

## WILLFULNESS

**The Supreme Court has said on numerous occasions that the term "willfulness" means:**

"as construed by our prior decisions in criminal tax cases, voluntarily and intentionally violated that duty. We deal first with the case where the issue is whether the defendant knew of the duty purportedly imposed by the provision of the statute or regulation he is accused of violating, a case in which there is no claim that the provision at issue is invalid. In such a case, if the Government proves actual knowledge of the pertinent legal duty, the prosecution, without more, has satisfied the knowledge component of the willfulness requirement. But carrying this burden requires negating a defendant's claim of ignorance of the law or a claim that, because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws." Cheek v. U.S., 498 U.S. 192, 201 (1991) (which cited U.S. v. Bishop, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he 412 U.S. 346 (1973) and U.S. v. Pomponio, 429 U.S. 10 (1976))

The Supreme Court again said in 1998, while explaining the holding in Cheek, supra, was the exception to the general rule that normally ignorance of the law is not a defense for being alleged to have violated the law, distinguishing gun laws as not within that exception, by explaining its Cheek decision:

"In certain cases involving willful violations of the tax laws, we have concluded that the jury must find that the defendant was aware of the specific provision of the tax code that he was charged with violating. See, e.g., Cheek v. United States, 498 U.S. 192, 201 (1991)." Bryan v. U.S., 524 U.S. 184, 194 (1998)

In the Cheek decision and Bryan decision what the Supreme Court said the Government had to prove:

- law imposed a duty; [*think* clear and unambiguous] and**
- that one knew of this exact duty and voluntarily violated the duty; and**
- actual knowledge of pertinent legal duty; [*think* ignorance of the law]; and**
- the jury must find defendant was aware of SPECIFIC PROVISION OF THE TAX CODE that he/she was charged with violating.**

The Government apparently has no evidence of the law to support their willfulness claims – if they did they would be happy to enter it into the record.

Check it out for yourself.

## **Willfulness is established by proving these three points:**

1. You have a legal duty to pay and to file.

No I don't! And I can prove it in a bunch of ways! You know darn well that I'd have to violate several statutes and regulations to do what the IRS is demanding. **OR:**

Me, I am not in possession of any thing that prescribes a legal duty for me to perform, should such a thing exist then you should have not difficulty entering it into the record. Me, I am willfully acting in good faith - how about you?

2. You knew and believed that you had a legal duty.

No, not me! I've proven that the law that I am aware of does not impose a tax or a requirement to file in a bunch of ways, and the government can't even talk about the applicable statutes I am using for protections! So please don't tell me that I know or believe I have a duty when it's clear that the government doesn't even know or believe it - and how is it that anyone knows what going on in my mind?

3. You failed to perform the [that] duty.

Me, I have no known duty! Explain how I am wrong about these statutes that you're using against me, or admit that I have no duty! What duty?! See #1 and #2.

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*For more on this please visit:*

[http://tocongress.com/PRIVATEPROPERTY/zzCONF\\_CALLS/willfulness.htm](http://tocongress.com/PRIVATEPROPERTY/zzCONF_CALLS/willfulness.htm)

**Miscellaneous case cites regarding willfulness:**

Willful failure to file return, supply information, or pay tax, see, 26 U.S.C. Sec.7203.

"To sustain a conviction defendant must have been a person required to make return, and his failure to make return must have been willful."

United States v. McCormick, 67 F.2d 867 (2d Cir. 1933, NY).

"Conviction under 26 U.S.C. Sec. 7203 is obtained on proving that defendant knew of requirement to file return and willfully failed to do so."

U.S. v. Klein, 438 F.Supp. 485 (S.D.N.Y.) (1977).

"Willfully means no more than voluntarily; it means an act done with bad purpose, without justifiable excuse, without regard for believing act is lawful, or conduct marked by careless disregard whether or not one has right so to act. Congress did not intend that person by reason of bona fide misunderstanding of his duties should become criminal by his mere failure to measure up to prescribed standard of conduct."

U.S. v. Murdock, 290 U.S. 389, 78 L.Ed. 381, 65 S.Ct. 223 (1933).

"Willful requirement with respect to willful failure to file return means act both intentional and reprehensible, attended by knowledge of legal obligation and purpose to prevent government from getting that which is lawfully required."

U.S. v. Vitiello, 363 F.2d, 22 ALR 3d 1161 (3d Cir. 1966, NJ).

"Willfully generally connotes voluntary, intentional violation of known duties."

U.S. v. McCorkle, 511 F.2d 482 (7th Cir. 1975, Ill.).

"Privilege against self-incrimination is not defense to prosecution for failing to file federal tax return, but privilege can be claimed against specific disclosure sought on return."

U.S. v. Garner, 424 U.S. 648, 47 L.Ed.2d 370 (1976).

"Bad faith or evil intent and want of justification in view of all financial circumstances of taxpayer are necessary elements of willfulness in criminal tax case."

U.S. v. Swanson, 509 F.2d 1205 (8th Cir. 1975, Iowa).

"Element of willfulness involves a specific wrongful intent, namely, actual knowledge of existence of legal obligation and intent to evade that obligation."

U.S. v. Thompson, 230 F.Supp. 530, 338 F.2d 997 (D.C.Conn. 1964).

"Defendant's conduct is not willful if he acts through negligence, inadvertence or mistake, or due to his good faith misunderstanding of requirements of law."

U.S. v. Rosenfield, 469 F.2d 598 (3d Cir. 1972, Pa.)

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**"If you've relied on prior decisions of the Supreme Court you have a perfect defense for willfulness."** U.S. v. Bishop, 412 U.S. 346

**Another take:**

"I move in good faith and without prejudice. It is not now nor has it ever been my intention to avoid, or evade, paying any obligation that [you claim] I may lawfully owe. In order that I can arrange to pay the obligation I may owe, please document and verify the obligation."

"May I say that this is pursuant to your Uniform Commerce Code (UCC) § 3-501, § 1-308 (without prejudice), § 1-103 (common law)"

"How do you say?"

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### **Assumpsit**

The Latin phrase means "being indebted he promised," or more literally "he undertook, or he assumed the duty [to pay]."

### **Non Assumpsit**

A form of pleading in which the defendant claims that he did not undertake or promise any obligation in the manner or form set forth in the plaintiff's complaint.

See assumpsit.

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