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TAX LITIGATION ISSUES

Navigating Willfulness Defenses in Criminal Tax Cases

By Jeremy H. Temkin

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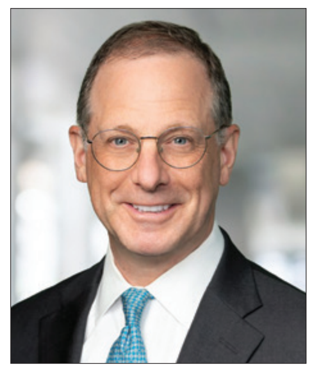
Criminal tax cases are different from other white-collar offenses in that the government must prove the defendant acted "willfully" to obtain a conviction. In *Cheek v. United States*, 498 U.S. 192 (1991), the defendant admitted that he had stopped filing income tax returns and avoided tax withholdings but testified that he had done so based on his belief that the federal income tax laws were invalid.

The Supreme Court reversed his conviction, holding that a defendant's good-faith belief that he was not violating the tax laws, even if objectively unreasonable, negates the willfulness element required for conviction.

Willfulness in criminal tax cases requires the government to prove a "voluntary, intentional violation of a known legal duty," and defendants have challenged the sufficiency of the government's evidence of willfulness without going so far as arguing that they believed the federal income tax laws were invalid.

Two recent appellate decisions, *United States v. Collins*, 162 F.4th 832 (7th Cir. 2025), and *United States v. Akhenaten*, 2026 WL 296530 (11th Cir. Feb. 4, 2026), illustrate the practical obstacles defendants face when attempting to negate the government's proof of willfulness and how the defense is more likely to succeed when the underlying tax obligation is complex or ambiguous.



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Collins

In *United States v. Collins*, Annazette Collins, a former Illinois state legislator, was charged with substantially underreporting her income each year between 2014 and 2016, with having overstated business expenses in 2018, and with failing to file an individual tax return for 2016 and corporate tax returns for 2015 and 2016.

At trial, the government introduced evidence that Collins had reported substantially more income to third parties than to the IRS, had previously reported income from sources she omitted from later returns, and had sponsored legislation to raise the Illinois income tax rate while serving in the state legislature. The government also presented testimony from Collins' tax return preparer regarding his interactions with Collins.

Collins' defense was hampered by three evidentiary rulings. First, after the district judge ruled the government could cross-examine her about her termination from a prior job, Collins opted not to testify.

Second, the defense called an expert who testified regarding errors in the government's calculation of Collins' tax liability and to her accountant's negligence but was not allowed to opine that Collins' business and travel expenses were greater than the government had calculated or that Collins' accountant was responsible for her failures to file.

And third, the district judge had also excluded evidence that Collins had amended her 2015 tax return and entered into an installment agreement with the Internal Revenue Service, finding that the evidence would scarcely be probative of her state of mind, and that any probative value was outweighed by the substantial risk of confusing the jury.

The jury convicted Collins of having made false statements on her 2014 and 2015 tax returns and failing to file both individual and corporate tax returns for 2016 but acquitted her of having filed a false 2018 individual income tax return and failing to file a corporate return in 2015.

On appeal, Collins asserted that the evidence that she had acted willfully was insufficient to support her convictions. Specifically, she argued that the testimony of her return preparer was "devoid of any of the specifics," such as that she had withheld information from him, failed to answer his questions, deliberately provided him with false information, or directed him to use incorrect figures.

Further, she contended that the government's reliance on her experience as a legislator to establish her knowledge of tax matters was speculative. The Seventh Circuit rejected Collins' arguments and found that the government had adequately established willfulness.

On the false statements, the court found a jury could reasonably conclude that Collins knew of her obligation to report her income because she was a sophisticated business owner who had sponsored tax legislation and had previously reported income from the very sources she later omitted.

The court also found that the jury had "ample" evidence indicating that Collins intentionally violated her tax obligations, including the substantial discrepancy between her actual and reported income, her return preparer's testimony that she had provided the underlying information and had verified the returns before authorizing their filing, and the fact that Collins had reported higher income to third parties than she reported to the IRS.

On the failure to file counts, the court found evidence of Collins' historical filing and her prior business acumen "compelling," and rejected Collins' claim that her return preparer had impeded her filing returns, noting that he had no incentive to do so given that he was only paid for returns he filed.

The Seventh Circuit also rejected Collins' challenges to the district court's evidentiary rulings. The court concluded that, by not testifying, Collins had waived her challenge to the district court's ruling permitting the government to cross-examine her on the circumstances surrounding her termination from her prior job, and that the ruling was correct because her conduct at a prior employer was probative of her character for untruthfulness under Federal Rule of Evidence 608(b).

Next, the court affirmed the district court's limitation on the expert's testimony because the prohibited opinions had been based on Collins' out-of-court statements and therefore raised reliability concerns.

Finally, the Seventh Circuit agreed with the district court's exclusion of evidence regarding Collins' amended 2015 tax return and her 2017 payment plan because she failed to link her later corrective conduct (which only occurred after she knew the IRS discovered her unreported income) to her state of mind at the time she filed the initial (false) return.

Akhenaten

While Collins complained that the district court's evidentiary decision impeded her right to testify, the Eleventh Circuit's decision in *United States v. Akhenaten*, 2026 WL 296530 (11th Cir. Feb. 4, 2026) (per curiam), underscores the risks a defendant takes by testifying.

In *Akhenaten*, the government alleged that, in addition to filing numerous false and fraudulent returns on behalf of his clients, the defendant filed corporate returns that substantially underreported the taxable income of his business and personal returns that failed to include all his W-2 wages.

At trial, the government presented evidence that Akhenaten had earned a master's degree in business administration and accounting, spent a year and a half working for Jackson Hewitt, and taught several classes on federal income taxes at a local college.

It also presented evidence that he reported no business income for 2014 and 2016, only $100 of business income in 2015, and other instances when his returns reported suspicious round numbers and items such as a $20,000 "loan" that were not deductible expenses. Unlike Collins, Akhenaten chose to testify, telling the jury he did not "affirmatively know something was wrong" and did not intentionally submit false returns.

On appeal, Akhenaten asserted that the evidence presented at trial was insufficient to establish he had acted willfully. The Eleventh Circuit rejected this argument, concluding that the evidence was sufficient to permit the jury to find that he had willfully prepared and filed the false tax returns.

The court explained that by testifying, Akhenaten "'r[an] the risk that if disbelieved the jury might conclude the opposite of his testimony [was] true,'—that he did knowingly file the false returns." According to the court, the rule "applies with special force where the elements to be proved for a conviction include highly subjective elements such as knowledge or intent."

Akhenaten thus brings into sharp focus the Catch-22 facing defendants seeking to rebut the government's evidence of willfulness.

While the defense is strongest when the defendant takes the stand and convincingly tells the jury that she was unaware of her obligations with respect to her tax returns or that she did not intentionally violate those obligations, the defendant runs the risk that the jury may infer the opposite of her denial is true. See, e.g., *United States v. Friedman*, 998 F.2d 53, 57 (2d Cir. 1993) (holding that the jury is entitled to conclude a defendant's version of events is false and "thereby infer his guilt" from his testimony).

Complexity of the Tax Law

In *Collins* and *Akhenaten*, the applicable tax concepts (i.e., accurately reporting one's income and not falsifying deductions) were straightforward. On the other hand, the

Supreme Court has recognized that the complexity of the tax laws warrants an exception to "[t]he general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution," *Cheek*, 498 U.S. at 199-200, and defendants have been more successful challenging willfulness in cases involving complex principles of tax law.

For example, in *United States v. Harris,* 942 F.2d 1125 (7th Cir. 1991), twin sisters were convicted of willfully evading their income tax obligations with respect to money they received from David Kritzik, a wealthy widower who gave each sister more than half a million dollars over several years. On appeal, the parties disputed whether the transfers were gifts or income.

In reversing the convictions, the Seventh Circuit examined the sufficiency of the government's evidence as to Kritzik's donative intent, which was relevant to the proper characterization of the payments, as well as the sisters' understanding of Kritzik's intent, which was critical to whether they willfully violated their tax obligations.

As to one sister, Leigh Ann Conley, the court found the evidence presented as to Kritzik's intent was insufficient to conclude that the transfers were income, and therefore insufficient to establish that Conley was obligated to file income tax returns.

The court concluded that even if the transfers were income, the government had presented no evidence of Conley's knowledge of Kritzik's intent to treat the transfers as compensation, and without this knowledge, the court reasoned, Conley could not have "willfully" failed to pay her taxes.

As to the other sister, Lynnette Harris, the court held that the district court had erred in excluding letters from Kritzik that Harris tried to introduce at trial. Although an evidentiary error ordinarily would result in a remand for retrial, the court directed dismissal of the indictment, concluding that, given the state of the law on the tax treatment of payments to mistresses, Harris did not have "fair warning that her conduct was criminal."

Surveying Tax Court decisions that had treated transfers in the context of long-term personal relationships as gifts rather than income, the court concluded that "criminal prosecutions are no place for the government to try out 'pioneering interpretations of tax law.'"

Conclusion

Taken together, *Collins, Akhenaten*, and *Harris* map the contours of a defense based on lack of willfulness. As demonstrated by *Harris*, the defense remains a vital protection in areas where the tax law is ambiguous or requires specialized tax knowledge.

Collins and *Akhenaten,* however, demonstrate the challenges faced by defendants charged with having violated straightforward tax obligations, especially those who possess a modicum of sophistication. These cases also raise the practical consideration of how to mount a persuasive defense and the risk that the jury's rejection of the defendant's testimony will supply critical evidence of willfulness supporting a conviction.

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