

Tax Evasion: A Short Trip from Being in Debt to Being in Jail.

Tax evasion is a serious federal offense; it is a felony punishable by up to five years in jail. Tax evasion occurs when someone “willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof” 26 U.S.C. § 7201.

Most tax evasion cases involve people who attempt to avoid being assessed for taxes through a variety of means such as skimming cash or creating fake deductions; these maneuvers qualify as “attempts . . . to evade or defeat any tax.” Cases that focus on willful “attempts . . . to evade or defeat . . . payment” are rarer. They typically involve taxpayers who take a variety of affirmative measures to prevent the IRS from collecting taxes that are due. This week, the District of Kansas confronted one of these cases. *United States v. Boisseau*, 2015 U.S. Dist. LEXIS 87509 (D. Kan. July 7, 2015).

Mr. Boisseau was a lawyer, a factor that no doubt played a role in the decision to prosecute. Boisseau owed the federal government unpaid taxes dating back to the 1998 tax year that totaled over one million dollars. *Boisseau*, 2015 U.S. Dist. LEXIS 87509, slip op. at *1-*4. Boisseau also was assessed with a trust fund recovery penalty of over \$250,000 because he willfully failed to deposit taxes withheld from his law firm’s employees. *Id.*, slip op. at *4. When the firm’s controller brought the problem to his attention and suggested that Boisseau cut his pay to make funds available to pay the taxes, Boisseau rejected the idea. *Id.*, slip op. at *5.

Then Mr. Boisseau got really clever: in 2005, he had a friend (also a lawyer) create a law firm for him, the Law Offices of Eldon L. Boisseau, LLC. Since the IRS would no doubt look to the law firm to collect Boisseau’s tax liabilities, Mr. Boisseau and his friend found a third lawyer, Richard Johnson, who would own this law firm. *Id.*, slip op. at *5-*7. Boisseau worked at the law firm for a salary.

In 2007, an IRS revenue officer sent Boisseau a notice of intent to levy. When he didn’t respond, she levied his bank account in early 2008. *Id.*, slip op. at *9-*11. When Boisseau learned of the levy, he told a law firm employee that he would stop taking a salary and issued a letter of resignation indicating that he would continue to work, but would not accept payment. As a consequence, when the IRS issued a wage levy, it was unable to collect. When the revenue officer issued a final demand on the law firm, she was advised that Boisseau was not being paid. *Id.*, slip op. at *11-*12.

Actually, he was still being compensated: the firm was paying his bills, including a trip to London, a trip to the Superbowl, and a trip to Ecuador and Peru. *Id.*, slip op. at *13-*14. These payments were directly contrary to prior advice Boisseau had received from his accountant. Then Mr. Boisseau proposed an installment agreement (a step that bars the IRS from issuing a levy) and began taking pay checks until that was rejected.

Against this background, following a bench trial, the district court had little difficulty determining that Boisseau was guilty of evasion. The decision to place ownership of the law firm in the hands of a nominee was a major factor in that decision, and Mr. Boisseau’s decision to play games with his compensation to avoid the wage levy was another.

The bottom line is that Mr. Boisseau managed to make the worst of a bad situation. He worked so hard to keep the IRS at bay that he committed a felony. Even if he somehow avoids

incarceration, he will likely be disbarred. And the other lawyers involved are fortunate that they were not charged with a conspiracy to defraud the United States.

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