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FOR THOSE WHO DID NOT FILE INCOME TAX RETURNS

The deadline for filing income tax returns was April 15th. With a request for an extension of time plus payment of the taxes due, the return could be filed as late as October 15th. Those who failed to file the return or request an extension can face significant problems

Failing to file the 2018 income tax return creates a problem that is magnified if returns have not been filed for several years. A perennial non-filer faces significant civil penalties as well as an increase in the chance of being criminally prosecuted.

Civil penalties for failing to file a tax return are based upon the amount of tax that should have been revealed on the return and paid. There are several penalties that apply. If a return is not filed, the IRS charges a penalty of 5% per month of the amount of tax that should have been shown on the return, to a maximum of 25%. A penalty of .5% (1/2 of 1%) per month, up to a maximum of 25%, is also imposed for failure to pay the tax. The IRS may impose a fraud penalty for failure to file the income tax returns. The fraud penalty is 15% per month, to a maximum of 75%. The failure to pay penalty is imposed upon the unpaid portion of the tax. A person who failed to file and pay is also charged interest that is compounded daily.

While the increase in the amount collected by the IRS due to the additional penalties might be significant, a greater potential problem exists if the government decides to bring criminal charges. The crime of willfully failing to timely file tax returns and timely pay the tax is a misdemeanor punishable by up to one year in prison for each year that the tax return was willfully not filed. The IRS may also charge the crime of tax evasion for the willful failure to file returns and pay the taxes. Tax evasion is a felony punishable by up to 5 years in prison for each year. The difference between the misdemeanor crime of failure to file and the felony of tax evasion rests on the facts and circumstances of

each case as well as the discretion of the IRS, in conjunction with the Department of Justice attorneys handling the case.

I have observed many individuals who failed to file a tax return one year and thereafter were afraid to file tax returns. The chances of the IRS identifying a person who has not filed or paid tax, increases with time. The consequences of failing to file for multiple years not only results in large amounts of tax, interest, and penalties, but also the possibility of going to federal prison. In addition to these serious consequences, the stress people endure because of the fear of being discovered by the IRS and facing prison time is severe.

We have been able to help people who have failed to file multiple yearly tax returns. The IRS has a Voluntary Disclosure Practice (VDP) which provides a mechanism for people to get straight with the IRS. The VDP provides a means to potentially avoid criminal prosecution.

There are limitations affecting the ability to take advantage of the VDP. One limitation is that if the IRS has opened a civil examination or criminal investigation, the VDP is not available. There are additional factors which can prevent entry into the VDP. We have been able to help many people get straight with the IRS and avoid criminal prosecution. While the VDP requires submission of complete and accurate tax returns as well as payment (or a payment plan) of taxes, civil penalties and interest, the outcome is far better than living with the stress and fear of a criminal prosecution.

Prompt action is imperative and we welcome inquiries from those seeking our help in getting straight with the IRS.



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