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WHAT CONSTITUTES AN ATTEMPT TO EVADE OR DEFEAT TAXES FOR PURPOSES OF SECTION 523(a)(1)(C) OF THE BANKRUPTCY CODE: THE NINTH CIRCUIT PARTS COMPANY WITH OTHER CIRCUITS

BY. A. LAVAR TAYLOR

In *Hawkins v. Franchise Tax Board*, -- F.3d – (9th Cir. No. 11-16276, Sept. 15, 2014), an opinion released on Monday that can be found here **[add link to http://cdn.ca9.uscourts.gov/datastore/opinions/2014/09/15/11-16276.pdf] ,** the Ninth Circuit addressed the question of what the IRS and other taxing agencies must prove to establish that a tax liability cannot be discharged by an individual in a chapter 11 or chapter 7 bankruptcy because the debtor/taxpayer "willfully attempted in any manner to evade or defeat" a tax liability for purposes of section 523(a)(1)(C) of the Bankruptcy Code. Breaking ranks with the other Courts of Appeal which have addressed this issue, the Ninth Circuit construed this language *in pari materia* with the nearly identical language contained in section 7201 of the Internal Revenue Code, as interpreted by the U.S. Supreme Court in the case of *Spies v. United States*, 317 U.S. 492 (1943).

The Ninth Circuit's holding in *Hawkins* departs from the holdings of virtually every other Court of Appeals to consider this issue. Before discussing prior case law and why I believe that the Ninth Circuit reached the right result, I want to warn readers that I am no innocent bystander on this issue. I authored a brief as *amicus curiae* filed in the *Hawkins* case, and the *Hawkins* majority opinion's discussion of the *Spies* case and its applicability to cases involving section 523(a)(1)(C) adopts the position I advocated in the brief as *amicus curiae*. For those you interested in reading that *amicus* brief, it can be found here. **[include link]** The *amicus* brief includes a detailed discussion of the differences between sections 7201 and 7203 and the case law construing those two provisions.

Now to the case law in the other Courts of Appeals opinions which preceded the Ninth Circuit's holding in *Hawkins*. In *Toti v. United States (In re Toti),* 24 F.3d 806 (6th Cir. 1994), the Court was faced with a situation where the debtor had failed to timely file returns and had failed to pay the taxes owed, but, per the trial court, had not committed an "affirmative act" of evasion. The trial court held that the taxes were discharged because there was no willful attempt to evade or defeat the taxes in that situation. The Sixth Circuit on appeal, however, reversed the trial court and held that Toti had "willfully attempted to evade or defeat the taxes" within the meaning of §523(a)(1)(C).

The Court attempted to justify its outright reversal of the finder of fact (as opposed to a remand to apply the legal standard adopted by the Sixth Circuit) by stating that the standard of "willfulness" under section523(a)(1)(C) should be the same standard of "willfulness" used by the courts in imposing criminal liability under section 7203 of the Internal Revenue Code, as

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opposed to section 7201 of the Code. The District Court's ruling, which was affirmed by the Sixth Circuit, explicitly approved of the standard of "willfulness" used in imposing liability under section 6672 of the Internal Revenue Code. 141 B.R. 126 (E.D. Mich. 1993).

Other Courts of Appeal followed the rationale of *Toti.* The Eleventh Circuit, in *Fretz v. United States (In re Fretz),* 244 F.3d 1323 (11th Cir. 2001), reversed a finding by the trial court that the debtor had not attempted to evade or defeat the taxes in question. The debtor had failed to file his returns and had failed to pay the taxes owed. The Eleventh Circuit held that this was sufficient to render the taxes non-dischargeable under §523(a)(1)(C) and that this section does not contain a requirement that the debtor engage in an affirmative act of evasion to render the taxes non-dischargeable. The Court stated as follows:

Thus, all the government must prove is that Dr. Fretz (1) had a duty to file income tax returns and pay taxes; (2) knew he had such a duty; and (3) voluntarily and intentionally violated that duty.

244 F.3d at 1330. The Seventh Circuit has ruled in a similar manner. *See United States v. Fegley (In re Fegeley)*, 118 F.3d 979, 984 (3d Cir. 1997). Most recently, the Tenth Circuit followed this logic in holding that taxes were not dischargeable. *Vaughn v. Comm'r (In re Vaughn),* - F.3d – 2014 WL 4197347 (10th Cir. 2014). Additional opinions on this issue from other Courts of Appeal are discussed in the Ninth Circuit's opinion.

Before discussing why the Ninth Circuit reached the correct result in Hawkins, it is useful to review the opinion of Bankruptcy Judge Carlson. Judge Carlson' opinion can be read here. **[add link to http://www.gpo.gov/fdsys/pkg/USCOURTS-canb-3_07-ap-03139/pdf/USCOURTS-canb-3_07-ap-03139-0.pdf]** Judge Carlson wrote in part as follows:

> William M. "Trip" Hawkins (Trip) is a very sophisticated businessman. He received an undergraduate degree in Strategy and Applied Game Theory from Harvard College, and an M.B.A. from Stanford University. He was an early employee of Apple Computer, where he rose to director of marketing. In 1982, he left Apple and became one of the founders of Electronic Arts, Inc. (EA), which became the largest supplier of computer entertainment software in the world. By 1996, Trip had a net worth of approximately $100 million, primarily from his holdings of EA shares.
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> In 1990, EA created a wholly owned subsidiary, 3DO, for the purpose of developing and marketing the devices on which computer games are played. Trip

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Hawkins left EA to run 3DO. 3DO went public in 1993. In 1994, Trip began to sell large amounts of his EA common stock to invest heavily in 3DO.

The story from that point forward is not unfamiliar to practitioners who have represented those taxpayers who "invested" in various "products" hawked by certain tax professionals. Hawkins invested in the FLIP and OPIS tax shelter products and claimed losses from these "investments." These losses were used to offset large gains generated from the sale of EA stock. The IRS then audited the income tax returns of Hawkins for the years 1996 through 2000, and Hawkins retained highly respected counsel to represent him in the audit. Hawkins attempted to participate in the settlement program announced in IRS Announcement 2002-97, but he was told that he was not eligible for that program.

In the meantime, Hawkins' investment in 3DO was going south. He loaned over $12 million to this company. The net result was that 3DO filed a chapter 11 bankruptcy in May of 2003, and the bankruptcy was converted to a chapter 7 (liquidation) later that year.

There was more bad news for Hawkins. In July of 2003, he received a revenue agent's report from IRS asserting that he owed roughly $16 million of taxes and penalties for the years covered by the audit. Hawkins had previously divorced his first wife. Trying to make lemonade out of lemons, in July of 2003 Hawkins filed a motion in the family law court to reduce child support payments due under the existing order, citing the fact that he owed the IRS and FTB over $25 million combined and his mounting losses associated with 3DO. The family law court granted Hawkins partial relief but required him to place certain assets in trust for his children and imposed a judicial lien on those assets in an effort to protect them from seizure by IRS and FTB.

Hawkins consented to the assessment of the IRS tax deficiencies in December, 2004. The California FTB assessed their "piggyback" audit deficiencies in September of 2005. In October of 2005, Hawkins submitted an Offer in Compromise to the IRS. This OIC was ultimately rejected. In July of 2006, Hawkins sold a residence, and the IRS received $6.5 million from this sale. The FTB received $6 million as the result of levies on financial accounts in August of 2006.

In September of 2006, Hawkins filed a chapter 11 bankruptcy petition. He confirmed a plan of reorganization in July, 2007. The IRS received roughly $3.4 million under the plan. But substantial amounts remained due and owing to both the IRS and the FTB after consummation of the chapter 11 plan. Hawkins then filed suit to determine whether the unpaid taxes owed to IRS and FTB were discharged in the Chapter 11 bankruptcy.

In the litigation, the IRS made two arguments in support of its position that the unpaid tax liabilities had not been discharged. First, they argued that Hawkins had filed fraudulent returns

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by claiming the tax shelter losses on those returns. Those of you who are familiar with Jack Townsend's excellent blog Federal Tax Crimes know that Jack has wondered for quite some time why the IRS has not asserted the civil fraud penalty more frequently against taxpayers who "invested" in tax shelters. In this particular case, the IRS argued that Hawkins filed a fraudulent return. So there you go, Jack. They finally claimed that a taxpayer acted fraudulently in claiming losses from a tax shelter on their income tax return, albeit in the context of bankruptcy dischargeability litigation, where the standard of proof for proving fraud is only a preponderance of the evidence.

Judge Carlson, however, explicitly refused to decide whether Hawkins acted with intent to defraud in filing the tax returns in question. Instead, Judge Carlson held that Hawkins had attempted to evade or defeat the taxes in question. Judge Carlson made it very clear that the basis for his holding that Hawkins had attempted to evade or defeat the taxes in question was that Hawkins had done nothing more than engage in "unnecessary" expenditures. Here is what Judge Carlton had to say:

The Government has met the required burden with respect to Trip Hawkins by establishing that for more than two and one-half years before filing for bankruptcy protection, he caused Debtors to make unnecessary expenditures in excess of Debtors' earned income, while he acknowledged that Debtors had a tax liability of $25 million, while he relied upon that tax liability in seeking a reduction of child support payments, while he knew Debtors were insolvent, while Debtors paid other creditors, and while Debtors planned to file bankruptcy to discharge their tax obligations.

Judge Carlson then commented extensively on Hawkins' lifestyle, stating as follows:

> From the time of their 1996 marriage onward, Debtors maintained a lifestyle that was commensurate with the great wealth they enjoyed at the time they were first married. In 1996, Debtors purchased a home in Atherton, California for $3.5 million. In 2000, Debtors purchased an $11.8 million private jet that they used for family vacations as well as for business trips. In 2002, Debtors purchased an ocean-view condominium in La Jolla, California for $2.6 million. From the date of their marriage to the date of their bankruptcy petition, Debtors employed various gardeners and household attendants.
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> Debtors altered this lifestyle very little after it became apparent in late 2003 that they were insolvent. Although they sold the private jet in 2003, they continued to maintain both the Atherton house and the La Jolla condominium until July 2006. In October 2004, Debtors purchased a fourth vehicle costing $70,000.

Debtors' personal living expenses exceeded their earned income long after Trip had acknowledged that Debtors were insolvent. In the Collection Information Statement accompanying their October 2005 Offer in Compromise, Debtors disclosed annual after-tax earned income of $150,000 and annual living expenses of more than $1.0 million. 6 In the schedules filed in their bankruptcy case in September 2006, Debtors disclosed annual after-tax earned income of $272,000 and annual living expenses of $277,000. The components of Debtors' living expenses are discussed in more detail below.

* * *

Before examining Hawkins' expenditures, it is appropriate to examine Hawkins' earned income. For the purpose of this decision, this court assumes that it should take some account of a debtor's earned income in determining what expenditures are culpable under section 523(a)(1)(C) as unduly lavish. It may not be appropriate to require a CEO earning hundreds of thousands of dollars per year to live in an apartment suitable for a clerical employee, even if that CEO is insolvent. The effort and skill required to earn such sums require a nuanced approach in determining what living expenses are necessary. Even the most nuanced approach, however, does not excuse living expenses greatly in excess of earned income over an extended period of time.

Debtors provided two snapshots of their income and expenses between January 2004 and September 2006. In October 2005, Debtors submitted a Collection Information Statement, signed under penalty of perjury, in support of their Office in Compromise. In September 2006, Debtors filed schedules in their chapter 11 case, also signed under penalty of perjury. The October 2005 Collection Information Statement indicated monthly after-tax earned income of $12,500. Bankruptcy Schedule I indicated monthly after-tax earned income of $22,180. All of this income was earned by Trip; Lisa was not employed outside the home at any time during this period.

Against this backdrop, the Debtors' personal living expenses from January 2004 to September 2006 are truly exceptional. After Trip represented to the family court that he was liable for $25 million in federal and state taxes and that he was insolvent as a result, Debtors spent between $16,750 and $78,000 more than their after-tax earned income each month.

In the Collection Information Statement submitted in October 2005, Debtors stated that their personal living expenses were more than seven times their after-tax earned income, and exceeded that income by more than $78,000 per month.

* * *

Several aspects of this Statement are worthy of note. The $33,600 housing expense included expenses for a 5-bedroom, 5.5 bath house in Atherton (later sold for $10.5 million), and a 4-bedroom, 3.5 bath condominium in La Jolla (later sold for $3.5 million). The transportation expense covers four vehicles for a family with only two drivers, and includes a $70,000 Cadillac SUV purchased ten months after Trip Hawkins had acknowledged Debtors' tax liability and insolvency in the family court proceeding.

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The schedules filed in Debtors' bankruptcy case indicate that Debtors' personal living expenses greatly exceeded their after-tax earned income until just before they filed their bankruptcy petition in September 2006. Debtors sold the Atherton house just before the bankruptcy petition was filed. Debtors sold the La Jolla condominium after the bankruptcy petition was filed. If one adds the minimum amount they could have been spending for housing before the July 2006 sale of the Atherton house, together with the income and living expenses that Debtors reported in their bankruptcy schedules, Debtors' living expenses greatly exceeded their after-tax earned income through July 2006.

* * *

Debtors made expenditures in excess of earned income for more than two-and-one-half years after Trip Hawkins acknowledged in January 2004 that Debtors were insolvent and would not pay their tax debt in full. Debtors did not sell the Atherton home until July 2006. They did not sell the La Jolla condominium until after filing for bankruptcy protection in September 2006. 24 They reported in their bankruptcy schedules that on the petition date they were still making the expenditures for the Cadillac SUV, child care, and recreation noted above. Debtors' high level of expenditure also continued well after they consented to assessment of tax by the IRS in the amount of $21 million in December of 2004, and well after the assessments were recorded in March 2005. The Collection Information Statement indicates that Debtors' monthly living expenses were seven times their earned income ten months after they consented to assessment and seven months after the IRS formally assessed the additional tax. This is not a case where the taxpayers acted appropriately once the tax was formally assessed, perhaps suggesting that their earlier failure to pay was based on some innocent misconception of their duty.

There is one point not focused on by Judge Carlson but of potential relevance to the resolution of the case under the standard relied on by him. The IRS taxes were not assessed until early 2005, some 18 months after the family court hearing. Assuming that Hawkins did not knowingly sign fraudulent tax returns when he claimed the tax shelter losses on those returns, his duty to pay the audit deficiency assessments did not arise until after the taxes were assessed

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and notice and demand for payment was sent in 2005. *See, e.g.,* §6651(a)(3) of the Internal Revenue Code, which imposes a penalty for the taxpayer's failure to pay a deficiency in income taxes only after the taxpayer has received notice and demand for payment after the tax deficiency has been assessed.

Based on the premise that Hawkins had no duty to pay the additional taxes until they were properly assessed, I have difficulty with Judge Carlson's reliance on the pre-assessment conduct of Hawkins to determine that he attempted to evade or defeat the taxes in question. Pre-assessment conduct of a taxpayer is certainly relevant for purposes of determining whether a taxpayer engaged in *Spies*-type evasion of taxes under section 7201. *See, e.g., United States v. Voorhies*, 658 F.2d 710 (9th Cir. 1981). But I am unaware of any case in which the IRS has ever charged or convicted a taxpayer for a failure to pay a tax under section 7203 based on the taxpayer's conduct prior to the tax being assessed and billed to the taxpayer.

Now I turn to why the Ninth Circuit reached the correct result in *Hawkins* by concluding that "improper" expenditures, by themselves, do not constitute an attempt to evade or defeat a tax liability. There are both legal and practical reasons why the Ninth Circuit's holding in *Hawkins* is the correct one. I first discuss the legal reasons.

The Ninth Circuit noted that the purpose of a bankruptcy discharge is to give an individual debtor a "fresh start." It noted that this "fresh start" philosophy argues for a more narrow interpretation of the "attempt to evade or defeat" exception from discharge. The Ninth Circuit also concluded that both the structure of section 523(a) of the Bankruptcy Code and its legislative history support a narrow reading of the "attempt to evade or defeat" exception to discharge.

The Ninth Circuit also took note of the Supreme Court's holding in *Kawaauhau v. Geiger,* 523 U.S. 57 (1998), in which the Supreme Court narrowly construed the term "willfully" for purposes of section 523(a)(6) of the Bankruptcy Code.

But the key to the Ninth Circuit's ruling is the fact that the Supreme Court, in *Spies v. United States,* 317 U.S. 492 (1943), held that a mere willful failure to file a return, coupled with a mere failure to pay the tax, does not constitute a willful attempt to evade or defeat the tax for purposes of section 7201 of the Internal Revenue Code. Section 7201 uses language almost identical to the language in section 523(a)(1)(C) of the Bankruptcy Code. The Supreme Court held in *Spies* that the taxpayer must take some sort of "willful commission" (in addition to the willful omissions), or engage in an "affirmative act" in an effort to evade the tax, in order to commit tax evasion under section 7201. Whether a particular act taken by a taxpayer is an affirmative act in an effort to evade the tax is to be decided by the trier of fact.

Because the language in section 523(a)(1)(C) of the Bankruptcy is virtually identical to the language in section 7201 of the Internal Revenue Code, it makes sense to construe section 523(a)(1)(C) in the same manner in which the Supreme Court construed section 7201 of the Internal Revenue Code in *Spies*. The elements discussed above in in the *Fretz* case, which were used by Judge Carlson in the *Hawkins* case and were used by all other Courts of Appeal to consider this issue, are elements required to convict a taxpayer of a willful failure to file or a willful failure to pay under IRC section 7203.

Section 7203 uses very different language than the "willful attempt in any manner to evade or defeat" language contained in IRC §7201 and Bankruptcy Code section 523(a)(1)(C). The failure by Congress to incorporate the language of IRC §7203 into section 523(a)(1)(C) of the Bankruptcy Code, coupled with the incorporation into section 523(a)(1)(C) of the language contained in section 7201 indicates that the holdings of the other Courts of Appeal were in error.

The Ninth Circuit's approach is also preferable for practical reasons. The most obvious practical problem for courts relying on the standard used in other Circuits is determining in a principled manner what expenditures by the debtor are "unnecessary" once the duty to pay the taxes arises. Only a principled approach can provide future guidance to courts, future litigants, debtors who wish to avoid a fight over whether they attempted to evade or defeat the taxes that they owed, and professionals who advise debtors who wish to avoid this fight.

Judge Carlson offered precious little principled guidance on how to decide what expenditures are "unnecessary" in other factual contexts. We know that a "nuanced approach" should be used, depending on the debtor's pre-existing income and lifestyle, but we know very little about how to define those "nuances" or about how to apply those "nuances" in future cases where the taxpayer's circumstances differ from those of Mr. Hawkins.

Can a debtor pay for extraordinary medical expenses for a parent or for a beloved pet, at the expense of not paying their taxes? What about paying modest private school tuition for their children? What about paying tuition for the debtor to obtain an advanced degree in the hopes that the debtor will obtain a much higher paying job? Does the potential level of earnings once the degree is earned make a difference? Can the debtor pay to go on any vacations at all? What if the debtor's therapist recommends that the debtor take a vacation because of stress related to a difficult marriage or related to financial difficulties?

What about debtors who owe business debts? Will some of these debts be deemed "necessary" and other "unnecessary?" Will it matter if payment of the business debt will give rise to a tax deduction which would reduce the amount of taxes owed? If a debtor pays state taxes without paying federal taxes, is that an attempt to evade or defeat the federal taxes? If the debtor pays federal taxes without paying state taxes, is that an attempt to evade or defeat the state taxes? What about payment of alimony and child support?

For those debtors who are living a good lifestyle but are greeted by an overwhelmingly large tax liability, how long do they have to reduce their expenditures before their pre-existing level of expenditures becomes "unnecessary?" Six months? A year? If they attempt to sell their expensive house and find no buyers at a reasonable price after a year, are debtors required to sell at a fire sale or to stop paying their mortgage?

If the debtor reasonably believes that he owns property that will appreciate enough for him to fully pay his taxes within several years, must the debtor lower his or her level of living expenses while waiting for the property to appreciate? Will the expenses paid while waiting for the property to appreciate be deemed to be "excessive" through hindsight if property values suddenly and unexpectedly decline?

The number of questions regarding "necessary" and "unnecessary" expenses which could arise under the standard employed by Judge Carlson and other Circuits is virtually limitless. Under this standard, courts, debtors and their counsel can look forward to innumerable Circuit splits on all of the exciting issues mentioned immediately above, among many others.

Simply put, if the standard for determining whether a taxpayer/debtor has attempted to evade or defeat the tax is whether the taxpayer/debtor made "inappropriate" expenditures, there is no principled way for courts to draw the line between what expenditures are "appropriate" and what expenditures are "inappropriate." Cases will be decided based on the whims and fancies of individual judges, each of whom will have their own sense of what expenses are "appropriate" and what expenses are "inappropriate." One judge may conclude that it was entirely proper for a taxpayer to spend $25,000 furthering their education in an effort to significantly increase their earnings capacity instead of paying the money over to the IRS, while another judge may conclude that the taxpayer attempted to evade or defeat the tax by spending $25,000 on educational expenses instead of paying the $25,000 over to the IRS.

In addition, IRS and other tax agencies could invoke the "attempt to evade or defeat" exception merely because they do not like the way the debtor/taxpayer spent their money. Such a standard carries with it a significant potential for abuse of taxpayers by tax agencies. The potential for abuse drastically decreases if tax agencies are required to prove the traditional elements of tax evasion in order to invoke the "attempt to evade or defeat" exception in section 523(a)(1)(C).

Under the standard used by Judge Carlson, it is impossible for tax professionals to advise their clients on whether the clients can make certain expenditures, assuming that the use of

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bankruptcy to discharge tax liabilities is a possibility at the time the advice is solicited. If the standard used by Judge Carlson applies, no competent professional will ever offer meaningful advice on this subject out of fear of the potential consequences of giving incorrect advice.

As a final note, I have several comments about the dissenting opinion in *Hawkins*. First, this dissent makes a statement that is downright scary. At page 17 of the Slip Opinion, the dissent states:

At the family court hearing, Hawkins' bankruptcy attorney "testified that Hawkins' *intent was not to pay the tax debt*, but to discharge it in bankruptcy. . . ." *Id.,* p. 19. This testimony is a strong indication of a willful intent to avoid the payment of taxes by hook or by crook.

I am troubled by the dissent's language, given that, at the time the statement was made by the attorney, Hawkins was insolvent and lacked the ability to pay the taxes in full. (I will ignore the fact that this statement regarding Hawkins' intent was not made by Hawkins himself.) In addition, 3DO was in financial difficulties and headed for chapter 7. Planning to discharge taxes in bankruptcy at a time when you lack the ability to pay the taxes in full is not an attempt to evade or defeat a tax liability. And Hawkins paid to the IRS and the FTB many millions of dollars between the date of that statement and the date of the bankruptcy petition.

I am also troubled by the dissent's conclusion that the majority opinion "gives Hawkins a pass." The majority opinion does no such thing. The majority remands the case so that the trial court can apply the correct legal standard. The trial court may now have to decide the issue previously ducked by Judge Carlson (who has now retired from the bench), namely, whether Hawkins acted with intent to defraud in filing the tax returns in question. At a minimum, the trial court will have to decide whether the actions taken by Hawkins leading up to his chapter 11 bankruptcy were taken with *Spies*-type intent to evade the tax liability. Hawkins has not been given a "pass." Rather, his conduct is going to be judged under the appropriate legal standard, rather than under a standard that is no standard at all.

For those of you who disagree with my statement that the standard relied upon by Judge Carlson (and by the dissent and by other Circuits) is no standard at all, I invite you to carefully review Judge Carlson's opinion and tell me how you would apply the "standard" set forth in that opinion to the vast majority of taxpayers whose financial circumstances are much more modest than those of Mr. Hawkins. I've read and re-read Judge Carlson's opinion. All I can take away from that opinion is that some expenditures are "appropriate," some expenditure are "inappropriate," that Bankruptcy Judges must take a "nuanced approach" in deciding which expenditures are "appropriate" and "inappropriate" for purposes of determining whether the debtor "attempted to evade or defeat" a tax liability, and that, if you continue spending "too

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much" money in the face of known tax liabilities for "too long," you will have engaged in an "attempt to evade or defeat" the tax liabilities, regardless of your motives for spending that money.

How you apply that standard to all other taxpayers other than Mr. Hawkins in a principled manner I haven't a clue. Which is why I believe the Ninth Circuit got it right in *Hawkins*.

Amicus is unaware of any reported opinion in which there was a conviction for a willful failure to pay the tax under §7203 where the unpaid tax in question was a deficiency (taxes owed but not shown on a return that was filed) in taxes which had not assessed at the time of the taxpayer's failure to pay the tax. Presumably that is because, unless the taxpayer knew at the time he or she signed the return that the tax was understated (i.e., unless the taxpayer intentionally signed a fraudulent return), a taxpayer's duty to pay any additional taxes owed over and above those shown on the return (i.e., the "deficiency" in income taxes) does not arise until the taxpayer receives a bill for the additional taxes. See, e.g., §6651(a)(3) of the Internal Revenue Code, which imposes a penalty for the taxpayer's failure to pay a deficiency in income taxes only after the taxpayer has received notice and demand for payment after the tax deficiency has been assessed