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## U.S. appeals tax sentence for beanie baby maker

*By David Auerbach*

CHICAGO — The Justice Department Thursday appealed 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 months 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, Thursday asked the U.S. Court of Appeals in Chicago 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. Warner 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 filed 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 country, said Bryan Skarlatos, a tax attorney at Kostelanetz & Fink in New York not involved in the case.

"The case is important for the Justice Department because 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.

Warner's attorney Gregory Sandaglia didn't immediately return a call seeking comment on the appeal. Spokesman Eric Herman declined to comment.

Chicago U.S. Attorney Zachary Fardon filed the one-sentence notice of appeal with the appeals court.

Last year, Peter Troost, a grave-marker and monument maker, was sentenced to a year and a day in prison by a judge in the same Chicago courthouse. Troost admitted he evaded taxes on more than \$3.3 million in income.

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.

"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 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.