

ANOTHER REASON TO FILE A CORRECT RETURN

THURSDAY, FEBRUARY 23, 2012

Filing a false income tax return can result in civil penalties, and also criminal fines and jail time. Now you can add deportation from the U.S. (if you are not a U.S. citizen) to the list of penalties.

Mr. Kawashima and his wife are citizens of Japan, but are admitted in the U.S. as permanent residents (*i.e.*, they have green cards). Mr. Kawashima pleaded guilty to willfully making and subscribing a false tax return, and his wife pleaded guilty to aiding and assisting in the preparation of a false tax return.

The government sought to deport the Kawashimas under subparagraph (M) of 8 U.S.C. §1101(a)(43). That subparagraph classifies as a deportable aggravated felony an offense that involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.

The offense of filing a false return does not require a showing of fraud or deceit. Thus, the Kawashimas argued that the above provision did not apply to them. The U.S. Supreme Court took on the case, and ruled that the Kawashimas could be deported. The court found that deceit is present when filing a false return, even though it is not an explicit element in the statute.

Note that this is not the situation of deportation of someone present in the U.S. only on a temporary visa. As green card holders, the Kawashimas would have been entitled to remain in the U.S. for the rest of their lives.

Authored by Charles Rubin, Esq. Mr. Rubin is a Florida Bar Board Certified tax attorney with the firm of Gutter Chaves Josepher Rubin Forman Fleisher P.A. (www.floridatdex.com) His practice focuses on protecting & enhancing individual, family & business wealth through: Planning to Minimize Taxes (U.S. & International) • Estate Planning, Charitable, Marital & Succession Planning • Business Structuring & Transactions • Trusts & Estates (Administration-Disputes-Drafting) • Creditor Protection. He can be reached at 561-998-7847 or at crubin@floridatdex.com. This article was previously published at <http://www.rubinontax.blogspot.com>.