

## CRIMINAL TAX MANUAL

*Note: The indictment forms are being updated.  
Page numbers and form numbers have changed.  
Please verify that you are using the appropriate form.*

### **INDICTMENT AND INFORMATION FORMS**

## **Contents**

26 U.S.C. § 6531 .....	1
1 Complaint to Toll Statute of Limitations .....	1
26 U.S.C. § 7201 .....	3
2 Individual Taxes – Evasion (Assessment) — False Return as Only Affirmative Act .....	3
3 Joint Taxes – Evasion (Assessment) — False Return as Only Affirmative Act.....	4
4 Individual Taxes – Evasion (Assessment) — False Return and Other Affirmative Acts.....	5
5 Joint Taxes – Evasion (Assessment) — False Return and Other Affirmative Acts.....	6
6 Individual Taxes – Evasion (Assessment) — Spies Evasion.....	7
7 Individual Taxes — Evasion (Payment) .....	8
8 Corporation Taxes – Evasion (Assessment) — False Return as Only Affirmative Act.....	9
9 Corporation Taxes – Evasion (Assessment) — False Return and Other Affirmative Acts .....	10
10 Corporation Taxes — Evasion (Assessment) — Spies Evasion .....	11
11 Corporation Taxes — Evasion (Payment).....	12
26 U.S.C. § 7202 .....	13
12 Failure to Collect, Account For, and Pay over Trust Fund Taxes — Tabular Form.....	13
26 U.S.C. § 7203 .....	16
13 Failure to File an Individual Income Tax Return.....	16
14 Failure to File a Partnership Income Tax Return.....	18
15 Failure to File a Corporate Income Tax Return .....	19
16 Failure to Pay Individual Income Tax.....	20
26 U.S.C. § 7204 .....	21
17 Failure to Furnish Employee's Withholding Statement, Form W-2 .....	21
18 Furnishing False and Fraudulent Employee's Withholding Statement, Form W-2.....	22
26 U.S.C. § 7205 .....	23
19 False Withholding Allowance Certificate, Form W-4.....	23
26 U.S.C. § 7206(1).....	24
20 Making and Subscribing a False Tax Return.....	24

21	Making and Subscribing a False Statement or Other Document.....	25
22	Making and Subscribing a False Tax Return — Tabular Form .....	26
23	Making and Subscribing a False Statement or Other Document — Tabular Form.....	27
24	Aiding and Assisting in the Preparation and Presentation of a False and Fraudulent Tax Return, Statement, or Other Document .....	28
25	Aiding and Assisting in the Preparation and Presentation of False and Fraudulent Tax Returns, Statements, or Other Documents — Tabular Form .....	29
26	Removal or Concealment of Goods or Commodities with Intent to Evade or Defeat the Assessment or Collection of a Tax.....	30
26 U.S.C. § 7206(5)(A).....		31
27	Concealment of Assets in Connection with a Compromise or Closing Agreement .....	31
26 U.S.C. § 7206(5)(B).....		32
28	Withholding, Falsifying, or Destroying Records or Making a False Statement in Connection with a Compromise or Closing Agreement.....	32
26 U.S.C. § 7207 .....		33
29	False Document Submitted to I.R.S. – Venue in District Where Document Submitted ....	33
30	False Document Submitted to I.R.S. – Venue in District of Mailing .....	34
31	False Documents Submitted to I.R.S. – Venue in District Where Documents Submitted – Tabular Form Information .....	35
32	False Documents Submitted to I.R.S. – Venue in District of Mailing – Tabular Form Information .....	36
26 U.S.C. § 7210 .....		37
33	Failure to Appear in Response to Summons .....	37
26 U.S.C. § 7212(A).....		38
34	Corrupt Endeavor to Obstruct and Impede the Administration of the Internal Revenue Laws .....	38
26 U.S.C. § 7215 .....		40
35	Failure to Make Trust Fund Deposit After Notice .....	40
18 U.S.C. § 286.....		42
36	Conspiracy to File False Claims.....	42
18 U.S.C. § 287.....		44
37	Filing False Claim for Refund.....	44
38	Filing False Claim for Refund – Tabular Form .....	45
18 U.S.C. § 371.....		46
39	Conspiracy to Defraud the United States .....	46

40 Dual-Object Conspiracy to Defraud the United States and to Commit Other Offenses....	48
18 U.S.C. § 1001 .....	51
41 False Statement or Representation Made to Department/Agency of U.S. ....	51
42 False Document Submitted to Department/Agency of U.S. ....	52
43 Falsify, Conceal, or Cover Up by Trick, Scheme, or Device a Material Fact .....	53
18 U.S.C. § 1956(A)(1)(A)(II) .....	54
44 Laundering of Monetary Instruments .....	54

Form 1

26 U.S.C. § 6531

*Complaint to Toll Statute of Limitations*

IN THE UNITED STATES DISTRICT COURT  
FOR THE \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

UNITED STATES OF )  
AMERICA )  
 )  
v. ) COMPLAINT  
 )  
\_\_\_\_\_ )

COMPLAINT FOR VIOLATION OF SECTION 7201<sup>1</sup>  
INTERNAL REVENUE CODE OF 1986 (26 U.S.C.)

Before [*Magistrate Judge's Name*], United States Magistrate Judge,  
[*Judicial District*].

The undersigned complainant, being duly sworn, states:

That he [she] is a Special Agent [*or Revenue Agent*] of the Internal Revenue Service and, in the performance of the duties imposed on him [her] by \_\_\_\_\_, he [she] has conducted an investigation of the Federal income tax liability of [*Defendant's Name*] of [*City*], [*State*], for the calendar year<sup>2</sup> 20\_\_\_\_, by examining the taxpayer's tax return for the calendar year 20\_\_\_\_, and other years; [*e.g., by examination and audit of the taxpayer's business and financial books and records; by identifying and interviewing third parties with whom the taxpayer did business; by consulting public and private records reflecting the taxpayer's income; and/or by interviewing third persons having knowledge of the taxpayer's financial condition.*]<sup>3</sup>

<sup>1</sup> When drafting complaints for violation of other Sections of the Internal Revenue Code, refer to the appropriate indictment form as a guide.

<sup>2</sup> If a fiscal year is involved, substitute "fiscal year ended, [*Date*], 20\_\_\_\_". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

<sup>3</sup> The bracketed descriptions of the kinds of investigation conducted by the subscribing agent may all be used if they correctly reflect the facts. Otherwise, the inapposite description(s) should, of course, be deleted. When appropriate, the description of a different investigative course should be added or substituted based on the facts. See *Jaben v. United States*, 381 U.S. 214 (1965).

That based on this investigation, the complainant has personal knowledge that on or about the day of , 20\_\_\_\_\_, at [City], [State] in the \_\_\_\_\_ District of \_\_\_\_\_, [Defendant's Name] did unlawfully and willfully attempt to evade and defeat the income taxes due and owing by him [her] to the United States of America for the calendar year 20\_\_\_\_, by preparing and causing to be prepared, and by signing and causing to be signed in the \_\_\_\_\_ District of \_\_\_\_\_, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service. In that return, [Defendant's Name] stated that his [her] taxable<sup>4</sup> [or adjusted gross] income for the calendar year 20\_\_\_\_ was \$\_\_\_\_\_, and that the amount of tax due and owing thereon was the sum of \$\_\_\_\_\_, when in fact, as he [she] knew, his [her] taxable [or adjusted gross] income for the calendar year<sup>5</sup> was the sum of \$\_\_\_\_\_, upon which taxable<sup>4</sup> [or adjusted gross] income he [she] owed to the United States of America an income tax of \$\_\_\_\_\_.

\_\_\_\_\_  
6  
Title of Subscribing Internal  
Revenue Service Officer

Sworn to before me and subscribed in my presence, this \_\_\_\_\_ day of 20\_\_\_\_\_.

\_\_\_\_\_  
United States Magistrate Judge

<sup>4</sup> Forms 1040 for some years do not use the phrase "taxable income" or "tax table income." However, what constitutes taxable income as defined in 26 U.S.C. § 63, is actually computed on the appropriate line of the return. That line may vary, and the line on the return showing the amount on which the actual tax was computed should be used.

<sup>5</sup> If a fiscal year is involved, substitute "fiscal year ended [Date], 20\_\_\_\_\_".

<sup>6</sup> To be sworn to by an Internal Revenue Service Officer having knowledge of the facts.

**Form 2**

**26 U.S.C. § 7201**

***Individual Taxes – Evasion (Assessment) — False Return as Only Affirmative Act***

[Revised October 2015]

**THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:**

From in or about **[Month Year]** through in or about **[Month Year]**, in the  
[ ] District of [ ] and elsewhere, DEFENDANT, a resident of **[City]**, **[State]**,  
willfully attempted to evade and defeat income tax due and owing by **[him/her]** to the United  
States of America, for the calendar year **[Year]**<sup>7</sup>, by preparing and causing to be prepared, and by  
signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**,  
which was submitted to the Internal Revenue Service. On that tax return, DEFENDANT reported  
and caused to be reported that **[his/her]** taxable income for the calendar year **[Year]** was \$[ ]  
and that the amount of tax due and owing was \$[ ]. In fact, as DEFENDANT knew, **[his/her]**  
taxable income for the calendar year **[Year]**<sup>8</sup> was greater than the amount reported on the tax  
return, and as a result of such additional taxable income, there was additional tax<sup>9</sup> due and owing to  
the United States of America.

In violation of Title 26, United States Code, Section 7201.

---

<sup>7</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on **[Date]**.”

<sup>8</sup> If the defendant is married and resides in a community property state, his/her and his/her spouse’s income may be computed based on that state’s rules for community property. If so, it may be appropriate to insert the phrase “, computed on a community property basis,”.

<sup>9</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

### Form 3

#### 26 U.S.C. § 7201

#### *Joint Taxes – Evasion (Assessment) — False Return as Only Affirmative Act*

[Revised October 2015]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about [Month Year] through in or about [Month Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] and elsewhere, DEFENDANT, a resident of [City], [State], willfully attempted to evade and defeat income tax due and owing by [him/her] and [his/her] spouse to the United States of America, for the calendar year [Year]<sup>10</sup>, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent [Form Title], Form [Form Number], which was submitted to the Internal Revenue Service. On that tax return, DEFENDANT reported and caused to be reported that [his/her] and [his/her] spouse's joint taxable income for the calendar year [Year] was \$[\_\_\_\_], and that the amount of tax due and owing was \$[\_\_\_\_\_]. In fact, as DEFENDANT knew, DEFENDANT and [his/her] spouse had joint taxable income for the calendar year [Year] that was greater than the amount reported on the tax return, and as a result of such additional taxable income, there was additional tax<sup>11</sup> due and owing to the United States of America.

In violation of Title 26, United States Code, Section 7201.

---

<sup>10</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>11</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

**Form 4**

**26 U.S.C. § 7201**

***Individual Taxes – Evasion (Assessment) — False Return and Other Affirmative Acts***

[Revised October 2015]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about [Month Year] through in or about [Month Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] and elsewhere, DEFENDANT, a resident of [City], [State], willfully attempted to evade and defeat income tax<sup>12</sup> due and owing by [him/her] to the United States of America, for the calendar year [Year]<sup>13</sup>, by committing the following affirmative acts, among others:

- (a) preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent [Form Title], Form [Form Number], which was submitted to the Internal Revenue Service; and
- (b) – (...) [insert other affirmative acts<sup>14</sup>].

In violation of Title 26, United States Code, Section 7201.

---

<sup>12</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

<sup>13</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>14</sup> For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

**Form 5**

**26 U.S.C. § 7201**

***Joint Taxes – Evasion (Assessment) — False Return and Other Affirmative Acts***

[Revised October 2015]

**THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:**

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[\_\_\_\_\_]** District of **[\_\_\_\_\_]** and elsewhere, DEFENDANT, a resident of **[City]**, **[State]**, willfully attempted to evade and defeat income tax<sup>15</sup> due and owing by **[him/her]** and **[his/her]** spouse to the United States of America, for the calendar year **[Year]**<sup>16</sup>, by committing the following affirmative acts, among others:

- (a) preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service; and
- (b)– (...) **[insert other affirmative acts<sup>17</sup>]**.

In violation of Title 26, United States Code, Section 7201.

---

<sup>15</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

<sup>16</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>17</sup> For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

## Form 6

### 26 U.S.C. § 7201

#### *Individual Taxes – Evasion (Assessment) — Spies Evasion*

[Revised October 2015]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year [Year]<sup>18</sup>, DEFENDANT, a resident of [City], [State], received taxable income<sup>19</sup>, upon which there was income tax<sup>20</sup> due and owing to the United States of America. Knowing the foregoing facts and failing to make an income tax return<sup>21</sup> on or before April 15<sup>22</sup>, [Year], as required by law, to any proper officer of the Internal Revenue Service, and to pay the income tax to the Internal Revenue Service, DEFENDANT, from on or about [Month Year] through on or about [Month Year], in the [\_\_\_\_] District of [\_\_\_\_] and elsewhere, willfully attempted to evade and defeat income tax due and owing by [him/her] to the United States of America, for the calendar year [Year], by committing the following affirmative acts, among others:

(a) – (...) [insert affirmative acts<sup>23</sup>].

In violation of Title 26, United States Code, Section 7201.

---

<sup>18</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>19</sup> If the defendant is married and resides in a community property state, his/her and his/her spouse’s income may be computed based on that state’s rules for community property. If so, it may be appropriate to insert the phrase “, computed on a community property basis.”

<sup>20</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

<sup>21</sup> It is important to note that *failing* to file a tax return is not an affirmative act and should not be alleged as such in a tax evasion indictment where a return was not submitted to the Internal Revenue Service.

<sup>22</sup> If April 15 of the applicable year fell on a weekend or holiday, then the filing deadline would be the next day that was not a weekend day or holiday. Also, if the defendant requested and received a filing extension, then the due date may need to be changed to October 15 (or later, if October 15 was a weekend or holiday).

<sup>23</sup> For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

Form 7

26 U.S.C. § 7201  
*Individual Taxes — Evasion (Payment)*  
[Revised October 2015]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about [Month Year] through in or about [Month Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] and elsewhere, DEFENDANT, a resident of [City], [State], willfully attempted to evade and defeat the payment of income tax<sup>24</sup> due and owing by [him/her]<sup>25</sup> to the United States of America, for the calendar year[s]<sup>26</sup> [Year(s)]<sup>27</sup>, by committing the following affirmative acts, among others:

(a) – (...) [insert affirmative acts<sup>28</sup>].

In violation of Title 26, United States Code, Section 7201.

---

<sup>24</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

<sup>25</sup> If the defendant is charged with evading the income taxes of him/her and his/her spouse, then insert “and [his/her] spouse.” Likewise, if the defendant is charged with evading the income taxes of another, then replace “him” or “her” with the name or initials of that person.

<sup>26</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>27</sup> If the evasion relates to multiple calendar (or fiscal) years, then the prosecutor should make the statement plural. [Criminal Tax Manual § 8.07\[2\]](#).

<sup>28</sup> For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

## Form 8

### 26 U.S.C. § 7201

#### *Corporation Taxes – Evasion (Assessment) — False Return as Only Affirmative Act*

[Revised October 2015]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the [\_\_\_\_] District of [\_\_\_\_] and elsewhere, DEFENDANT willfully attempted to evade and defeat income tax due and owing by **[Name of Corporation]**,<sup>29</sup> a corporation that had its principal place of business in **[City]**, **[State]**, to the United States of America, for the calendar year **[Year]**<sup>30</sup>, by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service. On that tax return, the corporation reported that its taxable income for the calendar year **[Year]** was \$[\_\_\_\_] and that the amount of tax due and owing was \$[\_\_\_\_]. In fact, as DEFENDANT knew, the corporation's taxable income for the calendar year **[Year]** was greater than the amount reported on the tax return, and as a result of such additional taxable income, there was additional tax<sup>31</sup> due and owing to the United States of America.

In violation of Title 26, United States Code, Section 7201.

---

<sup>29</sup> This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

<sup>30</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>31</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

## Form 9

### 26 U.S.C. § 7201

#### *Corporation Taxes – Evasion (Assessment) — False Return and Other Affirmative Acts*

[Revised October 2015]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about [Month Year] through in or about [Month Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] and elsewhere, DEFENDANT willfully attempted to evade and defeat income tax<sup>32</sup> due and owing by [Name of Corporation],<sup>33</sup> a corporation that had its principal place of business in [City], [State], to the United States of America, for the calendar year [Year]<sup>34</sup>, by committing the following affirmative acts, among others:

- (a) preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent [Form Title], Form [Form Number], which was submitted to the Internal Revenue Service; and
- (b)– (...) [insert other affirmative acts.<sup>35</sup>]

In violation of Title 26, United States Code, Section 7201.

---

<sup>32</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

<sup>33</sup> This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

<sup>34</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>35</sup> For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

## Form 10

### 26 U.S.C. § 7201

#### *Corporation Taxes — Evasion (Assessment) — Spies Evasion*

[Revised October 2015]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year [Year]<sup>36</sup>, [Name of Corporation],<sup>37</sup> a corporation that had its principal place of business in [City], [State], received taxable income, upon which there was income tax<sup>38</sup> due and owing to the United States of America. Knowing the foregoing facts, and that [Name of Corporation] neither made an income tax return<sup>39</sup> on or before March 15, [Year],<sup>40</sup> as required by law, to any proper officer of the Internal Revenue Service, nor paid the income tax to the Internal Revenue Service, DEFENDANT, from in or about [Month Year] through in or about [Month Year], in the [\_\_\_\_] District of [\_\_\_\_] and elsewhere, willfully attempted to evade and defeat income tax due and owing by [Name of Corporation] for the calendar year [Year], by committing the following affirmative acts, among others:

(a) – (...) [insert affirmative acts.<sup>41</sup>]

In violation of Title 26, United States Code, Section 7201.

---

<sup>36</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>37</sup> This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

<sup>38</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

<sup>39</sup> This form should be used when the corporation has not filed a return. It is important to note that *failing* to file a tax return is not an affirmative act and should not be alleged as such in a tax evasion indictment where a return was not submitted to the Internal Revenue Service.

<sup>40</sup> Generally, a corporation must file its income tax return by the 15th day of the third month after the end of its tax year. For a corporation that operates on a calendar year, the due date is March 15 of the following year. However, if the due date falls on a Saturday, Sunday, or legal holiday, the return is due on the next business day. Also, if the corporation requested and received a filing extension, then the due date may need to be changed to the date upon which the tax return was due once the extension was granted.

<sup>41</sup> For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

**Form 11**

**26 U.S.C. § 7201**

***Corporation Taxes — Evasion (Payment)***

[Revised October 2015]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about [Month Year] through in or about [Month Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] and elsewhere, DEFENDANT willfully attempted to evade and defeat the payment of income tax<sup>42</sup> due and owing by [Name of Corporation],<sup>43</sup> a corporation that had its principal place of business in [City], [State], to the United States of America, for the calendar year[s]<sup>44</sup> [Year(s)]<sup>45</sup>, by committing the following affirmative acts, among others:

(a)– (...) [insert affirmative acts.<sup>46</sup>]

In violation of Title 26, United States Code, Section 7201.

---

<sup>42</sup> Although the statutory language of 26 U.S.C. § 7201 does not contain the word “substantial,” some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. [Criminal Tax Manual § 8.07\[3\]](#).

<sup>43</sup> This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

<sup>44</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year that ended on [Date].”

<sup>45</sup> If the evasion relates to multiple calendar (or fiscal) years, then the prosecutor should make the statement plural. [Criminal Tax Manual § 8.07\[2\]](#).

<sup>46</sup> For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

**Form 12**

**26 U.S.C. § 7202**

***Failure to Collect, Account For, and Pay over Trust Fund Taxes — Tabular Form***

[Revised August 2021]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

**Introductory Allegations**

At all times relevant to this [indictment/information]:

DEFENDANT resided in [City], [State].

[Business name] was a [corporation/sole proprietorship/partnership/limited liability company]<sup>47</sup> doing business in [City], [State]. [Business Name] was engaged in the business of [describe type of business].

DEFENDANT was the [title/role]<sup>48</sup> of [Business Name].

The Internal Revenue Service (“IRS”) was an agency of the United States Department of the Treasury responsible for administering the tax laws of the United States and collecting taxes owed to the United States.

**Employment Tax Withholding**

Pursuant to the Internal Revenue Code and associated statutes and regulations, employers are required to withhold amounts from their employees’ gross pay including Federal Insurance Contribution Act (“FICA”) taxes, which represent Social Security and Medicare taxes, and federal income taxes. These taxes will be referred to in this Indictment collectively as “trust fund taxes” because employers hold the withheld amounts in trust until paid over to the United States. Employers are required to remit these withheld, trust fund amounts to the IRS on a quarterly basis, no later than the last day of month following the end of the quarter.

In addition to the trust fund taxes that must be withheld from pay, employers are separately required to make contributions under FICA for Social Security and Medicare in amounts matching the amounts withheld from their employees’ pay for those purposes. Such

---

<sup>47</sup> This form is not applicable where the business is operated as a sole proprietorship or a partnership and there are no employees other than the owner or the general partners. In such cases, the owners are directly liable for all income and self-employment taxes and should be charged with failure to file or pay, or tax evasion, as appropriate. This form may be used to charge the owner of a sole proprietorship or a general partner where there are other employees whose trust fund taxes are not properly withheld, accounted for, or paid over to the IRS.

<sup>48</sup> Include all the defendant’s titles and roles at the business, including founder, partner, CEO, CFO, president, member of the Board of Directors, etc.

employer contributions are likewise required to be remitted to the IRS no later than the last day of the month following the end of the quarter. Collectively, these five components required to be remitted quarterly are commonly referred to as “employment taxes,” made up of the trust fund taxes withheld (individual income, Social Security and Medicare taxes) and the matching amounts contributed by the employer.

Employers are required to file, one month after the conclusion of the calendar quarter, an Employer’s Quarterly Federal Tax Return, Form 941 (“Form 941”), setting forth the total amount of income taxes withheld, the total amount of Social Security and Medicare taxes due, and the total tax deposits.

A person is responsible for collecting, accounting for, and paying over the employment taxes if he or she has the authority required to exercise significant control over the employer’s financial affairs, regardless of whether the individual exercised such control in fact.<sup>49</sup>

DEFENDANT exercised control over [Business Name’s] financial affairs by, among other acts, [describe factors: i.e. approving payments, signing checks, controlling bank accounts, signature authority on bank accounts, etc.]; thus, [he/she] was a responsible person for collecting trust fund taxes, accounting for the employment taxes by filing Forms 941 with the IRS, and paying over to the IRS the employment taxes for [Business Name]’s employees.

### **Statutory Allegations**

Paragraphs [number] through [number] of this indictment are re-alleged as if fully set forth herein.

DEFENDANT was a person required to collect, account for on quarterly Forms 941, and pay over to the IRS on behalf of [Business Name] the trust fund taxes imposed on its employees by the Internal Revenue Code.

On or about the dates listed in the table below, for each of the calendar quarters listed below, in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere], DEFENDANT did willfully **[fail to collect, truthfully account for, and pay over]**<sup>50</sup> the trust fund taxes due and owing to the IRS on behalf of the employees of [Business Name].

---

<sup>49</sup> Where applicable, prosecutors may add the following: “More than one person may be considered a “responsible person” for the purpose of collecting, accounting for, and paying over employment taxes, including trust fund amounts and employers’ matching amounts.”

<sup>50</sup> Only include those duties the defendant failed to perform. For example, if the defendant withheld but did not account for (i.e., did not file the Form 941) or pay over, then the indictment would only allege a failure to “truthfully account for and pay over.” If the defendant withheld and filed the Form 941 but did not pay over, then the indictment would only allege a failure to “pay over.”

<b>Count</b>	<b>Calendar Quarter Ending</b>	<b>Due Date of Form 941</b>	<b>Trust Fund Taxes Due and Owing<sup>51</sup></b>
1			
2-(...)			

In violation of Title 26, United States Code, Section 7202.

---

<sup>51</sup> It is not necessary to allege the amounts due and owing. If the defendant did not file quarterly Forms 941, or filed false Forms 941, or you are otherwise unable to determine the exact amount of taxes due and owing for each quarter, you should not include this column.

## Form 13

### 26 U.S.C. § 7203

#### *Failure to File an Individual Income Tax Return*

[Updated September 2021]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year [Year]<sup>52</sup>, DEFENDANT, a resident of [City], [State],<sup>53</sup> had and received gross income<sup>54</sup> in excess of \$[Minimum filing requirement].<sup>55</sup> By reason of such gross income, [he/she] was required by law, following the close of calendar year [Year], and on or before April 15, [Year],<sup>56</sup> to make an income tax return to the Internal Revenue Service,

---

<sup>52</sup> Natural persons are generally required to report income based on calendar-year accounting. 26 U.S.C. § 441(g); 26 C.F.R. § 1.442-1. If a fiscal year is involved, however, substitute “fiscal year [Year]”. Fiscal-year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

<sup>53</sup> If venue is based on the defendant’s principal place of business, substitute for residence, “whose principal place of business was in [City], [State].”

<sup>54</sup> For a discussion of what constitutes gross income, see Criminal Tax Manual 10.05[2].

<sup>55</sup> The minimum amount of income necessary to trigger the duty to file varies by year and depends on the taxpayer’s age, marital status, filing status, and filing status of a spouse. For a discussion of gross income and the annual minimum filing requirement, see [Criminal Tax Manual 10.05\[2\]](#). If the decision is made to allege the specific amount of gross income, replace this language with “had and received approximately \$[defendant’s income] in gross income.”

If the defendant is married and files jointly, replace this language with “DEFENDANT and [his/her] spouse had and received gross income in excess of \$[minimum filing requirement for married filing jointly].” For spouses residing in a community property state, each spouse’s gross income is computed on the community property basis. In such a case, replace this language with “DEFENDANT and [his/her] spouse, [Spouse’s Name], were residents of [State], which is a community property state, had and received gross income computed on the community property basis of \$[Amount] and \$[Amount], respectively.”

<sup>56</sup> When April 15 falls on a Saturday, Sunday, or legal holiday, including Emancipation Day (celebrated in the District of Columbia on the weekday closest to April 16), 26 U.S.C. § 7503 provides that filing shall be deemed timely if performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, so “April 15” should be replaced with the “timely” filing deadline. Note, however, that Section 7503 does not change the statutory due date for purpose of calculating the statute of limitations under 26 U.S.C. § 6513(a), so the limitations period for charging should be calculated with reference to April 15, not the succeeding day. See Criminal Tax Manual 7.02[1][a]. Taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots’ Day in Massachusetts, which falls on the third Monday of April. It is important to verify the filing deadline for each year charged. The filing deadline also changes if the taxpayer obtained an extension of time for filing. See Criminal Tax Manual 10.05[3].

stating specifically the items of [his/her] gross income and any deductions and credits to which [he/she] was entitled. Knowing and believing all of the foregoing, [he/she] did willfully fail, on or about April 15, [**Year**], in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere,] to make an income tax return.

In violation of Title 26, United States Code, Section 7203.

**Form 14**

**26 U.S.C. § 7203**

***Failure to File a Partnership Income Tax Return***

[Updated September 2021]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year [Year]<sup>57</sup>, DEFENDANT conducted business as a partnership under the name [Name of business], with its principal place of business at [City], [State]. [He/She] was [a/the] partner responsible for filing tax returns on behalf of the partnership.<sup>58</sup> [He/She] was therefore required by law, following the close of the calendar year [Year] and on or before April 15, [Year],<sup>59</sup> to make, for and on behalf of the partnership, a partnership return of income to the Internal Revenue Service, stating specifically the items of the partnership's gross income and the deductions and credits allowed by law. Knowing and believing all the foregoing, [he/she] did willfully fail, on or about April 15, [Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere,] to make a partnership return.

In violation of Title 26, United States Code, Section 7203.

---

<sup>57</sup> If a fiscal year is involved, substitute "fiscal year [Year]".

<sup>58</sup> Prosecutors should not assume that all partners are responsible persons simply by virtue of being a partner. Instead, prosecutors should look to the partnership agreement, as well as the partnership's operational history, to determine whether a particular partner has the responsibility or duty to file the partnership's returns.

<sup>59</sup> Fiscal year partnership returns must be filed on or before the 15th day of the fourth month following the close of the fiscal year. 26 U.S.C. §§ 6031, 6072(a). When the 15th falls on a Saturday, Sunday, or legal holiday, 26 U.S.C. § 7503 provides that filing shall be deemed timely if performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, so the 15th should be replaced with the "timely" filing deadline. Note, however, that Section 7503 does not change the statutory due date for purpose of calculating the statute of limitations under 26 U.S.C. § 6513(a), so the limitations period for charging must be calculated with reference to the statutory filing date, not the succeeding day. See Criminal Tax Manual 7.02[1][a]. It is important to verify the filing deadline for each year charged. The filing deadline also changes if the taxpayer obtained an extension of time for filing. See Criminal Tax Manual 10.05[3].

**Form 15**

**26 U.S.C. § 7203**

***Failure to File a Corporate Income Tax Return***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year [Year]<sup>60</sup>, DEFENDANT was the [position held in corporation] of [Name of Corporation], a corporation not expressly exempt from tax, with its principal place of business at [City], [State]. [He/she] therefore was required by law,<sup>61</sup> after the close of calendar year [Year] and on or before March 15, [Year],<sup>62</sup> to make an income tax return, for and on behalf of the corporation, to the Internal Revenue Service, stating specifically the items of the corporation's gross income and the deductions and credits allowed by law. Knowing and believing all of the foregoing, [he/she] did willfully fail, on or about March 15, [Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere,] to make an income tax return at the time required by law.

In violation of Title 26, United States Code, Section 7203.

---

<sup>60</sup> If a fiscal year is involved, substitute "fiscal year [Year]".

<sup>61</sup> The term "person" as used in § 7203 encompasses corporate officers responsible for filing the returns of the corporate "person." See 26 U.S.C. §§ 7203, 7343. More than one corporate officer or employee may be a responsible person with respect to filing the corporation's income taxes. Whether an individual is responsible for filing a corporation's tax returns depends on all the circumstances, including their position, the corporation's governing documents, and the corporation's operational history.

<sup>62</sup> Fiscal year corporation income tax returns must be filed on or before the 15th day of the third month following the close of the fiscal year. 26 U.S.C. § 6072(b). When the 15th falls on a Saturday, Sunday, or legal holiday, 26 U.S.C. § 7503 provides that filing shall be deemed timely if performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday, so the 15th should be replaced with the "timely" filing deadline. Note, however, that Section 7503 does not change the statutory due date for purpose of calculating the statute of limitations under 26 U.S.C. § 6513(a), so the limitations period for charging must be calculated with reference to the statutory filing date, not the succeeding day. See Criminal Tax Manual 7.02[1][a]. It is important to verify the filing deadline for each year charged. The filing deadline also changes if the taxpayer obtained an extension of time for filing. See Criminal Tax Manual 10.05[3].

**Form 16**

**26 U.S.C. § 7203**

***Failure to Pay Individual Income Tax***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year<sup>63</sup> 20\_\_\_\_, [***Defendant's Name***], who was a resident of [***City***], [***State***], had and received taxable income of \$\_\_\_\_\_, on which taxable income there was owing to the United States of America an income tax of \$\_\_\_\_\_. He [she] was required by law to pay, on or before April 15, 20\_\_\_\_,<sup>64</sup> that income tax to the Internal Revenue Service Center, at [***City***], [***State***], to a person assigned to receive returns at the local office of the Internal Revenue Service at [***City***], [***State***], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing all of the foregoing, he [she] did willfully fail, on April 15, 20\_\_\_\_<sup>2</sup>, in the \_\_\_\_\_ District of \_\_\_\_\_ and elsewhere, to pay the income tax due.

In violation of Title 26, United States Code, Section 7203.

---

<sup>63</sup> If a fiscal year is involved, substitute "fiscal year ended \_\_\_\_\_, 20\_\_." Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

<sup>64</sup> If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. 26 U.S.C. § 7503. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

**Form 17**

**26 U.S.C. § 7204**

***Failure to Furnish Employee's Withholding Statement, Form W-2***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year 20\_\_\_\_, [***Defendant's Name***],<sup>65</sup> a resident of [City], [State], employed [***Name of Employee***], a resident of [City], [State]. [***Defendant's Name***] was required under the Internal Revenue laws to deduct and withhold federal income taxes and Federal Insurance Contributions Act taxes with respect to the wages of [***Name of Employee***] and to furnish him [her] on or before January 31, 20\_\_\_\_, with a written statement showing the amount of wages paid and taxes deducted and withheld during the calendar year 20\_\_\_\_. On or about the day of , 20\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, [***Defendant's Name***] did willfully fail to furnish the required statement to the employee, [***Name of Employee***], in the manner and at the time required by law.

In violation of Title 26, United States Code, Section 7204.

---

<sup>65</sup> If the employer is a corporation, refer to language in [Form 13](#) as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

**Form 18**

**26 U.S.C. § 7204**

***Furnishing False and Fraudulent Employee's Withholding Statement, Form W-2***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year 20\_\_\_\_, [***Defendant's Name***],<sup>66</sup> a resident of [City], [State], employed [***Name of Employee***], a resident of [City], [State]. [***Defendant's Name***] was required under the Internal Revenue laws to deduct and withhold federal income taxes and Federal Insurance Contributions Act taxes with respect to the wages of [***Name of Employee***] and to furnish him [her] on or before January 31, 20\_\_\_\_, with a written statement showing the amount of wages paid and taxes deducted and withheld during the calendar year 20\_\_\_\_. On or about [Month] [Day], [Year], in the \_\_\_\_\_ District of \_\_\_\_\_, [***Defendant's Name***] did willfully furnish to [***Name of Employee***] a false and fraudulent statement, showing that the total wages paid were \$\_\_\_\_\_, that the income taxes deducted and withheld were \$\_\_\_\_\_, and that the Federal Insurance Contributions Act taxes deducted and withheld were \$\_\_\_\_\_, whereas, as [***Defendant's Name***] then and there knew, the total wages paid were \$\_\_\_\_\_, the income taxes deducted and withheld were \$\_\_\_\_\_, and the Federal Insurance Contributions Act taxes deducted and withheld were \$\_\_\_\_\_.

In violation of Title 26, United States Code, Section 7204.

---

<sup>66</sup> If the employer is a corporation, refer to language in [Form 13](#) as a guide in charging appropriate corporate officers with an offense involving violation of a corporation's obligations under the law.

**Form 19**

**26 U.S.C. § 7205**

***False Withholding Allowance Certificate, Form W-4***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year 20\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], was employed by [*Name of Employer*], a resident of [*City*], [*State*]. [*Defendant's Name*] was required under the Internal Revenue laws to furnish [*Name of Employer*], on or about the date of the commencement of employment by [*Name of Employer*], with a signed Employee's Withholding Allowance Certificate, Form W-4, setting forth the number of withholding allowances claimed. On or about [*Month*] [*Day*], [*Year*], in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*] did willfully supply a false and fraudulent Employee's Withholding Allowance Certificate, Form W-4, to [*Name of Employer*], on which [*Defendant's Name*] claimed withholding allowances,<sup>67</sup> whereas, as [*Defendant's Name*] then and there knew, he [she] was entitled to claim only withholding allowances.<sup>68</sup>

In violation of Title 26, United States Code, Section 7205.

---

<sup>67</sup> Where appropriate, the following language should be substituted: “he [she] claimed exemption from withholding.” The Government does *not* have to prove the number of allowances that the defendant could claim. *See United States v. McDonough*, 603 F.2d 19, 23-24 (7th Cir. 1979).

<sup>68</sup> Where appropriate, the following language should be substituted: “he [she] was not exempt from withholding.” The Fifth Circuit has ruled that “withholding exemptions” and “withholding allowances” are the same in the context of the sufficiency of a Section 7205 indictment. *United States v. Anderson*, 577 F.2d 258, 261 (5th Cir. 1978).

## Form 20

### 26 U.S.C. § 7206(1)

#### *Making and Subscribing a False Tax Return*<sup>69</sup>

[Updated July 2020]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about [Date], in the [ ] District of [ ], [and elsewhere,] DEFENDANT willfully made and subscribed<sup>70</sup> [and filed and caused to be filed with the Internal Revenue Service,]<sup>71</sup> a false [Form Title], Form [Form Number], for calendar year [Year]<sup>72</sup>, which was verified by a written declaration that it was made under the penalties of perjury and which DEFENDANT did not believe to be true and correct as to every material matter. That tax return reported [*describe the line item(s)*]<sup>73</sup> and amount(s) reported OR describe the nature of the falsity], whereas, as DEFENDANT knew [he/she/the corporation] [*describe correct facts*]<sup>74</sup>.

In violation of Title 26, United States Code, Section 7206(1).

---

<sup>69</sup> Prosecutors should select this form when charging a false tax return. Tax returns that can be charged as violations of Section 7206(1) include, but are not limited to: U.S. Individual Income Tax Returns, Forms 1040 (as well as Forms 1040A and 1040EZ); U.S. Corporation Income Tax Returns, Forms 1120; U.S. Income Tax Returns for an S Corporation, Form 1120S; U.S. Returns of Partnership Income, Forms 1065; and Quarterly Federal Excise Tax Returns, Forms 720. Employer's Quarterly Federal Income Tax Returns, Forms 941, can be charged as violations of Sections 7201, 7202, or 7206(1).

<sup>70</sup> For electronically filed tax returns, no additional allegations are required to satisfy the subscription element. *See* Criminal Tax Manual § 12.08[2].

<sup>71</sup> The plain language of Section 7206(1) does not require that the return be filed with the IRS. However, some courts have held that a taxpayer does not “make” a return until it is filed with the IRS. *See* Criminal Tax Manual § 12.07[1]. In Circuits that have interpreted Section 7206(1) in this manner, the indictment should include the bracketed language alleging that the return was filed or caused to be filed with the IRS.

<sup>72</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year.”

<sup>73</sup> It is proper to allege multiple falsities on one tax return in a single count. When doing so, prosecutors should determine whether their Circuit requires a specific unanimity instruction or whether a general unanimity instruction is sufficient. *See* Criminal Tax Manual § 12.10[3].

<sup>74</sup> For example: “That tax return reported that DEFENDANT received \$X in gross income, whereas, as DEFENDANT knew, [he/she] received gross income in excess of \$X.”

## Form 21

### 26 U.S.C. § 7206(1)

#### *Making and Subscribing a False Statement or Other Document*<sup>75</sup>

[Updated July 2020]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about [**Date**], in the [\_\_\_\_\_] District of [\_\_\_\_\_] , [and elsewhere,] DEFENDANT willfully made and subscribed<sup>76</sup> [and filed and caused to be filed with the Internal Revenue Service,]<sup>77</sup> a false [**Form Title**], Form [**Form Number**], which was verified by a written declaration that it was made under the penalties of perjury and which DEFENDANT did not believe to be true and correct as to every material matter. That Form [**Form Number**] reported [*describe the line item(s), if applicable, and nature of the falsity*], whereas, as DEFENDANT knew [*describe correct facts*]<sup>78</sup>.

In violation of Title 26, United States Code, Section 7206(1).

---

<sup>75</sup> Prosecutors should select this form when charging a false statement or other document. Statements and documents that can be charged as violations of Section 7206(1) include, but are not limited to: Collection Information Statements for Wage Earners and Self-Employed Individuals, Forms 433-A; Collection Information Statements for Businesses, Forms 433-B; Offers in Compromise, Forms 656; and Reports of Cash Payments Over \$10,000 Received in a Trade or Business, Forms 8300.

<sup>76</sup> For electronically filed forms, no additional allegations are required to satisfy the subscription element. *See* Criminal Tax Manual § 12.08[2].

<sup>77</sup> The plain language of Section 7206(1) does not require that the statement or document be filed with the IRS. However, some courts have held that a taxpayer does not “make” a return until it is filed with the IRS. *See* Criminal Tax Manual § 12.07[1]. In Circuits that have interpreted Section 7206(1) in this manner, the indictment should include the bracketed language alleging that the statement or document was filed or caused to be filed with the IRS. Note that some documents are not “filed” with the IRS in the manner of tax returns; Forms 433, for example, are submitted directly to revenue officers.

<sup>78</sup> For example: “The Form 433-A reported that DEFENDANT had \$X in monthly income, whereas, as DEFENDANT knew, he had monthly income in excess of that amount.”

## Form 22

### 26 U.S.C. § 7206(1)

#### *Making and Subscribing a False Tax Return — Tabular Form*

[Updated July 2020]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about the dates set forth below, in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere,] DEFENDANT willfully made and subscribed<sup>79</sup> [and filed and caused to be filed with the Internal Revenue Service,]<sup>80</sup> the following false [**Form Titles**], Forms [**Form Numbers**]<sup>81</sup>, for the calendar years<sup>82</sup> set forth below, which were verified by a written declaration that they were made under the penalties of perjury and which DEFENDANT did not believe to be true and correct as to every material matter. The tax returns reported [*describe the falsities generally*], whereas, as DEFENDANT knew [*describe correct facts*].<sup>83</sup>

Count	Approximate Filing Date	Year	False Item(s) <sup>84</sup>
1			a. [Line, Line Title, and Reported Amount] b. ....
2			a. [Line, Line Title, and Reported Amount] b. ....

<sup>79</sup> For electronically filed tax returns, no additional allegations are required to satisfy the subscription element. *See* Criminal Tax Manual § 12.08[2].

<sup>80</sup> The plain language of Section 7206(1) does not require that the return be filed with the IRS. However, some courts have held that a taxpayer does not “make” a return until it is filed with the IRS. *See* Criminal Tax Manual § 12.07[1]. In Circuits that have interpreted Section 7206(1) in this manner, the indictment should include the bracketed language alleging that the return was filed or caused to be filed with the IRS.

<sup>81</sup> If the chart will include different types of tax returns, such as Forms 1040, 1040A and 1040EZ, replace this language with “the false forms set forth below” and add a “Tax Return” column to the chart between the filing-date and year columns.

<sup>82</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year.”

<sup>83</sup> For example: “The tax returns reported that DEFENDANT received gross income in the amounts set forth below, whereas, as DEFENDANT knew, [he/she] received gross income in excess of those amounts.”

<sup>84</sup> It is proper to allege multiple falsities on a document in a single count of Section 7206(1). When doing so, prosecutors should determine whether their Circuit requires a specific unanimity instruction or whether a general unanimity instruction is sufficient. *See* Criminal Tax Manual § 12.10[3].

**Form 23**

**26 U.S.C. § 7206(1)**

***Making and Subscribing a False Statement or Other Document — Tabular Form***

[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about the dates set forth below, in the [\_\_\_\_\_] District of [\_\_\_\_\_] , [and elsewhere,] DEFENDANT willfully made and subscribed [and filed and caused to be filed with the Internal Revenue Service,]<sup>85</sup> the following false **[Form Titles]**, Forms **[Form Numbers]**<sup>86</sup>, which were verified by a written declaration that they were made under the penalties of perjury and which DEFENDANT did not believe to be true and correct as to every material matter. The **[Form Numbers]** reported [*describe the falsities generally*], whereas, as DEFENDANT knew, [*describe correct facts*]<sup>87</sup>.

Count	Approximate Filing Date	Year	False Item(s) <sup>88</sup>
1			a. [Line, Line Title, and Reported Amount] b. ....
2			a. [Line, Line Title, and Reported Amount] b. ....

In violation of Title 26, United States Code, Section 7206(1).

---

<sup>85</sup> The plain language of Section 7206(1) does not require that statements or documents be filed with the IRS. However, some courts have held that a taxpayer does not “make” a return until it is filed with the IRS. *See* Criminal Tax Manual § 12.07[1]. In Circuits that have interpreted Section 7206(1) in this manner, the indictment should include the bracketed language alleging that the statement or document was filed and caused to be filed with the IRS. Note that some documents are not “filed” with the IRS in the manner of tax returns; Forms 433, for example, are submitted directly to revenue officers.

<sup>86</sup> If the chart will include different types of false statements or documents, such as Forms 433-A and 433-B, replace this language with “the false forms set forth below” and add a “Forms” column to the chart between the filing-date and false-items columns.

<sup>87</sup> For example: “The Forms 433-A reported that DEFENDANT had monthly income in the amounts set forth below, whereas, as DEFENDANT knew, he had monthly income in excess of that amount.”

<sup>88</sup> It is proper to allege multiple falsities on a document in a single count of Section 7206(1). When doing so, prosecutors should determine whether their Circuit requires a specific unanimity instruction or whether a general unanimity instruction is sufficient. *See* Criminal Tax Manual § 12.10[3].

**Form 24**

**26 U.S.C. § 7206(2)**

***Aiding and Assisting in the Preparation and Presentation of a False and Fraudulent Tax Return, Statement, or Other Document***

[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about **[Date]**, in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere], DEFENDANT willfully aided and assisted in, and procured, counseled, and advised the preparation and presentation to the Internal Revenue Service of a **[Form Title]**, Form **[Form Number]** for **[Taxpayer]**<sup>89</sup> for calendar year **[Year]**<sup>90</sup>, which was false and fraudulent as to a material matter. That [tax return/form] reported [*describe the line item(s)*<sup>91</sup> and amount(s) reported OR describe the nature of the falsity], whereas, as DEFENDANT knew, [*describe correct facts*<sup>92</sup>].

In violation of Title 26, United States Code, Section 7206(2).

---

<sup>89</sup> When the taxpayer is not also charged, prosecutors should not identify the taxpayer by name, but should instead use alternate generic identifiers, such as “Client 1,” “Individual A,” or the taxpayer’s initials. Section 7206(2) is not limited to cases involving professional return preparers, and the taxpayer may be any other person or entity. A defendant may also be charged with aiding and assisting in the preparation of his or her own tax return.

<sup>90</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year.”

<sup>91</sup> It is proper to allege multiple falsities on one tax return or other form in a single count. When doing so, prosecutors should determine whether their Circuit requires a specific unanimity instruction or whether a general unanimity instruction is sufficient. *See Criminal Tax Manual* § 12.10[3].

<sup>92</sup> For example, “That tax return claimed a \$X deduction for gifts to charity, whereas, as DEFENDANT knew, [Taxpayer] was not entitled to claim that deduction.”

**Form 25**

**26 U.S.C. § 7206(2)**

***Aiding and Assisting in the Preparation and Presentation of False and Fraudulent Tax Returns, Statements, or Other Documents — Tabular Form***

[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about the dates set forth below, in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere], DEFENDANT willfully aided and assisted in, and procured, counseled, and advised the preparation and presentation to the Internal Revenue Service of **[Form Titles]**, Forms **[Form Numbers]**<sup>93</sup>, for the taxpayers<sup>94</sup> and calendar years<sup>95</sup> set forth below, which were false and fraudulent as to a material matter. The [tax returns/documents] reported [*describe the falsities generally*], whereas, as DEFENDANT knew, the taxpayers [*describe correct facts*].

Count	Approximate Filing Date	Taxpayer <sup>96</sup>	Year	False Item(s) <sup>97</sup>
1				a. [Line, Line Title, Reported Amount] b. (...)
2				a. [Line, Line Title, Reported Amount] b. (...)

In violation of Title 26, United States Code, Section 7206(2).

---

<sup>93</sup> If the chart will include different types of tax returns, statements, or documents, replace this language with “the false forms set forth below” and add a “Form” column to the chart between the filing-date and taxpayer columns.

<sup>94</sup> If the defendant filed multiple false forms for the same taxpayer, replace this language with “for [Taxpayer] for the calendar years set forth below,” and omit the “Taxpayer” column from the table.

<sup>95</sup> If the relevant tax period is a fiscal year rather than a calendar year, substitute “fiscal year.” If all the forms were for the same year, replace this language with “for calendar year **[Year]**,” and omit the “Year” column from the table.

<sup>96</sup> When the taxpayer is not also charged, prosecutors should not identify the taxpayer by name, but should instead use alternate generic identifiers, such as “Client 1,” “Individual A,” or the taxpayer’s initials. Section 7206(2) is not limited to cases involving professional return preparers, and the taxpayer may be any other person or entity. A defendant may also be charged with aiding and assisting in the preparation of his or her own tax return.

<sup>97</sup> It is proper to allege multiple falsities on a form in a single count of Section 7206(1). When doing so, prosecutors should determine whether their Circuit requires a specific unanimity instruction or whether a general unanimity instruction is sufficient. *See* Criminal Tax Manual § 12.10[3].

**Form 26**

**26 U.S.C. § 7206(4)**

***Removal or Concealment of Goods or Commodities with Intent to Evade or Defeat the  
Assessment or Collection of a Tax***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

That on or about [*Month*] [*Day*], [*Year*], in the \_\_\_\_\_ District of \_\_\_\_\_,  
[*Defendant's Name*], a resident of [*City*], [*State*], with intent to evade and defeat the collection  
of income taxes assessed against him [her] on or about, 20\_\_\_\_, by the Internal Revenue  
Service,<sup>98</sup> did knowingly and unlawfully remove and conceal [*Describe Property*], upon which  
levy was authorized by Section 6331 of the Internal Revenue Code.

In violation of Title 26, United States Code, Section 7206(4).

---

<sup>98</sup> Where appropriate, substitute "evade and defeat the assessment of income taxes against him [her] by the Internal Revenue Service."

Form 27

26 U.S.C. § 7206(5)(A)

*Concealment of Assets in Connection with a Compromise or Closing Agreement*

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

That on or about [*Month*] [*Day*], [*Year*], in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], in connection with an offer in compromise<sup>99</sup> relating to his [her] liability for [*Type of Tax*] taxes due and owing by him [her] to the United States of America for the calendar year(s),<sup>100</sup> did willfully conceal from [*Specify Particular Officer, with Job Title*] and all other proper officers and employees of the United States, [*Describe Property Belonging to Taxpayer or Other Person Liable for the Tax*].

In violation of Title 26, United States Code, Section 7206(5)(A).

---

<sup>99</sup> Where appropriate, substitute "a compromise"; or "a closing agreement"; or "an offer to enter into a closing agreement".

<sup>100</sup> If fiscal year is involved, substitute "fiscal year(s) ended, 20\_\_". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

Form 28

26 U.S.C. § 7206(5)(B)

***Withholding, Falsifying, or Destroying Records or Making a False Statement in Connection with a Compromise or Closing Agreement***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

That on or about [*Month*] [*Day*], [*Year*], in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], in connection with an offer in compromise<sup>101</sup> relating to his [her] liability for [*Type of Tax*] taxes due and owing by him [her] to the United States of America for the calendar year(s),<sup>102</sup> did willfully [*(receive) (withhold) (destroy) (mutilate) or (falsify), Describe Book, Document, or Record Involved*].<sup>103</sup>

In violation of Title 26, United States Code, Section 7206(5)(B).

---

<sup>101</sup> Where appropriate, substitute "a compromise"; or "a closing agreement"; or "an offer to enter into a closing agreement".

<sup>102</sup> If fiscal year is involved, substitute "fiscal year(s) ended [*Date*], 20\_\_". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

<sup>103</sup> Where false statement is the crime, substitute "make a false statement to [*Name Appropriate Official, with Job Title*], at [*Place*], [*Location*], wherein [*Defendant's Name*] stated that [*Describe False Statement Relating to the Estate or Financial Condition of Taxpayer*], whereas, as he [she] then and there knew, [*Describe Correct Fact(s) Relating to False Statement*]".

Form 29

26 U.S.C. § 7207

*False Document Submitted to I.R.S.<sup>104</sup> – Venue in District Where Document Submitted*

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

That on or about [*Month*] [*Day*], [*Year*], in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully deliver and disclose by submitting to an Officer(s) of the Internal Revenue Service, United States Treasury Department, at [*Place*], [*Location*], a [*Describe Document, e.g., List, Account, Statement, or Other Document*].<sup>105</sup> [*Defendant's Name*] knew that the [*Description of Document*] was fraudulent and false as to a material matter in that [*Describe the False Fact(s)*], whereas, as he [she] then and there knew, [*Describe the Correct Fact(s)*].

In violation of Title 26, United States Code, Section 7207.

---

<sup>104</sup> Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

<sup>105</sup> A separate count should be charged for each false document.

**Form 30**

**26 U.S.C. § 7207**

***False Document Submitted to I.R.S.<sup>106</sup> – Venue in District of Mailing***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

That on or about [*Month*] [*Day*], [*Year*], in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully deliver and disclose by mailing and causing to be mailed, to an Officer(s) of the Internal Revenue Service, United States Treasury Department, a [*Describe Document, e.g., List, Account, Statement, or Other Document*].<sup>107</sup> [*Defendant's Name*] knew that the [*Description of Document*] was fraudulent and false as to a material matter in that [*Describe the False Fact(s)*], whereas, as he [she] then and there knew, [*Describe the Correct Fact(s)*].

In violation of Title 26, United States Code, Section 7207.

---

<sup>106</sup> Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

<sup>107</sup> A separate count should be charged for each false document.

Form 31

26 U.S.C. § 7207

***False Documents Submitted to I.R.S. – Venue in District Where Documents Submitted –  
Tabular Form Information***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

1. That on or about the dates hereinafter specified, in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully deliver and disclose by submitting to an Officer(s) of the Internal Revenue Service, United States Treasury Department, at [*Place*], [*Location*], documents<sup>108</sup> described below.<sup>109</sup> The defendant then and there knew that the documents were fraudulent and false as to a material matter, as set forth below.

2. The allegations of paragraph "1." are repeated and realleged in Counts I through \_\_\_\_\_, inclusive, of this Information, as though fully set forth therein.

<u>COUNT</u>	<u>DATE OF OFFENSE</u>	<u>DESCRIPTION OF DOCUMENT</u>	<u>FALSITY</u>
I.	_____	_____	_____
II.	_____	_____	_____
III.	_____	_____	_____

In violation of Title 26, United States Code, Section 7207.

<sup>108</sup> Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

<sup>109</sup> A separate count should be charged for each false document.

Form 32

26 U.S.C. § 7207

*False Documents Submitted to I.R.S. – Venue in District of Mailing – Tabular Form  
Information*

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

1. That on or about the dates hereinafter specified, in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully deliver and disclose by mailing and causing to be mailed, to an Officer(s) of the Internal Revenue Service, United States Treasury Department, documents<sup>110</sup> described below.<sup>111</sup> The defendant then and there knew that the documents were fraudulent and false as to a material matter, as set forth below.

2. The allegations of paragraph "1." are repeated and realleged in Counts I through \_\_\_\_\_, inclusive, of this Information, as though fully set forth therein.

<u>COUNT</u>	<u>DATE OF OFFENSE</u>	<u>DESCRIPTION OF DOCUMENT</u>	<u>FALSITY</u>
I.	_____	_____	_____
II.	_____	_____	_____
III.	_____	_____	_____

In violation of Title 26, United States Code, Section 7207.

---

<sup>110</sup> Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

<sup>111</sup> A separate count should be charged for each false document.

**Form 33**

**26 U.S.C. § 7210**

***Failure to Appear in Response to Summons***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about [***Month***] [***Day***], [***Year***], in the \_\_\_\_\_ District of \_\_\_\_\_, [***Defendant's Name***], a resident of [***City***], [***State***], was required under the Internal Revenue laws, by reason of being duly summoned, to appear to testify<sup>112</sup> at on that date at the office of \_\_\_\_\_. Well knowing and believing all of the foregoing, he [she] willfully failed to appear to testify<sup>1</sup> at the time and place required by the summons.

In violation of Title 26, United States Code, Section 7210.

---

<sup>112</sup> Where appropriate, add or substitute "and produce [***Describe Documents Summoned***]".

## Form 34

### 26 U.S.C. § 7212(a)

#### ***Corrupt Endeavor to Obstruct and Impede the Administration of the Internal Revenue Laws*** [Revised June 2020]

#### BACKGROUND

[An indictment charging a violation of 26 U.S.C. § 7212(a) should include a background section alleging the basic facts regarding the pending or reasonably foreseeable tax-related proceeding or targeted administrative action, such as an IRS audit, collection activity, or criminal investigation.<sup>113</sup> The section should include when the IRS commenced the proceeding, the type of proceeding,<sup>114</sup> the purpose of the proceeding in general terms,<sup>115</sup> and the major steps that the IRS took as part of the proceeding. Include any notices or other communications between the IRS and the defendant, as well as any other events, acts, or omissions<sup>116</sup> by the IRS, the defendant, or another person or entity (such as an accountant or return preparer) that would demonstrate the defendant's knowledge of or ability to reasonably foresee that action or proceeding.]

#### THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

Paragraph(s) [number(s)] above [is/are] incorporated as though fully set out herein.

From in or about [Month Year] through in or about [Month Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] and elsewhere, DEFENDANT, knowing of and reasonably foreseeing<sup>117</sup> the [type of proceeding]<sup>118</sup> described in Paragraph(s) [number(s)], did

---

<sup>113</sup> For a discussion of what types of proceedings or targeted administrative actions satisfy *Marinello*, see *Criminal Tax Manual*, Chapter 17.04[4].

<sup>114</sup> Types of proceedings include audits/examinations, collections, criminal investigations, etc.

<sup>115</sup> The purpose of the proceeding could be to assess or collect the defendant's (or another taxpayer's) taxes, to investigate potential violations of criminal law by the defendant (or another taxpayer), etc.

<sup>116</sup> Omissions, such as a defendant's failure to file a tax return, should not be alleged in the charging paragraph as an endeavor, but may and should be included in the background.

<sup>117</sup> Although this form indictment advises charging, in the conjunctive, that the defendant both knew of and reasonably foresaw the proceeding or targeted administrative action, prosecutors are cautioned to ensure that the requirements for reliance on the "reasonably foreseeable" language of *Marinello* are satisfied before relying on that

corruptly obstruct and impede, and corruptly endeavor to obstruct and impede, the due administration of the internal revenue laws, that is, the **[type of proceeding]**, by committing and causing to be committed various acts, each such act having a nexus to the **[type of proceeding]**, including but not limited to the following:

(a) — (...) [insert acts constituting corrupt endeavors]<sup>119</sup>

In violation of Title 26, United States Code, Section 7212(a).

---

prong. See *Criminal Tax Manual*, Chapter 17.04[5].

<sup>118</sup> Name the type of proceeding or targeted administrative action described in the background section.

<sup>119</sup> List the acts the defendant committed with the corrupt intent to obstruct or impede the pending or foreseeable proceeding or targeted administrative action. Do not include omissions. See *Criminal Tax Manual*, Chapters 17.03, 17.04[3]. Do not include acts that preceded the commencement of the IRS proceeding unless the requirements for reliance on the “reasonably foreseeable” language of *Marinello* are satisfied.

Form 35

26 U.S.C. § 7215

*Failure to Make Trust Fund Deposit After Notice*

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

1. During the period [**Date**], 20\_\_\_\_, to [**Date**], 20\_\_\_\_, in the \_\_\_\_\_ District of \_\_\_\_\_, [**Defendant's Name**] was an employer of labor<sup>120</sup> required under the provisions of the Internal Revenue Code to collect, account for, and pay over to the United States federal income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes withheld from wages.

2. [**Defendant's Name**] did fail at the time and in the manner prescribed by the Internal Revenue Code, and Regulations promulgated pursuant thereto, to collect, truthfully account for, and pay over and to make deposits and payments of the said withheld taxes to the United States, which were due and owing for the quarters ending [**Date**] 20\_\_\_\_, [**Date**] 20\_\_\_\_, [**Date**, 20\_\_\_\_, and [**Date**] , 20\_\_\_\_.<sup>121</sup>

3. On [**Date**], 20\_\_\_\_, [**Defendant's Name**] was notified of such failure by notice delivered in hand to him [her] as provided by Title 26, United States Code, Section 7512. The notice advised him [her] that he [she] was required to collect the aforesaid taxes that became collectible after delivery of the notice and, not later than the end of the second banking day after the collection, to deposit the taxes into a separate bank account established by him [her] in trust for the United States. The notice further advised [**Defendant's Name**] that the taxes were required to be kept in that bank account until paid over to the United States.

4. Within the \_\_\_\_\_ District of \_\_\_\_\_, [**Defendant's Name**] unlawfully failed to comply with the provisions of Title 26, United States Code, Section 7512, in that, after receiving delivery of the notice referred to in paragraph "3.", he [she] paid wages and was

---

<sup>120</sup> If the employer is other than a sole proprietorship (*e.g.*, a corporation, partnership, or joint venture), the relationship of the defendant to the employer-entity, which makes him the responsible person, should be alleged in paragraphs 1, 2, and 3, by substituting "[**Defendant's Name**], who was the [**Position Held in Company**] of [**Name of Company**], a [**Type of Company, e.g., Corporation, Partnership, etc.**], and an employer of labor".

<sup>121</sup> Quarters prior to notice for which there was a failure to collect, account for, and pay over federal income and F.I.C.A. taxes withheld from wages.

required to collect and deposit the said taxes, but failed to deposit said taxes into a separate bank account in trust for the United States, by the dates and in the amounts specified below:

<u>COUNT</u>	DATE WAGES <u>PAID</u>	DATE DEPOSIT <u>REQUIRED</u>	AMOUNT OF <u>DEPOSIT REQUIRED</u>
I.	_____	_____	\$_____
II.	_____	_____	\$_____
III.	_____	_____	\$_____
IV.	_____	_____	\$_____

In violation of Title 26, United States Code, Section 7215.

**Form 36**

**18 U.S.C. § 286**

***Conspiracy to File False Claims***<sup>122</sup>

[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

Beginning in or about [Month, Year], and continuing until in or about [Month, Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere,] DEFENDANT(S) [Names] and others known and unknown to the grand jury, knowingly, intentionally, and voluntarily agreed, combined, and conspired to defraud the United States by obtaining and aiding to obtain the payment and allowance of [a] false, fictitious and fraudulent claim[s] for refund[s] of taxes against the Internal Revenue Service, an agency of the United States Department of the Treasury.

The conspiracy was accomplished, in part, by the following acts:<sup>123</sup>

*[Describe how the conspiracy was accomplished or intended to be accomplished. The following examples are based on a scheme in which defendants prepare false and fictitious forms, such as Forms 1099-OID or Forms W-2, falsely reporting that taxpayers received income from which federal income taxes were withheld, and then file tax returns claiming refunds of the purportedly withheld taxes.]*<sup>124</sup> Include different or additional acts as warranted.]

1. Defendants [Names]<sup>125</sup> recruited customers into the scheme through [seminars/one-on-one consultations/other].
2. Defendants [Names] charged each customer up to \$[Amount] for [describe what customer received or was supposed to receive; avoid referring to membership].
3. Defendants [Names] paid a fee to others for referring a paying customer.
4. Defendants [Names] prepared [and caused to be prepared] false, fraudulent, and fictitious [Forms 1099-OID, Original Issue Discount, or Forms W-2, Wage and Tax Statements]. The

---

<sup>122</sup> This form may be used in conjunction with Form 49 to charge, in tabular form, specific false claims filed as part of the conspiracy.

<sup>123</sup> An overt act in furtherance of the conspiracy is not an element of a false-claims conspiracy under Section 286. See [Criminal Tax Manual 22.05](#).

<sup>124</sup> For a description of this scheme, and examples of other common false-claim schemes, see [Criminal Tax Manual 22.08](#).

<sup>125</sup> Specify which defendant(s) committed or caused to be committed the various acts.

forms falsely reported that the customer had received income which [he/she] had not actually received and that federal income taxes had been withheld from that income.

4. Defendants [**Names**] prepared [and caused to be prepared] false and fraudulent federal income tax returns in the names of customers. The returns falsely reported that the customer had received income that [he/she] had not actually received, and that federal income taxes had been withheld from this income. The tax returns claimed tax refunds to which the customers were not entitled.

4. Defendants [**Names**] required that scheme customers pay them a portion of the fraudulently obtained refunds.

5. Defendants [**Names**] [electronically] transmitted [or caused to be [electronically] transmitted] the false and fraudulent [Form 1099-OID/Form W-2] information and tax returns to the IRS.

In violation of Title 18, United States Code, Section 286.

**Form 37**

**18 U.S.C. § 287**  
***Filing False Claim for Refund***  
[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On about **[Date]**, in the [\_\_\_\_\_] District of [\_\_\_\_\_] , [and elsewhere,] DEFENDANT made and presented, and caused to be made and presented, to the Internal Revenue Service, an agency of the United States Department of the Treasury, a claim against the United States for payment of a refund of taxes in the amount of \$**[Amount]**, knowing that claim to be false, fictitious, and fraudulent. DEFENDANT made the claim by preparing and causing to be prepared, and presenting and causing to be presented to the Internal Revenue Service, a **[Form Title]**, Form **[Form Number]**, for calendar year **[Year]**, requesting a refund to which DEFENDANT knew [he/she] was not entitled.

In violation of Title 18, United States Code, Section 287.

**Form 38**

**18 U.S.C. § 287**

***Filing False Claim for Refund – Tabular Form***

[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On about the dates listed below, in the [\_\_\_\_\_] District of [\_\_\_\_\_] , [and elsewhere,] DEFENDANT made and presented, and caused to be made and presented, to the Internal Revenue Service, an agency of the United States Department of the Treasury, claims against the United States for payment of a refund of taxes, knowing those claims to be false, fictitious, and fraudulent. DEFENDANT made the claims by preparing and causing to be prepared, and presenting and causing to be presented to the Internal Revenue Service, **[Form Title]**, Forms **[Form Number]**<sup>126</sup>, for the individuals<sup>127</sup> and calendar years<sup>128</sup> set forth below, requesting refunds to which DEFENDANT knew the individuals were not entitled in the amounts listed below.

Count	Date	Name <sup>129</sup>	Year	Refund Claimed
1				<b>[\$Amount]</b>
2-(...)				<b>[\$Amount]</b>

In violation of Title 18, United States Code, Section 287.

---

<sup>126</sup> If the chart will include different types of tax returns, replace this language with “the forms set forth below” and add a “Form” column to the chart between the date and name columns.

<sup>127</sup> If the defendant filed multiple false claims for the same individual, replace this language with “for **[Individual]**, for the calendar years set forth below” and omit the “Name” column from the table.

<sup>128</sup> If all the forms were for the same year, replace this language with “for calendar year **[Year]**,” and omit the “Year” column from the table.

<sup>129</sup> When the taxpayer is not also charged, prosecutors should not identify the taxpayer by name, but should instead use alternate generic identifiers, such as “Client 1,” “Individual A,” or the taxpayer’s initials.

**Form 39**

**18 U.S.C. § 371**

***Conspiracy to Defraud the United States***

[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about [Month, Year], [the exact date being unknown to the Grand Jury], and continuing until in or about [Month, Year], in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere,] defendants [Names] did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other [and with other individuals both known and unknown to the Grand Jury] to defraud the United States by impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of the Department of the Treasury in the ascertainment, computation, assessment, and collection of the revenue: namely, [type of tax] taxes.<sup>130</sup>

Parties, Persons, and Entities

At all relevant times:

*[Identify and briefly describe the individuals and entities necessary to understand the conspiracy.]*<sup>131</sup>

Manner and Means<sup>132</sup>

The defendants sought to accomplish the objects of the conspiracy through the following manner and means, among others:

*[In general terms, describe how the conspiracy was carried out.]*<sup>133</sup>

---

<sup>130</sup> Describe the taxes at issue, such as individual income taxes, corporate income taxes, and/or employment taxes. Include *all* types of taxes and taxpayers involved in the tax fraud. For example, “their individual income taxes and the income taxes of clients” or “the corporate income and employment taxes of [entity].”

<sup>131</sup> When including entities involved in scheme, include type of entity and state of incorporation, and the relationship of defendants to entities. For example:

“[Entity], was a [state] [corporation/limited liability company] formed in [year] by defendant [name] to [purpose of entity/type of business].”

“Defendants [names] were president and vice president, respectively, of [entity]. Each owned 50 percent of the stock of [entity].”

“Defendant [name] was a certified public accountant who prepared the income tax returns of [entity], and its officers.”

<sup>132</sup> Unlike a conspiracy to commit a substantive offense, a *Klein* conspiracy should charge that the conspiracy was carried out by means that included deceit, craft, or trickery, or at least means that were dishonest. See Criminal Tax Manual 23.07; *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924).

### Overt Acts

In furtherance of the conspiracy, and to effect the objects thereof, the defendants committed or caused to be committed the following overt acts in the [\_\_\_\_\_] District of [\_\_\_\_\_] [and elsewhere]:

*[List overt acts in furtherance of the conspiracy.]*<sup>134</sup>

In violation of Title 18, United States Code, Section 371.

---

<sup>133</sup> For example:

“By providing false books and records to the corporate accountant for use in preparing [entity]’s, corporate income tax returns,”

“By backdating documents to conceal defendant [name]’s ownership of and interest in real property from the Internal Revenue Service,”

“By making false statements and representations to Internal Revenue Service agents to conceal defendant [name]’s income.”

“By preparing tax returns for clients that reported false expenses and fraudulently claimed deductions and credits.”

<sup>134</sup> For example:

“On or about [date], defendants [names] met and discussed how to backdate real estate contracts.”

“On or about [date], defendant [name] removed cash from defendant [name]’s safe deposit box at the [name of bank] in [city, state].”

“On or about [date], defendant [name] prepared and caused to be prepared a false individual income tax return for defendant [name] for calendar year [year], which failed to report all of defendant [name]’s income.”

**Form 40**

**18 U.S.C. § 371**

***Dual-Object Conspiracy to Defraud the United States and to Commit Other Offenses***

[Updated July 2020]

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month, Year]**, [the exact date being unknown to the Grand Jury], and continuing until in or about **[Month, Year]**, in the [\_\_\_\_\_] District of [\_\_\_\_\_] , [and elsewhere,] defendants **[Names]** did unlawfully, voluntarily, intentionally, and knowingly conspire, combine, confederate, and agree together and with each other [and with other individuals both known and unknown to the Grand Jury] to defraud the United States and to commit offenses against the United States, namely, violations of Title [18/26], United States Code, Section(s) **[Section(s)]**.

Objects of the Conspiracy

It was a part and an object of the conspiracy that **[Names]** [and others known and unknown to the Grand Jury] would and did defraud the United States by impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of the Department of the Treasury in the ascertainment, computation, assessment, and collection of the revenue: namely, **[type of tax]** taxes.<sup>135</sup>

It was further a part and object of the conspiracy that **[Names]** [and others known and unknown to the Grand Jury] would and did **[describe the statutory violation that was the other object of the conspiracy]**<sup>136</sup>, in violation of Title [26/18], United States Code, Section

---

<sup>135</sup> Describe the taxes at issue, such as individual income taxes, corporate income taxes, and/or employment taxes. Include *all* types of taxes and taxpayers involved in the tax fraud. For example, “their individual income taxes and the income taxes of clients” or “the corporate income and employment taxes of [entity].”

<sup>136</sup> Describe the statutory violation. Be sure to include the correct *mens rea* for that violation. For example:  
“would and did willfully subscribe to false U.S. Individual Income Tax Returns, Forms 1040, which returns contained and were verified by written declarations that they were made under the penalties of perjury, and which [taxpayers] did not believe to be true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).”

“would and did willfully aid, assist in, and procure, counsel, and advise the preparation and presentation to the IRS of U.S. Individual Income Tax Returns, Forms 1040, for clients, in violation of Title 26, United States Code, Section 7206(2).”

“would and did willfully attempt to evade or defeat the payment of income taxes due and owing by [taxpayer] to the United States, in violation of Title 26, United States Code, Section 7201.”

**[Section].**<sup>137</sup>

Parties, Persons, and Entities

At all relevant times:

*[Identify and briefly describe the individuals and entities necessary to understand the conspiracy.]*<sup>138</sup>

Manner and Means<sup>139</sup>

The defendants sought to accomplish the objects of the conspiracy through the following manner and means, among others:

*[In general terms, describe how the conspiracy was carried out.]*<sup>140</sup>

Overt Acts

In furtherance of the conspiracy, and to effect the objects thereof, the defendants committed or caused to be committed the following overt acts in the [\_\_\_\_] District of [\_\_\_\_], [and elsewhere]:

*[List overt acts in furtherance of the conspiracy.]*<sup>141</sup>

---

<sup>137</sup> If more than one statutory violation was the object of the conspiracy, include a separate paragraph for each one.

<sup>138</sup> When including entities involved in scheme, include type of entity and state of incorporation, and the relationship of defendants to entities. For example:

“[Entity], was a [state] [corporation/limited liability company] formed in [year] by defendant [name] to [purpose of entity/type of business].”

“Defendants [names] were president and vice president, respectively, of [entity]. Each owned 50 percent of the stock of [entity].”

“Defendant [name] was a certified public accountant who prepared the income tax returns of [entity], and its officers.”

<sup>139</sup> Unlike a conspiracy to commit a substantive offense, a *Klein* conspiracy should charge that the conspiracy was carried out by means that included deceit, craft, or trickery, or at least means that were dishonest. *See Criminal Tax Manual 23.07; Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924).

<sup>140</sup> For example:

“By providing false books and records to the corporate accountant for use in preparing [entity]’s, corporate income tax returns,”

“By backdating documents to conceal defendant [name]’s ownership of and interest in real property from the Internal Revenue Service,”

“By making false statements and representations to Internal Revenue Service agents to conceal defendant [name]’s income.”

“By preparing tax returns for clients that reported false expenses and fraudulently claimed deductions and credits.”

<sup>141</sup> For example:

“On or about [date], defendants [names] met and discussed how to backdate real estate contracts.”

“On or about [date], defendant [name] removed cash from defendant [name]’s safe deposit box at the [name of bank] in [city, state].”

In violation of Title 18, United States Code, Section 371.

---

“On or about [date], defendant [name] prepared and caused to be prepared a false individual income tax return for defendant [name] for calendar year [year], which failed to report all of defendant [name]’s income.”

**Form 41**

**18 U.S.C. § 1001**

***False Statement or Representation Made to Department/Agency of U.S.***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

That on or about [*Month*] [*Day*], [*Year*], [*Defendant's Name*], a resident of [*City*], [*State*], did willfully and knowingly make and cause to be made a materially false, fictitious, and fraudulent statement(s) and representation(s) in a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States by [*Describe False Statement or Representation and Describe Official to Whom False Statement Was Made*], at [*Place*], [*Location*], in the \_\_\_\_\_ District of \_\_\_\_\_. The statement[s] and representation[s] were false because, as [*Defendant's Name*] then and there knew, [*Describe Correct Fact(s) Regarding the False Statement or Representation*].

In violation of Title 18, United States Code, Section 1001.

**Form 42**

**18 U.S.C. § 1001**

***False Document Submitted to Department/Agency of U.S.***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

That on or about [*Month*] [*Day*], [*Year*], [*Defendant's Name*], a resident of [*City*], [*State*], did willfully and knowingly make and cause to be made, and use and cause to be used, in a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, a false writing or document, knowing the same to contain a materially false, fictitious, and fraudulent statement. [*Defendant's Name*] submitted [*Describe False Document and False Statement(s) Within Document and Describe Official to Whom the False Document Was Submitted*], at [*Place*], [*Location*], in the \_\_\_\_\_ District of \_\_\_\_\_, well knowing [*Describe Correct Fact(s) Regarding False Document*].

In violation of Title 18, United States Code, Section 1001.

**Form 43**

**18 U.S.C. § 1001**

***Falsify, Conceal, or Cover Up by Trick, Scheme, or Device a Material Fact***

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From on or about [*Month*] [*Day*], [*Year*], to on or about [*Month*] [*Day*], [*Year*], in the \_\_\_\_\_ District of \_\_\_\_\_, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully and knowingly falsify, conceal, and cover up, by trick, scheme, and device a material fact, in a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States. [*Defendant's Name*][*Describe Nature of Scheme or Device to Conceal, Including Name and Title of any IRS Employee to Whom False Statement(s) or Representation(s) Were Made; Nature of False Statement(s) or Representation(s); Place and Location Where False Statement(s) or Representation(s) Were Made; and/or Specific False Document(s) Submitted*],<sup>142</sup> well knowing [*Describe Correct Facts Relating to False Statement(s), Representation(s), and/or Document(s)*].<sup>143</sup>

In violation of Title 18, United States Code, Section 1001.

---

<sup>142</sup> E.g., "by representing to John Smith, Revenue Officer, Internal Revenue Service, at 33 Main Street, Boston, Massachusetts, that the deductions claimed for contributions were in the amount of \$ \_\_\_\_\_ and that eight checks drawn on account number \_\_\_\_\_ at \_\_\_\_\_ Bank were issued to make the contributions in the amounts represented on said checks".

<sup>143</sup> E.g., "the said eight checks had been altered and were false as to (amounts, payees, dates, etc.)".

Form 44

18 U.S.C. § 1956(a)(1)(A)(ii)  
*Laundering of Monetary Instruments*

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

On or about [***Date***], in the \_\_\_\_\_ District of \_\_\_\_\_, [***Defendant(s) Name(s)***] did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, [***Description of Financial Transaction***], which involved the proceeds of a specified unlawful activity, that is [***Describe Specified Unlawful Activity***]. Defendant acted with the intent to engage in conduct constituting a violation of [26 U.S.C. § 7201] [26 U.S.C. § 7206]<sup>144</sup> to wit, [***Describe Conduct***]. While conducting and attempting to conduct that financial transaction, [***Defendant's Name***] then and there knew that the property involved in the financial transaction, that is [***Funds***]<sup>145</sup> [***Monetary Instruments***]<sup>146</sup> in the amount of \$ \_\_\_\_\_, represented the proceeds of some form of unlawful activity.

All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(ii) and 2.

<u>Count</u>	<u>Approximate Dollar Amounts</u>
I.	\$ _____
II.	\$ _____
III.	\$ _____

---

<sup>144</sup>Choose one or both. If both are used, set forth in the conjunctive.

<sup>145</sup> Select one. Remember monetary instrument is a defined term in § 1956(c)(5), whereas "funds" is undefined.

<sup>146</sup> If the activity described in this paragraph is intended to cover more than one count, this last phrase can be redrafted in tabular form as follows: "That is, [***Funds***], [***Monetary Instruments***] in the amounts set forth below: