

# Kentucky tax fraud

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**W**hen someone uses the “F” word, it gets your attention. No, the reference to the “F” word here is not to the universal adjective. Rather, it is to F, as in fraud.

The Kentucky Revised Statutes provide civil and criminal penalties for acts that can be proven to be tax fraud. Civil fraud penalties are typically applied to Notices of Tax Due issued by the Kentucky Department of Revenue as a result of an audit. According to the Department’s Web site, its Division of Special Investigations identifies and investigates state tax crimes and prepares cases for prosecution.

## Civil tax fraud penalties

The Uniform Civil Penalties Act provides for a penalty of 50 percent of tax assessed which is the result of fraud. The fraud penalty is assessed against the taxpayer or other person who committed the fraud. *See* KRS 131.180(8).

For purposes of the fraud penalty, fraud is defined as:

Intentional or reckless disregard for the law, administrative regulations, or the Department’s established policies to evade the filing of any return, report, or the payment of any monies due to the Department pursuant to law or administrative regulation; or

The deliberate false reporting of returns or reports with the intent to gain a monetary advantage. KRS 131.010(10).

Under this definition, there are two types of civil tax fraud. One type entails evasion of filing of a return (or report) or the payment of monies due that results from intentional or reckless disregard for the law, administrative regulations, or established policies. The second type of civil tax fraud is that of the affirmative act of deliberately submitting a false return (or report) to gain a monetary advantage. Under this statutory standard, one could assert that the Department, in the course of auditing a taxpayer or other person, must prove that the person to be penalized had the requisite intent as a prerequisite to assessing a civil tax fraud penalty.

The civil tax fraud penalty, like other civil tax penalties, may be waived if the failure to file or pay is due to reasonable cause.

Administrative Regulation, 103 KAR 1:040, which addresses the waiver of penalties, provides examples of many circumstances that are considered to be reasonable cause. It would seem that when reasonable cause is present, the requisite intent required to impose the civil fraud penalty would be absent; thus, in such an instance, it would appear to be inappropriate for the Department to assess the tax fraud penalty in the first place.

## Criminal tax fraud

The Division of Special Investigations, as noted above, uses sources such as anonymous tips and collaboration with federal agencies to investigate cases of potential criminal tax fraud, such as those involving fraudulent tax refunds. The Division also investigates income tax evasion and theft of sales, use, and withholding taxes. The Division works regularly with other law enforcement agencies, which often share evidence with it. This information can result in state tax charges being brought and indictments of those accused.

The Department posts on its website [[www.revenue.ky.gov](http://www.revenue.ky.gov)] examples of indictments, guilty pleas and convictions in criminal tax fraud cases. Under KRS 141.990(5), it is a Class D felony for any taxpayer or employer to willfully fail to make a return, make a false return, or fail to pay taxes owing or collected with intent to evade payment of the tax or amount collected. The punishment for a Class D felony is at least one

but not more than five (5) years imprisonment. KRS 532.060(2)(d).

The Commonwealth may also impose a fine of no less than \$1,000 and no more than \$10,000, or double his gain from the crime, whichever is greater. KRS 534.030(1). Restitution can also be ordered. *See* KRS 532.032.

For example, in May 2013, a woman “pled guilty to three counts of Willfully Filing False Income Tax Returns, Class D Felonies (KRS 141.990(5)). She falsified wage statements on the returns to obtain fraudulent refunds for the tax years 2008, 2009 and 2010. She was sentenced to one year and was ordered

to pay restitution ... upon her release.”

Another example is a woman who “was indicted by the Boone County Grand Jury on five counts of Willful Filing of False Returns and 12 counts of Willful Preparation of False Returns. [She] attempted to obtain ... false refunds ... Fraudulent refunds were issued ... and deposited into her bank account.”

Yet another example of a fraud case is a Letcher County man who “was sentenced in relation to a variety of charges, including five felony counts of Filing a Fraudulent Individual Income Tax Return. These charges are in relation to [his] Kentucky individual income tax

returns for 2005, 2006, 2007, 2008, and 2009. [He] was sentenced to 10 years probation and ordered to pay ... restitution ...” This is an example of a tax crime involving the filing of fraudulent individual income tax returns; the fact that this felon was ordered to pay restitution, indicates that he may have obtained fraudulent refund claims.

These examples show that the Division of Special Investigations actively seeks to prosecute those people who it believes have attempted to procure fraudulent refunds from the Department.

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## Kentucky tax fraud continued



Those accused of criminal tax fraud are presumed innocent until proven guilty.

### Burden of proof

In general, the burden of proof falls upon a taxpayer to prove his or her position. As to civil penalties, however, the consensus among tax practitioners is that the burden of proof falls upon the Department with regard to the assessment of penalties. Given the requirements of proving the requisite intent to impose the civil tax fraud penalty, it appears appropriate that the burden falls upon the Department. As to criminal tax fraud, the burden of proof clearly falls upon the Commonwealth. KRS 500.070(1). Those accused of criminal tax fraud

are presumed innocent until proven guilty. *See, Long v. Hamilton*, 467 S.W.2d 139, 141 (Ky. App. 1971).

### “Fraud!” Fake V/ Sutler in V for Vendetta (2006)

Many Certified Public Accountants and other tax practitioners can go a lifetime without seeing an example of Kentucky tax fraud. Although there are people who are dishonest, I believe the vast majority of Kentuckians are honest people. But, desperate people

sometimes do desperate things. Regardless, all people deserve and are entitled to representation. What may appear to be tax fraud at first glance may not actually be. Consider the severity of the civil and criminal penalties and the representation the accused needs.

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