

**AUGUST 12, 2010 | PERSPECTIVE**

## **Lessons from the Crypt: The Wesley Snipes Tax Convictions**

By Nathan J. Hochman

In a summer where vampires have ruled the movie screens, a former vampire has finally met his match. For the last two years, Wesley Snipes, star of the "*Blade*" vampire trilogy, has been fighting a three-year sentence he received in April 2008 for misdemeanor tax violations. While the Florida federal jury acquitted Snipes of the charged felonies, it convicted him of misdemeanors for willfully failing to file his tax returns for three years.

At sentencing, the judge threw the book at him when it came out that Snipes was a tax defier and had failed to report and pay tax on \$37 million from 1999 to 2004.

On July 16, 2010, the 11th U.S. Circuit Court of Appeals put the final, proverbial nail in Snipes' legal coffin when it affirmed his three-year sentence in all respects.

As Snipes prepares to turn in his black leather vampire jacket for an orange prison jumpsuit, here's some important lessons we can learn from his case:

First, being a tax defier is a direct ticket to the penitentiary. Most people don't realize that Snipes' troubles started only when he became a tax defier. "Tax defiers" are the more updated nomenclature for "tax protestors." Tax defiers do more than simply voice their First Amendment rights to protest the tax system; they take illegal action in support of their views. For instance, in Snipes' case, he joined the American Rights Litigators, a tax defier organization. Thereafter, Snipes stopped filing income and payroll tax returns; he argued that only foreign-sourced earnings were taxable and claimed that he was a "fiduciary of God" and a "foreign diplomat."

Such arguments, while seemingly ridiculous on their face, have been peddled across the country for over the last 50 years. The dangerous seductiveness of such arguments is that they play to every taxpayer's fantasy - not having to pay any tax at all. Since there are over 130 million taxpayers filing over 240 million returns every year as part of a voluntary self-assessment tax system, the Internal Revenue Service and Department of Justice have no choice but to crush this fantasy whenever and wherever it appears.

In April 2008, the Tax Division launched the National Tax Defier Initiative to coordinate tax defier investigations, criminal prosecutions, and civil injunctions. Tax defier prosecutions have resulted in sentences normally reserved for drug trafficking or violent criminals. For example, Eddie Kahn, the head of American Rights Litigators, received a 10-year sentence for his tax defier activities. Irwin Schiff, who penned the tax defier screed "*How Anyone Can Stop Paying Income Taxes*," is serving a 151-month sentence.

The first important lesson is that the government takes tax defiers' tomfoolery very seriously. As John A. DiCicco, Acting Assistant Attorney General of the Tax Division, stated recently: "*Convicting tax defiers* sends a loud and clear message that illegal tax defiers will be

investigated, prosecuted and subjected to the full punishment of the law for their actions."

The second lesson is that you can go to jail simply for not filing your tax returns. Most people believe that jail time is reserved for the wicked. In the tax world, this usually translates to signing one or more false returns that, for example, fail to disclose offshore accounts or rely on bogus deductions. While such actions can lead to felony convictions, what if one's only mistake was knowing about the obligation to file a tax return and then choosing not to file it? In the past, a sentence for this type of tax misdemeanor would entail a slap on the wrist, some probation, restitution, and a small fine. Now, courts are much more likely to mete out prison sentences, even for first-time misdemeanants like Snipes. The government's mantra of "Deterrence, Deterrence, Deterrence" echoes in these sentencing hearings, spurred on by the pressing need to raise over \$2.5 trillion every year. While Willie Nelson may have gotten off with releasing the album "*IRS Tapes: Who'll Buy My Memories*" to pay off his IRS debt, the second lesson of Snipes' case is that future non-filers will face the music behind bars.

The third lesson is that while it is difficult to convict celebrities, it is not impossible. From the infamous O.J. Simpson acquittal to the Michael Jackson not-guilty verdict, it seemed for a time that celebrities wore Teflon coats in court. Snipes' case demonstrates, however, that there are certain lines a jury is not prepared to let a celebrity cross, particularly when the government presents the simplest theory possible. In a criminal tax case, normally a jury aligns with the defendant taxpayer since at some level everyone fears the IRS. Add in the celebrity factor with cameras, blogs, and Twitter just outside the courtroom doors, and the jury will absolutely hold the government to the presumption of innocence and proof beyond a reasonable doubt. Snipes had all these advantages going for him with his Ocala, Fla. federal jury. Nevertheless, he could not overcome the most basic government argument that he knew he had to file a return, chose not to, and got to keep all of his \$37 million. If the jurors have to file a tax return, then that's the least they expected Snipes to do. Thus, the third lesson is: when prosecuting a celebrity, keep it exceedingly simple. When defending a celebrity, the more complicated the better.

While Snipes' battle against the government is now dead, the lessons from his case remain immortal.

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*Reprinted from the Daily Journal - August 12, 2010*