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Here's the Tax Beat broadcast for November 4

Subject Line: Fifth vs. Sixth

Junior Johnson learned to drive the way most kids learn to ride a bike, except the bike was a souped-up Ford with 22 cases of white lightning in the trunk and the Treasury Department on his bumper. Growing up in North Carolina, he hauled his daddy's moonshine down mountain roads at night with the headlights off, and he's credited with inventing the "bootleg turn": a 180-degree spin at full speed that leaves the government's car pointed the wrong way. The revenuers called him a lot of things, mostly from a distance, because they never once caught him on the road. ("They weren't going to catch me," he explained.)

They caught him at the still instead, in 1956, because a still can't do a bootleg turn. He did 11 months in the federal reformatory in Chillicothe, Ohio, came home, then won 50 NASCAR races as a driver and 132 more as an owner. In 1986, when Ronald Reagan gave him a full pardon. Junior called it "the greatest thing in my life." (Think about that. The pardon beat 50 wins. You have to respect a guy who's more concerned with his character than his win-loss record.)

Here's the thing: Junior's crime wasn't the whiskey, it was the tax. The federal excise on spirits runs $13.50 per proof gallon, and back in 1868 Congress decided the easiest way to protect that money was to make it a felony to compete from home. You can brew beer in your garage. You can ferment grape juice in a bucket. But heat it up and catch the vapor, and you're looking at five years.

That 158-year-old law is now headed to the Supreme Court. In April, the Fifth Circuit in New Orleans struck it down: a ban that eliminates taxable activity isn't a way of collecting the tax. Eleven days later, the Sixth Circuit in Cincinnati upheld it, reasoning that every mason jar you fill at home is a bottle you didn't buy at the store. So making your hobby a felony actually raises revenue. (The court promised this logic can't reach bread-baking or sewing. Which is exactly what you'd say right before you taxed bread-baking and sewing.) On October 19 the Supreme Court agreed to settle the split, and the government dropped every other defense. Its whole case now is: we can criminalize what you do in your kitchen because it protects our cut. That's a defendant walking into court and announcing, "Your Honor, I did it for the money."

You probably don't own a copper coil. But Washington applies that mason-jar logic to you every day. Treasury keeps a list, and not the Santa kind. It's called "tax expenditures," which is Washington for "money we let you keep, which we're counting as money we gave you, so you owe us a thank-you note." This year's tally: $2.3 trillion. Your 401(k)? That's not your savings. That's a $355 billion gift from Uncle Sam, who'd like it back starting at age 73. The health insurance your company provides, $240 billion. The lower rate on your capital gains, $252 billion. The 20% deduction on your business income, $76 billion. Every one of those is a bottle you didn't buy at the store.

The only difference between you and Junior Johnson is paperwork. Like his recipe, his escape plan was in his head. Yours is in the Internal Revenue Code, written by Congress, on purpose. They wanted you to save for retirement, cover your people, and buy equipment, so they bribed you with tax breaks to do it. Using the bribe isn't evasion. It's good manners. The only mistake is leaving it on the shelf.

We can't teach you the bootleg turn. But we can keep you a full lap ahead of the revenuers, headlights on, with nothing in the trunk but the savings!

Kevin

