



be precluded from offering any evidence of her income amount for the years 1990, 1991, 1992 and 1993.<sup>1</sup> The defendant argues that the key factual dispute in the case will be whether or not the defendant was aware that her husband had failed to file joint returns for their income during the years in question. Moreover, the defendant states that the amount of income actually earned by the defendant does not bear on that question, and poses a considerable risk of misleading, confusing and prejudicing the jury. The government, however, states that evidence of the amount of a defendant's yearly income is relevant to the issue of whether the defendant's failure to file a return was willful.

The United States Court of Appeals for the Third Circuit held that evidence of a defendant's income "is very probative as to the element of wilfulness" in a prosecution for willful failure to file an income tax return. United States v. Rosenfeld, 469 F.2d 598, 600 (3d Cir. 1972), cert denied, 411 U.S. 932 (1973). Additionally, in United States v. Green, 757 F.2d 116 (7th Cir. 1985), the Court ruled that even when a defendant stipulates to the fact that he made sufficient income to be required to file a return, evidence of the amount of the defendant's income is admissible to establish the defendant's intent or willfulness in failing to file a return. Id. at 119-20; see also United States v.

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1. The offense of failure to file an income tax return has three elements, which are as follows:

- (1) the defendant was required by law to file an income tax return for the years charged;
  - (2) the defendant failed to file such a return at the time prescribed by law; and
  - (3) in failing to file the return, the defendant acted willfully.
- Devitt, Blackmar, and O'Malley (4th Ed.), §56.11.

Payne, 800 F.2d 227, 229 (10th Cir. 1986)(evidence of defendant's gross income is admissible in prosecution for failure to file income tax returns to show that failure to file return was willful).

Based on the above authorities, this Court finds that evidence relating to the amount of income the defendant made during the years charged, is relevant to the question of wilfulness, and therefore, denies the defendant's motion to preclude admission of such evidence.

**B. Evidence of Amount of Tax Liability**

Next, the defendant seeks to preclude the admission of evidence relating to the amount of money due and owing to the government in the years charged. In United States v. Wunder, 919 F.2d 34 (6th Cir. 1990), the Court held that evidence of the tax due and owing by the defendant was admissible for purposes of showing wilfulness in a prosecution for failing to file a tax return. Id. at 37. Accordingly, this Court finds that evidence of the defendant's tax liability for the years charged is relevant, and admissible to show wilfulness. Therefore, the defendant's motion to preclude such evidence is denied.

**C. Evidence of Housing Expenditures**

Lastly, the defendant moves to preclude the admission of evidence related to the purchase of a new home in September, 1994, and the pay off of a mortgage in 1992. The government, in its

responsive memorandum, states that it does not seek to offer any evidence in its case in chief with respect to these transactions. Therefore, the motion to exclude such evidence is moot.

An appropriate Order follows.

