Tax Division
United States Department of Justice

FY 2018 Congressional Budget

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I. Overview for Tax Division

A. Introduction

The Tax Division has one purpose: to enforce the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation. To accomplish this, the Tax Division requests a total of 499 permanent positions (377 attorneys), 499 full-time equivalent (FTE) work years and $106,858,000 for FY 2018. Electronic copies of the Department of Justice's Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: http://www.justice.gov/02organizations/bpp.htm.

The United States engages with all Americans through our tax system. We ask our citizens, residents, and those who earn income in this country to report their confidential financial information annually and to self-assess and pay their tax liabilities. These tax collections then fund government services, from national defense to national parks. The United States has an obligation to ensure fair and consistent enforcement of our tax laws. We owe each person and business complying with the tax laws a commitment to enforce the laws against those who do not comply. We also owe every taxpayer the assurance that our tax laws will be enforced on a consistent basis throughout the nation. Meeting these obligations is the Tax Division's central mission.

The Tax Division contributes to tax law enforcement by:

- Ensuring fair and uniform enforcement of tax laws;
- Encouraging voluntary compliance with tax laws through salutary effects of civil and criminal litigation and immediate and long-term financial impacts of cases;
- Defending IRS employees against charges arising from the conduct of their official duties; and
- Lending expertise to the enforcement of other laws with financial aspects.

The Tax Division represents the United States in virtually all litigation – civil and criminal, trial and appellate – arising under the internal revenue laws, in all state and federal courts except the United States Tax Court. To assist the Internal Revenue Service (IRS or the Service) in effectively enforcing the tax laws, Tax Division litigators must support the Service's investigations and determinations in civil cases and prosecute criminal violations of the revenue laws. Tax Division civil litigators enforce the Service's requests for information in ongoing examinations, and collect and defend tax assessments when the Service's examinations are complete. The Civil sections of the Tax Division have, on average, nearly 7,000 civil cases in process annually. In any given year, the Tax Division's civil appellate attorneys handle about 700 civil appeals, about half of which are from decisions of the Tax Court, where IRS attorneys represent the Commissioner. To help achieve uniformity in nationwide standards for criminal tax prosecutions, the Tax Division's criminal prosecutors authorize almost all grand jury investigations and prosecutions involving violations of the internal revenue laws. Alone or in conjunction with Assistant United States Attorneys, Tax Division prosecutors investigate and prosecute these crimes. Between FY 2014 and FY 2016, the Division authorizes between 1,300 and 1,800 criminal tax investigations annually.

The Tax Division's litigation activities are an indispensable part of our Nation's tax system. The Division contributes to tax enforcement in many ways: by the immediate and long-term financial impact of its cases; by the salutary effect our civil and criminal litigation has on voluntary compliance with the tax laws; by ensuring fair and uniform enforcement of the tax laws; by defending IRS employees against charges arising from the conduct of their official duties; and by lending the financial-crimes expertise of our tax prosecutors to the enforcement of other laws with financial aspects.

1. ***Financial Impact: Immediate as well as Long-Term.*** The Division is currently defending refund suits that collectively involve over $10.0 billion dollars.[1] This amount measures only the amount involved in the lawsuits themselves. It does not include the amounts at issue with the same taxpayers for other years or the amounts at issue with other taxpayers who will be bound by the outcome of the litigation. Decisions in the Division's cases may reduce the need for future administrative and judicial tax proceedings, by creating binding precedents that settle questions of law that govern millions of taxpayers. Moreover, millions more dollars are saved each year because the Division successfully defends the Government against many tax-related suits brought by taxpayers and third parties.

2. ***Improving Voluntary Compliance.*** The Tax Division's high litigation success rate (higher than 90%) has an enormous effect on voluntary tax compliance.[2] By law, the IRS cannot make public the fact of an IRS audit, or its result. By contrast, the Tax Division's important tax litigation victories receive wide media coverage, leading to a significant multiplier effect on voluntary compliance.[3] Efforts of the IRS and the Tax Division are having a positive effect on voluntary compliance. According to the most recent survey by the IRS Oversight Board, 86 percent of those surveyed think it is "not at all" acceptable to cheat on taxes.[4] The public attitude that it is not at all acceptable to cheat on your income taxes increased between 2011 and 2013 from 84 percent to 86 percent, while tolerance for tax cheating dropped from 14 percent to 12 percent. Also, the Commissioner's Offshore Voluntary Disclosure Initiatives, operating alongside the Division's ongoing criminal and civil enforcement actions concerning unreported offshore accounts, have resulted in an unprecedented number of taxpayers – over 55,800 since 2009 – attempting to "return to the fold" by paying back taxes, interest and penalties totaling approximately over $10 billion dollars. As an integral part of the IRS's enforcement efforts, the Tax Division contribute to the nation's ability to collect over $3 trillion in taxes each year.[5]

3. ***Fair and Uniform Enforcement of Tax Law.*** The Tax Division plays a major role in assuring the public that the tax system is enforced uniformly and fairly. Because the Division

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[1] See IRS Data Books 2016, http://www.irs.gov/uac/SOI-Tax-Stats-Data-Book, Table 27.

[2] A widely regarded study concluded that the marginal indirect revenue-to-cost ratio of a criminal conviction is more than 16 to 1. While no comparable study of civil litigation exists, the same research suggests that IRS civil audits -- the results of which are not publicly disclosed -- have an indirect effect on revenue that is more than 10 times the adjustments proposed in those audits. Alan H. Plumley, *The Determinants of Individual Income Tax Compliance*, pp. 35, 40, Internal Revenue Service Publication 1916 (1996).). Another predicts that an additional dollar allocated to civil audits would return $67 in general deterrence, while an additional dollar allocated to criminal investigation results in $55 of deterrence. Jeffrey A. Dubin, The Causes and Consequences of Income Tax Noncompliance 256 (2012).

[3] "The IRS ... found that taxpayers who heard about IRS audit activity via the media [rather than through word of mouth] were less likely to cheat..." Leandra Lederman, *The Interplay Between Norms and Compliance*, 64 Ohio. St. L. J. 1453, 1494-95 (2003), *quoting* Robert M. Melia, *Is the Pen Mightier than the Audit?*, 34 Tax Notes 1309, 1310 (1987).

[4] *See* IRS Oversight Board 2014 Taxpayer Attitude Survey, December, 2014, http://www.treasury.gov/irsob/reports/Pages/default.aspx.

[5] *See* Internal Revenue Service Data Book, 2014, Table 1, http://www.irs.gov/uac/SOI-Tax-Stats-IRS-Data-Book.

independently reviews the merits of each case the Internal Revenue Service requests be brought or defended, it is able to ensure that the Government's litigating positions are consistent with applicable law and policy. An observation about the Division made nearly 75 years ago still rings true today: "[T]he Department of Justice, as the Government's chief law office, is in a position to exercise a more judicial and judicious judgment. With taxes forming a heavy and constant burden it is essential that there be this leavening influence in tax litigation. Next to the constant availability of the courts, the existence of the Division is the greatest mainstay for the voluntary character of our tax system."[6]

4. ***Defending IRS Officials and the United States against Damage Suits.*** The Tax Division effectively defends IRS agents and officers, and the Government itself, against unmeritorious damage suits. Without successful representation of the quality provided by the Division, these suits could cripple or seriously impair effective tax collection and enforcement.

5. ***Expertise in Complex Financial Litigation.*** The Division's investigations, prosecutions, and civil trials often involve complex financial transactions and large numbers of documents. The Division is able to use the unique expertise its attorneys have developed in litigating complex tax cases to assist in other important areas of law enforcement, including:

   - Fighting terrorism as part of the Joint Terrorism Task Force, by investigating and prosecuting people and organizations that funnel money to terrorists;
   - Combating financial fraud;
   - Reducing drug trafficking as part of the Organized Crime and Drug Enforcement Task Force (OCDETF); and investigating public corruption by working on prosecution teams with attorneys from various United States Attorney's Offices and the Department's Criminal Division.

B. Full Program Costs

The FY 2018 budget request assumes 72% of the Division's budget and expenditures can be attributed to its Civil Tax Litigation and Appeals and 28% percent to Criminal Tax Prosecution and Appeals based on historical caseload. This budget request incorporates all costs, including mission costs related to cases and matters, mission costs related to oversight and policy, and overhead.

C. Environmental Accountability

The Tax Division has in place existing policies to incorporate environmental accountability in its day-to-day operations. These include green purchasing policies such as:

- Mandating the purchase of recycled paper products (copier/printer paper, paper towels) and;
- Training and written guidance on green purchasing for those employees responsible for purchasing office supplies.

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[6] Lucius A. Buck, *Federal Tax Litigation and the Tax Division of the Department of Justice*, 27 Va. L. Rev. 873, 888 (1940).

In addition, the Tax Division reduces waste and environmental impact by:

- Setting the default on printers to two-sided printing;
- Placing recycling bins for paper, glass, aluminum, and plastic in central locations and providing paper recycling containers for individual employee use;
- Recycling used printer cartridges;
- Promoting distribution of documents in electronic format only;
- Promoting scanning instead of photocopying;
- Recycling cell phones, laptops, computers and computer battery packs and;
- Sensitive materials are shredded and recycled.

The Division continues to work to reduce the environmental impact of its buildings. The Division is working with each building's Property Manager as they pursue LEED Certifications for their facilities through the General Services Administration and U.S. Green Building Counsel. On May 25, 2012, the Patrick Henry Building earned a Prestigious "LEED Silver Certification. Tax-occupied space in the Judiciary Center Building has been retrofitted with energy-efficient light fixtures and light bulbs, and motion sensors have replaced light switches throughout the Patrick Henry Building. The Division works with construction and maintenance contractors to use green materials whenever possible.

D. Performance Challenges

The Tax Division faces two serious and immediate challenges to the accomplishment of its mission.

External – Reducing the Tax Gap amid Increasing Globalization

The IRS collects more than $3.3 trillion annually[7]. Enforcement actions brought in almost $37.4 billion for 2016[8]. The IRS estimates that the annual tax gap – the difference between taxes owed and taxes paid voluntarily and timely – is $450 billion or approximately two thirds of the FY 2018 Defense budget request. The IRS Oversight Board cited "Enforcement programs allow the IRS to further voluntary compliance, help reduce the estimated $450 billion tax gap, and provide much needed dollars to the federal purse."[9] Improving compliance is the number one priority in the IRS Strategic Plan. The problem is intensified by the growing speed in financial globalization, which has expanded the opportunities for assets and income to be easily hidden offshore.

Reducing the tax gap will require increased enforcement. The challenge is to narrow that gap in a manner that not only collects the revenue due, but also assures the public that enforcement actions are vigorous, fair, and uniform.

[7] Internal Revenue Service Data Book Table 1 Collections and Refunds, by Type of Tax, 2016.
[8] Internal Revenue Service Data Book Table 16 Delinquent Collection Activities, 2016.
[9] IRS Oversight Board, FY 2015 Budget Recommendation, Special Report, May 2014.

Internal – Retaining an Experienced Workforce to Handle Complex Litigation

It is expected that the Division's cases – both civil and criminal – will continue to become increasingly complex, as the IRS focuses its enforcement efforts on offshore issues, tax-related cyber crimes and on taxpayer populations with more sophisticated tax issues, such as flow-through entities, high-income individuals, and corporations.

It remains a challenge for the Tax Division to retain highly trained and experienced attorneys who can serve effectively as lead counsel in our most complex cases. The existing caseload, coupled with increased IRS enforcement, will likely lead to an increase in the numbers of these highly complex cases over the next three years.

II. Summary of Program Changes

No program changes.

III. Appropriations Language and Analysis of Appropriations Language

No substantive changes proposed.

IV. Program Activity Justification

A. General Tax Matters

General Tax Matters	**Direct Pos.**	**Estimate FTE**	**Amount**
2016 Enacted	639	534	106,979
2017 Enacted	639	534	106,776
Adjustments to Base and Technical Adjustments	0	0	82
2018 Current Services	499	499	106,858
2018 Program Increases	0	0	0
2018 Program Offsets	0	0	0
2018 Request	499	499	106,858
Total Change 2017-2018	-140	-35	82

***General Tax Matters*-Information Technology Breakout (of Decision Unit Total)**	**Direct Pos.**	**Estimate FTE**	**Amount**
2016 Enacted	11	11	7,478
2017 Enacted	11	11	5,620
Adjustments to Base and Technical Adjustments	0	0	0
2018 Current Services	11	11	7,082
2018 Program Increases	0	0	0
2018 Program Offsets	0	0	0
2018 Request	11	11	7,082
Total Change 2017-2018	0	0	0

1. PROGRAM DESCRIPTION

a) Civil Tax Litigation

The Tax Division is responsible for litigating all matters arising under the internal revenue laws in all state and federal trial courts, except the Tax Court, and in appeals from all trial courts, including the Tax Court. Tax Division trial attorneys defend the United States in suits relating to the tax laws, including refund suits, tax shelter cases, and other suits seeking monetary or other relief. Tax Division trial attorneys also bring suits that the IRS has requested, including suits to stop tax scam promoters and preparers; suits to collect unpaid taxes; and suits to allow the IRS to obtain information needed for tax enforcement. Tax Division civil appellate attorneys represent the United States in all appeals from trial court decisions.

Defending the United States

Tax cases filed against the United States comprise approximately 66% of the Division's civil caseload, in terms of both the number of cases litigated and the number of attorney work hours devoted to them each year. These lawsuits include requests for tax refunds, challenges to federal tax liens, claims of unauthorized disclosure, and allegations of wrongdoing by IRS agents. The Division's representation of the government in these defensive suits saves the Treasury hundreds of millions of dollars annually, both by retaining money that taxpayers seek to recover and by fending off unjustified damage claims. The Division handles a panoply of important defensive cases, such as:

Sunoco, Inc. v. United States (Fed. Cl.). On November 22, 2016, the Court of Federal Claims denied Sunoco a refund of over $306 million for tax periods between 2005 and 2009. In each of the tax periods in suit, Sunoco paid fuel excise taxes under I.R.C. § 4081 and received excise-tax credits for alcohol fuel mixtures under I.R.C. § 6426. In its original income-tax returns, when Sunoco included fuel excise-tax expenses in its cost-of-goods sold, Sunoco reduced its excise-tax liabilities by the alcohol fuel mixture credits it claimed. Sunoco thereafter, however, filed refund claims asserting that it was entitled to include the gross gasoline excise-tax liabilities in its income-tax cost-of-goods sold, without reducing those excise-tax liabilities by the tax credits that it took against those liabilities. The Government argued that Sunoco's claim is based on an interpretation of § 6426 that is erroneous as a matter of law, and the Court of Federal Claims agreed. Relatedly, this same issue arises in a refund suit filed in the Northern District of Texas by Exxon Mobil Corporation. Moreover, reports suggest that refund claims with this issue have a potential tax impact, industry-wide, of $8 billion.

Nextera Energy, Inc. v. United States (S.D. Fla.). On March 24, 2017, a district court ruled that Nextera Energy was not entitled to a $90 million tax refund because it cannot carryback as "specified liability losses," payments it made to the Department of Energy under the Nuclear Waste Policy Act. Section 172(f), which expands the two-year period to carryback net operating losses, permits a longer period for amounts paid to satisfy a liability under federal or state law requiring decommissioning of a nuclear power plant. Nextera claimed that section 172(f) applied to the fees it paid to the DOE. The fees were based on the electricity Nextera sold and funded DOE's national program (Yucca Mountain) for disposal of spent fuel rods used by plant operators to produce electricity. In rejecting Nextera's claim, the district court held that the fees Nextera paid the DOE (1) were not a cost of decommissioning a plant (analogizing Nextera's claim to the disposal of waste from a naval vessel that remains in service), and if they were; (2) were not traceable to any specific act of waste disposal. Rather, Nextera was legally obligated to pay fees based upon the amount of electricity it produced, while the statutory obligation to dispose of the waste produced in the production of electricity produced belongs to DOE.

Wells Fargo & Co. v. United States (D. Minn.). On November 17, 2016, after a 3-week trial, a Minnesota jury decided that Wells Fargo was not entitled to hundreds of millions of dollars in tax benefits that Wells Fargo claimed based on its participation in an abusive tax shelter known as Structured Trust Advantaged Repackaged Securities (STARS). The jury was asked to determine whether Wells Fargo's STARS tax shelter had economic substance, and the jury made some key factual findings through a special verdict form. Wells Fargo contended that STARS was a single, integrated transaction that resulted in low-cost funding, but the jury found that in reality, the transaction consisted of two economically distinct and independent transactions: a loan and a trust. The jury found that the trust structure had no reasonable potential for pretax profit and that Wells Fargo entered into the trust structure solely for tax reasons. The court instructed the jury to find that the $1.25 billion loan had a possibility of pretax profit, but, still, the jury found that Wells Fargo lacked a nontax business purpose for the loan which Wells Fargo used to camouflage the tax scheme. Before the Court enters final judgment, it needs to decide the legal issues of whether penalties apply and whether a taxpayer is required to satisfy both prongs of the economic substance test in order for its transaction to survive a challenge. The court has issued a briefing schedule, and a decision is expected in 2017.

There are three groups of recent defensive cases that have been filed with respect to the IRS's handling of applications for section 501(c) tax-exempt status: (1) damage/injunction actions; and (2) challenges under the Administrative Procedure Act (APA); and (3) Freedom of Information Act (FOIA) actions.

1. Damages/Injunctive actions. Four cases in which plaintiffs seek injunctive relief and damages against the United States in various forms are: Linchpins of Liberty et al. v. United States et al. (D.D.C. . – D.C. Cir.), NorCal Tea Party Patriots v. IRS et al. (S.D. Ohio– 6th Cir.), True the Vote, Inc. v. IRS et al. (D.D.C. – D.C. Cir.), and Freedom Path, Inc. v. Lerner et al. (S.D. Tex).

   Initially, the district court dismissed claims in True the Vote and Linchpins, both stemming from the IRS's alleged targeting of tax-exempt status applications based on the applicants' viewpoints, seeking declaratory and injunctive relief under the APA and/or directly under the Constitution and other claims. On appeal, the D.C. Circuit affirmed in part and reversed in part. The Court reversed the District Court's determination that the plaintiffs' claims for equitable relief were moot and affirmed the dismissal of the plaintiffs' other claims. After the case returned to the district court, the United States moved for summary judgment on mootness grounds, and the court has True the Vote and Linchpins to conduct limited discovery while the motion is pending.

   In NorCal, the Government's motion to dismiss was partially granted and discovery has commenced, including class action discovery and depositions of IRS personnel. The class action suit claims that IRS employees improperly inspected the applications and related materials submitted by applicants for Sec. 501(c)(3) and (c)(4) status. Plaintiffs claim that as a result of the alleged "targeting scheme," IRS employees were not acting with a tax administration purpose when reviewing the plaintiffs' applications, and that the inspections violated Sec. 6103. Extensive discovery has been undertaken and it continues. Summary judgment deadline is June 29, 2017.

   In Freedom Path, its motion for partial summary judgment is pending. Freedom Path contends that the "facts and circumstances" test in Rev. Rul. 2004-6 used by the IRS to determine whether a group has engaged in an "exempt function" and, thus, may have taxable income violates the First and Fifth Amendments. Freedom Path also seeks a declaratory judgment that the IRS "targeting scheme" violated its First Amendment rights and damages for the accidental disclosure of its confidential information to Pro Publica.

2. Administrative Procedure Act (APA). The plaintiff in Z Street v. Koskinen (D.D.C. - D.C. Cir.) claims that the IRS was discriminating against its application for tax-exempt status under an alleged "Israel special policy," in violation of the First Amendment. The district court denied our motion to dismiss, which asserted that, inter alia, the suit was barred by the Anti-Injunction Act or the Declaratory Judgment Act. We sought and received an interlocutory appeal, and on June 19, 2015, the D.C. Circuit affirmed the district court's decision. After the case returned to the district court, the court has stayed the matter to enable the parties to explore settlement.

3. Freedom of Information Act (FOIA). Various plaintiffs have filed suits under FOIA seeking documents relating to the IRS's selection and examination of section 501(c) applications.

Cumulatively, Cause of Action, Judicial Watch, and other organizations filed nearly a dozen FOIA suits seeking information related to 501(c) applications. The outcomes of these suits vary and include in some instances: court ordered dismissal, joint dismissal after document production, and rolling continuous production of responsive documents.

Shutting Down Tax-Fraud Schemes and Fraudulent Return Preparers

The Tax Division has a successful program to put tax-fraud promoters and fraudulent tax preparers out of business. Some of the cases involved parallel criminal proceedings as well. The promoters sued range from tax defiers selling frivolous packages that falsely promise to eliminate customers' income tax entirely, to lawyers and accountants selling sophisticated, complex tax shelters to wealthy business owners. In one recent example, the Tax Division obtained injunctions against the alleged promoter of an abusive timeshare donation scheme and several of his associates and businesses. In United States v. Tarpey, et al. (D. Mon.), the government alleges that James Tarpey's donation scheme encouraged customers to donate their unwanted timeshares to Tarpey's business on the false promise of tax-savings in return, i.e. charitable contribution deductions. The government alleged that the defendants unlawfully overvalued the timeshares by using inflated appraisals in exchange for high processing fees. On March 30, 2017, the district court enjoined the last of the defendants from involvement with charitable contribution deductions claimed on federal tax returns.

The Division also supports the IRS's assessments of penalties against promoters. In one recent example, Estate of Richard Siegal v. United States (E.D.N.Y.), the United States is seeking a judgment for the IRS's assessment of more than $32 million in penalties against Richard Siegal who promoted an alleged abusive tax shelter, based upon an oil and gas investment scheme, that led to his customers claiming more than $1.3 billion in bogus tax deductions.

Since 2000, Tax Division attorneys have obtained injunctions against more than 500 tax-fraud promoters and return preparers. This number represents a dramatic increase over the 1990s, when the total number of promoters and preparers enjoined barely reached 25 for the entire decade. The schemes the Division has enjoined during the past several years had cost the Federal Treasury more than $2 billion and placed an enormous administrative burden on the IRS. If permitted to continue unchecked, these schemes would undermine public confidence in the integrity of our tax system, and require both the IRS and the Tax Division to devote tremendous resources to detecting, correcting, and collecting the resulting unpaid taxes.

Tax Division lawyers have, for many years, participated in IRS training classes and conferences to help agents and Chief Counsel attorneys learn about the injunction process and how to conduct an investigation that leads to a successful injunction referral.

In the past few years, the Division has litigated a number of significant injunction suits. In March 2017, a federal court barred Jason Stinson, the owner of a tax return preparation business with stores in four states: Alabama, Florida, Georgia, and North Carolina, from owning a tax return preparation business and preparing tax returns, among other prohibitions. In United States v. Stinson (M.D. Fla.), the court also ordered Stinson to disgorge nearly $950,000 in fees he received from improper and fraudulent tax return preparation.

In recent years the Tax Division has brought disgorgement claims, in addition to seeking injunctive relief, against promoters and preparers. Notably, in September 2014, we filed 8 suits against

Walner G. Gachette, the founder of Orlando-based tax preparation company LBS Tax Services, seven LBS Tax Services franchisees (including Jason Stinson), and three LBS Tax Services managers from owning, operating, or franchising a tax return preparation business and preparing tax returns for others. LBS Tax Services cases (M.D. Fla & S.D. Fla). According to the complaints, in 2013, LBS Tax Services operated at least 239 stores (192 owned by the named defendants) in Florida, North Carolina, South Carolina, Georgia, Texas, Tennessee, Alabama and Mississippi. LBS Tax Services prepared more than 55,000 federal income tax returns in 2013, according to our suits. And the IRS estimated that the tax loss from the fraudulent practices at defendants' LBS stores for the 2012 tax year alone is in the tens of millions of dollars, according to the complaints. In November 2016, a federal court enjoined Gachette from preparing returns and owning a return preparation business, in addition to entering a $5 million disgorgement judgment against him for the fees he received from preparing returns.

Additionally, the Division enforces injunctions it has obtained, and courts have held enjoined return preparers in civil contempt for violating the bar on preparing tax returns. For example, in United States v. Edmond (W.D. Tenn.), in April 2016, a federal court held a return preparer, Stephanie Edmond, and her husband, Kevin Williams in civil contempt for violating a an injunction barring them from preparing tax returns. The court ordered each to turn over to the United States all of the fees they received from preparing federal tax returns in violation of the ban, and when Williams failed do so, jailed him for a short period of time.

Assisting with IRS Information Collection and Examinations

Individuals or businesses sometimes seek to thwart an IRS investigation by refusing to cooperate with IRS administrative summonses requesting information. When that happens, the IRS frequently asks the Tax Division to bring suit in federal court for an order to compel compliance with the summons. These judicial proceedings enable the government to obtain needed information, while also providing important procedural and substantive rights to those affected by the summons.

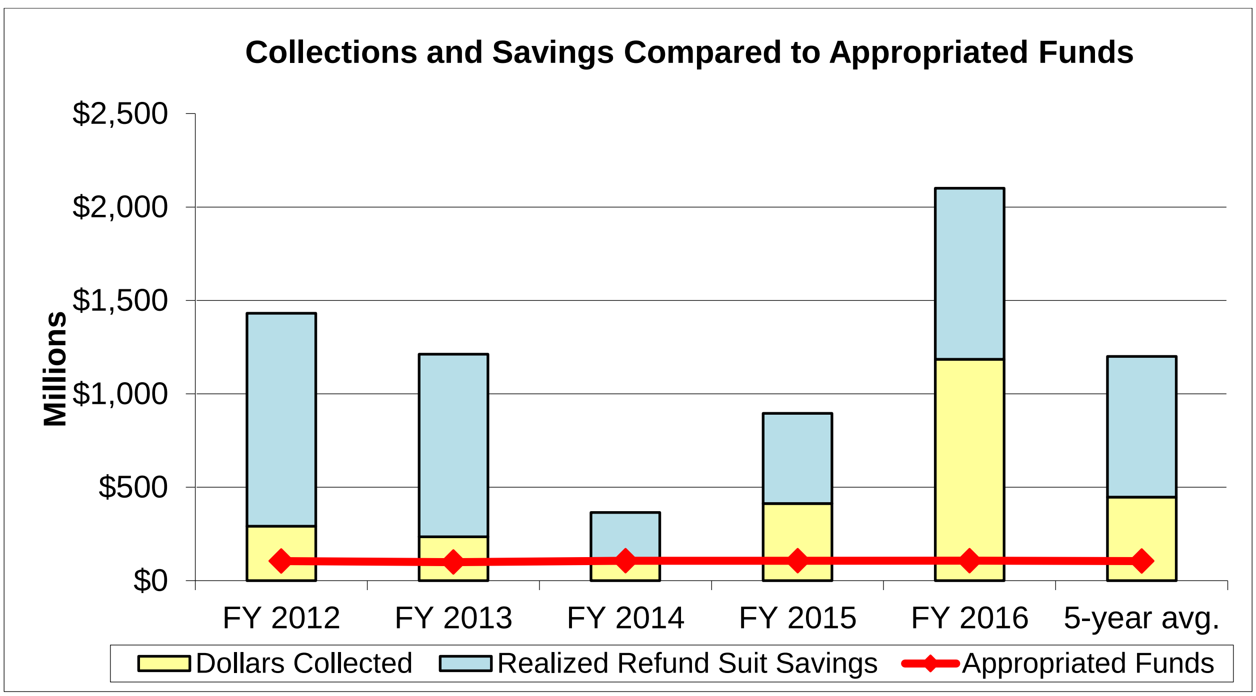
For example, in United States v. Facebook, Inc. (N.D. Cal.), the United States filed a petition seeking enforcement of summons issued to Facebook, Inc. in July 2016. The petition sought enforcement of seven summonses seeking information about agreements between Facebook, Inc., and Facebook Ireland Holdings Limited, in which Facebook purported to transfer rights associated with its worldwide business, except for the United States and Canada, to Facebook Ireland Holdings. The information sought in the summonses may be relevant to determining the value of the transferred intangible property rights. On November 17, 2016, the court entered a stipulated case management order enforcing the summonses in this enforcement proceeding.

Another example involves the IRS's request to obtain information about United States persons who for a certain period of time conducted transactions in convertible virtual currency. To obtain this information from a virtual currency exchanger called Coinbase, the Tax Division filed an ex parte petition seeking authorization to issue a John Doe summons to Coinbase. The IRS uses John Doe summonses to obtain information about possible tax law violations by individuals whose identities are unknown. On November 30, 2016, a federal court granted the government's petition for leave to serve a John Doe summons on Coinbase. Afterwards, the Tax Division filed a petition to enforce this summons on Coinbase on March 16, 2017. The case is United States v. Coinbase, Inc. (N.D. Cal.) and litigation of the case continues.

In addition to these cases, a federal court in Montana, on January 18, 2017, issued an order authorizing the IRS to serve a John Doe summons upon Michael Behr to obtain information about U.S. taxpayers who may hold offshore accounts established by Sovereign Management & Legal LTD (SML), a Panamanian entity. Specifically, the IRS sought records of U.S. taxpayers who, during the years 2005 to 2016, had been issued a "Sovereign Gold Card" debit card that could be used to access the funds in those accounts in such a manner as to evade their obligations under internal revenue laws.

Collecting Unpaid Taxes

The Division collects unpaid tax liabilities, including income tax, employment tax, and a variety of penalties, by bringing affirmative civil litigation against delinquent taxpayers. Most of the affirmative collection suits that the Division handles are factually complex and time-consuming – debts that the IRS has been unable to collect administratively and that frequently involve fraudulent transfers of property or other unlawful attempts by taxpayers to conceal their income or assets or to delay the proceedings. Despite these difficulties, Tax Division attorneys collected over $1.1 billion in taxes, interest, and penalties in FY 2016. Indeed, the Division's affirmative litigation typically brings in more each year than the Division's entire budget, as illustrated by the following chart and has averaged $447 million from FY 2012 to FY 2016.



In FY 2008 as part of its continuing efforts to improve its post-judgment collection efforts, the Division, created a Financial Litigation Unit, which is staffed by three-to-five attorneys (some on details from other civil trial sections) and four paralegals that work under the supervision of the Office of Review.

One particularly notable collection case involved a suit for the failure to file Reports of Foreign Bank and Financial Accounts ("FBAR"). These penalties help prevent the use of offshore accounts for tax evasion. Accordingly, ensuring that the penalties are collected is an important (and growing) part of the Division's caseload. For example, in ***United States v. Dominique Colliot*** (W.D. Tex.), the Tax Division filed suit to obtain a judgment for FBAR penalties in the amount of $917,446 plus a 10% statutory surcharge for debt collection in December 2016. After filing suit, the court issued a pre-judgment writ of garnishment to UBS Financial Services, Inc., ordered Colliot to instruct UBS to liquidate assets as necessary to generate $1,126,016 in cash, and ordered UBS to segregate and hold those funds until further instruction from the court.

In addition to bringing collection cases for FBAR penalties, the Tax Division brings suits to collect unpaid employment taxes. In some instances, the Tax Division will also seek a court order enjoining employers from failing to meet their employment tax obligations. In 2016, the Tax Division obtained employment tax injunctions against 38 employers—more than double the number of injunctions obtained in 2015. Since January 1, 2017, the Tax Division filed 17 suits, collectively seeking more than $10 million in unpaid employment taxes, against tax-delinquent medical-care providers who, despite IRS notices and efforts to collect, have been non-compliant for three or more quarters, despite persistent attempts by the IRS to remind them of their obligations and to collect the unpaid taxes.

Protecting the Government's Interest in Tax-Related Bankruptcy Litigation

Division attorneys have also handled a number of tax-related bankruptcy matters, including:

- ***In re Samuel Wyly*** (Bankr. N.D. Tex.). On May 10, 2016, the bankruptcy court issued a 450-page opinion finding that business moguls Sam and Charles Wyly had committed tax fraud over a period of years (1992 through the present) using a series of offshore trusts. The Wylys funded the trusts by transferring assets, such as stock options in companies they owned, to U.S. corporations. In exchange, the corporations purportedly promised to pay the Wylys annuities in the future. As soon as the corporations were funded, they transferred both the assets and the obligations to pay the annuity to offshore entities, including trusts created in the Isle of Man. Following a judgment against them for securities fraud in the Southern District of New York, Sam Wyly and Charles Wyly's widow, Caroline "Dee" Wyly, filed Chapter 11 proceedings in Dallas October 2014 and immediately filed motions to determine their tax liabilities under 11 U.S.C. § 505. The IRS, which had not audited the years covered by the fraud, had to examine more than 20 years (1992-2013) of income tax returns, determine the debtors' liability for gifts made over these years, and calculate the debtors' liability for "international penalties" for failing to file the proper forms to disclose relationships with offshore trusts. The IRS proof of claim was filed on April 15, 2015, just six months after the filing of the bankruptcies. The court held a three-week trial in January 2016, followed by a day and a half of oral arguments in the following week. On June 27, 2016, the court entered final judgments in the consolidated bankruptcy proceedings, holding Sam Wyly liable for approximately $1.1 billion in income taxes, penalties, and interest and Caroline "Dee" Wyly, Charles Wyly's widow, liable for approximately $37 million in income and gift taxes and interest.

- ***In re Warner*** (Bankr. N.D. Ohio). On April 14, 2017, the bankruptcy court granted the United States' motion for summary judgment regarding a Chapter 7 debtor's interest, prior to a divorce decree, in her non-debtor spouse's Thrift Savings Plan ("TSP") retirement account. At the time of the bankruptcy, the debtor had a pending divorce action in state court. No divorce decree had been entered yet, nor had the state court entered an order approving a property settlement between the debtor and her spouse, nor had a qualifying retirement benefits court order ("QRBCO") been entered. The court held that the debtor's beneficiary interest in the TSP account was not property of the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2) and the TSP statute's anti-alienation provision. The court then held that the debtor's "equitable claim" to distribution of plan assets prior to issuance of a divorce decree is a contingent interest in property which is exempt from the trustee's administration under both Ohio and federal bankruptcy exemption statutes. The court also held that even if the debtor had only a pre-divorce decree "equitable claim" to distribution of TSP assets, the bankruptcy court cannot compel the debtor or the state court to issue a QRBCO with the trustee as direct payee, relying on the TSP regulation's restrictions on who can be a payee, and on bankruptcy courts' deference to state courts regarding family law matters.

- ***In re Fernando A. Villarreal & Suzanne Villarreal*** (Bankr. S.D. Ohio). On December 27, 2016, the Bankruptcy Court entered an Order sustaining the United States' objection to the debtors' claim of a $265,000 homestead exemption to the extent the debtor sought to protect the proceeds from the sale of the Villarreals' residence by the Chapter 7 Trustee from payment to the United States for the Villarreals' non-dischargeable assessed tax debts. The Court found that, although the majority of the United States' claim was not a secured claim, because no notice of tax lien had been filed prior to the petition, the assessment liens that arose under I.R.C. § 6321 attached to the proceeds of any future sale by the Trustee that were attributable to the homestead exemption. The Court further held that, to the extent that any portion of the United States' claim was for non-dischargeable taxes, the United States could enforce its assessment liens against the proceeds of the homestead exemption and have the Trustee pay the portion of the proceeds attributable to the homestead exemption to the United States to satisfy the non-dischargeable taxes.

B) Appellate

Civil Appellate Cases

During FY 2016, the Appellate Section litigated approximately 600 tax appeals before the United States Courts of Appeals and a variety of state appellate courts, and won (in whole or in part) over 95% of taxpayer appeals and 80% of Government appeals. . In the Supreme Court, the Appellate Section helped to craft the Government's ultimately successful position regarding the permissibility and effect of "structured dismissals" in bankruptcy. In Czyzewski v. Jevic Holding Corp., by a 6-2 vote, the Supreme Court held that Bankruptcy Courts do not have the authority to approve "structured dismissals" that, without the consent of affected creditors, do not follow the ordinary priority rules of the Bankruptcy Code. The Court held the Code's priority system "has long been considered fundamental," and that its importance "leads us to expect more than simple statutory silence if, and when, Congress were to intend a major departure." The Court specifically rejected the suggestion that such departures should be permitted in "rare cases"; the Court said that such an exception would swallow the rule, because many litigants would argue that their cases are rare. The Court's decision will have a significant impact in preserving federal tax claims in bankruptcy.

At the court of appeals level, the Appellate Section has won a series of important victories involving foreign tax credit generator shelters, including the Structured Trust Advantaged Repackaged Securities (STARS) shelter. These shelters were designed to allow a U.S. taxpayer to claim approximately $2 in foreign tax credits for every $1 of out-of-pocket expense. In such transactions, the taxpayer circulated U.S. income through a trust in a way that subjected the income to U.K. tax and then claimed foreign tax credits based on that tax. At the same time, a U.K. bank acquired a formal interest in the trust, which allowed it to recoup most of the U.S. taxpayer's U.K. tax by claiming certain U.K. benefits, including a U.K. tax credit for the same U.K. tax for which the U.S. taxpayer claimed foreign tax credits. The bank then shared these tax credits with the taxpayer through "rebate" payments. The transaction also featured a large loan to the U.S. taxpayer, which the taxpayer claimed as its reason for engaging in the transaction. In Salem Financial v. United States, the Federal Circuit upheld the disallowance of nearly $500 million in foreign tax credits, reasoning that the U.K.-trust component of the transaction was "artificial[ ]" and had an "unlimited capacity to generate gains, without any additional exposure or commitment of resources." In Bank of New York Mellon Corp. v. Commissioner, the Bank of New York utilized the STARS shelter to generate over $500 million in tax benefits. The Second Circuit upheld the disallowance of the foreign tax credits, and, in the course of its opinion, confirmed that the economic substance doctrine applied to transactions involving foreign tax credits. Most recently, in Santander Holding USA, Inc. & Subsidiaries v. United States, the taxpayer challenged the IRS's disallowance of foreign tax credits stemming from the tax shelter, sskeing a refund of nearly $234 million in taxes, interest, and penalties. The First Circuit concluded that the STARS transaction lacked economic substance, emphasizing that when a transaction is designed to produce tax gains instead of real gains, "it is an act of tax evasion that, even if technically compliant, lies outside of the intent of the Tax Code . . . ." The Supreme Court has denied petitions for writs of certiorari regarding the first two appellate decisions, although a petition relating to Santander is currently pending.

The Appellate Section also achieved significant victories relating to other types of tax shelters. In Russian Recovery Fund Ltd. v. United States, the Federal Circuit disallowed a $49.8 million loss generated by a distressed asset/debt (DAD) tax shelter and sustaining the applicability of a 40-percent accuracy-related penalty. The Federal Circuit upheld the IRS's determination that the key elements of the transaction lacked economic substance, and that the taxpayer failed to establish reasonable reliance on professional advice, as would negate the penalty. Appellate scored important victories in intermediary tax shelter cases, in which, as a general matter, a taxpayer, who owns a company holding property with large built-in tax liability sells his shares to an intermediary that pays the taxpayer a premium for the shares, immediately sells the corporate property, and then dissolves the company without paying the resulting liability. In Cullifer v. Commissioner, the Eleventh Circuit held Cullifer liable as a transferee for tax liabilities resulting from an intermediary tax shelter. In Stuart v. Commissioner, the Eighth Circuit vacated an unfavorable decision of the Tax Court, which had declined to consider whether the shelter transaction should be recharacterized under substance-over-form principles applicable to Nebraska fraudulent-conveyance law, and remanded for consideration of the relevant state law.

Other significant victories include Nacchio v. United States, in which the Federal Circuit reversed the unfavorable judgment of the Court of Federal Claims, which had held that a criminal forfeiture payment in the amount of $44 million that a taxpayer was ordered to pay as part of his criminal sentence was deductible. The Federal Circuit explained that forfeiture was tantamount to a nondeductible fine or other penalty, a result fully consistent with the decisions of the other Circuit Courts, which "repeatedly conclud[ed] that forfeitures of property to the government similar to the one at issue are not deductible because they are punitive." In Estate of Sanders v. Commissioner, the Eleventh Circuit reversed the adverse decision of the Tax Court in this case arising from the IRS's effort to crack down on meritless claims of U.S. Virgin Islands residency to avoid paying federal income tax. The Eleventh Circuit concluded that the facts considered by the Tax Court to support residency were "insufficient to establish that Sanders ever became a bona fide resident of the USVI," and criticized the Tax Court's reliance on formalities and failure to analyze whether Sanders's arrangement with the USVI partnership had economic substance or business purpose. The Court remanded the case so that the Tax

Court could make the necessary findings and determine (under the careful analysis articulated by the Eleventh Circuit) when, if ever, Sanders became a bona fide USVI resident, emphasizing that there was "substantial supporting evidence that Sanders masqueraded as a USVI resident." Lastly, in QinetiQ U.S. Holdings, Inc. v. Commisioner, the IRS determined a corporate income tax deficiency of approximately $14 million against QinetiQ U.S. Holdings, Inc., resulting from the disallowance of $118 million in claimed salary and wage deductions. In upholding the IRS's deficiency determination, the Fourth Circuit rejected QinetiQ's argument that the notice of deficiency was invalid under the Administrative Procedure Act. The Fourth Circuit concluded that Congress did not intend to superimpose the "APA's general procedures for judicial review, including the requirement of a reasoned explanation in a final agency decision, . . . on the Internal Revenue Code's specific procedures for de novo review of the merits of a Notice of Deficiency."

C) Criminal Prosecutions and Appeals

Indictments and Convictions

During FY 2016, Division prosecutors obtained 148 indictments and 158 convictions (not including the additional criminal tax prosecutions handled exclusively by United States Attorneys' Offices). The conviction rate for cases brought by Tax Division prosecutors for FY 2016 was 98%.

Enforcing U.S. Tax Laws in Today's Global Economy

For the Tax Division's criminal enforcement sections, one of the top litigation priorities is identifying, investigating and holding accountable U.S. taxpayers who conceal foreign financial accounts in an effort to evade U.S. reporting and tax obligations. Use of foreign tax havens by U.S. taxpayers has been on the rise, aided by increasingly sophisticated financial instruments and the ease of moving money around the globe, irrespective of national borders. While the Division's enforcement focused initially on cross-border activities in Switzerland, it has expanded to include wrongdoing by U.S. accountholders, financial institutions, and other facilitators globally, including publicly disclosed enforcement concerning banking activities in India, Israel, Liechtenstein, Luxembourg, Belize, Hong Kong and the Caribbean.

Offshore Tax Evasion

According to a 2008 report issued by the Permanent Subcommittee on Investigations, Committee on Homeland Security and Government Affairs, United States Senate, the use of undeclared offshore accounts to evade U.S. taxes at that time cost the Treasury at least $100 billion annually. Using tax havens facilitates evasion of U.S. taxes and related financial crimes, and fosters the perception that, if people have enough money and access to unscrupulous professionals, they can get away with hiding money offshore. Thanks to the considerable and highly publicized efforts of the Tax Division and the IRS, reality has caught up with those who have chosen to engage in this illegal behavior.

Since 2009, when the Tax Division reached a ground-breaking deferred prosecution agreement with UBS AG, Switzerland's largest financial institution, the Department has publicly charged over 130 accountholders and approximately 42 bankers and advisors with violations arising from offshore banking activities. Over 120 accountholders have pleaded guilty or been convicted at trial, and several are either awaiting trial or in fugitive status. Approximately 17 bankers and financial advisors have either pleaded guilty or been convicted at trial; many remain fugitives.

The prosecution of professionals, including lawyers, financial advisors, and return preparers, who facilitate offshore tax evasion is an essential part of the Tax Division's efforts in this area. In December 2014, the Tax Division secured convictions against David and Nadav Kalai, two California tax return preparers, for conspiracy to defraud the IRS and willfully failing to file a Report of Foreign Bank and Financial Accounts (FBAR). The Kalais prepared false individual income tax returns that did not disclose their clients' foreign financial accounts and did not report the income earned from those accounts. In order to conceal their clients' ownership and control of assets and to conceal their clients' income from the IRS, the Kalais incorporated offshore companies in Belize and elsewhere and helped clients open secret bank accounts at the Luxembourg locations of two Israeli banks.

Efforts to combat offshore tax evasion have also focused on bankers and investment advisors who enable U.S. taxpayers to hide their money abroad.

In September and October 2014, three investment advisors were sentenced to prison following their guilty pleas to conspiracy to launder monetary instruments. Joshua Vandyk and Eric St-Cyr were employed by an investment firm in the Cayman Islands, and Patrick Poulin was an attorney in Turks and Caicos who represented U.S. citizens. Vandyk, St-Cyr and Poulin conspired to conceal and disguise the nature, location, source, ownership and control of property believed to be the proceeds of bank fraud, specifically $2 million. The defendants assisted undercover law enforcement agents posing as U.S. clients in laundering purported criminal proceeds through an offshore structure designed to conceal the true identity of the proceeds' owners. Vandyk and St-Cyr invested the laundered funds on the clients' behalf and represented that the funds would not be reported to the U.S. government.

The Tax Division also remains committed to holding foreign banks accountable for their role in facilitating attempts to evade U.S. tax and reporting obligations. Since announcing the UBS deferred prosecution agreement in February 2009, the Tax Division has continued to investigate this activity, and, as described below, has taken public action against other financial institutions and external asset management firms.

In February 2016, Daniela Casadei and Fabio Frazzetto, two bankers who worked as client advisors at Bank Julius Baer, pleaded guilty to conspiring with U.S. taxpayer-clients to help them hide their assets in offshore accounts and to evade U.S. taxes on the income earned in those accounts. They aided U.S. taxpayers in maintaining undeclared accounts at the bank and advised the taxpayers that their accounts would not be disclosed to the IRS.

In February 2012, Wegelin Bank, the oldest private bank in Switzerland, was indicted for conspiracy to defraud the United States for actions arising from its efforts on behalf of U.S. account holders. Wegelin Bank pleaded guilty to felony tax charges (and was the first foreign bank to do so) in January 2013, and was ordered to pay approximately $58 million to the United States and to forfeit funds in the amount of $16.2 million previously seized by the government from a correspondent account in the United States, for a total recovery to the United States of approximately $74 million.

In July 2013, the Department announced that Liechtensteinische Landesbank AG, a bank based in Vaduz, Liechtenstein (LLB-Vaduz), agreed to pay more than $23 million to the United States and entered into a non-prosecution agreement. As noted in the agreement, before the government began the investigation, LLB-Vaduz voluntarily implemented a series of remedial measures to stop servicing U.S. account holders with undeclared accounts. The bank also assisted in changing the law in Liechtenstein retroactively, which enabled the Division to obtain account files of non-compliant U.S. account holders without having to identify each account holder whose information was requested.

In May 2014, Credit Suisse AG pleaded guilty to conspiracy to aid and assist U.S. taxpayers in filing false income tax returns and other documents with the IRS. The guilty plea was the result of a years-long investigation by U.S. law enforcement authorities that also produced indictments of eight Credit Suisse executives since 2011; three of those individuals have pleaded guilty so far. The plea agreement, along with agreements made with other federal and state agencies, required Credit Suisse to pay a total of $2.6 billion – $1.8 billion to the Department of Justice for the U.S. Treasury (as restitution for lost tax revenue), $100 million to the Federal Reserve, and $715 million to the New York State Department of Financial Services. Credit Suisse also paid approximately $196 million in disgorgement, interest and penalties to the Securities and Exchange Commission (SEC) for violating the federal securities laws by providing cross-border brokerage and investment advisory services to U.S. clients without first registering with the SEC.

Also in May 2014, the Department of Justice entered into a non-prosecution agreement with Swisspartners Investment Network AG, a Swiss-based asset management firm, and three of its wholly-owned subsidiaries (collectively, the Swisspartners Group). As part of the agreement, the Swisspartners Group admitted that it knew certain U.S. taxpayers were maintaining undeclared foreign bank accounts with the assistance of the Swisspartners Group in order to evade their U.S. tax obligations, in violation of U.S. law. The Swisspartners Group acknowledged that it helped certain U.S. taxpayer-clients conceal from the IRS their beneficial ownership of undeclared assets maintained in foreign bank accounts by, among other things, creating sham foundations and other sham entities that served as the nominal account holders; placing accounts or insurance policies in the names of non-U.S. nationals; facilitating the transportation of large amounts of cash into the United States on behalf of U.S. taxpayer-clients; and arranging for the bulk deposit of cash at Swiss depository financial institutions on behalf of U.S. taxpayer-clients. As a condition of the non-prosecution agreement, the Swisspartners Group agreed to pay a fine of $4.4 million

In December 2014, Bank Leumi, a major Israeli international bank, admitted that it conspired to aid and assist U.S. taxpayers to prepare and present false tax returns to the IRS by hiding income and assets in offshore bank accounts in Israel and elsewhere around the world. A deferred prosecution agreement between Bank Leumi Group and the Department of Justice required the bank to pay $270 million to the United States, provide the names of more than 1,500 of its U.S. account holders, and cooperate with related ongoing investigations. This unprecedented agreement marked the first time an Israeli bank admitted to such criminal conduct which spanned over a 10 year period and included an array of services and products designed to keep U.S. taxpayer accounts concealed at Bank Leumi Group's locations in Israel, Switzerland, Luxembourg and the United States.

In February 2016, the Department of Justice filed criminal charges against Bank Julius Baer & Co Ltd., headquartered in Switzerland, and the Bank entered into a deferred prosecution agreement with the Department. Julius Baer admitted that it assisted many of its U.S. taxpayer clients in evading their U.S. tax obligations. The agreement required the bank to pay $547 million, in restitution, forfeiture and penalties.

In March 2016, Cayman National Securities Ltd. and Cayman National Trust Co. Ltd., pleaded guilty to conspiring with many of their U.S. taxpayer clients to hide more than $130 million in offshore accounts from the IRS and to evade U.S. taxes on the income earned in those accounts. As part of the plea agreement, the entities were required to produce account files of non-compliant U.S. taxpayers through the treaty process and pay $6 million in financial penalties. This marked the first conviction of a non-Swiss financial institution for tax evasion conspiracy.

In addition to these public actions, the Tax Division has ongoing criminal investigations concerning the cross-border activities of banks and U.S. account holders, as well as bankers and other professionals who facilitated U.S. tax evasion and reporting violations.

The high profile prosecutions of financial institutions, facilitators, and accountholders created pressure on non-compliant taxpayers to correct their tax returns to report previously undisclosed accounts. According to the IRS, since the inception of the investigation against UBS, over 55,800 taxpayers have reported previously secret accounts through the IRS's offshore voluntary disclosure programs, and an additional 48,000 have made use of separate streamlined procedures to correct prior non-willful omissions. In total, the IRS has collected more than $10 billion in back taxes, interest, and penalties through these programs. These enforcement efforts not only remedy past wrongdoing, but also bring into the system tax revenue from taxpayers who become compliant going forward. Through the voluntary disclosure programs, taxpayers are required to cooperate, providing leads on banks and facilitators.

The Department is also successfully using a variety of law enforcement tools to gather information that we believe will lead to admissible evidence in future enforcement efforts. For example, in recent years the Department obtained orders authorizing the issuance of John Doe summonses for information about U.S. taxpayers using accounts based in Switzerland, India, Bahamas, Barbados, Cayman Islands, Guernsey, Hong Kong, Malta, Belize, and the United Kingdom. The Tax Division continues to work with the IRS and the United States Attorneys' Offices to gather information about taxpayers who seek to avoid or evade our tax loss.

Swiss Bank Program

The investigation and prosecution of offshore tax evasion requires the IRS and the Tax Division to obtain foreign evidence, most often through a tax information exchange agreement or a mutual legal assistance or other treaty. A fundamental issue with respect to obtaining information about accounts located in Switzerland has been the degree to which Swiss law permits disclosure under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed on October 2, 1996. Swiss banks often contend, in response to our investigations, that Swiss law prohibited meaningful cooperation (most notably, the disclosure of the names of bank employees and of U.S. accountholders).

To address these issues, on August 29, 2013, the Department announced the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Program"), which was designed to encourage Swiss banks, about which the Department had little or no information, to come forward, disclose conduct and account information related to U.S. offshore accounts, and to cooperate with our ongoing offshore enforcement efforts to target U.S. accountholders and the bankers and advisers who facilitated them, in exchange for the possibility of a non-prosecution agreement. The Program expressly excluded the fourteen banks, referred to in the Program as "Category 1 banks," that were authorized for investigation in connection with their Swiss banking activity related to U.S. account holders before the Program was announced. Second, the Program expressly excluded all individuals. No Swiss banker or professional advisor was offered any sort of protection or immunity, and no U.S. account holder was covered by the Program.

The Program established three additional categories of eligibility. Category 2 banks are Swiss banks that were not under investigation as of the date the Program was announced but believed they had committed tax-related offenses. Category 2 banks were required to provide detailed information regarding their cross-border activities, employees and representatives, and U.S.-related accounts, and were required to pay a penalty that could be mitigated if the bank established that a particular account was declared or came into compliance through the IRS offshore voluntary disclosure programs. Category 3 and 4 banks are Swiss banks that did not commit any violations of U.S. law but sought a non-target letter after providing information required under the Program.

The Program banks were required to fully disclose their cross-border businesses relating to U.S. taxpayers by providing documents and making in-person presentations to the Tax Division by the end of June 2014 (which included a 60-day extension that was requested by each bank). Thereafter, it was anticipated that the parties would execute non-prosecution agreements and that the Tax Division would begin making requests under the U.S.-Swiss tax treaty for account information. This process was delayed as a result of the reluctance of many banks to adequately disclose their conduct. This issue was resolved, and the Program moved forward.

By early 2016, the Tax Division completed the Category 2 part of the program. In all, the Department signed 80 agreements with 78 Category 2 banks. The Department had little or no prior information regarding a significant number of these banks prior to their self-reporting under the Program. In addition to providing valuable leads concerning assistance provided to U.S. taxpayers maintaining secret accounts, these banks paid a total of more than $1.36 billion in penalties under the Program. The Division also completed its review of Category 3 and 4 banks in 2016 and reached final resolutions with the banks that met the requirements under the program.

The Tax Division has also submitted more than 194 treaty requests to Switzerland covering 36 different banks, and continues to submit requests as additional information is received. These treaty requests are being submitted under the current 1996 U.S.-Swiss tax treaty under which the Swiss will grant assistance only in cases where the information is sought because of tax fraud, as that term is narrowly interpreted by Swiss legal authorities. A new Protocol amending the 1996 tax treaty was signed but has been stalled in the Senate for several years. Once the Protocol is ratified, Switzerland will begin granting assistance in cases where the information is foreseeably relevant to a civil or criminal tax investigation. The “foreseeably relevant” standard is far more lenient and would result in hundreds of, if not more than one thousand, successful treaty requests.

The Swiss are responding promptly to the tax treaty requests that we are submitting under the 1996 treaty. To date, the Tax Division has received more than 147 responses to the treaty requests. The Tax Division is working closely with the IRS to review the information received in response to the treaty requests and from the banks in the Program, as well as from whistleblowers and cooperators, to pursue investigations against individual accountholders, bankers and other facilitators, both within and beyond Switzerland. The Tax Division believes that these investigations will result in a number of criminal prosecutions.

Pure Tax Crimes

Legal-source income tax cases are the core of the Tax Division's criminal enforcement mission. These cases encompass tax crimes where the source of the individual's income is earned through legitimate means, and the examples are legion: a restaurateur who skims cash receipts; a corporation that maintains two sets of books, one reporting its true gross receipts and the other – used for tax purposes – showing lower amounts; a self-employed individual who hides taxable income or inflates deductible expenses to reduce the amount of tax due and owing; or, an individual who, although aware of the duty to file a return, knowingly and intentionally refuses to do so.

The focus on legal-source income cases is important because tax crimes of this type significantly erode the tax base and, when such conduct is left unaddressed, have the potential to encourage tax cheating by otherwise law-abiding citizens. Prosecutions in these cases often receive substantial local media coverage, and convictions assure law-abiding citizens who pay their taxes that those who cheat are punished. During the past year, Tax Division attorneys investigated and prosecuted cases involving tax crimes committed by individuals from all walks of life.

In March 2017, Jeffrey Nowak, a Las Vegas, Nevada liquor storeowner, was sentenced to serve 41 months in prison for tax evasion and conspiring to defraud the United States. Nowak conspired with Ramzi Suliman, with whom he jointly owned and operated liquor stores in Las Vegas. Nowak and Suliman skimmed cash receipts and provided their accountant with a phony set of books that omitted nearly $4 million in cash receipts.

In March 2017, two Louisiana attorneys, James Burton and Lucretia Pecantte-Burton, pleaded guilty to failing to file individual income tax returns. Burton and Pecantte-Burton were partners of the law firm Pecantte-Burton & Burton (PB&B). PB&B offered general legal services and representation and regularly received cash payments from clients for legal services rendered. They also had a partnership interest in a tax return preparation business. For tax years 2007, 2008 and 2009, Burton and Pecantte-Burton did not file individual income tax returns despite earning income from their law practice and the tax return preparation business.

In January 2017, Semere Tsehaye, the owner of a Missouri tax preparation business, was sentenced to serve 27 months in prison for tax evasion. Tsehaye owned and operated at least 20 Instant Tax Service franchise locations. During the years 2010 and 2011, Tsehaye provided fraudulent financial summaries that understated his businesses' gross receipts to his tax return preparer which were used to prepare Tsehaye's individual income tax returns. These tax returns underreported gross receipts by a total of approximately $547,895 in 2010 and $1.03 million in 2011, and resulted in Tsehaye evading approximately $581,264 in taxes.

In September 2016, Christopher Swartz, a New York food and restaurant entrepreneur and franchisor pleaded guilty to tax evasion and wire fraud. Swartz engaged in a ten-year tax evasion scheme, filing false returns that understated his personal income. He diverted money from business accounts and disguised the diversions in the company records as loans and business expenses. He made extensive use of cash to diminish the traceability of funds and concealed his ownership of various assets using multiple entities and nominees. He also falsified partnership tax returns and attempted to impede the IRS's ability to collect employment taxes.

Employment Tax Crimes

Beginning in FY 2015, the Tax Division sharpened its focus on employers who willfully fail to collect, truthfully account for, and pay over employment taxes to the IRS. The Division has continued to enhance its enforcement efforts in this area during FY 2016. Employers have a legal obligation to withhold federal income, Social Security, and Medicare taxes from their employees' wages, hold these funds in trust, and then pay them over, along with a matching amount of Social Security and Medicare tax, to the IRS. Employment and income tax withheld comprise 70% of the total revenues collected by the IRS[10], and as of June 2016, nearly $59.4 million of employment tax reported on quarterly employment tax returns remained unpaid.

Many employment tax prosecutions involve business owners who divert withheld taxes to their personal use, funding a lavish lifestyle with the government's money. For example:

- In March 2017, Richard Tatum, a Houston, Texas, business owner of an industrial staffing company, pleaded guilty to failing to pay more than $18 million in employment taxes. Tatum filed false employment tax returns that did not report the majority of his employees and did not pay over the taxes he withheld from his employees. Instead, he used the money for luxury travel and to make payments on his ranch. They were also ordered to pay restitution to the IRS.

- In January 2017, two West Virginia business owners, Michael and Jeanette Taylor, were sentenced to serve 21 and 27 months in prison for failing to pay over more than $1.4 million in employment taxes. The Taylors owned a construction business that transported steel and sold gravel and concrete. They changed the name of their business several times, though the operations of the business remained the same. Both were responsible for collecting, accounting for and paying over the employment taxes withheld from their employees' wages. Instead of paying over the taxes that they collected, the Taylors used the funds to purchase property and finance their horse farm.

- In January 2017, Paul Harvey Boone, of Hillsborough, North Carolina, was sentenced to serve 15 months in prison for failing to pay over employment taxes. Boone owned and operated Boone Audio Inc. From 2008 through 2011, Boone used company funds for personal expenses while failing to pay over the employment taxes withheld from his employees' wages. He was also ordered to pay restitution to the IRS.

- In December 2016, Sreedar Potarazu, a Maryland surgeon and entrepreneur, pleaded guilty to failing to account for and pay over $7.5 million in employment taxes and to shareholder fraud. Potarazu founded VitalSpring Technologies, Inc., a corporation which that provided data analysis and services related to health care expenditures. Potarazu was responsible for collecting, truthfully accounting for and paying over VitalSpring's employment taxes. Instead of paying over the employment tax, Potarazu spent millions on personal expenses including transferring funds to himself and others, travel, car service and the publication of a book.

[10] Internal Revenue Service Data Book, 2016 Table 1 Collections and Refunds by Type of Tax

The Tax Division is working closely with the IRS Collection, Examination and Criminal Investigation divisions to ensure that IRS and Department personnel receive up-to-date training with respect to employment tax offenses, charging issues, potential defenses and sentencing issues. With respect to existing resources, in September 2015, the Tax Division updated the employment tax chapter of the Criminal Tax Manual and is currently working on a centralized database of criminal employment tax resources for Department prosecutors. The Tax Division also designated an Assistant Chief in the Southern Criminal Enforcement Section as the Point of Contact for criminal employment tax enforcement matters for the IRS and the Offices of the U.S. Attorneys. Finally, the Tax Division has increased its efforts to publicize results achieved in its employment tax prosecutions.

Prosecutions in this area not only punish those charged, but send a strong message of deterrence to those engaged in similar violations and those who are considering such conduct that the Department stands ready to investigate, prosecute and hold accountable those engaged in similar conduct.

Stolen Identity Refund Fraud

Stolen Identity Refund Fraud (SIRF) crimes continue to be committed across the country, with many defendants filing thousands of false returns, resulting in millions of dollars in fraudulent refund claims. Moreover, their level of sophistication has risen, with many of the recent SIRF crimes involving a cybercrime component. Victims hail from all segments of our society. The elderly are particularly vulnerable as a result of their contact with hospitals, assisted living centers, nursing homes, but they are not alone. SIRF victims include state and federal employees, the imprisoned, young children, the infirm, and members of our armed forces deployed overseas. Concerted and coordinated efforts among law enforcement partners are necessary to successfully combat this fraud.

In contrast with many of our traditional tax prosecutions, which may arise out of IRS administration investigations or lengthy grand jury proceedings, SIRF prosecutions are often reactive to exigent circumstances. In many cases, the crime is discovered by local law enforcement officers who come upon a large cache of Treasury checks or debit cards loaded with fraudulent tax refunds.

The low physical risk and high potential for financial gain has made stolen identity refund fraud the new crime of choice for drug dealers and gangs. While the crime may seem deceptively simple, the scope and organization of these criminals is vast and growing. In certain cases, the proceeds of the crimes have been used to purchase illegal narcotics for resale, or funneled offshore.

For taxpayers who are direct SIRF victims, the economic and personal consequences can be severe and often long-term. While the IRS will make good on the refund that is due to the taxpayer, the personal burden and delay can be considerable. Further, when a stolen identity is used to commit tax refund fraud, all taxpayers are victims, and all Americans are impacted by the loss to the Federal Treasury.

Recognizing these fast-moving law enforcement needs, and understanding that the Tax Division's required review and authorization for all tax grand jury investigations and prosecutions nationwide takes time, in October, 2012, we issued Directive 144, delegating to local U.S. Attorneys' Offices the authority to initiate tax-related grand jury investigations in SIRF matters, to charge those involved in SIRF crimes by complaint, and to obtain seizure warrants for forfeiture of criminally-derived proceeds arising from SIRF crimes, all without prior authorization from the Tax Division.

Since Directive 144 was issued, USAOs, have been able to respond quickly to SIRF type cases, and the Tax Division has authorized more than 1,300 SIRF investigations involving more than 2,000 subjects. As a result, the Tax Division and the U.S. Attorneys' Offices have brought approximately 1,000 prosecutions involving more than 1,900 individuals. And the courts are responding with substantial sentences. In addition, in February 2014, the Tax Division formed a SIRF Advisory Board, consisting of experienced SIRF prosecutors and designed to develop and implement a national strategy to ensure consistent and effective enforcement and prosecution.

Throughout 2015 and continuing into 2017, the Tax Division has worked in collaboration with the U.S. Attorney's Office for the District of Columbia to aggressively pursue a massive SIRF scheme that targeted vulnerable victims. This sophisticated scheme involves an extensive network of more than 130 individuals and resulted in the filing of at least 12,000 fraudulent federal income tax returns for the tax years 2005 through 2012 that sought refunds of more than $40 million. The co-conspirators filed returns in the names of individuals whose identities had been stolen, including the elderly, people in assisted living facilities, drug addicts, and the incarcerated. Multiple defendants have pleaded guilty or been convicted for their role in this scheme, and several have received substantial prison sentences, including the following:

In February 2017, Tony Bryant, Brian Bryant and Takara Cooper, were convicted following a jury trial for their role in this scheme. The Bryants used bank accounts they controlled to deposit the fraudulent refund checks and had roles in refund claims seeking more than $4.9 million. Cooper was paid to receive fraudulent refund checks at her address and provided the checks to a co-conspirator.

In December 2016, Kevin Brown, formerly of Capitol Heights, Maryland, was sentenced to serve 135 months in prison and ordered to pay more than $4.5 million in restitution to the IRS. Brown was a key organizer and leader of this scheme and recruited others to participate in the illegal activity. He pleaded guilty in February 2013.

In July 2016, Bradley King, of Fredericksburg, Virginia, was sentenced to serve 47 months for his role in this scheme. King recruited others to provide their personal identification information and their addresses to be used for the filing of the fraudulent returns and receipt of the refund checks. He also negotiated and sold the fraudulently obtained checks.

In January 2016, Marc Bell, a former employee of the D.C. Department of Youth Rehabilitation Services, pleaded guilty to his role in this scheme. Bell admitted to using his position to steal the names of at least 645 juveniles who were under court supervision. Bell then sold those names to co-conspirators, who used the information to file fraudulent tax returns.

In another far-reaching conspiracy, several defendants were sentenced to lengthy prison terms in the Middle District of Alabama and Middle District of Georgia for using stolen identities to file over 9,000 fraudulent returns that claimed over $24 million in tax refunds. Between January 2011 and December 2013, Keisha Lanier and Tracy Mitchell led a large-scale identity theft ring in which Lanier, Tracy Mitchell and their co-defendants obtained stolen identities from various sources, including the U.S. Army, several Alabama state agencies, a Georgia call center and employee records from a Georgia company. Mitchell worked at the hospital located at Fort Benning, Georgia, where she had access to the identification data of military personnel, including soldiers who were deployed to Afghanistan. She stole the personal information of soldiers and used that information to file false tax returns. The scheme also involved a complex money laundering operation with nearly $10 million in fraudulent tax refund checks being cashed at several businesses located in Alabama, Georgia and Kentucky.

In September 2015, Keisha Lanier, the ringleader of the scheme, was sentenced to 15 years in prison. In August 2015, Tracy Mitchell was sentenced to 159 months in prison and seven other co-conspirators were sentenced on that date. Several of the defendants were sentenced in 2016. For instance, in February 2016, Elizabeth Grant, a U.S. postal worker, was sentenced to 70 months in prison for providing co-conspirators with addresses along her mail delivery route to use in filing fraudulent returns, retrieving refund checks from the mail, and delivering them to her co-conspirators. Two owners of check cashing stores in Columbus, Georgia, Sunny Shah and George Rowell, were sentenced to 21 and 18 months for cashing fraudulent tax refund checks. Shah was also ordered to forfeit $1.3 million. Two bank tellers, Tonya Alexander and Vicky Wheeler, were sentenced to 37 and 18 months for cashing close to a million dollars in fraudulent tax refunds. In total, 21 participants in this fraud were sentenced to a combined prison term of approximately 106 years.

We all know we will not prosecute our way out of this problem, but we are committed to aggressively prosecuting these offenders and assisting the IRS as it works to increase its ability to stop these refunds from being issued.

Prosecuting Abusive Promotions

The Department continues to actively target those who promote the use of fraudulent tax shelters and other schemes to evade taxes and hide assets. Some schemes use domestic or foreign trusts to evade taxes. Promoters of these schemes often use the internet to aggressively market these trusts to the public, and rely upon strained, if not demonstrably false, interpretations of the tax laws. Employing what they often call “asset protection trusts” (ostensibly designed to guard an individual’s assets from legitimate creditors, including the IRS), these promoters are in fact assisting taxpayers to fraudulently assign income and conceal ownership of income-producing assets in order to evade paying their taxes. The Tax Division and U.S. Attorneys’ Offices are vigorously employing a range of criminal and civil tools, including injunctive relief, to address these abusive activities.

In March 2015, three promoters of a scheme called the National Audit Defense Network (NADN) were sentenced to substantial prison terms for conspiring to defraud the United States and aiding in the preparation of false tax returns. Alan Rodrigues, a former casino owner, was sentenced to 72 months in prison; Weston Coolidge, a former Las Vegas businessman was sentenced to 70 months; and former NFL punter Joseph Prokop received an 18-month prison term. These sentences follow the defendants’ May 2014 conviction following a six-week jury trial in the District of Nevada. A fourth co-conspirator, California businessman Daniel Porter, pleaded guilty to conspiracy to defraud the United States and was sentenced on April 10 to 55 months in prison. Porter created a product called Tax Break 2000 and conspired with Rodrigues, Coolidge, and Prokop to promote the product by falsely representing to customers that buying Tax Break 2000 would allow them to claim income tax credits and deductions under the Americans with Disabilities Act by modifying the customers’ websites to be more accessible to the disabled. As part of the conspiracy, the defendants trained return preparers working for NADN to prepare false tax returns that claimed these bogus credits and deductions. Between 2001 and 2004, the defendants sold Tax Break more than 18,000 times to thousands of customers throughout the United States. In 2004, the Tax Division also filed a civil suit to enjoin NADN’s activities.

Return-Preparer Fraud

Corrupt accountants and tax return preparers continue to present a serious law enforcement concern. Some accountants and return preparers deceive unwitting clients into filing false and fraudulent returns, while others serve as willing "enablers," providing a veneer of legitimacy for clients predisposed to cheat. In addition to the significant adverse impact these individuals have on the U.S. Treasury, their status as professionals may be perceived as legitimizing tax evasion, thereby promoting disrespect for the law. We have prosecuted many such return preparer cases during the past year. In one recent case, Cheryl Singleton, an Atlanta, Georgia tax return preparer was sentenced in January 2017 to serve 150 months in prison for filing fraudulent returns seeking more than $20 million in refunds. Singleton hired and trained employees to prepare fraudulent returns and encouraged them to manipulate the numbers to maximize their clients' refunds by including false dependents and fraudulent business income. Singleton also manipulated people into providing their personal identifying information by telling them that they could qualify for an "Obama Stimulus" payment, and used their information to file fraudulent tax returns in their names, without their knowledge or consent.

National Tax Defier Initiative

Tax defiers, also known as illegal tax protesters, have long been a focus of the Tax Division's investigative and prosecution efforts. Tax defiers advance frivolous arguments and develop a wide variety of schemes to evade their income taxes, assist others in evading their taxes, and frustrate the IRS, all under the guise of constitutional and other meritless objections to the tax laws. Frivolous arguments used by tax defiers include, for example, spurious claims that an individual is a "sovereign citizen" not subject to the laws of the United States, that the federal income tax is unconstitutional, and that wages are not income. Schemes utilized include the use of fictitious financial instruments in purported payment of tax bills and other debts, as well as the filing of false liens and IRS reporting forms, such as Forms 1099, designed to harass and retaliate against government employees and judges. In the most extreme circumstances, tax defiers have resorted to threats and violence to advance their anti-government agenda.

Tax defiers are identified by the schemes in which they participate and the tactics they utilize. It is important to note that those who merely express dissatisfaction with the tax laws should not be, and are not, prosecuted. The Department cherishes the right to free speech, but recognizes that it does not extend to acts that violate or incite the imminent and likely violation of the tax laws.

Because a segment of the tax defier community may and has resorted to violence to advance their cause, it is essential that law enforcement be prepared to respond rapidly to threats against agents, prosecutors, and judges. The Tax Division has implemented a comprehensive strategy using both civil and criminal enforcement tools to address the serious and corrosive effect of tax defier and sovereign citizen activity. Led by a National Director, the Tax Division's Tax Defier Initiative facilitates coordination among nationwide law enforcement efforts. Increased coordination allows new and recycled tax defier and related schemes and arguments to be identified quickly, and a coordinated strategy to be developed.

Through the Tax Defier Initiative, the Division has leveraged our expertise to develop a government-wide approach to monitoring and combating these crimes. As a result, our National Director for the Tax Defier Initiative, working with representatives of IRS Criminal Investigations, Treasury Inspector General for Tax Administration, the FBI Domestic Terrorism Operations Unit, and the Department's National Security Division, developed and implemented a national training program for prosecutors and investigators. The close working relationships fostered by our Initiative have enabled us to identify and respond more quickly and efficiently to trends in the tax defier community.

As in other areas, the Tax Division has made important strides in combating tax defier activity. Recent successes include the following.

In April 2017, Winston Shrout, one of the most prominent sovereign citizen tax defier promoters, was convicted following a jury trial, of making, passing and submitting fictitious financial instruments to a financial institution and the U.S. Treasury and failing to file tax returns. Shrout was highly influential in the sovereign citizen movement and has a significant following across the country and abroad. From approximately 2008 through 2015, Shrout created and submitted more than 1000 bogus financial instruments with the intent of defrauding financial institutions and the U.S. Treasury. He held worldwide seminars and private meetings to promote and market the use of these fake financial instruments to pay off debts, including federal taxes. Shrout sold recordings of his seminars, templates for fake financial instruments and other materials through his website. Despite earning $562,224 in income from his seminars, licensing fees from his products, and pension payments, Shrout failed to file his 2009 through 2014 tax returns.

In June 2016, Charles Parker, of College Park, Maryland was sentenced to serve 97 months in prison for conspiring to file false federal income tax returns and filing false tax returns. Parker recruited clients for a co-conspirator, who prepared tax returns falsely reporting the amount of taxes withheld and purportedly paid to the IRS. He collected financial information from clients and provided the information to his co-conspirator for the preparation of the false tax returns, causing the filing of 14 false tax returns that fraudulently claimed $7,753,940 in tax refunds.

In May 2016, Sean Gallman, of Upper Marlboro, Maryland, and Eric Gallman, of Huntersville, North Carolina, were sentenced to serve 132 months and 48 months in prison, after pleading guilty to perpetrating a scheme in which they filed fraudulent tax returns seeking refunds in excess of $224 million. The defendants established trusts and business entities, with addresses at numerous private commercial postal carrier stores in Maryland and North Carolina, and mailed fraudulent tax returns to the IRS in the names of the trusts and businesses requesting refunds. After receiving the refund checks, the defendants deposited the funds into bank accounts they controlled and used cashier's checks and other financial instruments to transfer a portion of the money to third parties and other bank accounts.

In January 2016, Canadian citizen Kevin Cyster was sentenced to 135 months in prison for his role in a tax fraud scheme that attempted to defraud the government out of approximately $10 million. Cyster and other Canadian citizens living in Canada filed tax returns that claimed refunds based on false Forms 1099-OID. On these tax returns, Cyster and his co-conspirators falsely claimed that nearly $10 million in federal income taxes had been withheld on their behalf by various Canadian financial institutions and paid over to the IRS. Brekke was sentenced to 12 years in prison for promoting the 1099-OID scheme, which the IRS has listed among its "dirty dozen" tax scams.

Counter-Terrorism

Tax Division attorneys play an important role in the fight against international terrorism. Tax Division attorneys lend their expertise to attorneys at the National Security Division and at U.S. Attorneys' Offices in prosecuting those who take advantage of the tax laws to fund terrorism, including through the use of tax-exempt organizations. A Tax Division Senior Litigation Counsel is responsible for managing matters associated with counter-terrorism and terrorist financing and serves as lead counsel in investigating, developing, and prosecuting criminal tax cases with a nexus to counter-terrorism and terrorism financing.

Corporate Fraud and other Financial Crimes

The Division investigates and prosecutes financial crimes such as corporate fraud and mortgage fraud. The Division also cooperates with other law enforcement components in formulating national policies, programs, strategies and procedures in a coordinated attack on financial crime.

In July 2016, Anton Drago, formerly known as Evan Fogarty, of Las Vegas, Nevada, was sentenced to serve 25 years in prison following his conviction on multiple fraud charges including wire fraud, theft of government funds and submitting false claims to the Department of Veterans Affairs (VA). Drago orchestrated a large-scale Nigerian oil investment fraud scheme from 2004 through 2012. He told investors that money they invested would be used for legal fees and business expenses to fund production, refinement and shipment of crude oil from Nigeria to the Bahamas and to purchase an oil refinery in the Bahamas. He promised investors a 400 percent return in sixty days and investors gave more than $2 million. Instead, Drago spent the money on personal expenses to include rent, travel, jewelry, luxury retail purchases, his Mercedes and exclusive club memberships. At the same time, Drago falsely claimed thousands of dollars in unemployment compensation benefits from the VA, claiming to have a debilitating military service-related injury, despite being an avid golfer and all while spending more than $100,000 on golf-related expenses. He was ordered to pay $2.3 million in restitution.

International Cooperation to Investigate Tax Evasion

The Tax Division regularly provides advice and assistance to Assistant United States Attorneys and IRS agents seeking extradition, information, and cooperation from other countries for both civil and criminal tax investigations and cases. Occasionally, the Tax Division provides assistance to attorneys from other federal agencies and offices, including the Federal Bureau of Investigation, the Securities and Exchange Commission, and the Department of Homeland Security.

The Tax Division also works to increase cooperation with foreign nations, recognizing that reciprocal engagements ultimately further the Division’s mission. For example, the Division has participated in consultations with France and Canada in an effort to improve the exchange of information under our income tax treaties with those countries, and the Division periodically hosts visiting delegations of tax officials from countries interested in learning more about federal tax enforcement in the United States. The Tax Division is also an important partner in the U.S. negotiating team for Double Taxation Conventions, Tax Information Exchange Agreements, and other international agreements concerning tax information.

Civil/Criminal Coordination

Finally, the Tax Division uses parallel civil and criminal proceedings to pursue both civil injunctions and criminal prosecutions against those who promote abusive schemes, engage in false tax return preparation, and pyramid employment tax liabilities. To facilitate this process and ensure that the Division is employing all available enforcement tools it named two trial attorneys as Counsel for Civil and Criminal Coordination. The Counsel provide civil trial attorneys and prosecutors with one-on-one assistance in handling parallel civil and criminal proceedings, participate in a Comprehensive Enforcement Working Group formed to promote better coordination of parallel proceedings, conduct training, and participate in various bar panels. The Tax Division also maintains an online resource library regarding parallel proceedings and comprehensive tax enforcement efforts.

2. Performance Tables

Performance and Resource Table

PERFORMANCE AND RESOURCES TABLE											
Decision Unit: General Tax Matters											
RESOURCES											
		Target		**Actual**		**Target**		**Changes**		**Requested (Total)**	
		FY 2016		**FY 2016**		**FY 2017**		**Current Services Adjustments and FY 2017 Program Changes**		**FY 2018 Request**	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**
		485	$106,979			**534**	$106,776	**-35**	$82	**499**	$106,858
TYPE	**PERFORMANCE**	**FY 2016**		**FY 2016**		**FY 2017**		**Current Services Adjustments and FY 2017 Program**		**FY 2018 Request**	
Program Activity: Criminal Prosecution & Appeals		**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**
		137	$30,128			154	$30,111	-10	$23	144	$30,134
Performance Measure: Workload	**Number of Cases received from the IRS and USAO for Authorization and Review**	n/a		n/a		n/a		n/a		n/a	
Performance Measure: Output	**Number of Investigations Authorized**	n/a		n/a		n/a		n/a		n/a	
Performance Measure: Output	**Number of Prosecutions Authorized**	n/a		n/a		n/a		n/a		na/	
Performance Measure: Outcome	**Success Rate for Criminal Tax Cases Handled by the Division**	95%		99%		90%		n/a		90%	
Program Activity: Civil Litigation & Appeals		**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**	**FTE**	**$000**
		348	$76,851	0	$0	380	$76,665	-25	$59	355	$76,724
Performance Measure: Outcome	**Civil Cases Successfully Litigated in the Trial Courts**	90%		96%		80%		n/a		80%	
Performance Measure: Outcome	**Civil Cases Successfully Litigated - Taxpayer Appeals**	85%		94%		85%		n/a		85%	
Performance Measure: Outcome	**Civil Cases Successfully Litigated - Government and Cross Appeals**	85%		64%		60%		n/a		60%	
Performance Measure: Outcome	**Tax Dollars Collected and Retained by Court Action and Settlement ($ in millions)**	n/a		$895		n/a		n/a		n/a	

Data Collection & Storage: The data sources for all performance data is TaxDoc, the Tax Division's automated case management system.

Data Validation and Verification: The Tax Division has established procedures to collect and record reliable and relevant data in TaxDoc.

Data Limitations: Some activities that are tracked in TaxDoc lack historical data. Dollars Collected and Retained fluctuates due to the type and stage of litigation resolved during the year.

Performance Measure Table

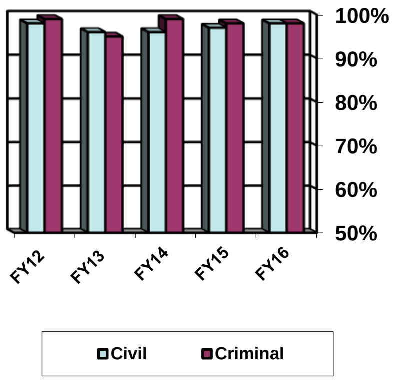
PERFORMANCE MEASURE TABLE								
Decision Unit: General Tax Matters								
Performance Report and Performance Plan Targets		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Actual	Target	Target
Performance Measure	Number of Criminal Investigations Authorized	938	749	664	590	553	n/a	n/a
Performance Measure	Number of Criminal Prosecutions Authorized	1,751	1,495	1,233	1,073	914	n/a	n/a
Outcome Measure	Success Rate for Criminal Tax Cases Handled by the Division	99%	95%	99%	98%	98%	90%	90%
Outcome Measure	Civil Cases Successfully Litigated in the Trial Courts	96%	96%	96%	96%	98%	80%	80%
Outcome Measure	Civil Cases Successfully Litigated - Taxpayer Appeals	98%	97%	94%	94%	96%	85%	85%
Outcome Measure	Civil Cases Successfully Litigated - Government and Cross Appeals	55%	68%	64%	61%	80%	60%	60%
Outcome Measure	Tax Dollars Collected and Retained by Court Action and Settlement ($ in millions)	$1,430.4	$1,212.2	$365.2	$907.0	$2,036.2	n/a	n/a
n/a = In accordance with Department guidance, there is no target for this measure.								

3. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

The goals of the Tax Division are to increase voluntary compliance, maintain public confidence in the integrity of the tax system, and promote the sound development of law.

Cases Favorably Resolved (TAX)



Data Definition: Favorable civil resolutions are through a judgment or settlement. Each civil decision is classified as a Government win, partial win, or taxpayer win; for this report, success occurs if the Government wins in total or in part. Criminal cases are favorably resolved by convictions which includes defendants convicted after trial or by plea agreement at the trial court level in prosecutions in which the Tax Division has provided litigation assistance at the request of a USAO.

Data Collection and Storage: The Tax Division utilizes a litigation case management system called TaxDoc.

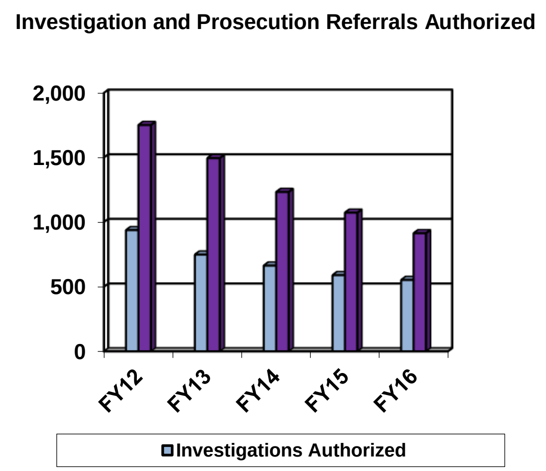
Data Validation and Verification: The Tax Division has established procedures to collect and record reliable and relevant data in TaxDoc. Management uses the data to set goals, manage cases and project workload. The statistics in this table are provided on a monthly basis to Division management for their review.

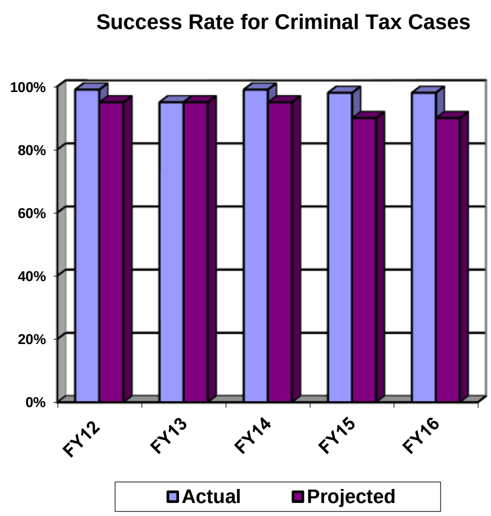
Data Limitations: The Tax Division lacks historical data on some activities that are now tracked in the case management system. The information system may cause variations in the way some statistics are presented.

Performance Measure 1: Percentage of Cases Favorably Resolved

FY 2016 Actual: 98% for Civil Trial and 98% for Criminal.

Discussion: The outcome measure for this decision unit is favorable resolution of all cases. The Department of Justice Strategic Plan sets Department-wide goals for the litigating components: 90% of criminal cases favorably resolved Department-wide and 80% of civil cases favorably resolved. As illustrated in the chart "Cases Favorably Resolved (TAX)," the Tax Division has exceeded the Department's goal for the last several years. In FY 2016, favorable outcomes were achieved in 98% of all civil and 98% of all criminal cases litigated by the Tax Division, including non-tax cases.





Data Definition: <u>Investigation and Prosecution Referrals</u> are grand jury investigation and criminal prosecution requests referred to the Tax Division for review to ensure that federal criminal tax enforcement standards are met. The number of prosecution referrals authorized is a defendant count; investigations may involve one or more targets. <u>The Success Rate</u> is convictions divided by the total of convictions and acquittals. "Convictions" includes defendants convicted after trial or by plea agreement at the trial court level in criminal tax prosecutions in which the Tax Division has provided litigation assistance at the request of a USAO. Defendants acquitted are defendants acquitted in the district court in cases in which the Tax Division provided litigation assistance.

Data Collection and Storage: The Tax Division utilizes a litigation case management system known as TaxDoc. The Division periodically reviews the complement of indicators that are tracked.

Data Validation and Verification: There are procedures to collect and record pertinent data, enabling Section Chiefs to make projections and set goals based on complete, accurate and relevant statistics.

Data Limitations: The Tax Division lacks historical data on some activities that are tracked in the case management system.

Performance Measure 2: Criminal Investigation and Prosecution Referrals Authorized

FY 2016 Actual: 553 Grand Jury Investigations and 914 Prosecutions

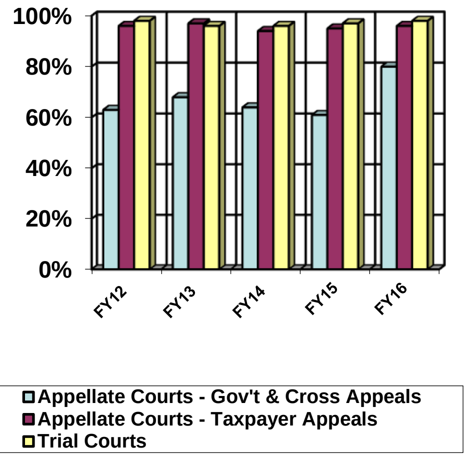
Discussion: The Tax Division also measures the number of authorized investigation and prosecution referrals in criminal cases. In FY 2016, the Division authorized 590 grand jury investigations and 1,073 prosecutions of individual defendants. Changes in the number of authorized investigations are largely proportional to the number of investigations initiated by the Internal Revenue Service.

Performance Measure 3: Success Rate for Criminal Tax Cases

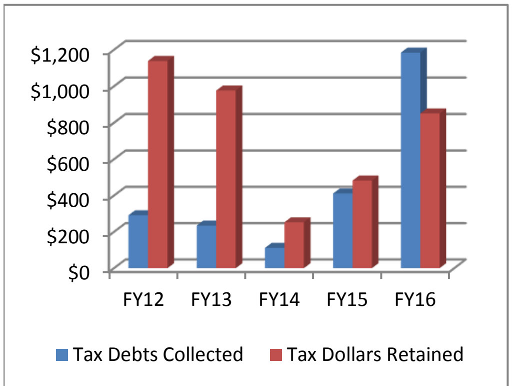
FY 2016 Actual: 98%

Discussion: The Tax Division's Criminal Trial Sections assume responsibility for some cases at the request of the United States Attorney Offices, generally multi-jurisdictional investigations and prosecutions, and cases with significant regional or national importance. Although many of these cases are difficult to prosecute, the Division has maintained a conviction rate at or greater than 95%. In FY 2016, the Division's conviction rate was 98% in tax cases.

Civil Cases Successfully Litigated [TAX]



Tax Debts Collected and Dollars Retained ($s in Millions)



Data Definition: A **decision** is the resolution of a claim through judgment or other court order. Each decision is classified as a Government win, partial win, or taxpayer win; for this report, success occurs if the Government wins in whole or in part. Appellate cases are classified as Taxpayer Appeals, Government Appeals, or Cross Appeals. The number of Government or Cross Appeals is generally less than 10% of the number of taxpayer appeals. **Tax Debts Collected** represents dollars collected on pending civil cases and outstanding judgments. **Tax Dollars Retained** represents the difference between claim amount sought and received by opposing parties in refund suits closed during the period.

Data Collection and Storage: The Tax Division utilizes a case management system known as TaxDoc.

Data Validation and Verification: The Tax Division has established procedures to collect and record reliable and relevant data in TaxDoc. Management uses the data to set goals, manage cases and project workload. The statistics in this table are provided on a monthly basis to Division management for their review.

Data Limitations: The Tax Debts Collected and Dollars Retained indicator fluctuates in response to the type and stage of litigation resolved during the year.

Performance Measure 4: Civil Cases Successfully Litigated

FY 2016 Actual:
Trial Courts – 98%
Taxpayer Appeals – 96%
Government and Cross Appeals – 80%

Discussion: For civil cases, the Tax Division measures cases successfully litigated, in total or in part, by the resolution of a claim through judgment or other court order.

We anticipate that maintaining this level of success will result in legal precedent that provides taxpayers, including individuals, businesses and industries, with guidance regarding their tax obligations; the collection of significant tax revenues; and the protection of the government against unfounded taxpayer claims. Many of the government appeals (and cross-appeals) during the reporting period involve the same (or similar) issues, so that a loss in a single case affects the outcome of multiple appeals.

Performance Measure 5: Tax Dollars Collected and Retained

FY 2016 Actual: $1.2 Billion Collected and $851.2 Million Retained

Discussion: The Tax Division collects substantial amounts for the federal government in affirmative litigation, and retains even more substantial amounts in defensive tax refund and other litigation. For FY 2016, the Division collected $1.2 billion and retained $851.2 million.

In addition to this measurable impact, the Division's litigation affects the revenue at issue in many cases being handled administratively by the IRS, and determines tax liabilities of litigants for many additional tax years. Its litigation successes also foster overall compliance with the tax laws. This substantial financial impact is a consequence of the Division's consistent and impartial enforcement of the tax laws. The Division does not measure these indirect effects of its litigation.

b. Strategies to Accomplish Outcomes

A strong tax system is vital to our national strength. It is essential that taxpayers believe, with good reason, in the integrity of the tax system. It is fundamental that we meet our obligations to our citizens to ensure the full, fair, and consistent enforcement of our tax laws. The Division's long-standing coordinated approach to tax enforcement is a particularly effective component to reduce the tax gap. Because the Tax Division's work already encompasses the elements of an effective tax enforcement program, the organization is well suited to expand existing programs with greater benefits in return.

The Tax Division's primary civil strategy to achieve its goals is to litigate federal civil tax cases filed by and against taxpayers in the federal courts. Through this litigation, the Division ensures the tax laws are properly enforced, by targeting particularly acute tax enforcement problems that threaten tax administration. In carrying out its mission, the Tax Division conducts in each civil tax case an independent review of the IRS's views and administrative determinations to help ensure that the Government's position is consistent with applicable law and policy. This independence, backed by a willingness to engage in aggressive litigation where appropriate, promotes the effective collection of taxes owed, while also serving as a check against potential abuses in tax administration.

While the Tax Division is and will remain responsive to shifts in criminal tax schemes, enforcement of the criminal tax statutes against individuals and businesses that engage in attempts to evade taxes, willful failure to file returns, and the submission of false returns, are at the core of the Division's mission. Enforcement of the internal revenue laws serves the goals of both specific and general deterrence. Enforcement of our criminal tax laws also helps us meet our responsibility to all taxpayers who meet their obligations, to pursue those who do not.

V. Program Increase by Item

No increases proposed.

VI. Program Offsets by Item

No offsets proposed.