. *Snyder v. U.S.*, D.Md.1995, 897 F.Supp. 241. Criminal Law  1433(2)

50. ---- Identification and address of taxpayer, information within return, failure to file return or supply information

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A signed but otherwise blank Form 1040 is not a "return" precluding assessment of penalties for failing to meet this section's obligation to file income tax returns. *Knighen v. C.I.R.*, C.A.5 1983, 702 F.2d 59, rehearing denied 705 F.2d 777, certiorari denied 104 S.Ct. 249, 464 U.S. 897, 78 L.Ed.2d 237. Internal Revenue ☞ 4477

Taxpayer who submitted 1040 forms containing only his name, address, social security number and occupation, was not entitled to acquittal of charges of failing to file income tax returns on ground that he was not guilty of bad faith or equal motive since his conduct amounted to a total failure to file a return. *U. S. v. Evanko*, C.A.6 (Ohio) 1979, 604 F.2d 21, certiorari denied 100 S.Ct. 685, 444 U.S. 1024, 62 L.Ed.2d 657. Internal Revenue ☞ 5261

Filing of a form which contains only one's name, address, and social security number constitutes a failure to file a return as required by law. *U. S. v. Stout*, C.A.7 (Ill.) 1979, 601 F.2d 325, certiorari denied 100 S.Ct. 481, 444 U.S. 979, 62 L.Ed.2d 406. Internal Revenue ☞ 5261

51. ---- Zeros, information within return, failure to file return or supply information

Tax return on which defendant indicated he had zero income from wages and interest, that he owed no income taxes, and that he was entitled to refund on all taxes which had been withheld by his employer for back year was "no return" for purposes of this section and section 7205 of this Title, inasmuch as return failed to include any information upon which tax could be calculated; rejecting *United States v. Long*, 618 F.2d 74. *U.S. v. Mosel*, C.A.6 (Ohio) 1984, 738 F.2d 157. Internal Revenue ☞ 4477

Defendant could not escape criminal penalty for failure to file federal income tax returns by crossing out income figures on his withholding statement and inserting zeros for such figures. *U. S. v. Rickman*, C.A.10 (Kan.) 1980, 638 F.2d 182. Internal Revenue ☞ 5261

Defendant, whose income tax "returns" for two consecutive years contained nothing but zeroes and constitutional objections, was properly charged with failure to file for those years. *U. S. v. Smith*, C.A.5 (Tex.) 1980, 618 F.2d 280, certiorari denied 101 S.Ct. 203, 449 U.S. 868, 66 L.Ed.2d 87. Internal Revenue ☞ 5261

Defendant could not be convicted of willful failure to file income tax returns where he filed returns in which he had inserted zeros in spaces reserved for entering exemptions, income, tax, and tax withheld, even if that information was false. *U. S. v. Long*, C.A.9 (Cal.) 1980, 618 F.2d 74. Internal Revenue ☞ 5261



52. ---- Miscellaneous information insufficient, information within return, failure to file return or supply information

IRS 1040 forms on which taxpayer wrote only asterisks were not "returns" within meaning of prohibition against willful failure to make return. *U.S. v. Kimball*, C.A.9 (Nev.) 1991, 925 F.2d 356. Internal Revenue ☞ 5263.25


Where tax forms filed by defendants contained no information about income or deductions, they did not file returns which were adequate to preclude guilt for failure to file income tax returns, even though government did acquire sufficient information to assess tax liability. *U.S. v. Stillhammer*, C.A.10 (N.M.) 1983, 706 F.2d 1072. Internal Revenue ☞ 5261



Evidence was sufficient to support convictions of failure to file income tax returns and filing a false withholding statement on part of defendant, who entered little or no information on his 1040 tax return forms and claimed 26 withholding allowances on his W-4 form knowing that he could not be entitled to that large a number of exemptions, who filed no amended returns after nonprocessable forms were returned to him, and who had publicly advocated very method of avoiding paying taxes that he used. *U. S. v. Brown*, C.A.5 (Tex.) 1979, 591 F.2d 307, certiorari denied 99 S.Ct. 2831, 442 U.S. 913, 61 L.Ed.2d 280. Internal Revenue ☞ 5299; Internal Revenue ☞ 5301


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Tax return which contained absolutely no information about taxpayer's tax status but merely stated "all details available on proper demand" did not fulfill taxpayer's obligation to file, and court properly so instructed jury in prosecution for willful failure to file federal income tax returns. *U. S. v. Klee*, C.A.9 (Cal.) 1974, 494 F.2d 394, certiorari denied 95 S.Ct. 62, 419 U.S. 835, 42 L.Ed.2d 61. Internal Revenue  4477; Internal Revenue  5317


53. Tax deficiency, failure to file return or supply information


Even though tax due and owing computations were not necessary to prove necessity for filing return in prosecution for willful failure to file income tax returns, they were admissible on issue of willfulness. *U.S. v. Wunder*, C.A.6 (Ohio) 1990, 919 F.2d 34. Internal Revenue  5294


Government is not required to show that federal income tax is due or an intent to evade tax to obtain conviction of willful failure to file return, and thus, district court could exclude as irrelevant defendant's proffered testimony as to whether he would have received a refund had he timely filed a tax return in year in which he was charged with willfully failing to file. *U.S. v. Hairston*, C.A.10 (Utah) 1987, 819 F.2d 971. Internal Revenue  5261; Internal Revenue  5294

In prosecution for willful failure to file individual income tax returns, defendant's actual tax liability for three years for which he failed to file returns was relevant because defendant's entire income was derived from wages, and district court did not abuse its discretion in admitting this evidence. *U.S. v. Schmitt*, C.A.10 (Kan.) 1986, 794 F.2d 555. Internal Revenue  5294


In prosecution for willfully failing to file income tax returns for the years 1972 and 1973, it was not necessary that prosecution prove that a tax liability existed, since testimony disclosed that defendant had received checks in amount of \$184,330.06 in 1972 and \$128,371.01 in 1973 for work performed as a subcontractor thus establishing that defendant had gross income requiring him to file a return. *U. S. v. Wade*, C.A.5 (Tex.) 1978, 585 F.2d 573, certiorari denied 99 S.Ct. 1264, 440 U.S. 928, 59 L.Ed.2d 484. Internal Revenue  5301

Defendant's deliberate failure to file income tax returns without justifiable excuse and his inferable intent to prevent government from knowing extent of his tax liability, taken together, amounted to "wilfulness" required for conviction of willfully failing to file income tax returns, and government was not required to prove that he owed any tax. *U.S. v. McCabe*, C.A.7 (Wis.) 1969, 416 F.2d 957, certiorari denied 90 S.Ct. 751, 396 U.S. 1058, 24 L.Ed.2d 752. Internal Revenue  5261

Prosecution for willful failure to file tax return is imposed without regard to existence of tax liability. *Lumetta v. U.S.*, C.A.8 (Mo.) 1966, 362 F.2d 644. Internal Revenue  5261

Prosecution for knowing and willful failure to make income tax returns is not limited to situation where government would not know extent of defendant's tax liability. *U. S. v. Keig*, C.A.7 (Ill.) 1964, 334 F.2d 823. Internal Revenue  5261

54. Defenses, failure to file return or supply information--Generally

Even if the Internal Revenue Service (IRS) did fail to comply with the Paperwork Reduction Act by failing to display the Office of Management and Budget control numbers on tax forms and on regulations, that did not preclude taxpayer from being penalized for failing to file a tax return. *U.S. v. Hicks*, C.A.9 (Ariz.) 1991, 947 F.2d 1356. Internal Revenue  5228

Paperwork Reduction Act, which provides that no person shall be subject to any penalty for failing to provide information to any agency if information collection request does not display current control number assigned by

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Director of Office Management and Budget, did not apply to statutory requirement that taxpayer file income tax return, and therefore defendant could be convicted of willful failure to file income tax return even though regulations and instructions concerning the filing of income tax returns did not contain control numbers. *U.S. v. Kerwin*, C.A.5 (Tex.) 1991, 945 F.2d 92. Internal Revenue 🔑 5261

Knowing and willful filing of document which does not contain information relating to taxpayer's income from which tax can be computed is violation of this section unless defendant can establish that failure to supply required information was legally justified. *U. S. v. Verkuilen*, C.A.7 (Ill.) 1982, 690 F.2d 648. Internal Revenue 🔑 5261

Defense to charge of failing to file federal income tax returns by failing to include sufficient income information for determination of tax liability on ground that symbol "dollar" (\$) has been rendered legal fiction by country's monetary system was without merit. *U. S. v. Weir*, C.A.8 (Mo.) 1982, 679 F.2d 769. Internal Revenue 🔑 5261

Absence of Office of Management and Budget Control number on instruction booklet prepared by Internal Revenue Service to accompany individual income tax Form 1040 did not bar prosecution for willful failure to file income tax returns. *U.S. v. Schweitzer*, D.Mont.1991, 775 F.Supp. 1355. Internal Revenue 🔑 5263.10

Absence of Office of Management and Budget Control number on instruction booklet prepared by Internal Revenue Service to accompany individual income tax Form 1040 did not bar prosecution for willful failure to file income tax returns. *U.S. v. Schweitzer*, D.Mont.1991, 775 F.Supp. 1355. Internal Revenue 🔑 5263.10

Instruction booklets are not "information collection requests" under Paperwork Reduction Act provision forbidding agency from collecting information or subjecting any person to penalty for failing to provide information without first obtaining control number from Office of Management and Budget (OMB); control numbers do not have to be on booklets since booklets are merely publications designed to assist taxpayers to complete tax forms and tax forms themselves display control numbers, and therefore, fact that booklets did not have numbers did not prevent IRS from subjecting taxpayers to penalty for tax evasion and failure to file tax return. *U.S. v. Stiner*, D.Kan.1991, 765 F.Supp. 663, affirmed 952 F.2d 1401. Internal Revenue 🔑 3044

55. ---- Constitutionality of tax laws, defenses, failure to file return or supply information

Defendant's good-faith belief that income tax law was unconstitutional as applied to him did not provide defense to charges of willfully attempting to evade income taxes and failing to file income tax returns, notwithstanding claim that, because of his belief in the unconstitutionality of the tax laws as applied to him, the income tax laws could not legally impose any duty upon him of which he should have been aware. *Cheek v. U.S.*, U.S.Ill.1991, 111 S.Ct. 604, 498 U.S. 192, 112 L.Ed.2d 617, on remand 931 F.2d 1206. Internal Revenue 🔑 5263.35

Defendant's opinion that tax laws are unconstitutional cannot constitute "good faith" defense to tax charges. *U.S. v. Lindsay*, C.A.10 (Kan.) 1999, 184 F.3d 1138, certiorari denied 120 S.Ct. 438, 528 U.S. 981, 145 L.Ed.2d 343. Internal Revenue 🔑 5250

56. ---- Disclosure of identity of defendant, defenses, failure to file return or supply information

It was no defense to charge of failure to file timely income tax returns that defendant feared returns would disclose his identity and he would be prosecuted by state authorities. *U. S. v. Matosky*, C.A.7 (Ill.) 1970, 421 F.2d 410, certiorari denied 90 S.Ct. 1691, 398 U.S. 904, 26 L.Ed.2d 62. Internal Revenue 🔑 5280

III. WILLFULNESS

<Subdivision Index>


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81. Willfulness generally


Despite taxpayer's contention that evidence from Internal Revenue Service that he failed to file tax return indicated error in IRS records or error of postal service, evidence was sufficient to support conviction for willful failure to file tax return, since taxpayer's history of failing to file returns or filing delinquently demonstrated that he knew he had obligation to file and that he intentionally ignored that obligation. *U.S. v. Briscoe*, C.A.7 (Ill.) 1995, 65 F.3d 576. Internal Revenue  5301

Defendant charged with willfully failing to file income tax returns was entitled to admit into evidence legal materials, including court opinions and portions of the Congressional Record, which he claimed supported his belief that he was not required to file income tax, which evidence was relevant to issue of willfulness. *U.S. v. Gaumer*, C.A.6 (Ohio) 1992, 972 F.2d 723, rehearing denied. Internal Revenue  5294

Both failure to file and false filing offenses under Internal Revenue Code require that accused have acted willfully, that is, intentionally in violation of known legal duty. *U.S. v. Burton*, C.A.5 (Tex.) 1984, 737 F.2d 439. Internal Revenue  5261; Internal Revenue  5263.35


Willfulness, for purposes of prosecution for failure to file timely employer's quarterly federal tax returns, does not require any motive other than a voluntary, intentional violation of a known legal duty. *U.S. v. Rothbart*, C.A.10 (Colo.) 1983, 723 F.2d 752. Internal Revenue  5261


Willfulness is essential element of offense of failure to file tax return. *U. S. v. Verkuilen*, C.A.7 (Ill.) 1982, 690 F.2d 648. See, also, *U.S. v. Moore*, C.A.7 (Ill.) 1980, 627 F.2d 830, certiorari denied 101 S.Ct. 1360, 450 U.S. 916, 67 L.Ed.2d 342; *Ayash v. U.S.*, C.A.Utah 1965, 352 F.2d 1009. Internal Revenue  5261


Willfulness under this section requires only proof of intentional violation of known legal duty. *U. S. v. Francisco*, C.A.8 (Iowa) 1980, 614 F.2d 617, certiorari denied 100 S.Ct. 1861, 446 U.S. 922, 64 L.Ed.2d 278. See, also, *U.S. v. Rifen*, C.A.Mo.1978, 577 F.2d 1111; *U.S. v. Bourque*, C.A.R.I.1976, 541 F.2d 290; *U.S. v. Marks*, W.D.Mo.1982, 534 F.Supp. 663. Internal Revenue  5263.10


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
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To show that a taxpayer's failure to file a federal tax return was willful, the Government need not prove anything beyond establishing that taxpayer's action was deliberate, intentional, and without justifiable excuse or, as otherwise stated, a voluntary, intentional violation of a known duty. *U. S. v. Pohlman*, C.A.8 (N.D.) 1975, 522 F.2d 974, certiorari denied 96 S.Ct. 776, 423 U.S. 1049, 46 L.Ed.2d 638. See, also, *U.S. v. Londe*, D.C.Mo.1978, 449 F.Supp. 590, affirmed 587 F.2d 18, certiorari denied 99 S.Ct. 1050, 439 U.S. 1130, 59 L.Ed.2d 92; *U.S. v. Greenlee*, D.C.Pa.1974, 380 F.Supp. 652, affirmed 517 F.2d 899, certiorari denied 96 S.Ct. 391, 423 U.S. 985, 46 L.Ed.2d 301. Internal Revenue  5291.1

"Willful" requirement of this section making it misdemeanor to willfully fail to file federal income tax return means act both intentional and reprehensible, attended by knowledge of legal obligation and purpose to prevent government from getting that which it lawfully requires. *U.S. v. Vitiello*, C.A.3 (N.J.) 1966, 363 F.2d 240. Internal Revenue  5261



"Willful" within this section making it a misdemeanor to wilfully fail to make an income tax return means with a bad purpose or without grounds for believing that one's act is lawful or without reasonable cause or capriciously or with a careless disregard of whether one has the right to so act. *Martin v. U.S.*, C.A.9 (Hawai'i) 1963, 317 F.2d 753 . Internal Revenue  5261



"Willful," as used in this section making it a misdemeanor to willfully fail to file income tax returns means intentional, knowing or purposeful, as opposed to careless, thoughtless, heedless or inadvertent. *Haner v. U.S.*, C.A.5 (Tex.) 1963, 315 F.2d 792. Internal Revenue  5261

A difference exists in the meaning of word "willfully" when used in a statute defining a felony and that defining a misdemeanor, and word is one of many meanings, its constructions often being influenced by its context, and it may well mean something more as applied to non-payment of a tax, than when applied to failure to make a return, and mere voluntary and purposeful, as distinguished from accidental, omission to make a timely return might meet the test of willfulness. *Abdul v. U.S.*, C.A.9 (Hawai'i) 1958, 254 F.2d 292. Internal Revenue  5261

One who intentionally refuses to furnish information, required by Schedule I, Partnership Return of Income, knowing that such information is required, is guilty of willfully and intentionally withholding such information as those terms are used in § 145(a) [I.R.C.1939 (now covered in this section)], requiring taxpayers to supply such information. *Pappas v. U.S.*, C.A.10 (Utah) 1954, 216 F.2d 515. Internal Revenue  5267

82. Knowledge, willfulness

Offenses of willfully filing false income tax returns and willfully failing to file an income tax return do not require actual knowledge so as to render improper an instruction on willful blindness. *U.S. v. Bussey*, C.A.8 (Mo.) 1991, 942 F.2d 1241, rehearing denied, certiorari denied 112 S.Ct. 1936, 504 U.S. 908, 118 L.Ed.2d 542, rehearing denied 113 S.Ct. 9, 505 U.S. 1238, 120 L.Ed.2d 937. Criminal Law  772(5); Internal Revenue  5317

With respect to crime of failure to file income tax return, failure to file must be shown to have been willful result of some bad intent, such as intent to conceal taxable income from Government or delay the assessment and collection of taxes, but specific knowledge that such conduct has been made a criminal offense is not necessary to the offense and, as long as inexcusable intent is present, it is not necessary that defendant know that his conduct is subject to criminal penalties. *U. S. v. Rosenfield*, C.A.3 (Pa.) 1972, 469 F.2d 598, certiorari denied 93 S.Ct. 1899, 411 U.S. 932, 36 L.Ed.2d 391. Internal Revenue  5261; Internal Revenue  5291.1

In criminal proceedings for attempted tax evasion and failure to file income tax returns, district court's failure to instruct jury that defendant was not presumed to know the law was not plain error, given that the district court instructed the jury that it had to find that defendant acted "willfully" and "knowingly," and it carefully defined those terms so that the jury would know that the government had to prove beyond a reasonable doubt that the law

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imposed a duty on defendant, that defendant knew of that duty, and that he voluntarily and intentionally violated it. U.S. v. Harpole, C.A.9 (Alaska) 2006, 168 Fed.Appx. 182, 2006 WL 377547, Unreported. Criminal Law 1038.2

Evidence was sufficient to support finding that defendant willfully failed to file a tax return, given that defendant had filed a tax return in previous years and therefore knew of his obligation to do so. U.S. v. Woodman, C.A.6 (Ohio) 2004, 115 Fed.Appx. 840, 2004 WL 2711025, Unreported. Internal Revenue 5301

83. Specificity of intent, willfulness

Willfulness element in statute prohibiting willful failure to file income tax return requires proof of intentional violation of known legal duty, and thus describes specific intent crime. U.S. v. Birkenstock, C.A.7 (Wis.) 1987, 823 F.2d 1026. Internal Revenue 5261

The element of "willfulness" as used in this section making it a misdemeanor willfully to fail to file income tax returns involves a specific wrongful intent, namely: actual knowledge of existence of a legal obligation and intent to evade that obligation. U.S. v. Thompson, D.C.Conn.1964, 230 F.Supp. 530, affirmed 338 F.2d 997. Internal Revenue 5261

Proof of willful attempt to evade tax, such as would warrant exception of tax liability from discharge, requires showing of debtor's specific intent to evade tax believed to be owing. In re Teeslink, Bkrtcy.S.D.Ga.1994, 165 B.R. 708. Bankruptcy 3343.5

84. Ability to file or pay tax, willfulness

Where defendant, charged with willfully failing to file federal income tax returns for years 1967-1969, conceded that he knew a tax was due but asserted that failure to file was not willful because he was unable to pay and thought he could not file without tendering the tax due, evidence of defendant's net worth was admissible to rebut contention of his inability to pay; fact that increase in net worth may have been due to appreciation, gift, or other nontaxable or unrealized income did not make net worth statements any less probative; also, net worth statements relating to years immediately after 1969 were admissible since fact that defendant did not file when he later acquired funds to do so cast doubt on his defense. U. S. v. Haller, C.A.9 (Or.) 1976, 543 F.2d 62. Internal Revenue 5294

In prosecution for willful failure to file federal income tax returns within the time required by law, mistaken belief that tax return could not be filed without simultaneous payment could be shown to negative willfulness. U.S. v. Di Silvestro, E.D.Pa.1957, 147 F.Supp. 300. Internal Revenue 5294

85. Bad purpose or evil motive, willfulness

Word "willfully" has the same meaning in tax felony statutes as in tax misdemeanor statutes, importing with respect to both a bad purpose or evil motive; disapproving Abdul v. United States, 254 F.2d 292. U. S. v. Bishop, U.S.Cal.1973, 93 S.Ct. 2008, 412 U.S. 346, 36 L.Ed.2d 941, on remand 485 F.2d 248. Internal Revenue 5261

"Willfulness" in context of criminal tax cases is defined as voluntary, intentional violation of a known legal duty, and neither bad purpose nor evil motive is an independent element of willful failure to file tax returns; thus, the Government may prove willful conduct by establishing either that defendant acted with bad purpose or evil motive, or that defendant voluntarily, intentionally violated a known legal duty. U.S. v. Powell, C.A.9 (Ariz.) 1991, 955 F.2d 1206, appeal after new trial 46 F.3d 1148. Internal Revenue 5263.35; Internal Revenue 5300

In prosecution for failing to file federal income tax returns and for supplying a false and fraudulent withholding

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certificate to employer, trial court did not err in excluding defendant's exhibit of a tape of a tax protestor meeting on which he relied in deciding to file his protest federal tax forms, in that since evil motive or bad faith is not required for a finding that taxpayer willfully failed to file a return, trial court could exclude defendant's evidence of good purpose or good faith. *U. S. v. Lawson*, C.A.10 (Wyo.) 1982, 670 F.2d 923. Internal Revenue ☞ 5294

A defendant need not be shown to have acted with bad purpose or evil motive to be convicted under this section pertaining to willful failure to file an income tax return; as the trial court correctly instructed, to act willfully in this context means to act voluntarily, purposefully, deliberately and intentionally, as distinguished from accidentally, inadvertently or negligently. *U. S. v. Dillon*, C.A.10 (N.M.) 1977, 566 F.2d 702, certiorari denied 98 S.Ct. 1613, 435 U.S. 971, 56 L.Ed.2d 63 See, also, *U.S. v. Platt*, C.A.N.Y.1970, 435 F.2d 789. Internal Revenue ☞ 5261

Bad purpose or evil motive is not an element of willfully failing to file a federal tax return. *U. S. v. Pohlman*, C.A.8 (N.D.) 1975, 522 F.2d 974, certiorari denied 96 S.Ct. 776, 423 U.S. 1049, 46 L.Ed.2d 638. Internal Revenue ☞ 5261; Criminal Law ☞ 432

In context of this section, requirement that act be done "willfully" means that it must have been activated by a bad purpose or evil motive. *U. S. v. Greenlee*, C.A.3 (Pa.) 1975, 517 F.2d 899, certiorari denied 96 S.Ct. 391, 423 U.S. 985, 46 L.Ed.2d 301. Internal Revenue ☞ 5261

Term "willful" within this section means bad faith or evil motive. *U. S. v. Goldstein*, C.A.3 (Del.) 1974, 502 F.2d 526.

Decision in *Lumetta v. United States*, 362 F.2d 644, holding that government seeking to prove offense of willful failure to file income tax returns at required time must prove that failure to file return was prompted by a bad purpose and without grounds for believing that failure to file was lawful, as opposed to a careless, thoughtless or inadvertent oversight is overruled to extent that it indicates that "a careless disregard" may establish willfulness. *U. S. v. Bengimina*, C.A.8 (Mo.) 1974, 499 F.2d 117. Internal Revenue ☞ 5261

Fact that failure to furnish tax information required by this section was not for any "bad purpose" but for the purpose of protesting government policies and in the belief that the income tax in itself or as administered is unconstitutional and that to pay income taxes would be treason afforded no defense to prosecution under this section. *U. S. v. Douglass*, C.A.5 (Fla.) 1973, 476 F.2d 260. Criminal Law ☞ 21


In prosecution for misdemeanor offense of willful failure to file tax returns, government had duty of providing substantial evidence that failure to file returns was prompted by bad purpose and without grounds for believing that failure to file was lawful, as opposed to a careless, thoughtless or inadvertent oversight. *Lumetta v. U.S.*, C.A.8 (Mo.) 1966, 362 F.2d 644. Internal Revenue ☞ 5301



In prosecution of taxpayer for knowingly and willfully failing to make income tax returns at time required by law, evidence sustained finding that defendant's failure to file income tax returns when due was willful in that omission was advertent and motivated by bad purpose of preventing government from receiving returns at time required by law. *U.S. v. Litman*, C.A.3 (Pa.) 1957, 246 F.2d 206, certiorari denied 78 S.Ct. 118, 355 U.S. 869, 2 L.Ed.2d 75. Internal Revenue ☞ 5301

86. Concealment of income, willfulness


Evidence was sufficient to sustain conviction of willful failure to file income tax returns on part of a taxpayer, who had received charter to establish church, designated all income from his medical practice as church income, and transferred to church all assets except Swiss bank account; taxpayer's lifestyle was inconsistent with vow of poverty he had taken, church services closely resembled medical staff meetings and there was evidence that


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taxpayer made deposits in Swiss bank account during time that he claimed all medical earnings went to church. U.S. v. Eargle, C.A.5 (Tex.) 1991, 921 F.2d 56, certiorari denied 112 S.Ct. 52, 502 U.S. 809, 116 L.Ed.2d 29. Internal Revenue  5301


In prosecution for willfully failing to file income tax returns, proof of intent to conceal income would establish willfulness, but intent to conceal is not an essential element. U. S. v. Platt, C.A.2 (N.Y.) 1970, 435 F.2d 789. Internal Revenue  5261; Internal Revenue  5300


87. Defrauding of government as motive, willfulness

"Willfulness" involved in crime of willfully failing to file federal income tax returns involves only intentional failure to file and knowledge by defendant that he was under legal obligation to do so, and intent to defraud Government or other similar bad purpose or evil motive is not necessary. U.S. v. McCorkle, C.A.7 (Ill.) 1975, 511 F.2d 482, certiorari denied 96 S.Ct. 43, 423 U.S. 826, 46 L.Ed.2d 43. Internal Revenue  5261


Willfulness required for misdemeanor of willfully failing to file income tax returns does not entail a purpose to evade tax or to defraud, such as is required for the felony offense. U. S. v. Haseltine, C.A.9 (Cal.) 1969, 419 F.2d 579. See, also, Attorney Grievance Commission of Maryland v. Walman, 1977, 374 A.2d 354, 280 Md. 453. Internal Revenue  5261


In prosecution for willful failure to file income tax return, it is not necessary for government to prove that defendant intended or attempted to evade payment of taxes. U.S. v. Fullerton, D.C.Md.1960, 189 F.Supp. 211. Internal Revenue  5291.1

Intention to defraud government need not be proved to establish violation of this section making it unlawful to willfully fail to file tax return. Johnson v. State, Md.1982, 451 A.2d 330, 294 Md. 515. Taxation  3563


Crime of willful failure to file income tax return does not require proof of intent to defraud government. Board of Law Examiners of State v. Stevens, Tex.1994, 868 S.W.2d 773, certiorari denied 114 S.Ct. 2676, 512 U.S. 1206, 129 L.Ed.2d 811. Internal Revenue  5263.35

88. Future intent, willfulness

Evidence that defendant knew he was required to file tax returns and during time in question he filed numerous corporate returns over his signature would support finding that defendant wilfully failed to file income tax returns despite contention that once IRS agents arrived to assist him in preparing his tax returns defendant did intend to pay his taxes and contention that his failure to file resulted from procrastination. U. S. v. Browney, C.A.4 (Va.) 1970, 421 F.2d 48. Internal Revenue  5301


Fact that defendant intended to file his return and to pay his taxes in the future was of no assistance in negating his specific intent to violate this section. U. S. v. Ettorre, E.D.Pa.1975, 387 F.Supp. 582. Internal Revenue  5261


89. Good faith, willfulness


In prosecution for willful failure to file income tax returns, jury could acquit if it found that defendants believed in good faith that statute removed obligation to file tax return, but not because the jury itself so interpreted the statute. U.S. v. Powell, C.A.9 (Ariz.) 1991, 955 F.2d 1206, appeal after new trial 46 F.3d 1148. Internal Revenue  5318


Where defendant or his tax advisors may have subjectively, but wrongly, seen ambiguity in tax law, defendant in


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prosecution for willful failure to file tax returns or willful tax evasion may present evidence to jury showing basis for his alleged good-faith belief in his construction of tax law, which may include expert testimony about case law to the extent actual reliance on case law is claimed. *U.S. v. Harris*, C.A.7 (Wis.) 1991, 942 F.2d 1125. Internal Revenue  5294


"Willfulness," under this section requires proof only of a voluntary, intentional violation of a known legal duty, and good faith disagreement with the law does not negate willfulness, and circumstantial evidence is sufficient to prove willfulness. *U.S. v. Gleason*, C.A.8 (Minn.) 1984, 726 F.2d 385. Internal Revenue  5261

Element of offense of willfully failing to supply information on income tax return involves proof of failure to file and willfulness in doing so and defendant's good motive is not relevant in determining whether his act was willful. *U. S. v. Quimby*, C.A.5 (Tex.) 1981, 636 F.2d 86. Internal Revenue  5261


Good motive is irrelevant if defendant knows of duty to file income tax returns and deliberately fails to file. *U. S. v. Weninger*, C.A.10 (Colo.) 1980, 624 F.2d 163, certiorari denied 101 S.Ct. 568, 449 U.S. 1012, 66 L.Ed.2d 470. Internal Revenue  5261


It is not a defense to the charges that the failure to furnish information required by this title as passed by Congress was done for the purpose of protecting government policies, even if it is done in good faith. *U. S. v. Smith*, C.A.5 (Tex.) 1980, 618 F.2d 280, certiorari denied 101 S.Ct. 203, 449 U.S. 868, 66 L.Ed.2d 87. Internal Revenue  5261


90. Grant of immunity, filing contingent on, willfulness


Willingness of taxpayer to refile contingent upon a grant of immunity did not establish that taxpayer's failure to file for particular year in question was other than willful. *U. S. v. Farber*, C.A.8 (Iowa) 1980, 630 F.2d 569, certiorari denied 101 S.Ct. 946, 449 U.S. 1127, 67 L.Ed.2d 114. Internal Revenue  5261

91. Income of defendant, willfulness

Evidence of defendant's gross income is admissible in prosecution for failure to file income tax returns to show that failure to file return was willful. *U.S. v. Payne*, C.A.10 (Colo.) 1986, 800 F.2d 227. Internal Revenue  5294

In prosecution for failing to file income tax returns, evidence of amount of defendant's income, its source, reason for receipt and time of receipt was admissible even though defendant was willing to stipulate that he had made enough income during the years in question to be required to file a return, since the evidence related to issue of defendant's intent or "willfulness" in failing to file a return. *U.S. v. Green*, C.A.7 (Ind.) 1985, 757 F.2d 116. Stipulations  18(4)

In view of amount of defendant's gross income for years in question, he was clearly commanded by section 6012 of this title to file tax returns for those years, and filing was not voluntary, and his failure to file could be called "willful" within meaning of this section. *U.S. v. Richards*, C.A.8 (Mo.) 1983, 723 F.2d 646. Internal Revenue  5261

In prosecution of defendant for failure to file income tax returns for four consecutive years, evidence that taxpayer did in fact file "returns" without income information for each year in question, from which it could be reasonably inferred that he recognized that his "gross income" was sufficient to require him to file return, was sufficient to support finding that government proved beyond reasonable doubt that taxpayer had sufficient gross income for years in question to require him to file tax return. *U.S. v. Kalita*, C.A.7 (Ill.) 1983, 712 F.2d 1122. Internal Revenue  5301

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In prosecution for wilfully failing to file income tax returns, even though evidence of amount of defendant's income constituted evidence of crime of tax evasion, an offense not charged, such evidence was probative as to element of willfulness and was properly admitted on that issue, especially where court admitted evidence solely on that issue and gave jury charge to that effect. *U. S. v. Rosenfield*, C.A.3 (Pa.) 1972, 469 F.2d 598, certiorari denied 93 S.Ct. 1899, 411 U.S. 932, 36 L.Ed.2d 391. Criminal Law ↪ 371(1)

Detailed evidence as to total gross receipts for years in question for defendant who admitted that he failed to file tax returns and that his receipts exceeded \$600 in each of the years bore upon willfulness of defendant's act and was admissible. *U. S. v. MacLeod*, C.A.8 (Mo.) 1971, 436 F.2d 947, certiorari denied 91 S.Ct. 1378, 402 U.S. 907, 28 L.Ed.2d 647, rehearing denied 91 S.Ct. 1659, 402 U.S. 990, 29 L.Ed.2d 157. Internal Revenue ↪ 5294

Even if government did not prove exact amount of income on which taxpayer wilfully failed to file a return, it was sufficient if evidence showed that receipts exceeded the cost of goods sold by at least \$600. *Siravo v. U.S.*, C.A.1 (R.I.) 1967, 377 F.2d 469. Internal Revenue ↪ 5301

In income tax evasion prosecution, where evidence disclosed that defendant had sufficient personal income to require him to make a personal income tax return for years involved, proof that he did not do so was relevant to show his knowledge of his obligation and his intent to defraud the Government. *Harris v. U.S.*, C.A.5 (Fla.) 1957, 243 F.2d 74, certiorari denied 78 S.Ct. 20, 355 U.S. 817, 2 L.Ed.2d 33. Internal Revenue ↪ 5294

In prosecution for wilfully and knowingly failing to make an income tax return, government's establishment, by proof beyond a reasonable doubt, that during calendar year involved defendant had received income from winning bets in excess of \$600 would not be sufficient to sustain conviction. *Winkler v. U.S.*, C.A.1 (R.I.) 1956, 230 F.2d 766. Internal Revenue ↪ 5301

Evidence of defendant's husband's income was relevant in prosecution for failure to file income tax returns on issue of defendant's knowledge of her obligation to file income tax returns; since defendant had past history of filing joint returns with her husband, consideration of her husband's income was relevant to determination of whether defendant would have had tax obligation if she had filed jointly. *U.S. v. Tarrant*, E.D.Mich.1992, 798 F.Supp. 1292. Internal Revenue ↪ 5294

92. Mental capacity, willfulness

It is not manifestly erroneous for trial court to conclude that psychiatric testimony should not be admitted in prosecution for willful failure to file tax returns where psychiatric testimony defendant offered to show that he was not capable of forming specific intent to fail to file tax returns was ambiguous and would not have materially assisted jury in determining whether defendant committed voluntary, intentional violation of known legal duty. *U.S. v. Byers*, C.A.9 (Or.) 1984, 730 F.2d 568, certiorari denied 105 S.Ct. 333, 469 U.S. 934, 83 L.Ed.2d 270. Criminal Law ↪ 474

In prosecution for willful failure to file federal income tax returns, court acted properly in charging jury that defendant would be guilty of crime charged if, even though he was incapacitated on dates when returns were lawfully due, he later regained capacity and nonetheless willfully continued to fail to file such return. *U. S. v. Pelose*, C.A.2 (N.Y.) 1976, 538 F.2d 41. Internal Revenue ↪ 5317

Evidence was sufficient to sustain finding that defendant's failure to file federal income tax returns for the two years in question was willful, notwithstanding his claim that his mental and physical condition demonstrated lack of willfulness. *U. S. v. Griffin*, C.A.8 (Mo.) 1970, 432 F.2d 558. Internal Revenue ↪ 5300

Doctrine of diminished responsibility could not be used to relieve, defendant of consequences of his conduct, in prosecution for willfully failing to file income tax returns, since, being sane, defendant had the capacity to act

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willfully. U. S. v. Haseltine, C.A.9 (Cal.) 1969, 419 F.2d 579. Criminal Law ☞ 46

In prosecution for failing to file income tax returns, exclusion of evidence of defendant's physical disorders at time of trial did not limit or circumscribe defense that because of mental disease or defect defendant was not criminally responsible at the time returns should have been filed, and, thus, such ruling was not error. U.S. v. Baird, C.A.2 (N.Y.) 1969, 414 F.2d 700, certiorari denied 90 S.Ct. 559, 396 U.S. 1005, 24 L.Ed.2d 497. Criminal Law ☞ 354

Even though defendant, charged with willfully failing to file personal and corporate income tax returns, was under a great deal of stress and suffered from some mental abnormalities during period in question, defendant, who at time of offense was running a business on a daily basis, teaching school and paying state and local taxes, had the requisite capacity to conform his conduct to the requirements of the law, and was not entitled to an acquittal on theory that Government failed to meet its burden of proving his mental capacity. U. S. v. Ettorre, E.D.Pa.1975, 387 F.Supp. 582. Criminal Law ☞ 570(1)

93. Mistakes or misunderstandings, willfulness

One failing to supply information for computation, assessment, or collection of income tax because of bona fide misunderstanding is not guilty of "willfully" failing to do so. U.S. v. Murdock, U.S.Ill.1933, 54 S.Ct. 223, 290 U.S. 389, 78 L.Ed. 381. Internal Revenue ☞ 5263.35; Internal Revenue ☞ 5267

Jury charge that did not use term "subjective standard," but did not include any reference to objectively reasonable standard or to measure of conduct of reasonable taxpayer, adequately instructed jury on good-faith misunderstanding of the law defense in criminal prosecution for tax evasion and failure to file tax returns, where jury was additionally instructed on government's burden of proof and on standard of willfulness. U.S. v. Hauert, C.A.7 (Ill.) 1994, 40 F.3d 197, certiorari denied 115 S.Ct. 1822, 514 U.S. 1095, 131 L.Ed.2d 744. Internal Revenue ☞ 5317

Defendant's direct testimony regarding effect tax protest literature and seminars had on his understanding of tax law filing requirements was more probative of defense of good-faith misunderstanding of filing requirements than were publications themselves, and thus, trial court could exclude publication on grounds that materials might mislead or confuse jury; literature exhaustively dealt with constitutionality of tax laws, and good-faith belief that laws are unconstitutional provides no defense to willful failure to file return. U.S. v. Hairston, C.A.10 (Utah) 1987, 819 F.2d 971. Criminal Law ☞ 398(1)

Good-faith misunderstanding of the law may negate willfulness, but good-faith disagreement with the law does not. U.S. v. Kraeger, C.A.2 (N.Y.) 1983, 711 F.2d 6. See, also, U.S. v. Romero, C.A.9 (Cal.) 1981, 640 F.2d 1014; U.S. v. Moore, C.A.7 (Ill.) 1980, 627 F.2d 830, certiorari denied 101 S.Ct. 1360, 450 U.S. 916, 67 L.Ed.2d 342. Criminal Law ☞ 20; Criminal Law ☞ 32

Failure to file income tax return does not violate this section which prohibits willful failure to file if failure resulted from good-faith misunderstanding of the law. U.S. v. Buras, C.A.9 (Cal.) 1980, 633 F.2d 1356. Internal Revenue ☞ 5261

Belief that one does not have to file an employer's quarterly federal tax return if he is not able to pay the tax owed is a recognized legal defense against the element of "willfulness" in a prosecution for willfully failing to file such returns. U. S. v. Pinner, C.A.5 (Fla.) 1977, 561 F.2d 1203. Internal Revenue ☞ 5261

An inefficient and negligent accountant does not constitute a justification for failure to file federal income tax returns, warranting acquittal of a taxpayer on charge of willfully failing to file; only a good-faith misunderstanding or inadvertence constitutes justification for failure to file. U. S. v. Wilson, C.A.5 (Fla.) 1977, 550 F.2d 259. Internal Revenue ☞ 5261

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Only inadvertent failure to file tax returns or bona fide misunderstanding as to defendant's duty to make return constitute justifiable excuses in prosecution for willful failure to file income tax returns. *U.S. v. McCorkle*, C.A.7 (Ill.) 1975, 511 F.2d 482, certiorari denied 96 S.Ct. 43, 423 U.S. 826, 46 L.Ed.2d 43. Internal Revenue ☞ 5261

Claimed belief of taxpayer, who had little education and who had once been visited by internal revenue agent who helped taxpayer prepare returns for three years past, that another agent would come around to collect any taxes owed was permissible defense in prosecution for willful failure to file timely return, and instructions depriving defendant of this defense were prejudicially erroneous. *U. S. v. Collins*, C.A.6 (Ky.) 1972, 457 F.2d 781. Criminal Law ☞ 1172.1(4); Internal Revenue ☞ 5280

In prosecution for failure to file income tax returns, subjective standard applied in determining whether defendants had bona fide misunderstanding of the law. *U.S. v. Edgington*, E.D.Tex.1989, 727 F.Supp. 1083, affirmed 897 F.2d 527, certiorari denied 110 S.Ct. 2217, 495 U.S. 952, 109 L.Ed.2d 542. Internal Revenue ☞ 5261

In view of fact that taxpayer had number of legitimate tax deductions which he had not taken and in view of fact that calculations of Government's expert witnesses in arriving at tax liability of taxpayer were wrong as a matter of law and fact, evidence that taxpayer failed to report money which he was paid for running valet service and failed to report capital gains resulting from stock transactions was insufficient to prove, beyond a reasonable doubt, that taxpayer knowingly and willfully violated this section. *U. S. v. Celentano*, S.D.N.Y.1975, 391 F.Supp. 1252. Internal Revenue ☞ 5302

94. Negligence, willfulness

Willfulness in failing to file an income tax return requires that the failure be committed purposefully with an awareness of the action, not just negligently or inadvertently. *U. S. v. Merritt*, C.A.5 (Tex.) 1981, 639 F.2d 254. Internal Revenue ☞ 5261

A careless or reckless disregard does not elevate a defendant's conduct to "willful" as that term is employed in this section. *U. S. v. Bengimina*, C.A.8 (Mo.) 1974, 499 F.2d 117. Internal Revenue ☞ 5261

While negligence or oversight is not to be equated with willfulness in a prosecution for violation of this section making it a misdemeanor to willfully fail to file tax return or to pay tax, conscious intent which Government must show under this section is not conduct, separately provided for in felony statute, consisting of intent to defraud the fisc; rather, all that is needed to be shown is a deliberate intent to disobey filing requirement. *U. S. v. Lachmann*, C.A.1 (R.I.) 1972, 469 F.2d 1043, certiorari denied 93 S.Ct. 1897, 411 U.S. 931, 36 L.Ed.2d 390. Internal Revenue ☞ 5291.1

For purposes of offense of failure to file income tax return, a defendant's conduct is not "willful" if he acted through negligence, inadvertence or mistake, or due to his good-faith misunderstanding of requirements of the law. *U. S. v. Rosenfield*, C.A.3 (Pa.) 1972, 469 F.2d 598, certiorari denied 93 S.Ct. 1899, 411 U.S. 932, 36 L.Ed.2d 391. Internal Revenue ☞ 5261

95. Notice by Government, willfulness

District court did not abuse its discretion in admitting into evidence letter from IRS to taxpayer indicating that IRS had not received tax return from taxpayer for tax year and setting forth penalties and punishments for failure to file tax return, to establish that taxpayer was made aware of his duty to file return and of consequences for failure to file, in order to establish proof of willfulness. *U.S. v. Poschwatta*, C.A.9 (Wash.) 1987, 829 F.2d 1477, certiorari denied 108 S.Ct. 1024, 484 U.S. 1064, 98 L.Ed.2d 989. Criminal Law ☞ 433

Taxpayer's W-2 forms were relevant to establish duty to file tax return and to show willfulness of failure to file tax

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return and were admissible despite taxpayer's willingness to stipulate to amount of income. *U.S. v. Bergman*, C.A.9 (Nev.) 1987, 813 F.2d 1027, certiorari denied 108 S.Ct. 154, 484 U.S. 852, 98 L.Ed.2d 110. Internal Revenue ¶ 5294

Finding that defendant's failure to file tax returns was "wilful" could be supported by evidence that defendant charged with wilfully failing to file tax returns and willfully filing false certificates asking his employer to cease all withholding filed returns for at least ten years, that IRS sent defendant a letter informing him of the need to file and the penalties for not filing, and that defendant failed to file a tax return for 1983, even though that return was due after return of first indictment for wilfully failing to file tax returns. *U.S. v. Thomas*, C.A.7 (Ill.) 1986, 788 F.2d 1250, certiorari denied 107 S.Ct. 187, 479 U.S. 853, 93 L.Ed.2d 121. Internal Revenue ¶ 5299; Internal Revenue ¶ 5300

Evidence in prosecution for willful failure to file income tax return, including evidence that defendant had filed returns for 30 years and knew of his duty, that Internal Revenue Service had sent defendant four written notices reminding him of his obligation to file returns, and that defendant himself admitted that he knew he had obligation to file returns on April 15 of each year, was sufficient to support finding of willfulness under 26 U.S.C.A. § 7203. *U.S. v. Sempos*, C.A.1 (Mass.) 1985, 772 F.2d 1. Internal Revenue ¶ 5300

In prosecution for failing to file income tax returns, evidence, including defendant's tax returns for prior years, copies of letters from Internal Revenue Service for the years in question explaining that his returns failed to meet legal requirements, and fact that defendant never did file proper returns for the years in question supported finding that defendant voluntarily and intentionally violated a known legal duty even after he had been repeatedly advised. *U.S. v. Green*, C.A.7 (Ind.) 1985, 757 F.2d 116. Internal Revenue ¶ 5301

In prosecution for willful failure to file income tax returns, evidence that defendant had previously filed proper tax returns and that city service center had advised him that protest documents were invalid tax returns, giving rise to inference that defendant knew of his legal duty to file proper tax return and that he willfully failed to do so, was sufficient to sustain conviction. *U.S. v. Grumka*, C.A.6 (Mich.) 1984, 728 F.2d 794. Internal Revenue ¶ 5301

In prosecution for willful failure to file income tax returns, testimony that defendant's accountant reminded him of his obligation to file personal income tax returns for calendar year 1974 but that defendant objected to preparation and requested accountant to voice constitutional objections to Internal Revenue Service and that accountant declined to do so, and testimony that defendant had filed corporate income tax returns and had previously filed income tax returns and had received income in years in question and that notices of failure to file had been mailed to defendant was sufficient to present issue of willfulness. *U. S. v. Schiff*, C.A.2 (Conn.) 1979, 612 F.2d 73. Internal Revenue ¶ 5313


Assertion of privilege under U.S.C.A.Const. Amend. 5 by taxpayer in his tax return, which contained no financial information from which a tax liability could be computed, did not insulate taxpayer from a failure to file prosecution on asserted ground that element of "willfulness" was not subject to proof, where evidence established that taxpayer had filed returns in 1968 and 1969 and that Internal Revenue Service had sent taxpayer letter in 1974 advising him that his 1973 return did not comply with tax laws and would subject him to criminal penalties unless corrected. *U. S. v. Wade*, C.A.5 (Tex.) 1978, 585 F.2d 573, certiorari denied 99 S.Ct. 1264, 440 U.S. 928, 59 L.Ed.2d 484. Internal Revenue ¶ 5261


96. Prior or subsequent conduct, willfulness


Testimony of former accountant, that in years prior to years in question defendants had filed tax returns, as well as evidence of substantial gross income during years in question, was proper evidence of willfulness in failing to file tax returns. *U.S. v. Dawes*, C.A.10 (Kan.) 1989, 874 F.2d 746, rehearing denied, certiorari denied 110 S.Ct. 284, 493 U.S. 920, 107 L.Ed.2d 264, error coram nobis granted 895 F.2d 1581, on remand. Internal Revenue ¶ 5300


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Evidence that taxpayer failed to file tax returns in the past, had applied for extensions of time, and knew possible criminal penalties for failure to file return was sufficient to support finding that taxpayer's failure to file income tax return was willful, notwithstanding testimony of two attorneys that they had told taxpayer not to sign anything or make any admissions until taxpayer knew that he was clear of criminal prosecution. *U.S. v. Poschwatta*, C.A.9 (Wash.) 1987, 829 F.2d 1477, certiorari denied 108 S.Ct. 1024, 484 U.S. 1064, 98 L.Ed.2d 989. Internal Revenue  5301



Defendant's 1975 through 1979 tax returns were admissible, in prosecution for willful failure to file returns for years 1980 through 1983 in that defendant's "pseudo-dollar/gold standard" returns, and his attempts to create "family trust," were probative of defendant's intent, which defendant had placed in issue by arguing that his failure to file was due solely to inadvertence and confusion. *U.S. v. Birkenstock*, C.A.7 (Wis.) 1987, 823 F.2d 1026. Criminal Law  371(1)


Evidence that recalculation of defendant's tax liability for years between 1972 and 1979 resulted in a 9% to a 2000% increase in his income tax liability, and that defendant had not filed tax returns since 1981 supported finding that defendant's failure to file tax returns was willful. *U.S. v. Upton*, C.A.8 (Iowa) 1986, 799 F.2d 432. Internal Revenue  5301


Willfulness element of prosecution for failing to file tax return was met by evidence that defendant had previously filed lawful returns, had filed apparently inaccurate W-4 form stating he was exempt from withholding four days after filing form with contrary information, and that defendant included "protest" documents when he filed his 1040 form. *U.S. v. Shivers*, C.A.5 (Miss.) 1986, 788 F.2d 1046. Internal Revenue  5300


Evidence that defendant had filed tax returns from 1946 to 1960 but that he did not file tax returns in 1976 and 1977 when he had taxable income in excess of \$28,000 sustained finding that defendant's failure to file was willful. *U.S. v. Callery*, C.A.9 (Nev.) 1985, 774 F.2d 1456. Internal Revenue  5300

In prosecution for willful failure to file income tax returns and for filing false W-4 statements, defendant's tax forms which preceded dates of his violations were relevant in determining defendant's intent in failing to file returns for subsequent years. *U.S. v. Latham*, C.A.7 (Ill.) 1985, 754 F.2d 747. Internal Revenue  5294

Evidence that defendant had previously filed late personal income tax returns was admissible, in prosecution for failure to file timely employer's quarterly federal tax returns, to show intent and absence of mistake, where sole issue was defendant's willfulness. *U.S. v. Rothbart*, C.A.10 (Colo.) 1983, 723 F.2d 752. Criminal Law  370; Criminal Law  371(1)

In prosecution for willful failure to file income tax return, defendant's prior tax returns were admissible to demonstrate defendant's knowledge of the duty to file a proper tax return. *U.S. v. Heise*, C.A.6 (Ohio) 1983, 709 F.2d 449, certiorari denied 104 S.Ct. 285, 464 U.S. 918, 78 L.Ed.2d 262. Criminal Law  419(12)

Proof of a taxpayer's failure to file return prior or subsequent to years in question is relevant to issue of willfulness in prosecution for failure to file tax return. *U.S. v. Serlin*, C.A.7 (Ill.) 1983, 707 F.2d 953. See, also, *U.S. v. Kalita*, C.A.Ill.1983, 712 F.2d 1122; *U.S. v. Moore*, C.A.7(Ill.) 1980, 627 F.2d 830, certiorari denied 101 S.Ct. 1360, 450 U.S. 916, 67 L.Ed.2d 342; *U.S. v. Snow*, C.A.7 (Cal.) 1976, 529 F.2d 224, certiorari denied 97 S.Ct. 69, 429 U.S. 821, 50 L.Ed.2d 82. Criminal Law  371(1)

In prosecution for willfully failing to file income tax returns, evidence, including filing of returns before 1976, was sufficient for jury to find that defendant intentionally failed to file returns for years 1976 through 1979, despite returns for years he believed in good faith that wages were not subject to income tax. *U. S. v. Marks*, C.A.8 (Mo.) 1982, 691 F.2d 428. Internal Revenue  5301

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Subsequent tax-paying conduct is relevant to issue of intent or willfulness in a prior year in prosecution for failure to file an income tax return. *U. S. v. Farber*, C.A.8 (Iowa) 1980, 630 F.2d 569, certiorari denied 101 S.Ct. 946, 449 U.S. 1127, 67 L.Ed.2d 114. Criminal Law ☞ 369.2(8)

Even if it could be said that unmailed quarterly tax return forms proved prior wrong and that such wrong was harmful to defendant, evidence of such wrong was nevertheless relevant and admissible, in prosecution for failure to file employer's quarterly tax returns, as evidence of defendant's knowledge and intent in failing to file subsequent quarterly tax returns. *U. S. v. Pry*, C.A.5 (Tex.) 1980, 625 F.2d 689, certiorari denied 101 S.Ct. 1379, 450 U.S. 925, 67 L.Ed.2d 355. Criminal Law ☞ 370; Criminal Law ☞ 371(1)

Evidence of taxpayer's prior taxpaying history and his involvement in tax protest movement was sufficient to establish that he was aware of his legal obligation and intentionally chose not to comply despite his claim that he had no duty to file an income tax return and that his failure to file could not have been willful because an income tax on wages was illegal as a direct tax on source of income. *Hayward v. Day*, C.A.8 (Mo.) 1980, 619 F.2d 716, certiorari denied 100 S.Ct. 2951, 446 U.S. 969, 64 L.Ed.2d 830. Internal Revenue ☞ 5301

Even if the government, in order to use evidence of defendant's failure to file income tax returns for the years 1976 through 1978 in his trial for failing to do so in 1974 and 1975, was required to prove that defendant had a duty to file in 1976, 1977, and 1978, defendant's admission at sentencing that he had prepared returns for those three years and that his tax liability ranged from \$600 to \$1,200 for the three years was sufficient to show that defendant was under such a duty. *U. S. v. Luttrell*, C.A.8 (Ark.) 1980, 612 F.2d 396. Criminal Law ☞ 374

In prosecution for willfully failing to file an income tax return, there was no abuse of discretion in introducing returns for prior years which defendant had signed and filed, to prove willfulness in failing to file a return in subsequent year, in case in which defense was that defendant acted out of a good-faith misunderstanding of the law. *U. S. v. Karsky*, C.A.8 (S.D.) 1979, 610 F.2d 548, certiorari denied 100 S.Ct. 1058, 444 U.S. 1092, 62 L.Ed.2d 781. Criminal Law ☞ 371(1)

In prosecution for willful failure to file income tax returns, no error resulted from Government's introduction of evidence showing that defendant owed taxes from 1971, 1972 and 1973, what defendant's income was for 1972 and 1973 and that defendant had long history of late filing and late payment of taxes with dishonored checks, only subsequently made good. *U. S. v. Gamble*, C.A.9 (Ariz.) 1979, 607 F.2d 820, certiorari denied 100 S.Ct. 1059, 444 U.S. 1092, 62 L.Ed.2d 781, rehearing denied 100 S.Ct. 1609, 445 U.S. 955, 63 L.Ed.2d 792. Criminal Law ☞ 338(7)

Evidence of taxpayer's prior and subsequent conduct as to filing of tax returns was admissible for purpose of determining whether taxpayer knew that he was required to file returns and whether, in failing to file returns, he did so willfully. *U. S. v. Stout*, C.A.7 (Ill.) 1979, 601 F.2d 325, certiorari denied 100 S.Ct. 481, 444 U.S. 979, 62 L.Ed.2d 406. Internal Revenue ☞ 5294

Evidence that defendant received substantial income from his dental practice in 1973 and 1974, that, although he directed that returns be prepared by his accountant, he did not file those returns on or before April 15 in the year required, that he had previously pled guilty to failing to file an income tax return for the calendar tax year of 1969, and that he had filed income tax returns in only one year between 1970 and 1976 was sufficient to sustain defendant's conviction of the misdemeanor of willfully and knowingly failing to file income tax returns. *U. S. v. Eagan*, C.A.6 (Mich.) 1978, 587 F.2d 338. Internal Revenue ☞ 5301

In prosecution for failing to file federal income tax returns and for supplying false and fraudulent statement to employer, evidence of defendant's prior tax paying history and of attempts by taxpayer's employer and Internal Revenue Service to explain legal requirements to defendant was sufficient to sustain jury's finding that defendant was aware of his legal obligations under tax laws and intentionally chose not to comply. *U. S. v. Rifen*, C.A.8

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(Mo.) 1978, 577 F.2d 1111. Internal Revenue ☞ 5301

Subsequent conduct cannot relieve taxpayer from criminal liability for failure to file tax returns on or before due date nor can subsequent events transform an act or omission, innocent when it occurred, into a criminal act. U. S. v. Bourque, C.A.1 (R.I.) 1976, 541 F.2d 290. Internal Revenue ☞ 5261

Evidence respecting events after due date for filing of income tax returns for the respective years in question in prosecution for failure to file income tax returns was not irrelevant to the crucial question of his state of mind at the time he failed to make the required returns. U. S. v. Greenlee, C.A.3 (Pa.) 1975, 517 F.2d 899, certiorari denied 96 S.Ct. 391, 423 U.S. 985, 46 L.Ed.2d 301. Internal Revenue ☞ 5294

In prosecution for willfully and knowingly failing to file income tax returns for the years 1969, 1970 and 1971, no error was committed in admitting evidence of defendant's failure to file tax returns in the years immediately prior to and subsequent to the years at issue. U. S. v. Farris, C.A.7 (Ill.) 1975, 517 F.2d 226, certiorari denied 96 S.Ct. 189, 423 U.S. 892, 46 L.Ed.2d 123. Internal Revenue ☞ 5294

That defendant was familiar with filing requirements for federal tax returns, and circumstantial evidence of late filing in 1965-1968, was sufficient to support finding that failure to file 1969 and 1970 income tax returns was willful. U. S. v. Thompson, C.A.8 (Mo.) 1975, 513 F.2d 577. Internal Revenue ☞ 5301

Fact that defendant, charged with willfully failing to file income tax returns for 1960, 1961, and 1962, had filed federal and state returns for years 1957, 1958, 1959 showing net losses and fact that he had applied for extensions of time within which to file for both 1961 and 1962 would permit findings that defendant knew the law required him to file federal income tax returns and that he had deliberately failed to do so without justifiable excuse. U.S. v. McCabe, C.A.7 (Wis.) 1969, 416 F.2d 957, certiorari denied 90 S.Ct. 751, 396 U.S. 1058, 24 L.Ed.2d 752. Internal Revenue ☞ 5301

Defendants' personal income tax returns were false, as charged by indictment for filing false income tax returns, regardless of whether defendants suffered net operating loss during particular year; indictment charged only failure to report income. U.S. v. O'Connor, E.D.Va.2001, 158 F.Supp.2d 697. Internal Revenue ☞ 5286

Evidence that defendant earned over \$20,000 per year for three years in question, that defendant filed affidavits stating that she was not required to file or pay tax because she was not a corporation and had not been granted any special privileges by the government, and that defendant had filed joint returns with her husband for previous years was sufficient to establish beyond reasonable doubt that defendant willfully failed to file tax returns in violation of 26 U.S.C.A. § 7203. U.S. v. Ferguson, S.D.Ind.1985, 615 F.Supp. 8, affirmed 793 F.2d 828, certiorari denied 107 S.Ct. 406, 479 U.S. 933, 93 L.Ed.2d 358. Internal Revenue ☞ 5235

97. Reliance on advice, willfulness

Defendant was not entitled to jury instruction on "advice of counsel" defense in prosecution for willfully failing to file income tax returns and willfully attempting to avoid income taxes where defendant did not seek any advice until after he first failed to file proper tax returns, record indicated that defendant merely continued course of illegal conduct begun prior to contacting counsel, and none of testifying attorneys advised him not to file tax returns but, rather, each advised him that he might be criminally prosecuted if he failed to file. U.S. v. Cheek, C.A.7 (Ill.) 1993, 3 F.3d 1057, certiorari denied 114 S.Ct. 1055, 510 U.S. 1112, 127 L.Ed.2d 376. Criminal Law ☞ 772(6)

Evidence that defendant relied on advice of tax protesters in failing to file federal income tax returns without making any independent investigation of protesters' views or soliciting any opinion from persons outside tax protest movement supported conviction for willful failure to file federal income tax return. U.S. v. Witvoet, C.A.7

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(Ill.) 1985, 767 F.2d 338. Internal Revenue ☞ 5301

Circumstances like advice of counsel or inefficiency of accountant can negate willfulness, but they do not constitute an absolute defense to charge of failing to file corporate income tax return. U. S. v. Civella, C.A.8 (Mo.) 1981, 666 F.2d 1122. Internal Revenue ☞ 5261

Regular filing of withholding returns by defendant's accountant was relevant to defendant's criminal intent in failing to file personal income tax returns during same period when defendant claimed that his failure to file such returns resulted from reliance on accountant's assurances that extensions had been granted; accordingly, withholding returns were admissible in prosecution for failing to file income tax returns, although government was entitled to instruction concerning their limited relevance. U. S. v. Platt, C.A.2 (N.Y.) 1970, 435 F.2d 789. Internal Revenue ☞ 5294

Husband and wife income tax return preparers engaged in conduct subject to criminal penalty under Internal Revenue Code by willfully failing to file federal income tax returns for eight-year period, even though husband and wife alleged that their refusal to file was based upon advice of their attorney that Internal Revenue Service (IRS) could use future tax returns as evidence against them in pending criminal action for filing false tax returns during earlier years; only situation in which taxpayer may justifiably rely upon advice of his accountant or tax attorney not to file return is when taxpayer is advised that no return is due. U.S. v. Bailey, N.D.Tex.1992, 789 F.Supp. 788. Internal Revenue ☞ 5263.55

98. Religious beliefs or philosophy, willfulness

Belief in tax-free status, no matter how sincerely held, is not necessarily a defense to Government's claim of willfulness in prosecution for failure to file income tax returns; belief must be one that the law does not apply to defendant, not that the law should not apply. U.S. v. Willie, C.A.10 (N.M.) 1991, 941 F.2d 1384, certiorari denied 112 S.Ct. 1200, 502 U.S. 1106, 117 L.Ed.2d 440. Internal Revenue ☞ 5261

Defendant's belief that he was not required to file income tax return, if held in good faith, would be valid defense to prosecution for willful failure to file; beliefs need not be reasonable if actually held in good faith. U.S. v. Mann, C.A.10 (Utah) 1989, 884 F.2d 532, rehearing denied. Internal Revenue ☞ 5263.35

Evidence of a person's philosophy, motivation and activities as tax protestor is relevant and material to issue of intent in prosecution for failure to file individual income tax return. U. S. v. Reed, C.A.5 (Tex.) 1982, 670 F.2d 622, certiorari denied 102 S.Ct. 2945, 457 U.S. 1125, 73 L.Ed.2d 1341. Internal Revenue ☞ 5294

In view of clear evidence demonstrating that defendant's failure to file income tax returns was willful, defendant's religious beliefs concerning the validity of the income tax laws could not negate the criminality of that willfulness. U. S. v. Kahl, C.A.5 (Tex.) 1978, 583 F.2d 1351. Internal Revenue ☞ 5261

A disagreement with the Internal Revenue Code or a belief that the Code is unconstitutional does not negate the element of willfulness, for purpose of offense of willful failure to file income tax returns. U.S. v. Massey, C.A.9 (Alaska) 2005, 2005 WL 1529703, Unreported, published in full at 419 F.3d 1008, on remand 2005 WL 3077156, certiorari denied 126 S.Ct. 2019. Internal Revenue ☞ 5261

99. Miscellaneous actions constituting willfulness

Evidence in prosecution for willfully failing to file corporate tax returns was sufficient to demonstrate that defendant willfully failed to file the returns; evidence revealed that defendant was the sole owner of the business and exercised complete control over it, and that he was aware of his obligation to file tax forms as he hired an accountant to complete tax forms and submit them to a lending institution, but never signed the forms and did not

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cause the forms to be submitted to the IRS; jury was not obligated to accept accountant's testimony that defendant insisted the forms be filed, in light of accountant's demeanor as a witness and his close association with defendant. U.S. v. Moses, C.A.3 (Pa.) 1998, 148 F.3d 277, certiorari denied 119 S.Ct. 1047, 525 U.S. 1148, 143 L.Ed.2d 53. Internal Revenue ☞ 5300

Evidence did not establish that money woman received from wealthy widower partial to company of young women was income or that woman acted in knowing disregard of her obligations by failing to file tax return, so would not support conviction for willful failure to file return; gift tax returns of widower identifying gifts in amounts substantially less than money transferred to woman, bank card on which woman listed widower in space marked "employer," and regular payments by check did not establish that intent of widower was other than to make gifts to woman. U.S. v. Harris, C.A.7 (Wis.) 1991, 942 F.2d 1125. Internal Revenue ☞ 5301

Government established taxpayer's willfulness as to counts of failing to file tax return and supplying false and fraudulent statements claiming to be exempt from federal income taxes, in that Government introduced evidence which established taxpayer's knowledge of her duty to file proper returns and forms, taxpayer's "Affidavits of Revocation" stated that she was not required to file forms or pay taxes, thus showing her intent to violate her duty to file, and taxpayer's letter stated that income was not wages and she would continue to file exempt W-4 forms. U.S. v. Ferguson, C.A.7 (Ind.) 1986, 793 F.2d 828, certiorari denied 107 S.Ct. 406, 479 U.S. 933, 93 L.Ed.2d 358. Internal Revenue ☞ 5300

Evidence that defendant knew that he had to file income tax returns, that he knew he had made false statements on his W-4 forms and that he had overall purpose to evade taxes he knew he owed supported conclusion that defendant acted willfully in failing to file tax returns, filing false W-4 form and attempting to evade taxes. U.S. v. Foster, C.A.7 (Ill.) 1986, 789 F.2d 457, certiorari denied 107 S.Ct. 273, 479 U.S. 883, 93 L.Ed.2d 249. Internal Revenue ☞ 5301; Internal Revenue ☞ 5303

Defendant's acknowledgement that no tax return was filed, without more, sustained conviction for willful failure to file income tax return. U.S. v. McMullen, C.A.6 (Tenn.) 1984, 755 F.2d 65, certiorari denied 106 S.Ct. 92, 474 U.S. 829, 88 L.Ed.2d 75. Internal Revenue ☞ 5261

Taxpayer could be held criminally liable for willfully failing to file income tax returns, although he contended instruction booklet which accompanied returns failed to use word "mandatory" to cover duty to file return and failed to inform taxpayer that failure to file could result in criminal liability, particularly since taxpayer did not allege that he was ignorant of his legal duty to pay taxes and record revealed that he intentionally violated that duty. U.S. v. Wilber, C.A.8 (Mo.) 1982, 696 F.2d 79. Internal Revenue ☞ 5261


Evidence was sufficient to support conviction for willful failure to file federal income tax return in case in which defendant had filed returns in previous years but then filed "protest" returns which disclosed none of the information required by law with respect to defendant's income for the years in question, but contained notations and attachments which claimed that his constitutional rights would be violated if he were required to disclose the information called for. U. S. v. Mundt, C.A.6 (Mich.) 1981, 666 F.2d 1029. Internal Revenue ☞ 5301


Evidence that defendant participated in regular weekly black jack game, that house cut would range from \$500 to \$1,500 per night, that defendant often handed out the chips at the beginning of the evening and would often handle settling up among the players at the end, that defendant was involved in a sports bookmaking operation, that defendant received 500 shares of stock in corporation as payment for a gambling debt and also had an account with a brokerage firm in which he realized over \$6,000 in short-term capital gains, and that defendant did not file income tax return, was sufficient to sustain defendant's conviction for failing to file income tax return. U. S. v. Garguilo, C.A.2 (N.Y.) 1977, 554 F.2d 59. Internal Revenue ☞ 5301


In prosecution for wilful failure to file income tax returns, evidence that, after investigation of defendant began,


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defendant hired an accountant to prepare returns but gave the accountant an estimate of cash received which was less than that shown on his books and did not give accountant records which would have shown income from a trust account was material to the issue of willfulness. *U. S. v. Hawk*, C.A.9 (Cal.) 1974, 497 F.2d 365, certiorari denied 95 S.Ct. 67, 419 U.S. 838, 42 L.Ed.2d 65. Internal Revenue  5294


Late filing and late tax payment are immaterial on issue of willfulness in a prosecution for having willfully and knowingly failed to make federal income tax returns. *U. S. v. Ming*, C.A.7 (Ill.) 1972, 466 F.2d 1000, certiorari denied 93 S.Ct. 235, 409 U.S. 915, 34 L.Ed.2d 176, rehearing denied 93 S.Ct. 514, 409 U.S. 1051, 34 L.Ed.2d 504. Internal Revenue  5294


In prosecution for wilful failure to file federal income tax returns, a political flier which demonstrated to defendant's constituents that his income tax for particular year had been paid in full, together with evidence of defendant's past history of delinquent payments, was admissible for purpose of proving defendant's state of mind when he failed to file his returns. *U. S. v. O'Connor*, C.A.1 (Mass.) 1970, 433 F.2d 752, certiorari denied 91 S.Ct. 874, 401 U.S. 911, 27 L.Ed.2d 809. Internal Revenue  5294

Failure of taxpayer to keep adequate records, omission from his returns of large amounts of taxable income, purchase of securities with checks from patients and deposit of such checks in various savings accounts constituted clear and convincing proof of fraud justifying imposition of penalties. *Friedman v. C. I. R.*, C.A.6 1970, 421 F.2d 658. Internal Revenue  5236

Evidence sustained conviction of misdemeanor violation for willful failure to file tax returns by experienced tax accountant whose excuse for failure to file was pressure of business and taking care of his clients' tax problems and who asserted that his failure to file was not willful. *Eustis v. U.S.*, C.A.9 (Cal.) 1969, 409 F.2d 228. Internal Revenue  5301

There was insufficient circumstantial evidence of defendants' willfulness to support their convictions of willfully attempting to evade or defeat tax, for underreporting their income, in light of evidence that their business was entirely legitimate, no cash transactions or hoards were involved, unreported income consisted of legitimate business payments made in form of checks, interest earned on that income was properly reported, returns were prepared by independent and honest accountant who provided broad range of legitimate services, defendants maintained proper books and records from which income could be determined and kept no false set of books, and defendants presented strong un rebutted character evidence and otherwise engaged in behavior inconsistent with willful evasion of taxes. *U.S. v. Olbres*, D.N.H.1994, 881 F.Supp. 703, reversed 61 F.3d 967, certiorari denied 116 S.Ct. 522, 516 U.S. 991, 133 L.Ed.2d 430. Internal Revenue  5300

Delinquent filings and payment of taxes, interest, and penalties by taxpayer was probative to issue of willfulness in prosecution for failure to file income tax; disputed evidence was probative of whether taxpayer had knowledge or responsibility to file quarterly tax returns as 50% owner of corporation. *U.S. v. Klotz*, M.D.Pa.1992, 792 F.Supp. 28. Internal Revenue  5219.25

Assuming it was applicable, doctrine of equitable estoppel did not bar criminal prosecution of defendant for failure to file federal income tax returns, based on contention that Internal Revenue Service instruction booklet misled defendant into believing that his failure to file federal income tax return would result only in civil penalties, in that passage from instruction booklet in question did not constitute a misrepresentation of fact but, at most, offered an incomplete statement of the law, and defendant could not have reasonably relied on such passage as providing assurance that he would never be criminally prosecuted for failing to file a federal income tax return. *U.S. v. Anderson*, D.Conn.1986, 637 F.Supp. 1106. Criminal Law  36.6

Defendant, a certified public accountant, who knew of obligation to file federal income tax returns and intentionally failed to do so because he gave priority to other things or because he simply did not want to be

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bothered by preparation of his own tax returns, though about one-third of his gross income was derived from preparing tax returns for others, was guilty of willful failure to file returns. U. S. v. Sullivan, D.C.Mont.1974, 369 F.Supp. 568. Internal Revenue ↻ 5261

IV. FAILURE TO PAY TAX

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121. Failure to pay tax generally

Offense punishable under § 145(b) [I.R.C.1939], dealing with failure to collect and pay over income tax, and attempt to defeat or evade such tax, relates not only to defendant's own income tax, but also to that due and owing by others, including tax on joint or community income of himself and his wife. Ford v. U.S., C.A.5 (Tex.) 1954, 210 F.2d 313. Internal Revenue ↻ 5262; Internal Revenue ↻ 5263.15

122. Elements of offense generally, failure to pay tax


Misdemeanor of willfully failing to pay taxes when due has only willfulness and the omission of the required act, the payment of taxes when due, as elements. Sansone v. U.S., U.S.Mo.1965, 85 S.Ct. 1004, 380 U.S. 343, 13 L.Ed.2d 882. Internal Revenue ↻ 5262


Three elements of crime of willful tax evasion are willfulness, existence of tax deficiency, and affirmative act constituting attempt to evade or defeat payment of the tax. U.S. v. Eaken, C.A.7 (Ill.) 1993, 995 F.2d 740. Internal Revenue ↻ 5263.10; Internal Revenue ↻ 5263.35

123. Willfulness, failure to pay tax--Generally


"Willfulness", as used in § 145(a) [1939] proscribing willful failure to pay income taxes, requires existence of a specific wrongful intent, an evil motive, at the time the crime charged was committed, that is, failure to pay the tax


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due at the time required by law, and a series of defaults, indicating a pattern of behavior, knowingly and intentionally made, may suggest existence of the specific evil motive, though mere laxity, careless disregard of duty imposed by law, or even gross negligence, unattended by evil motive are not probative of willfulness. U.S. v. Palermo, C.A.3 (Pa.) 1958, 259 F.2d 872. Internal Revenue  5262


Even though taxpayer had made payments in years in which he had taxable income, he could be convicted of willfully failing to pay his taxes, where he had knowingly and understandingly signed an agreement that payments which he had made would be used for prior tax obligations. U. S. v. Tucker, E.D.La.1981, 524 F.Supp. 748, affirmed 686 F.2d 230, rehearing denied 690 F.2d 905, stay denied 103 S.Ct. 442, 459 U.S. 1027, 74 L.Ed.2d 599, certiorari denied 103 S.Ct. 492, 459 U.S. 1071, 74 L.Ed.2d 634. Internal Revenue  5262


124. ---- Availability of funds, willfulness, failure to pay tax


In order to establish willful failure to pay income tax, United States is not required to prove that, at time defendant filed returns, defendant possessed readily available funds so that he could pay his taxes; rejecting *United States v. Andros*, 484 F.2d 531; *United States v. Goodman*, 190 F.Supp. 847. U.S. v. Ausmus, C.A.6 (Ky.) 1985, 774 F.2d 722. Internal Revenue  5262

To establish the offense of wilful failure to pay income taxes, government was required to prove that the financial circumstances of the taxpayer were such that, on or about July 16, 1966, the date on which the crime charged was alleged to have been committed, defendant possessed sufficient funds to be able to meet his legal obligation to the government but voluntarily and intentionally did not pay the taxes. U. S. v. Andros, C.A.9 (Cal.) 1973, 484 F.2d 531. Internal Revenue  5291.1

125. ---- Concealment of operations, willfulness, failure to pay tax

In prosecution for wilful failure to register and pay wagering excise tax, proof of defendant's efforts to conceal wagering operation was admissible to show "bad purpose", an element of wilfulness. U. S. v. Marquez, C.A.2 (N.Y.) 1964, 332 F.2d 162, certiorari denied 85 S.Ct. 162, 379 U.S. 890, 13 L.Ed.2d 94. Internal Revenue  5294

In prosecution for engaging in business of accepting wagers as copartners in syndicate and conspiring and attempting to defeat part of excise tax on wagers, evidence permitted jury to conclude that defendants conspired to utilize registration and monthly tax returns of one defendant as front to mask magnitude of operation with plan of evading substantial taxes due. U.S. v. Shaffer, C.A.7 (Ind.) 1961, 291 F.2d 689, certiorari denied 82 S.Ct. 192, 368 U.S. 915, 7 L.Ed.2d 130, rehearing denied 82 S.Ct. 392, 368 U.S. 962, 7 L.Ed.2d 393, certiorari denied 82 S.Ct. 193, 368 U.S. 914, 7 L.Ed.2d 130. Conspiracy  47(7)

Implied admission that defendant knowingly failed to renew special wagering occupational tax stamp for period of five months, fact that there were a number of violations, and that business was conducted in back of false front, constituted substantial evidence to justify inference that defendant wilfully failed to pay \$50 occupational stamp fee, and wilfully failed to register and make application for gambling stamp. U. S. v. Pepe, D.C.Del.1962, 209 F.Supp. 592, affirmed 339 F.2d 264. Internal Revenue  5295

126. ---- Future intent, willfulness, failure to pay tax

An intent to report income and pay tax in future does not vitiate willfulness requirements of this section and § 7207 of this title making it a misdemeanor to willfully not pay taxes when due and to willfully file document known to be false or fraudulent in any material manner, or vitiate willfulness required by § 7201 of this title making it a felony to willfully attempt to evade or defeat tax. *Sansone v. U.S.*, U.S.Mo.1965, 85 S.Ct. 1004, 380 U.S. 343, 13

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L.Ed.2d 882. Fraud ↻ 68.10(2); Internal Revenue ↻ 5263.35

127. ---- Knowledge of criminal nature of sanctions, willfulness, failure to pay tax

Willfulness required to sustain conviction for failure to pay special wagering occupational tax was established by a showing that defendant knew that wagering tax stamp was required, even without a showing that defendant also knew that failure to comply would involve criminal and not merely civil sanctions. *U. S. v. Wilson*, D.C.Del.1963, 214 F.Supp. 629. Internal Revenue ↻ 5295

128. ---- Knowledge of obligation or requirements, willfulness, failure to pay tax

Offenses of willful failure to file income tax returns occurred when defendant willfully failed to pay taxes at time or times required by law, despite defendant's contention that offenses did not occur until his commodity futures trading company was closed because he expected, up until that time, to pay back his investors and did not consider any investor funds to be taxable income. *U.S. v. Morrison*, C.A.10 (Colo.) 1991, 938 F.2d 168. Internal Revenue ↻ 5263.35

Defendants charged with tax evasion in connection with their scheme to sell trusts into which participants allegedly transferred income and assets for tax avoidance purposes were not charged under law that was vague or highly debatable and could form requisite intent to violate it; pertinent tenets of tax law, that earned income is taxable to those who earn it and that dominion and control over property, rather than documentary title, determines to whom income from that property is taxable, was supported by a number of cases. *U.S. v. Schmidt*, C.A.4 (N.C.) 1991, 935 F.2d 1440. Internal Revenue ↻ 5317

Knowledge of wagering tax requirements is a prerequisite for conviction for a "wilful" failure to pay the tax and register. *U. S. v. Marquez*, C.A.2 (N.Y.) 1964, 332 F.2d 162, certiorari denied 85 S.Ct. 162, 379 U.S. 890, 13 L.Ed.2d 94. Internal Revenue ↻ 5270

Where statutory definition of crime of failure to pay tax includes element of willfulness, specific wrongful intent, that is, actual knowledge of existence of obligation and wrongful intent to evade it, is of essence. *Edwards v. U.S.*, C.A.5 (Fla.) 1963, 321 F.2d 324, on rehearing 334 F.2d 360, certiorari denied 85 S.Ct. 721, 379 U.S. 1000, 13 L.Ed.2d 702. Internal Revenue ↻ 5262

In prosecution for violation of § 4401 of this title imposing tax on persons engaged in business of accepting wagers, evidence, which revealed that defendant had knowledge of said section and intentionally refused to comply, was sufficient to establish that his failure to comply was wilful. *U.S. v. Simon*, C.A.7 (Wis.) 1957, 241 F.2d 308. Internal Revenue ↻ 5295

129. ---- Pleas of defendant, willfulness, failure to pay tax

By pleading *nolo contendere* to charge of willful failure to pay income taxes, defendant admitted that he acted willfully and could not subsequently attack evidence as insufficient to support finding of willfulness. *U. S. v. Freed*, C.A.6 (Mich.) 1982, 688 F.2d 24. Criminal Law ↻ 275

130. ---- Prior or subsequent conduct, willfulness, failure to pay tax

Defendant's prior taxpaying history, both federal and state, was admissible and was probative of his willfulness in failing to pay substantial amounts of federal taxes in later years in question, in prosecution for failure to pay federal income taxes. *U.S. v. Magnus*, C.A.2 (N.Y.) 1966, 365 F.2d 1007, certiorari denied 87 S.Ct. 856, 386 U.S. 909, 17 L.Ed.2d 783, rehearing denied 87 S.Ct. 1160, 386 U.S. 978, 18 L.Ed.2d 140. Internal Revenue ↻ 5294;

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Internal Revenue ☞ 5300

A pattern of behavior, as distinguished from a single occurrence, itself suggests "willfulness", within § 145(a) [1939 (now covered in this section)] proscribing willful failure to make timely payment of income taxes, but a pattern of behavior does not inescapably establish willfulness. *U.S. v. Palermo*, C.A.3 (Pa.) 1958, 259 F.2d 872. Internal Revenue ☞ 5262

131. ---- Miscellaneous actions constituting willfulness, failure to pay tax

In prosecution for the wilful failure to pay income taxes, the government's evidence, including proof that defendant had, by his own admission, \$20,000 in cash as the result of a winning wager on July 16, 1966, that he had previously agreed to an assessment for deficiencies in income taxes that amounted to \$7,501.20, and that demands for payment had been sent him about three months before the July 16 win, established the guilt of defendant beyond a reasonable doubt. *U. S. v. Andros*, C.A.9 (Cal.) 1973, 484 F.2d 531. Internal Revenue ☞ 5299

Evidence relating to activities of defendant at race track and to his possession of records in the nature of "recap sheets" was sufficient to sustain his conviction for willful and knowing failure to pay special occupational tax on business of accepting wagers and to register and file a return. *U. S. v. Angelini*, C.A.7 (Ill.) 1965, 346 F.2d 278, certiorari denied 86 S.Ct. 86, 382 U.S. 838, 15 L.Ed.2d 80. Internal Revenue ☞ 5295

132. Persons liable, failure to pay tax

Evidence in prosecution for conspiring to engage in business of accepting wagers without paying the special federal occupational tax failed to establish that defendant, claimed to be a "banker" or to have some other proprietary interest in business of receiving wagers from bettors was liable for the tax. *U. S. v. Sette*, C.A.2 (Conn.) 1964, 334 F.2d 267. Conspiracy ☞ 47(7)

Evidence that defendant, while not the operator, accepted bets on horse races from his associates to be placed with a "bookie" justified conviction of engaging in business of accepting wagers, receiving wagers on behalf of a person so engaged, failing to pay tax thereon imposed, and failing to register as a person required to pay the tax. *U. S. v. Gaydos*, C.A.2 (N.Y.) 1962, 310 F.2d 883. Internal Revenue ☞ 5295

In prosecution for wilful failure to pay and register a horse race wagering occupational tax by defendant, who on occasion of search and seizure was seen sitting on a couch stuffing some papers under the seat which were win-loss owe sheets covering a period of about 18 days and who on a number of occasions was seen receiving from runners or pick-up men sheets of paper of kind used by bookmakers which he then took to very same apartment where he was arrested and where the bookmaking material was seized under search warrant, evidence sustained finding that defendant was not a mere bookkeeper, runner or pick-up man, but rather a principal in the bookmaking business. *Rutherford v. U.S.*, C.A.9 (Cal.) 1959, 264 F.2d 180, certiorari denied 79 S.Ct. 1140, 359 U.S. 1003, 3 L.Ed.2d 1031. Internal Revenue ☞ 5295

V. SENTENCE AND PUNISHMENT

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161. Concurrent sentences, sentence and punishment

Even if counts charging defendant with willfully failing to make an income tax return and willfully failing to supply required information on income tax form were duplicitous, judgment entered on jury verdict of guilty as to both counts would be affirmed under concurrent sentence doctrine where defendant had been sentenced to concurrent terms on each of the two counts. *U. S. v. Radue*, C.A.5 (Ala.) 1973, 486 F.2d 220, rehearing denied 487 F.2d 1401, certiorari denied 94 S.Ct. 1615, 416 U.S. 908, 40 L.Ed.2d 113, application denied 94 S.Ct. 1559, 415 U.S. 971, 39 L.Ed.2d 870. Criminal Law ☞ 1177

Remand for resentencing was required when Sentencing Guidelines mandated consecutive sentences for defendant's two convictions for failure to report income tax and district court did not conduct downward departure analysis, as required, before imposing concurrent sentences. *U.S. v. Anderson*, C.A.9 (Or.) 2004, 94 Fed.Appx. 487, 2004 WL 604937, Unreported, certiorari denied 125 S.Ct. 192, 543 U.S. 863, 160 L.Ed.2d 105, rehearing denied, rehearing denied 125 S.Ct. 493, 543 U.S. 984, 160 L.Ed.2d 367, certiorari denied 125 S.Ct. 203, 543 U.S. 863, 160 L.Ed.2d 105. Criminal Law ☞ 1181.5(8)

162. Administrative action by Armed Forces, sentence and punishment-- Generally

That as an incident of a sentence the Army might have taken administrative action to divest defendant of his commission had no effect on the sentence rendered under this section. *Martin v. U.S.*, C.A.9 (Hawai'i) 1963, 317 F.2d 753. Sentencing And Punishment ☞ 117; Sentencing And Punishment ☞ 1483

163. ---- Loss of Army reserve status, administrative action by armed forces, sentence and punishment

Sentence of a fine of \$1,000 and one week in jail on each of four counts, with the sentences to run concurrently, was within terms of this section and could not be considered cruel and unusual even if such sentence might have resulted in defendant's loss of his Army reserve status and even though defendant's gross income for each of the years in question was approximately \$2,000. *Martin v. U.S.*, C.A.9 (Hawai'i) 1963, 317 F.2d 753. Sentencing And Punishment ☞ 1483; Sentencing And Punishment ☞ 1560

164. Costs, sentence and punishment

Defendant convicted of willfully failing to file income tax returns was liable for fees charged by court-appointed mental health experts who were hired to determine whether defendant was competent to stand trial. *U.S. v. May*, C.A.8 (Mo.) 1995, 67 F.3d 706. Costs ☞ 304

Mandatory cost of prosecution provision in statute prohibiting willful failure to file federal income tax return achieves legitimate government objectives of recovering expenditures and imposing additional punishment and does not needlessly chill defendant's right to jury trial; declining to follow *United States v. Glover*, 588 F.2d 876.

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U.S. v. Palmer, C.A.11 (Ga.) 1987, 809 F.2d 1504. Costs ↻ 285; Jury ↻ 31.3(1)

Taxation of costs on defendant convicted of willfully failing to file a return, supply information or pay tax required by law serves a legitimate governmental purpose; therefore, defendant who files in forma pauperis for purpose of trial is not entitled to exemption from payment of those costs on basis that there might be a chilling effect on an indigent defendant's exercise of constitutional rights. U.S. v. Wyman, C.A.8 (Neb.) 1984, 724 F.2d 684. Costs ↻ 302

Defendant, who was convicted of willful failure to file income tax returns under this section, was not denied a full opportunity to exercise his constitutional rights because of his impecuniosity where there was no suggestion that lack of funds affected defendant's eligibility to have a jury trial or compulsory process, but there was only possibility that defendant might later be assessed costs of prosecution. U. S. v. Chavez, C.A.9 (Ariz.) 1980, 627 F.2d 953, certiorari denied 101 S.Ct. 1376, 450 U.S. 924, 67 L.Ed.2d 353. Costs ↻ 302

Where defendants are jointly indicted, tried and convicted of willfully failing to pay taxes or file returns, each one is jointly and severally liable to pay entire costs of prosecution. U.S. v. Troiani, N.D.Ill.1984, 595 F.Supp. 186. Costs ↻ 292

There was no authority, in prosecution for violations of this section and section 1341 of Title 18, for taxation of the costs of the grand jury investigation. U.S. v. Black, D.C.Or.1984, 589 F.Supp. 594. Costs ↻ 307

165. Imprisonment, sentence and punishment

Where defendant was convicted only of failure to supply proper information to the Internal Revenue Service and not of failure to pay income taxes, there was no basis for contention that imprisonment for failure to supply such information constituted imprisonment for debt. U. S. v. Douglass, C.A.5 (Fla.) 1973, 476 F.2d 260. Constitutional Law ↻ 83(3)

The imposition of a sentence of imprisonment for three months on defendant, who was convicted on his plea of guilty to three counts of information charging willful failure to file federal income tax returns, a sentence within permissible statutory limits did not constitute a cruel or unusual punishment with respect to defendant who claimed that his health would be injured by confinement but it was suggested that before actual commitment district judge might obtain an impartial medical opinion as to defendant's condition. U.S. v. Overton, C.A.4 (Va.) 1966, 359 F.2d 28. Sentencing And Punishment ↻ 1505

Where defendant claimed income tax deduction of \$350,000 for donation of music library which he knew was almost worthless and such knowledge was underscored by defendant's admitted false statement in letter that he had judgment of eminent persons in music world as to library's worth, sentence of six months' imprisonment for offense of filing income tax returns containing false statements was proper. U. S. v. Henderson, S.D.N.Y.1975, 399 F.Supp. 508. Internal Revenue ↻ 5319

166. Licenses or permits, loss of, sentence and punishment

Where licensee was convicted on plea of guilty of federal offense of failure to buy gambling stamp and an element of that offense was either wagering or gambling which is crime under state law, licensee's plea of guilty was an admission of violation of state law and constituted sufficient cause for revocation of licensee's liquor license. Maggio v. State Liquor Control Commission, Ill.App.1967, 233 N.E.2d 59, 89 Ill.App.2d 401. Intoxicating Liquors ↻ 106(4)

Conviction for willfully failing to make income tax return, where such return is required by law, does not represent

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conviction of a "crime, and element of which is dishonesty or fraud" within meaning of statute authorizing accountancy board to revoke or suspend any certificate. *Doelker v. Accountancy Bd., Ohio* 1967, 232 N.E.2d 407, 12 Ohio St.2d 76, 41 O.O.2d 328. Licenses ↻ 38

167. Parole or probation, sentence and punishment

Satisfaction of taxpayer's restitution obligation, imposed as condition of probation when sentencing him for willful failure to file federal income tax returns, also discharged taxpayer's civil tax liabilities; U.S. Attorney elected to include taxpayer's civil tax liabilities as part of restitution order, and issued satisfaction of judgment and release of judgment lien securing restitution obligation. *Creel v. C.I.R.*, C.A.11 2005, 419 F.3d 1135. Sentencing And Punishment ↻ 1973(3)

District court's decision to revoke defendant's probation, on basis that defendant committed substantial violations of his probation, was not abuse of discretion, where defendant made misrepresentations to his attorney and to court about whether he was under home detention from onset of his probation, defendant made materially false report with regard to his financial matters, and defendant traveled outside district without authorization. *U.S. v. Tschebaum*, C.A.8 (Mo.) 2002, 306 F.3d 540. Sentencing And Punishment ↻ 1967(3); Sentencing And Punishment ↻ 1969(3)

Condition of probation that defendant make restitution for taxes due and owing was not improper, although tax liability had not been finally determined when the trial court imposed sentence. *U.S. v. Green*, C.A.9 (Cal.) 1984, 735 F.2d 1203. Sentencing And Punishment ↻ 1973(2)

Modified sentence allowing immediate probation for two years and requiring as condition of probation that defendant, who was convicted of willful failure to file federal income tax return for one year and who was initially sentenced to one-year imprisonment, reside in halfway house for 60 days on work release was legal in view of fact that one-year suspended sentence did not exceed the one-year statutory limit set forth in this section prohibiting willful failure to file federal income tax return and the two-year probationary term with provision for 60-day residence at halfway house met terms of section 3651 of Title 18 providing that if maximum punishment provided for such offenses is more than six months, court may impose sentence in excess of six months and provide that defendant be confined in jail-type institution or treatment institution for period not exceeding six months. *Neidinger v. U. S.*, C.A.4 (Md.) 1981, 647 F.2d 408, certiorari denied 102 S.Ct. 311, 454 U.S. 859, 70 L.Ed.2d 155 . Sentencing And Punishment ↻ 1923

In prosecution wherein defendant was convicted of violating this section requiring the filing of income tax returns, district court exceeded its discretion in imposing parole condition upon defendant that he "divorce (himself) from any organization advocating the willful disobedience of any local, state or federal law and refrain * * * from making any statements to others advocating any disobedience of any local, state or federal law," and defendant's sentence was to be modified by striking phrase "any local, state or federal law" and substituting therefore "the Internal Revenue Code." *U. S. v. Smith*, C.A.5 (Tex.) 1980, 618 F.2d 280, certiorari denied 101 S.Ct. 203, 449 U.S. 868, 66 L.Ed.2d 87. Pardon And Parole ↻ 64.1

Where defendant found guilty on November 23, 1970 of failing to file federal income tax returns for the years 1964, 1965 and 1966 received suspended sentence and was placed on probation for period of one year, conditioned on payment against tax liability for the years involved, and it was ordered that during probation defendant refrain from any violation of law, and defendant failed timely to file income tax return for the year 1970 or to obtain extension of time for payment, revocation of probation was not an abuse of discretion. *U. S. v. Tucker*, C.A.6 (Ky.) 1971, 444 F.2d 512, certiorari denied 92 S.Ct. 711, 404 U.S. 1048, 30 L.Ed.2d 739. Sentencing And Punishment ↻ 2004

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Defendant's failure to file timely income tax returns constituted violation of probation condition that defendant refrain from violation of any law. *U.S. v. Schwartz*, E.D.Pa.1995, 903 F.Supp. 852. Sentencing And Punishment ¶ 1966(3)

168. Conspiracy, sentence and punishment

In view of § 371 of Title 18, providing that if crime, furtherance of which is object of conspiracy, is only a misdemeanor, maximum punishment on conviction of conspiracy may not exceed maximum punishment provided for substantive offense, two-year sentences on conspiracy count charging conspiracy to violate federal wagering tax laws were illegal, though defendants were convicted on more than one substantive count under this title, where substantive offenses were misdemeanors only, and maximum sentence which could have been imposed on conviction of any substantive offense was one year imprisonment, and sentences were to run concurrently. *U. S. v. Magliano*, C.A.4 (Md.) 1964, 336 F.2d 817. Conspiracy ¶ 51

169. Failure to file returns, sentence and punishment

District court did not commit clear error by applying presumption under Sentencing Guidelines that tax loss caused by defendant convicted of willfully failing to file income tax returns was 20% of his stipulated gross income, where defendant had destroyed his records, commingled his personal and business expenses, and failed to provide information regarding his claimed deductions. *U.S. v. Sullivan*, C.A.10 (Wyo.) 2001, 255 F.3d 1256, certiorari denied 122 S.Ct. 1182, 534 U.S. 1166, 152 L.Ed.2d 124. Sentencing And Punishment ¶ 962

Sentence including three years of confinement for failure to file federal income tax returns was not excessive, even though defendant entered his plea of guilty expecting 90 days of incarceration at most. *Chichakly v. U.S.*, C.A.7 (Ind.) 1991, 926 F.2d 624. Internal Revenue ¶ 5319

Sentence which was imposed upon defendant following conviction on three counts of wilfully failing to file an income tax return and which consisted of a three-year term of imprisonment, suspended as to all but six months, a fine of \$500 for each count, and a directive requiring defendant to pay costs of prosecution was within limits of this section and was not an abuse of discretion. *U. S. v. Campbell*, C.A.8 (Neb.) 1980, 619 F.2d 765. Internal Revenue ¶ 5319

Imposing fine of \$10,000 on Count I of indictment charging misdemeanor offense of failure to file interest equalization tax returns, plus a period of five years' probation on condition that defendant use best efforts under aegis of probation officer to pay his civil tax liability, and committing defendant on Count II to custody of Attorney General for imprisonment for a period of 90 days was reasonable and as lenient as defendant could expect. *U. S. v. Greenberg*, D.C.Minn.1971, 332 F.Supp. 1324. Internal Revenue ¶ 5319

District court's tax-loss determination when sentencing defendant for attempted tax evasion and failure to file income tax returns violated defendant's Sixth Amendment rights, given that defendant was sentenced under mandatory sentencing guidelines and the tax-loss determination was not based on either a jury finding or defendant's own admission. *U.S. v. Harpole*, C.A.9 (Alaska) 2006, 168 Fed.Appx. 182, 2006 WL 377547, Unreported. Jury ¶ 34(1)

170. Failure to pay tax, sentence and punishment

Ninety-day sentence and \$500 fine would be valid under this section prescribing punishment for wilful failure to pay tax. *U. S. v. Goldman*, C.A.3 (N.J.) 1965, 352 F.2d 263. Internal Revenue ¶ 5319

171. Reduction of sentence, sentence and punishment

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Fact that defendant was 72 years of age was not a basis for reducing sentence of 90 days imposed on count of indictment charging misdemeanor offense of failing to file interest equalization tax returns, notwithstanding letter from doctor describing defendant as suffering from a number of maladies and opining that time spent in jail would be injurious to his health, since federal institutions have adequate medical facilities and, if defendant's health so warranted, he would receive proper medical attention. *U.S. v. Grabinski*, D.C.Minn.1983, 558 F.Supp. 1324, affirmed 727 F.2d 681.

In prosecution for misdemeanor failure to file taxes, sentence for defendant was proper, where, given that he failed to raise objections at sentencing, sentence did not reveal any plain error; defendant had ample opportunity to comment on presentence report (PSR), appropriate version of guidelines was used in order to avoid ex post facto problems in calculating offense level, base offense level was properly deemed to be 13, offense level was then reduced by two levels to 11, based on defendant's acceptance of responsibility, criminal history category was properly calculated as I, based on zero criminal history points, and resulted in guidelines range of imprisonment of 8 to 14 months, and magistrate judge then permissibly departed downward on basis of diminished mental capacity and ordered defendant to serve two years of probation, reasoning that defendant's criminal history did not indicate need to incarcerate him to protect public. *U.S. v. Coomes*, C.A.6 (Ohio) 2004, 106 Fed.Appx. 967, 2004 WL 1800864, Unreported. Criminal Law 🔑 1042

172. Increase in sentence, sentence and punishment

Issues of calculation of tax loss caused by actions of defendant convicted of willful failure to file income tax return, and two-level increase under Sentencing Guidelines based on sophisticated concealment, were not required to be submitted to jury and proven beyond reasonable doubt pursuant to *Apprendi*, where loss calculation and increase did not increase defendant's sentence beyond statutory maximum. *U.S. v. Sullivan*, C.A.10 (Wyo.) 2001, 255 F.3d 1256, certiorari denied 122 S.Ct. 1182, 534 U.S. 1166, 152 L.Ed.2d 124. Jury 🔑 24; Sentencing And Punishment 🔑 973

More severe sentence imposed at second trial of defendant for willful failure to file tax returns was not in retaliation for a successful appeal of the first conviction; rather, more severe sentence resulted from failure to file required income tax returns following first conviction and as such was proper. *U.S. v. Harris*, C.A.9 (Cal.) 1984, 726 F.2d 558. Double Jeopardy 🔑 115

173. Presentence reports, sentence and punishment

In prosecution for knowingly and willfully failing to make and file income tax returns for certain years, trial court's action in passing sentence upon defendant without receiving presentence report did not constitute error. *U.S. v. Williams*, C.A.3 (Pa.) 1958, 254 F.2d 253. Sentencing And Punishment 🔑 276

VI. ATTORNEY LIABILITY

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201. Attorney liability generally

The objective of disciplinary action against an attorney for a federal income tax conviction is not additional punishment of the attorney but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole. Ford's Case, N.H.1959, 149 A.2d 863, 102 N.H. 24. Attorney And Client ☞ 39

202. Factors determining punishment, attorney liability--Generally

In determining disciplinary action to be taken against an attorney for a federal income tax conviction, fact that attorney was charged with a misdemeanor and not a felony, that he cooperated with the federal officials from the beginning and that he did not breach any of his professional duties to his clients or had been guilty of other wrongdoing and his professional life had been exemplary and unmarred except for the instant offense were to be considered. Ford's Case, N.H.1959, 149 A.2d 863, 102 N.H. 24. Attorney And Client ☞ 58

203. ---- Moral turpitude, factors determining punishment, attorney liability

Conviction of willful failure to file federal income tax return is crime involving moral turpitude, and, when committed by attorney, is grounds for disciplinary action by State Supreme Court. Matter of Pohlman, N.D.1976, 248 N.W.2d 833. Attorney And Client ☞ 39

Even in absence of finding of moral turpitude or breach of attorney's responsibilities in performance of professional services, willful failure to timely file income tax returns may warrant disciplinary action in particular circumstances; discipline is warranted in such instances when violation demeans integrity of legal profession and constitutes breach of attorney's responsibility to society. In re Rohan, Cal.1978, 578 P.2d 102, 145 Cal.Rptr. 855, 21 Cal.3d 195. Attorney And Client ☞ 38

Knowing and unlawful failure to file federal income tax return does not involve "moral turpitude" within meaning of the disciplinary statutes, West's Ann. Bus. Prof. Code, §§ 6101, 6102, where failure is not for purpose of personal financial gain or with intent to avoid ultimate payment of tax obligations but is result of professional and domestic pressures and psychoneurotic difficulties, and thus conviction for such offense does not warrant discipline where it appears that income tax delinquencies and accompanying state of mind do not impair respondent's performance of his professional duties. In re Fahey, Cal.1973, 505 P.2d 1369, 106 Cal.Rptr. 313, 8 Cal.3d 842. Attorney And Client ☞ 39

Violation of this section in the willful and knowing failure to make an income tax return, resulting in conviction,

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regardless of nature of plea to charge, involves moral turpitude justifying disciplinary action. State Bd. of Law Examiners v. Holland, Wyo.1972, 494 P.2d 196. Attorney And Client ↻ 39

204. ---- Willfulness, factors determining punishment, attorney liability

Attorney, who was convicted, on his plea of guilty, of misdemeanor of willfully and knowingly failing to make and file personal income tax returns, as required by this section, was subject to disciplinary action, though he may not have acted with a corrupt motive in failing to make and file tax returns. In re McKechnie, Or.1958, 330 P.2d 727, 214 Or. 531. Attorney And Client ↻ 39

205. Censure, attorney liability

Conviction of willfully and knowingly failing to supply information to United States Internal Revenue Service as to full amount of gross receipts for small business corporation warrants censure. Matter of Lomangino, N.Y.A.D. 2 Dept.1983, 457 N.Y.S.2d 875, 91 A.D.2d 113. Attorney And Client ↻ 58

Conviction on guilty plea to violation of this section in willful and knowing failure to file income tax returns warrants censure, in light of attorney's personal problems, current health situation, and fact that he was punished for his criminal conduct. Matter of McGratty, N.Y.A.D. 2 Dept.1982, 455 N.Y.S.2d 92, 89 A.D.2d 246. Attorney And Client ↻ 58

Knowing and willful failure to file income tax returns for two calendar years warrants censure. Matter of Jonas, N.Y.A.D. 2 Dept.1979, 421 N.Y.S.2d 370, 70 A.D.2d 469. Attorney And Client ↻ 58

Conviction for failure to file income taxes constituting professional misconduct on part of respondent, who otherwise had satisfactory record during 23 years since his admission to bar, who for period of time involved was beset with serious personal problems, who engaged in no dishonesty in sense of filing a false return, and who in each of years involved procured extensions of time to file, warranted censure. Matter of Wolke, N.Y.A.D. 1 Dept.1978, 403 N.Y.S.2d 737, 61 A.D.2d 691. Attorney And Client ↻ 58

Conviction for violating the Internal Revenue Laws by willfully and knowingly failing to file a federal income tax return warrants censure for misconduct. Matter of Pagonis, N.Y.A.D. 2 Dept.1978, 402 N.Y.S.2d 434, 61 A.D.2d 424. Attorney And Client ↻ 58

Censure was appropriate sanction following conviction of willfully failing to file federal income tax returns. In re Harrison, N.Y.A.D. 2 Dept.1975, 367 N.Y.S.2d 35, 47 A.D.2d 259. Attorney And Client ↻ 58

Failure to file income tax return warrants censure. In re McKneally, N.Y.A.D. 2 Dept.1974, 354 N.Y.S.2d 133, 44 A.D.2d 81, 44 A.D.2d 610. Attorney And Client ↻ 58

Plea of guilty to misdemeanor charge of failure to file a federal income tax return and failure to timely file federal income tax returns for eight years warrants censure. People v. Borchard, Colo.1992, 825 P.2d 999. Attorney And Client ↻ 58

206. Disbarment, attorney liability

Willful failure to file federal income tax return with intent to avoid payment of taxes constitutes a crime involving moral turpitude within meaning of applicable disciplinary rule and warrants disbarment. Attorney Grievance Commission v. Barnes, Md.1979, 408 A.2d 719, 286 Md. 474. Attorney And Client ↻ 58

Not every conviction of an attorney for failure to file federal tax returns is a crime involving "moral turpitude," but

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the issue depends on the particular facts of the individual case; thus, disbarment does not automatically follow from every conviction of failure to file a federal tax return. Attorney Grievance Commission of Maryland v. Walman, Md.1977, 374 A.2d 354, 280 Md. 453. Attorney And Client ☞ 58

Generally, the crime of willfully failing to make tax returns to the federal government and failing to keep records, even though not a felony, is regarded as involving "moral turpitude", conviction of which is a ground for disbarment. Rheb v. Bar Ass'n of Baltimore City, Md.1946, 46 A.2d 289, 186 Md. 200. See, also, State ex rel. Nebraska State Bar Ass'n v. Fitzgerald, 1957, 85 N.W.2d 323, 165 Neb. 212. Attorney And Client ☞ 39

Convictions of interstate transportation of fraudulently obtained moneys and wilful failure to file income tax returns warrant disbarment. Matter of Ulland, N.D.1981, 310 N.W.2d 709. Attorney And Client ☞ 58

Violation of this section for failure to file federal income tax return is not a misdemeanor necessarily involving moral turpitude within purview of disbarment statute, SDCL 16-19-2(1), and does not necessitate disbarment. In re Weisensee, S.D.1975, 224 N.W.2d 830, 88 S.D. 544. Attorney And Client ☞ 39

Conviction for willful failure to file federal income tax return warrants disbarment. Matter of Norrid, N.M.1983, 670 P.2d 580, 100 N.M. 326. Attorney And Client ☞ 58

207. Probation, attorney liability

An attorney convicted of the "serious crime" of unlawfully, willfully and knowingly failing to file income tax returns is not entitled to engage in the practice of law while serving a criminal sentence of probation. Matter of Richter, N.Y.A.D. 1 Dept.1983, 462 N.Y.S.2d 222, 93 A.D.2d 505. Attorney And Client ☞ 39

One year of probation and reprimand by publication of opinion was sufficient discipline for misdemeanor offenses of failure to file federal income tax returns. The Florida Bar v. Greene, Fla.1970, 235 So.2d 7. Attorney And Client ☞ 58

208. Public reprimand, attorney liability

Willful failure to file federal income tax returns warrants public reprimand, although criminal prosecution does not result from such failure. Matter of Garcia, N.J.1990, 574 A.2d 394, 119 N.J. 86. Attorney And Client ☞ 58

Conviction of wilfully and knowingly failing to make a federal income tax return warrants public reprimand. The Florida Bar v. Ryan, Fla.1977, 352 So.2d 1174. See, also, The Florida Bar v. Silver, Fla.1975, 313 So.2d 688. Attorney And Client ☞ 58

209. Suspension, attorney liability--Generally

Failure to file income tax returns for four successive years may warrant suspension from practice. Bar Ass'n of Erie County v. Stewart, N.Y.A.D. 4 Dept.1965, 257 N.Y.S.2d 611, 22 A.D.2d 571. Attorney And Client ☞ 58

210. ---- Number of violations, suspension, attorney liability

Failure to file income tax return which initially is misdemeanor, but which violation in reality is second violation and also violation of condition of probation, and wrongful claiming of ineligible dependent, constitutes actions involving moral turpitude and warrants suspension from practice of law. Matter of Fosaaen, N.D.1975, 234 N.W.2d 867. Attorney And Client ☞ 39; Attorney And Client ☞ 58

Discipline via suspension for a first offender for violation of a federal statute not previously construed is not

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fundamentally unfair. *In re Lewis*, Mich.1975, 229 N.W.2d 316, 394 Mich. 224. Attorney And Client ☞ 58

211. ---- Length, suspension, attorney liability

Conviction of failure to file personal income tax return, after prior reprimand for use of unbecoming language in courtroom, warrants six-month suspension from practice of law, in view of mitigating factors of ready admission of wrongdoing, paying most of tax liability, and significant emotional distress and financial difficulties. *Matter of Chester*, N.J.1990, 567 A.2d 1008, 117 N.J. 360. Attorney And Client ☞ 58

Failure to pay employees' income and social security taxes, not marked by any attempt at personal gain, warrants six-month suspension. *Matter of Esposito*, N.J.1984, 474 A.2d 254, 96 N.J. 122. Attorney And Client ☞ 58

Being convicted of four misdemeanor counts of willful failure to file income tax returns warrants suspension from the practice of law for a period of six months. *Matter of Baisch*, N.Y.A.D. 4 Dept.1986, 507 N.Y.S.2d 945, 120 A.D.2d 72. Attorney And Client ☞ 58

Conviction of misdemeanor of willful failure to file an income tax return constitutes professional misconduct warranting suspension from practice of law for a period of three months. *Matter of Sullivan*, N.Y.A.D. 3 Dept.1983, 459 N.Y.S.2d 633, 92 A.D.2d 978. See, also, *Romas v. Committee on Professional Standards*, Third Judicial Dept., 1979, 419 N.Y.S.2d 793, 71 A.D.2d 969, appeal denied 397 N.E.2d 760, 48 N.Y.2d 606, 421 N.Y.S.2d 1030. Attorney And Client ☞ 58

Conviction on two counts of willful failure to file income tax returns warrants suspension from the practice of law for six months. *Matter of Doyle*, N.Y.A.D. 4 Dept.1982, 454 N.Y.S.2d 353, 89 A.D.2d 10. Attorney And Client ☞ 58

Willfully and knowingly failing to file income tax return, following previous suspension from practice of law for one year, warrants suspension from practice for period of three years and until further order of court. *Matter of Gilbert*, N.Y.A.D. 2 Dept.1982, 447 N.Y.S.2d 288, 85 A.D.2d 19. Attorney And Client ☞ 58

Conviction for failure to timely make or file income tax return warrants suspension from practice of law for three months. *Matter of Lawson*, 1982, 454 N.Y.S.2d 760, 90 A.D.2d 561. *Murphy v. Committee on Professional Standards*, Third Judicial Dept., N.Y.A.D. 3 Dept.1981, 437 N.Y.S.2d 461, 80 A.D.2d 981. Attorney And Client ☞ 58


Despite previously unblemished record, conviction for willful failure to file income tax return warrants suspension for six months and until further order of the court. *Matter of Daetsch*, N.Y.A.D. 4 Dept.1980, 428 N.Y.S.2d 374, 74 A.D.2d 471. Attorney And Client ☞ 58


Conviction for failing to file federal income tax returns warrants one year suspension. *Bar Ass'n of Greater Cleveland v. Litt*, Ohio 1983, 449 N.E.2d 429, 5 Ohio St.3d 98, 5 O.B.R. 178. See, also, *In re Hartman*, 1969, 255 A.2d 255, 54 N.J. 372. Attorney And Client ☞ 58


Failure to file federal income tax return is illegal conduct involving moral turpitude and adversely reflecting on one's fitness to practice law, and such conduct warrants 30 days' suspension from practice of law. *Matter of Brault*, Ind.1981, 425 N.E.2d 75. Attorney And Client ☞ 58


Failure to timely file United States individual income tax returns for two years warrants suspension for 30 days with automatic reinstatement after such period. *Matter of Gay*, Ind.1980, 413 N.E.2d 879. Attorney And Client ☞ 58


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Willful failure to file income tax return, as required by federal law, constitutes misconduct involving moral turpitude and warrants one-year suspension. State ex rel. Nebraska State Bar Ass'n v. Duchek, Neb.1987, 401 N.W.2d 484, 224 Neb. 777. Attorney And Client  58


Conviction of willful failure to file income tax returns warrants three-year suspension from practice of law. Matter of Discipline of Weisensee, S.D.1983, 334 N.W.2d 505. Attorney And Client  58



Knowingly and intentionally operating law office in such a manner that gross income would not be properly recorded and, as result, would not be properly reported in preparation of tax returns, in addition to prior disciplinary action having been imposed by another state, warrants suspension from practice of law for a period of five years with credit given for a period of interim suspension. Matter of Wines, Ariz.1983, 660 P.2d 454, 135 Ariz. 203. Attorney And Client  58


Willful failure to file federal income tax returns warrants six months' suspension. Matter of Clark, Wyo.1980, 613 P.2d 1218. See, also, Mondo v. Monroe County Bar Ass'n, 1969, 298 N.Y.S.2d 750, 31 A.D.2d 420; In re De Pumpho, 1968, 289 N.Y.S.2d 378, 29 A.D.2d 461. Attorney And Client  58


Conduct of knowingly failing to timely file personal income tax returns, which is cumulative in nature and results in probation and fine by federal court, warrants six months suspension subject to proof of rehabilitation prior to reinstatement. The Florida Bar v. Blankner, Fla.1984, 457 So.2d 476. Attorney And Client  58


212. ---- Indefinite suspension, attorney liability


When an attorney is convicted of the willful failure to file a federal income tax return, and such determination becomes final, that attorney will be indefinitely suspended from the practice of law. Columbus Bar Ass'n v. Dunbar, Ohio 1980, 413 N.E.2d 1195, 64 Ohio St.2d 132, 18 O.O.3d 364. See, also, Butler County Bar Ass'n v. Bartels, 1979, 389 N.E.2d 1141, 12 O.O.3d 267, 58 Ohio St.2d 260; Dayton Bar Ass'n v. Westbrook, 1978, 381 N.E.2d 1320, 10 O.O.3d 175, 56 Ohio St.2d 75; Ohio State Bar Ass'n v. Tekulve, 1975, 328 N.E.2d 405, 42 Ohio St.2d 285. Attorney And Client  58

Conviction for wilfully and knowingly failing to make a federal income tax return, entered on a plea of nolo contendere, warrants indefinite suspension though county bar association has conducted an investigation and found no misconduct. Ohio State Bar Ass'n v. Tzagournis, Ohio 1976, 348 N.E.2d 690, 46 Ohio St.2d 367, 75 O.O.2d 444. Attorney And Client  39; Attorney And Client  57

Conviction, on plea of guilty, of wilfully failing to file a federal income tax return warrants indefinite suspension. Cleveland Bar Ass'n v. Stein, Ohio 1972, 278 N.E.2d 670, 29 Ohio St.2d 77, 58 O.O.2d 151, certiorari denied 93 S.Ct. 268, 409 U.S. 949, 34 L.Ed.2d 219. Attorney And Client  58

Failure to make return of federal income taxes withheld from wages of employees and of federal insurance contributions act taxes warrants indefinite suspension. In re Kline, Mont.1970, 477 P.2d 881, 156 Mont. 177. Attorney And Client  58


Plea of nolo contendere to charge of violating federal statute providing penalties for wilful failure to file a tax return, supply information thereabout, or pay the tax warrants indefinite suspension. In re Ray, S.C.1975, 214 S.E.2d 328, 264 S.C. 292. Attorney And Client  58


Pleading guilty to five-count information charging failure to file federal income tax returns warrants indefinite suspension from practice of law. In re Martin, S.C.1974, 212 S.E.2d 251, 264 S.C. 1. Attorney And Client  58

213. ---- Miscellaneous suspensions, attorney liability

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Conviction of willful failure to file federal income tax return would warrant suspension from practice of law despite problems caused by wife's refusal to cooperate in filing. Cincinnati Bar Ass'n v. Pandilidis, Ohio 1979, 385 N.E.2d 1317, 57 Ohio St.2d 47, 11 O.O.3d 158. Attorney And Client  39

Wilfully and knowingly failing to make federal income tax return is an offense involving moral turpitude, within purview of V.A.M.S. §§ 484.010 et seq., authorizing suspension of attorney from practice upon conviction for any criminal offense involving moral turpitude. In re Burrus, Mo.1953, 258 S.W.2d 625, 364 Mo. 22. Attorney And Client  39

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Current through P.L. 109-374 (excluding P.L. 109-304, P.L. 109-364)
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