

TAX AVOIDANCE VS TAX EVASION

There is a fine line between Tax Avoidance and Tax Evasion. Know the differences.

1. **Tax Avoidance is not Criminal:** It is not a crime. (It is the legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted) IRM 25.1.1.2.4(1)

2. **Tax Evasion is Criminal:** It is a crime. Evasion involves some affirmative acts to evade or defeat tax or payment of tax. Examples of affirmative acts are Deceit, Subterfuge, Camouflage, Concealment, Attempts to color or obscure events, or make things seem other than they are. IRM 25.2.2.3.4(2)

Common Evasion Schemes include intentional understatement or omission of income, claiming fictitious or improper deductions, false allocation of income, improper claims, credits or exemptions, and/or concealment of assets.

3. Underreporting Gross Income by 25% constitutes Fraud.

4. **Non-Filing Multiple Years of Tax Returns:** IRS Agents can use non-compliance of tax issues as Tax Avoidance and or Tax Evasion. Failure to file multiple years of tax returns is now a form of Tax Evasion for Non-Filers. IRS may not consider this area as Tax Avoidance if tax liability occurs upon filing. IRC Sec 7203: Willful failure to file a return, supply information or pay tax. "Any person required under this title to pay any estimated tax or tax liability is guilty of a Misdemeanor and upon conviction thereof, shall be fined not more than \$25,000 or \$100,000 in case of a Corporation or imprisoned for not more than 1 year or both together with costs of prosecution".

5. IRS agents are preparing "**Substituted Returns**" and assessment is enforced for collection. Returns are prepared as Single without any deductions for business, spouse, children etc. This procedure is enforced when IRS receives 1099's, W2, K-1 or other income items. Upon assessment, enforcement begins in the form of Liens, Levies, Seizures or Foreclosures on Assets, Building or Residential Property. Your homestead is not exempt from IRS seizures. Disposition of Assets are held like auction monthly, including any Rental Properties owned or Investments such as Retirement Pension, Social Security Benefits, Wages and Commissions.

6. **Trust Penalty and Conviction - (100%)** is assessed for payroll violations, failure to withhold taxes, match employer's portion, deposit the employee's withholding, non-filing of payroll reports timely, payment of taxes- IRS in enforcing civil tax/trust penalties. Employer may be found guilty of a Felony and upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years or both, together with costs of prosecution.

"When affirmative acts or firm indications of fraud exist, and if criminal criteria are met, the compliance IRS employee will refer the case through the Fraud Technical Advisor to Criminal Investigations" (IRM 25.1.3.1)

Differences between "**Misdemeanor and Felony Tax Evasion**"

Misdemeanor Offense: Willful Failure to file or pay taxes when due.

Felony Offense: Willful attempt to evade or defeat taxes.
