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Beanie Baby Maker Ty Warner Tax Sentence Appealed by U.S.

By David Voreacos and Andrew Harris - Feb 13, 2014

The U.S. Justice Department is appealing the sentence of H. Ty Warner, the billionaire creator of [Beanie Babies](#) plush toys who got probation, not prison, for evading taxes on money hidden in a Swiss bank account.

Warner faced 46 to 57 months in prison under nonbinding guidelines when he was sentenced Jan. 14 by U.S. District Judge Charles Kocoras in Chicago. Prosecutors, who urged Kocoras to impose some prison time on Warner, today asked the U.S. Court of Appeals to review his sentence.

Kocoras sentenced Warner, the founder of toymaker Ty Inc. and Ty Warner Hotels & Resorts, to two years of probation and 500 hours of community service at three Chicago-area schools. Warner had pleaded guilty to evading almost \$5.6 million in taxes on more than \$24.4 million in undeclared income on accounts that held as much as \$107 million.

Warner's evasion was the largest of more than 100 cases brought in a five-year crackdown against taxpayers and enablers who used offshore accounts to cheat the Internal Revenue Service. Prosecutors are concerned that his sentence will affect others around the U.S., said Bryan Skarlatos, a tax attorney at Kostelanetz & Fink LLP in New York, who isn't involved in the case.

"It's a very large account and a high-profile defendant, and prosecutors are obviously disappointed that they couldn't get a term of incarceration," said Skarlatos. They fear "that other defendants at sentencing will cite the Ty Warner case in arguing that they shouldn't go to prison," he said.

Evaded Taxes

Warner's attorney, Gregory Scandaglia, didn't immediately return a call seeking comment on the appeal.

"We are working out the details of Mr. Warner's community service," Eric Herman, a spokesman for Warner, said in an e-mailed statement. "He's looking forward to beginning his work there and

expects to begin soon.”

Last year, Peter Troost, a maker of grave markers and monuments, was sentenced to a year and a day in prison by a judge in the same [Chicago](#) courthouse. Troost admitted to evading taxes on more than \$3.3 million in income. At Warner’s sentencing, Assistant U.S. Attorney Michelle Petersen said that should be the baseline for the plush-toy tycoon’s punishment.

‘Bad Investment’

Failing to send him to jail would reduce the crime of tax evasion to “little more than a bad investment,” she said.

Chicago U.S. Attorney Zachary Fardon filed the one-sentence notice of appeal with the appeals court today. At a press conference after the sentencing, Fardon said Warner had been held accountable and rejected the notion Kocoras had sent a message that a wealthy man need only write a check to avoid prison. Judges must account for many circumstances in tailoring sentences to individual defendants, he said.

“There is no right or wrong when it comes to imposing sentence, and different judges are going to see similar facts and circumstances in different ways,” Fardon said at the time.

Lawyers for Warner, who has a net worth of \$1.7 billion, argued that he deserved leniency because of his charitable contributions. They cited his donation of \$140 million in cash and toys to charities.

Before sentencing Warner, the judge read letters from supporters describing some of the billionaire’s charitable deeds for schools, a kidney dialysis patient, Ty Inc. salesmen and his local park district.

‘Best Served’

“Society will be best served by allowing him to continue his good works,” Kocoras concluded.

Warner’s lawyers said he sought entry in an IRS voluntary disclosure program that has attracted more than 43,000 taxpayers who avoided prosecution since 2009. Prosecutors said he didn’t apply to the program until learning the government knew of his conduct.

Warner paid a civil penalty of \$53 million and filed amended tax returns for the years 1999 to 2008, his lawyers said. He has also paid \$14 million in back taxes and interest, according to prosecutors.

From 1996 to 2008, Warner parked money at [UBS AG \(UBSN\)](#) in Switzerland and then at Zuercher Kantonalbank, failing to disclose those holdings to his own accountants, according to court papers. By 2008, the balance of his undisclosed account exceeded \$107 million, prosecutors said.

The case is U.S. v. Warner, 13-cr-00731, U.S. District Court, Northern District of [Illinois](#) (Chicago).

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