

Tax Division
United States Department of Justice

FY 2023 Congressional Budget



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Table of Contents

| | Page No. |
|--|----------|
| I. Overview..... | 1 |
| II. Summary of Program Changes | 10 |
| III. Appropriations Language and Analysis of Appropriations Language.. | 11 |
| IV. Program Activity Justification | 11 |
| A. General Tax Matters | |
| 1. Program Description | |
| 2. Performance Tables | |
| 3. Performance, Resources, Strategies | |
| V. Program Increases by Item..... | 33 |
| VI. Program Offsets by Item..... | 38 |
| VII. Exhibits..... | 38 |
| A. Organizational Chart | |
| B. Summary of Requirements | |
| B. Summary of Requirements by DU | |
| C. FY 2022 Program Increases/Offsets by Decision Unit | |
| D. Resources by DOJ Strategic Goal and Objective | |
| E. Justification for Technical and Base Adjustments | |
| F. Crosswalk of 2021 Availability | |
| G. Crosswalk of 2022 Availability | |
| H-R. Summary of Reimbursable Resources (Not Applicable) | |
| H-S. Summary of Sub-Allotments and Direct Collections Resources | |
| I. Detail of Permanent Positions by Category | |
| J. Financial Analysis of Program Changes | |
| K. Summary of Requirements by Object Class | |
| L. Status of Congressionally Requested Studies, Reports, and Evaluations (Not Applicable) | |

I. Overview for Tax Division

Introduction – Revitalize Tax Enforcement

Both President Biden and Attorney General Garland have identified revitalizing tax enforcement as a critical factor in guaranteeing that our country has a fair, effective, and credible tax system. In the American Families Plan, President Biden proposes several tax compliance measures to foster a system where taxpayers report and pay the taxes they owe. The Plan's first step is a multi-year commitment to expand the Internal Revenue Service's (IRS) tax enforcement capabilities. One part of the Plan is adding more than 5,100 agents in fiscal years 2022 and 2023 to handle sophisticated tax evasion audits and investigations.¹ Indeed, the IRS recently announced that it was seeking to hire up to 200 more agency attorneys just to help combat tax schemes being aggressively marketed by tax shelter promoters.² However, the IRS's important work in identifying and pursuing tax evasion and underpayments is only part of the equation. It is the Department of Justice through the Tax Division that ensures that IRS investigations, audits and cases reach a prompt and successful resolution – by conducting grand juries, prosecuting criminal violations, pursuing civil enforcement actions, and defending claims against the fisc through the courts. To achieve the Plan's objective of expanding and enhancing tax enforcement – especially the goal of achieving greater accountability for corporations and high net worth individuals willfully evading their tax obligations -- it will require the Tax Division's robust participation.

The Tax Division's present funding, however, cannot support new matters from the IRS on the scale that would be generated from even a portion of the 5,100 new agents President Biden believes are necessary, or the 200 more agency attorneys the IRS is immediately seeking to hire. In 2009, the Tax Division was authorized to fill 639 positions. However, the Tax Division's FY 2021 funding level of \$111 million supports only 423 FTE positions. A budget at current levels will leave the President's goal of reducing the tax gap through fair and equitable tax enforcement in a bottleneck when criminal or civil matters must be handled by the Department of Justice in court.

Accordingly, to support the President's tax enforcement agenda and the Attorney General's goal of revitalized tax enforcement, the Tax Division is seeking a budget increase of \$4.3 million and 20 positions (14 attorneys) and 10 FTE to allow the TAX Division to begin preparing for the increases proposed for the IRS in FY 2022 and FY 2023. The Tax Division's FY 2023 budget request is for \$121,306,000 including 519 permanent positions (391 attorneys), and 461 full-time equivalent (FTE) work years.

¹ *The American Families Plan Tax Compliance Agenda* at p. 16, U.S. Department of the Treasury (May 2021) <https://home.treasury.gov/system/files/136/The-American-Families-Plan-Tax-Compliance-Agenda.pdf>

² IRS Chief Counsel looking for 200 experienced attorneys to focus on abusive tax deals; job openings posted, IR-2022-17 (January 2022) <https://www.irs.gov/newsroom/irs-chief-counsel-looking-for-200-experienced-attorneys-to-focus-on-abusive-tax-deals-job-openings-posted>.

These additional resources would be deployed to dovetail with the IRS's stated priority for its new resources: examinations of high-income and global high net worth individuals as well as complex structures, like partnerships, multi-tier pass-through entities, and multinational corporations. In the Division's experience these matters often involve issues with evidence and assets held offshore or, increasingly, transactions in cryptocurrencies that are not as transparent as traditional banking. As such, we anticipate using the additional resources to build a cadre of attorneys and staff with expertise to work across several cases on these specific issues, allowing the Division to scale up quickly to handle the increased workload from the IRS. The new funding also will help the Division implement the sophisticated litigation support applications and data analysis needed to make sense of the voluminous and disparate evidence that will be gathered, to reshape the Tax Division's infrastructure to fully support these priority cases.

With greater resources, the Tax Division will be well positioned to help achieve the goal of increased tax enforcement, particularly against sophisticated tax evaders, both by working independently and in collaboration with the IRS. For example, in FY 2021 the Tax Division attorneys collected \$351,100,000 in taxes, interest, and penalties from unpaid taxes the IRS referred to DOJ after it was unable to collect the debt using its administrative authorities; a return of over three times the Division's appropriated funding. The Division also works to enhance the IRS's enforcement efforts. In the IRS's Offshore Voluntary Disclosure Program from 2009 to 2018 more than 56,000 taxpayers joined the program and paid \$11.1 billion in back taxes, interest, and penalties.³ These taxpayers each had not reported their offshore holdings as required by U.S. law – hoping that their violations would go undetected. When the IRS created its voluntary disclosure program these taxpayers had little incentive to join and pay what was due unless they had a realistic fear of being identified and held to account by the Government. That 56,000 individuals came forward to pay more than \$11 billion was in large part due to the Tax Division's work. The Tax Division gathered the names of taxpayers using foreign accounts through John Doe Summons proceedings. The Tax Division followed that success with its own Swiss Bank Program, leading to 81 banks providing valuable leads about U.S. taxpayers maintaining secret accounts. (These banks also collectively paid more than \$1.6 billion in penalties for their own conduct.) The Division also investigated, and criminally charged taxpayers illegally using secret offshore accounts as well as banks, bankers, asset managers, accountants and other professionals that enabled this evasion. These highly visible enforcement actions provided real incentives for taxpayers on their own to quickly come into compliance with the IRS before the Tax Division and the IRS identified them and then sought even greater civil and criminal penalties. The Division has recently pursued similar priorities targeting employment tax evasion, syndicated conservation easements, and traditional tax crimes such as evasion. Against this backdrop of successful recent collaboration with the IRS on a myriad of priorities, the Tax Division – with the requested new resources -- will be well positioned to build on its current staffing to successfully take on the work generated by substantial increases in the IRS enforcement funding.

³ IR-2018-52, *IRS To End Offshore Voluntary Disclosure Program; Taxpayers With Undisclosed Foreign Assets Urged To Come Forward Now*, March 13, 2018. (<https://www.irs.gov/newsroom/irs-to-end-offshore-voluntary-disclosure-program-taxpayers-with-undisclosed-foreign-assets-urged-to-come-forward-now>)

The Tax Division's Primary Responsibilities

The United States Government engages with every American, and all those who benefit from our nation, through our tax system. Tax collections fund most Federal Government services, from national defense to national parks. The Government lacks the resources to directly assess and audit each individual taxpayer; therefore, we ask our citizens, residents, and those who earn income in this country to report their confidential financial information annually, and to self-assess and pay their tax liabilities. In the United States, citizens file more than 157 million tax returns each year⁴ and pay \$1.2 trillion⁵, representing approximately 44 percent of Net Collections. Such a high voluntary compliance rate depends on the IRS and Tax Division maintaining an active and effective criminal and civil enforcement program. Those programs must both deter individuals and businesses who would consider violating the tax laws and assure taxpayers who pay their fair share that those who violate the laws will promptly and fully be held to account.

Tax Division litigators are charged with effectively enforcing federal tax laws by evaluating and supporting the IRS's investigations and determinations in civil cases and prosecuting criminal violations of the revenue laws. On average, Tax Division civil litigators have nearly 5,200 civil cases in process annually, in which they seek to enforce the Service's requests for information in ongoing examinations, and to collect and defend tax assessments when the Service's examinations are complete. The Tax Division's civil appellate attorneys handle about 630 appeals annually, about half of which are from decisions of the Tax Court, where IRS attorneys represent the Commissioner. In criminal matters, Tax Division prosecutors authorize almost all grand jury investigations and prosecutions involving violations of the internal revenue laws, furthering uniformity in nationwide standards for such prosecutions. Between FY 2017 and FY 2021, the Division authorized over 1,300 criminal tax investigations annually. Tax Division prosecutors investigate and prosecute these crimes either alone or in conjunction with the United States Attorneys' Offices (USAOs).

Improving Voluntary Compliance. The Tax Division's high litigation success rate (higher than 90 percent) has an enormous effect on voluntary tax compliance. By law, the IRS cannot make public the fact of an IRS audit, or its result. By contrast, the Tax Division's important tax litigation victories receive widespread media coverage, leading to a significant multiplier effect on voluntary compliance. A widely regarded study concluded that the marginal indirect revenue-to-cost ratio of a criminal conviction is more than 16 to 1.⁶ While no

⁴ Internal Revenue Service Data Book, 2020 page 4, Table 2. Number of Returns and Other Forms Filed, by Type, Fiscal Years 2019 and 2020.

⁵ Internal Revenue Service Data Book, 2020 page 3, Table 1. Collections and Refunds, by Type of Tax, Fiscal Years 2019 and 2020 .

⁶ Alan H. Plumley, *The Determinants of Individual Income Tax Compliance*, pp. 35, 40, Internal Revenue Service Publication 1916 (1996). "For 2015, the IRS estimated that the cost of enforcement activities, combining enforcement and the relevant part of operations support, was

(continued...)

comparable study of civil litigation exists, the same research suggests that IRS civil audits have an indirect effect on revenue that is more than 10 times the adjustments proposed in those audits. Another predicts that an additional dollar allocated to civil audits would return \$67 in general deterrence, while an additional dollar allocated to criminal investigation results in \$55 of deterrence.⁷ The positive effects of the IRS and the Tax Division's efforts on this front are seen in public opinion regarding voluntary compliance. According to a survey by the IRS oversight board, the public takes a very negative view of cheating on one's taxes, with 86 percent of the respondents indicating that it is never acceptable. Also, the IRS's Offshore Voluntary Disclosure Initiatives, operating alongside the Division's ongoing criminal and civil enforcement actions concerning unreported offshore accounts, have resulted in an unprecedented number of taxpayers – over 55,800 since 2009 – attempting to “return to the fold” by paying back taxes, interest and penalties totaling over \$11 billion.

The Tax Division's criminal litigators, and their partners at the IRS and the USAOs, work tirelessly to hold wrongdoers accountable and signal to the nation's taxpayers following the law that those who cheat will be held accountable. For example:

- December 2021 – John Barry was sentenced to 12 years in prison. As part of a multi-state conspiracy, Barry promoted a “mortgage recovery” scheme based on the false claim that clients could extinguish mortgage debts by filing false forms with the IRS claiming large tax withholdings. Barry was ordered to pay more than \$4.2 million in restitution to the IRS;
- November 2021 – John Zourdos, Helen Zourdos, and son John Zourdos, the operators of several New York donut shops, were convicted at trial of various tax crimes. The Zourdos family concealed millions in cash sales from their businesses;
- October 2021 – Oleg Tinkov was sentenced for filing a false tax return. As part of his plea agreement, Tinkov paid \$508,936,184, more than double what he had sought to escape paying to the U.S. Treasury through a scheme to renounce his U.S. citizenship and conceal from the IRS large stock gains that he knew were reportable. This amount included \$248,525,339 in taxes, statutory interest on that tax, and a nearly \$100 million fraud penalty;
- August 2021 – Chandra Yarlagadda, a biodiesel exporter who owned and operated Alpha Bioenergy LLC, was sentenced to 30 months in prison for tax fraud. Under the Clean Air Act and related federal regulations, companies such as Alpha that exported biodiesel fuel were required to purchase and retire “Renewable Identification Numbers.” Yarlagadda substantially overstated expenses associated with the

\$5.6 billion, while the revenue generated was \$54.2 billion, for a return on investment of \$9.60 for every \$1 spent.”

⁷ Jeffrey A. Dubin, *The Causes and Consequences of Income Tax Noncompliance* 256 (2012).

- purchase of Renewable Identification Numbers on the Schedules C attached to his 2009, 2010, and 2011 tax returns. He was ordered to pay restitution of \$3.2 million;
- April 2021 – The manager of the San Diego Home Cooking restaurant chain was sentenced to 30 months in prison for employment tax fraud. From the last quarter of 2014 through 2017, Aleksandar Sreckovic did not file employment tax returns, nor did he pay employment taxes for San Diego Home Cooking, causing a tax loss of over \$1.5 million. Instead of paying employment taxes, Sreckovic paid other creditors and his own personal expenses;
 - In October 2020, a federal grand jury in San Francisco, California, returned a 39-count indictment charging Robert T. Brockman, the CEO of an Ohio-based software company, with tax evasion, wire fraud, money laundering, and other offenses. The charges stem from an alleged decades-long scheme to conceal approximately \$2 billion in income from the IRS as well as a scheme to defraud investors in the software company's debt securities;
 - On October 20, 2020, two biofuel company owners were sentenced to prison for conspiracy to defraud the IRS and preparing a false tax claim, among other offenses. Ben Wootton, 55, of Savannah, Georgia, was sentenced to 70 months and Race Miner, 51, of Marco Island, Florida, to 66 months, after a jury convicted both defendants and their company, Keystone Biofuels Inc., in April 2019;
 - In June 2020, a federal grand jury in Tennessee charged John David McAfee with tax evasion and willful failure to file tax returns. McAfee allegedly earned millions in income from promoting cryptocurrencies, consulting work, speaking engagements, and selling the rights to his life story for a documentary. According to the indictment, from 2014 to 2018, McAfee failed to file tax returns, despite receiving considerable income from these sources. The June 15, 2020, indictment was unsealed on October 5, 2020, following McAfee's arrest in Spain. Spanish courts approved McAfee's extradition to the U.S. on June 23, 2021. Mr. McAfee died in prison shortly after extradition was approved;
 - In July 2019, the CEO and CFO of Washakie Renewable Energy, a Utah based biodiesel company, and two additional co-defendants pleaded guilty as charged in a significant biofuel credit fraud case. Lev Dermen was convicted by a jury in March 2020 in a \$1 billion biodiesel tax fraud scheme. The defendants claimed \$1.16 billion in biofuel credits of which \$511 million in cash was received from the IRS. The four co-defendants, who have pleaded guilty, Jacob Kingston, Isaiah Kingston, Sally Kingston, and Rachel Kingston, have agreed to \$511 million in restitution and to forfeit multiple assets;
 - In February 2020, a Rhode Island property preservation businessperson, Monique Brady, was sentenced to eight years in prison for utilizing her business to run a \$10.3 million Ponzi scheme and obstructing the IRS; and

- In June 2019, the owner of several engineering businesses in Hawaii, Wagdy Guirguis, was sentenced to five years in prison for conspiring to defraud the IRS and filing false corporate income tax returns, as well as witness tampering. In July 2019, his co-conspirator Michael Higa, a Hawaii Certified Public Accountant (CPA) and controller of the engineering businesses, was sentenced to 40 months in prison for his role in the tax fraud scheme. Both were convicted at trial and over \$3.3 million in restitution to the IRS was ordered as part of sentencing.

The Tax Division’s prosecutors and litigators are on the forefront of abusive transactions and take considered litigation efforts to not only end abusive practices, but to force promoters to cease engaging in fraudulent schemes. For example:

- In December 2020, two Atlanta-area tax professionals pleaded guilty to promoting a syndicated conservation easement tax scheme involving more than \$1.2 billion in fraudulent charitable deductions. Stein Agee of Canton, Georgia, and Corey Agee of Atlanta, Georgia, are currently awaiting sentencing for their role in the scheme; and
- In April 2021, one of the defendants in a suit seeking to stop several individuals from organizing, promoting, or selling an allegedly abusive conservation easement syndication tax scheme entered into a stipulated injunction in the case that bars her from participating in or facilitating such schemes in the future. The complaint, filed in December 2018, targeted activities that yielded over \$2 billion of tax deductions from overvalued and improper qualified conservation contributions resulting in hundreds of millions of dollars of tax harm. This case is continuing and plays a key role in the IRS’s efforts in the area of abusive syndicated conservation easements.

The convictions and sentences, above, and the ongoing litigation efforts, exemplify the increasing economic magnitude of fraud and the corresponding need for Tax Division prosecution and injunction action.

Protecting the Public Fisc. The Tax Division is one of the principal guardians of public funds, and the resources committed to it pay substantial dividends. The Division’s affirmative civil litigation typically brings in more each year than the Division’s entire budget, averaging \$333.5 million from FY 2017 to FY 2021. The significant amounts obtained by the Division through affirmative litigation are nonetheless dwarfed by the public funds that the Division safeguards through its defensive civil litigation. The Division is currently defending refund suits that collectively involve over \$9.9 billion. While these figures represent amounts directly at issue, they cannot fully capture the strong indirect effects of the Tax Division’s affirmative and defensive litigation. Decisions in the Division’s cases often reduce the need for future administrative and judicial tax proceedings by settling questions of law for millions of taxpayers. For example:

- From June through July 2021, the Tenth Circuit Court of Appeals, as well as district courts in Illinois and Texas, rejected constitutional challenges to a provision of the tax code that allows the State Department to revoke the passports of taxpayers that the IRS certifies to have “seriously delinquent tax debts.” Taxpayers challenged, without

success, the passport revocation statute as violating their fundamental right to international travel. Prior to passage of the passport revocation statute in 2015, a GAO Report stated that, as of September 2008, passports had been issued to over 225,000 individuals collectively owing over \$5.8 billion in federal taxes. More recent figures from the IRS indicated that 436,400 taxpayers qualified for passport revocation as of April 2018;

- A California district court in September 2020 and a Maryland district court in November 2021 rejected plaintiffs' claims that provisions of the CARES Act were unconstitutional discrimination against the spouses or children of certain immigrants. Both courts concluded the challenged provisions need only be rationally related to a legitimate government interest, including administrative efficiency in speedily providing relief payments to those eligible to work in the United States;
- In February 2021, a district court in Texas entered judgment for the United States on refund claims totaling \$1.35 billion brought by Exxon Mobil Corp. In doing so, the court made final its earlier rulings in the case rejecting Exxon's attempts to deduct fuel excise taxes that had been offset by its receipt of alcohol fuel credits (as discussed below) and to recharacterize its oil and gas contracts in Qatar and Malaysia as sales rather than leases;
- In December 2020, the Eighth Circuit Court of Appeals reversed the adverse decision of the U.S. Tax Courts in a \$2 million tax deficiency case arising from the IRS's efforts to crack down on meritless claims of U.S. Virgin Islands residency to avoid paying federal income tax. Holding that the Virgin Islands' transmittal of part of the taxpayers' local income tax return to the IRS did not trigger the statute of limitations for issuing a notice of federal income tax deficiency, the Eight Circuit favorably resolved an issue that, according to the IRS, is pending in more than 60 similar cases. The Supreme Court denied certiorari in January 2022;
- In June 2021, the Seventh Circuit Court of Appeals affirmed the position of the United States that butane is not an alternative fuel for purposes of the alternative fuel mixture credit and rejected claims by U.S. Venture Inc. that its gasoline-butane mixtures qualified for such credits. In 2020, Texas district courts held likewise as to similar claims by Vitol, Inc. and Valero Marketing and Supply Co. The Joint Committee on Taxation estimates that more than \$49.9 billion is at stake because of other taxpayers with the same issue;
- In April 2020, the Eight Circuit Court of Appeals rejected Wells Fargo's claimed entitlement to more than \$300 million in foreign-tax credits resulting from its participation in a then-popular type of tax shelter known as a structured trust advantaged repackaged securities (STARS) transaction. In doing so, the court joined the First, Second, and Federal Circuits in holding that STARS transactions lack economic substance;

- In June 2019, the Ninth Circuit Court of Appeals rejected a challenge to IRS cost-sharing regulations that govern the splitting of costs between domestic companies and their foreign subsidiaries, which are often in lower-taxed jurisdictions. Affecting a wide range of tech companies and other corporate taxpayers, the Ninth Circuit's decision has already resulted in increased tax revenues of more than \$2 billion; and
- In 2021, district courts in Texas and Tennessee entered judgments for the United States on refund claims brought by Exxon Mobil, Sunoco, and Delek totaling more than \$480 million, rejecting their position that they were entitled to deduct as "costs" on their income taxes not only the fuel-excise taxes they actually incurred, but also the excise taxes they would have owed if they had not claimed "alcohol fuel mixture" credits against those taxes. Those results followed a November 2018 decision of the Federal Circuit Court of Appeals rejecting the same position as to Sunoco's separate claim for a refund of more than \$300 million for other tax years. This issue has a potential industry-wide economic effect of \$8 billion.

Fair and Uniform Enforcement of Tax Law. The Tax Division plays a major role in assuring the public that the tax system is enforced uniformly and fairly. The Division independently reviews the merits of each case that the IRS requests be brought or defended to ensure that the Government's litigating positions are consistent with applicable law and policy.

Domestic and Counter Terrorism. Tax Division attorneys play an important role in the fight against international and domestic terrorism. Tax Division attorneys lend their expertise to attorneys at the National Security Division and at USAOs in prosecuting those who take advantage of the tax laws to fund terrorism through the use of tax-exempt organizations. A Tax Division Senior Litigation Counsel manages this effort. In the last several years, the Division has worked with Assistant U.S. Attorneys (AUSA) and Joint Terrorism Task Forces to authorize tax charges when other criminal violations were not available and currently are reviewing and approving a number of terrorist financing investigations. On the domestic front, the Division's Tax Defier Initiative is designed to investigate, pursue and, where appropriate, prosecute those who take concrete action to defy the fundamental validity of the tax laws. To accomplish this goal, the Division works closely with IRS-CI, Treasury Inspector General for Tax Administration, FBI, and the DOJ National Security Division to develop a coordinated approach to litigating - civilly and criminally - those involved in the sovereign citizen/redemption scheme cases across the country.

Full Program Costs

In the FY 2023 budget request, approximately 72 percent of the Division's resources are for Civil Tax Litigation and Appeals, and 28 percent for Criminal Tax Prosecution and Appeals. This budget request incorporates all costs, including mission costs related to cases and matters, mission costs related to oversight and policy, and overhead.

Environmental Accountability

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

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

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

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

The Division continues to work to reduce the environmental impact of its buildings. The Division is working with each building's Property Manager as they pursue LEED Certifications for their facilities through the General Services Administration and U.S. Green Building Counsel. In May 2019, the Tax Division moved its staff from the Patrick Henry Building to the newly constructed Four Constitution Plaza building with a Prestigious LEED Platinum Certification. In May 2021 Tax moved staff from the Judiciary Center Building to One Constitution Plaza building, which also has a Prestigious LEED Platinum Certification.

External and Internal Performance Challenges

The Tax Division faces serious and immediate challenges to accomplishing its mission.

External

Reducing the Tax Gap. The IRS collects almost \$3.5 trillion annually.⁸ Enforcement actions brought in more than \$38 billion for FY 2020.⁹ The Department of the Treasury reports that the tax gap totaled nearly \$600 billion in 2019 and will rise to about \$7 trillion over the course of the next decade if left unaddressed—roughly equal to 15% of all taxes owed. The problem is exacerbated by the vast increase in financial globalization, which has expanded the opportunities for assets and income to be easily hidden offshore, and by the rise of cryptocurrencies that can be used to evade tax laws. As noted by the IRS Oversight Board, Enforcement programs allow the IRS to further voluntary compliance, help reduce the tax gap,

⁸ Internal Revenue Service Data Book, 2020 page 1.

⁹ Internal Revenue Service Data Book, 2020 page 57. In Fiscal Year (FY) 2020, the IRS collected more than \$60.3 billion in unpaid assessments on returns filed with additional tax due, netting more than \$38.5 billion after credit transfers.

and provide much needed dollars to the federal purse.¹⁰ Improving compliance is the number one priority in the IRS Strategic Plan and an integral part of President Biden’s American Family Plan. It is why revitalizing tax enforcement is an explicit goal for the Department.

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

Internal

The Tax Division’s vigorous civil and criminal enforcement program enhances deterrence and compliance, leads to the recovery of substantial funds, and more than pays for itself. The Division collects through criminal and civil affirmative enforcement more than the annual cost of its budget.

Volatility in Resource Allocation. In addition to its affirmative enforcement mandate, the Tax Division is responsible for defending cases filed against the United States involving tax laws and refund claims. Because the plaintiffs file these suits at a time of their choosing, the Tax Division has little choice but to allocate resources to defend these suits at the time they are filed. Taxpayer refund suits brought by sophisticated corporate counsel put at risk billions of dollars and require sophisticated and nuanced legal defense by Division attorneys. On the other end of the spectrum, many taxpayers file frivolous claims against the United States, and it is critical that the Tax Division vigorously defends those suits as well. The Tax Division saves taxpayers and the Treasury from paying millions of dollars each year in meritless damage claims. Because these suits are reactive in nature, the Tax Division has little control over our defensive docket and must allocate the necessary attorney and staff resources required to defend these cases.

II. Summary of Program Changes

Tax Enforcement

The Tax Division is seeking a budget increase of \$4.3 million and 20 positions (14 attorneys) and 10 FTE to keep pace with the increase in workload proposed for FY 2023. The Tax Division’s total request is 519 Positions and \$121.3 million.

Funding is sought in two areas:

- Staffing for Increased Tax Enforcement: \$2.244 million and 20 positions (14 attorneys) in order to meet the new workload demands.
- Modern Automation Tools: \$2.048 million to establish a modern Data Analytics and Automated Litigation Support (ALS) program in the Tax Division.

¹⁰ IRS Oversight Board, FY 2015 Budget Recommendation, Special Report, May 2014.

III. Appropriations Language and Analysis of Appropriations Language

No substantive changes proposed. TAX’s appropriations language is included in the GLA rollup.

IV. Program Activity Justification

A. General Tax Matters

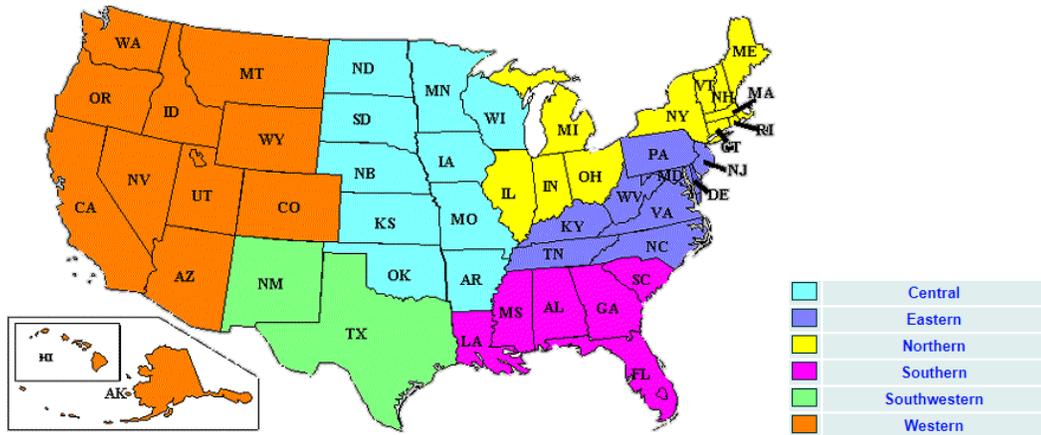
| <i>General Tax Matters</i> | Direct Pos. | Estimate FTE | Amount (\$000) |
|---|--------------------|---------------------|-----------------------|
| 2021 Enacted | 499 | 419 | \$111,002 |
| 2022 Annualized CR | 499 | 451 | 111,002 |
| 2022 Rebaseline Adjustment | 0 | 0 | 5,167 |
| Adjustments to Base and Technical Adjustments | 0 | 0 | 845 |
| 2023 Current Services | 499 | 451 | 117,014 |
| 2023 Program Increases | 20 | 10 | 4,292 |
| 2023 Program Offsets | 0 | 0 | 0 |
| 2023 Request | 519 | 461 | \$121,306 |
| Total Change 2022-2023 | 20 | 10 | \$5,137 |

| <i>General Tax Matters-Information Technology Breakout (of Decision Unit Total)</i> | Direct Pos. | Estimate FTE | Amount (\$000) |
|---|--------------------|---------------------|-----------------------|
| 2021 Enacted | 12 | 8 | \$12,242 |
| 2022 Annualized CR | 12 | 10 | 10,837 |
| 2022 Rebaseline Adjustment | 0 | 0 | 0 |
| Adjustments to Base and Technical Adjustments | 0 | 2 | 883 |
| 2023 Current Services | 12 | 12 | 11,720 |
| 2023 Program Increases | 2 | 2 | 2,250 |
| 2023 Program Offsets | 0 | 0 | 0 |
| 2023 Request | 14 | 14 | 13,970 |
| Total Change 2022-2023 | 2 | 4 | \$3,133 |

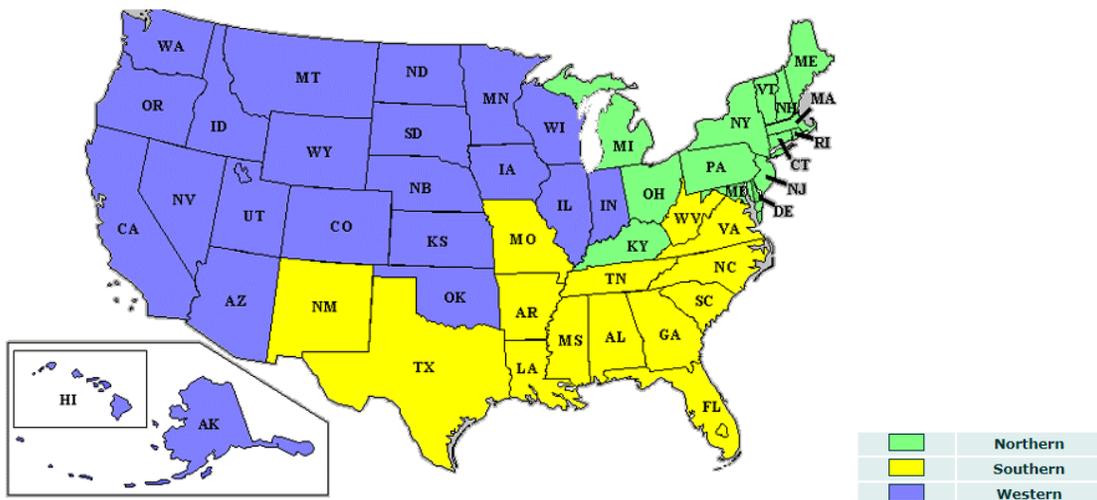
1. Program Description

The Tax Division represents the United States in both civil and criminal tax matters. The Division is composed of twelve litigating sections – civil trial (7), criminal enforcement (3), and appellate (2). All Tax Division sections are based in Washington, D.C., except for the Southwestern Civil Trial Section located in Dallas, Texas.

Civil Trial Sections



Criminal Enforcement Sections



Civil Trial and Appellate Sections

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

Defending the United States. Tax cases filed against the United States comprise approximately 42 percent of the Division’s civil caseload, in terms of both the number of cases litigated and the number of attorney work hours devoted to them each year. These lawsuits include requests for tax refunds, challenges to federal tax laws, challenges to liens, claims of unauthorized disclosure of confidential tax information, and allegations of wrongdoing by IRS agents. The Tax Division’s representation of the Government in these defensive suits saves the Treasury hundreds of millions of dollars annually, both by retaining money that taxpayers seek to recover and by fending off unjustified damage claims.

For example, in June 2021, the Fifth Circuit affirmed the favorable decision of the Tax Court rejecting a challenge to the IRS’s determination of a \$38 million tax deficiency against MoneyGram International, Inc. MoneyGram had claimed favorable tax treatment that the tax code provides only to banks. But the Fifth Circuit held MoneyGram is not a “bank” within the meaning of the statute because customers do not deposit funds with MoneyGram for the purpose of safekeeping.

In March 2021, the D.C. district court granted summary judgment against plaintiffs challenging the validity of the “transition tax” (§ 965) regulations. The court declined to change its ultimate ruling in response to a motion for reconsideration. The plaintiffs have now appealed. Based on estimates by the Joint Committee on Taxation, revenue raised by the transition tax on earnings accumulated abroad was estimated at \$340 billion over the 10 years from 2018 to 2027¹¹.

As another example, in November 2019, the Fifth Circuit affirmed the order of the District Court for the Southern District of Texas denying Baker Hughes a refund of \$17.7 million plus interest for a \$52.0 million advance made by its predecessor to a Russian subsidiary, which Baker Hughes asserted was deductible as either a bad debt pursuant to § 166, or as an ordinary and necessary business expense pursuant to § 162. The courts agreed with the Government that the payment was a non-deductible capital contribution. And in August 2020, the Seventh Circuit rejected similar arguments about the deductibility of \$95 million that a family-controlled

¹¹ Joint Committee on Taxation, General Explanation of Public Law 115-97, JCS-1-18 at 440 (Estimated Budget Effects..., Subtitle D, Part I, Subpart A, at (C) “Treatment of Deferred Foreign Income....”)

company had advanced to the son of its founder, affirming the Tax Court’s determination that the company is liable for income tax deficiencies in excess of \$28.0 million.

As a further example, in May 2020, the Federal Circuit affirmed two judgments of the Court of Federal Claims rejecting wind-farm owners’ claims that so-called “development fees” they had effectively paid to themselves in circular transactions were costs of developing the wind farms that entitled the owners to \$32 million in cash grants under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009. Although Section 1603 generally allowed the owners to claim cash grants, in lieu of tax credits, equal to 30 percent of each wind farm’s cost basis, the courts agreed with the Government that the owners failed to prove that the development fees reflected true costs.

Shutting Down Tax-Fraud Schemes and Fraudulent Return Preparers. Since 2000, Tax Division attorneys have obtained injunctions against more than 500 tax-fraud promoters and return preparers. This number represents a dramatic increase over the 1990s, when the total number of promoters and preparers enjoined barely reached 25 for the entire decade. The schemes the Division has enjoined during the past several years had cost the Federal Treasury more than \$2.0 billion and placed an enormous administrative burden on the IRS. For example, in June 2020, the Tenth Circuit affirmed a district court judgement barring defendants R. Gregory Shepard, Neldon Johnson and Utah companies RaPower-3 LLC and International Automated Systems, Inc., from promoting and marketing an abusive tax shelter scheme, involving false tax deductions and solar energy credits, and ordering them to disgorge over \$50.0 million in gross receipts from facilitating and promoting the scheme. The court also froze the defendants’ assets and appointed a receiver to effect collection. On July 6, 2020, the court found Neldon Johnson, Glenda Johnson, LaGrand Johnson, and Randale Johnson in civil contempt for violating the receivership order and imposed sanctions. In another case against a promoter of an abusive tax scheme, a district court in Montana first issued an injunction against further promotion activity and then, in December 2021, judged the defendant liable for a nearly \$8.5 million dollar penalty, plus interest. If permitted to continue unchecked, these schemes would undermine public confidence in the integrity of our tax system and require both the IRS and the Tax Division to devote tremendous resources to detecting, correcting, and collecting the resulting unpaid taxes.

Assisting with IRS Information Collection and Examinations. Individuals or businesses sometimes seek to thwart an IRS investigation by refusing to cooperate with IRS administrative summonses requesting information. When that happens, the IRS frequently asks the Tax Division to bring suit in federal court for an order to compel compliance with the summons. These judicial proceedings enable the Government to obtain needed information, while also providing important procedural and substantive rights to those affected by the summons. In August 2021, a North Carolina district court ordered compliance with an IRS summons into a conservation easement transaction that generated over \$220 million in tax deductions for members of the entity being investigated.

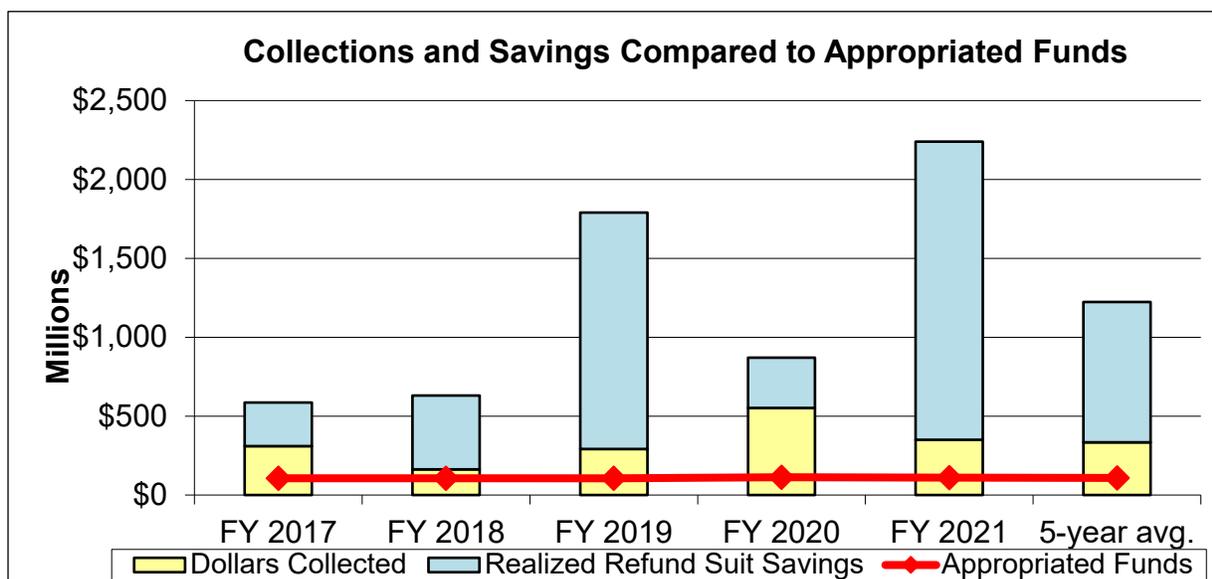
Enforcing penalties for failing to report foreign accounts. The Division brings suit to collect penalties owed by taxpayers with unreported foreign bank accounts abroad who do not come into compliance through the IRS’s Offshore Voluntary Disclosure programs. For instance,

in March 2020, a Florida district court issued a judgment exceeding \$15 million against an individual with unreported accounts in Switzerland and Costa Rica. Then, in November 2021, that court issued a repatriation order (later stayed, pending defendant's appeal) that required the defendant to bring back funds he held in foreign accounts in an amount sufficient to pay the judgment. The Division has also obtained pre-judgment relief to prevent the dissipation of assets held abroad while a case is ongoing. In one instance, in November 2021, a Michigan district court entered a temporary restraining order, soon followed by a preliminary injunction, requiring defendant to maintain over a million dollars in his Lichtenstein account, to track the judgment sought against him. In another instance, in December 2021, after the Government petitioned for an asset freeze based on a showing that defendant transferred his money assets to his wife, the Colorado district court ordered the defendant's wife to maintain at least \$2.2 million in her Swiss account and surrender her passport to her attorney, while the suit against her husband proceeds.

In November 2021, the Fifth Circuit agreed with the Government that the \$10,000 penalty for a non-willful failure to disclose foreign bank accounts on the proper form should apply to each unreported account, rather than just once per unsubmitted or incomplete reporting form. The IRS advises that nationwide, this issue affects over 200 debtors who collectively owe more than \$30 million.

Since late 2020, the Fourth Circuit, the Federal Circuit, and the Eleventh Circuit have each agreed with the Government that a 1987 regulation setting a maximum penalty of \$100,000 for willful violations of the foreign bank account disclosure requirements, which was at that time the statutory maximum, had been superseded in 2004 when Congress increased the statutory maximum for willful violations to the greater of \$100,000 or 50 percent of the balance in the foreign account at the time of the violation.

Collecting Unpaid Taxes. The Division collects unpaid tax liabilities, including income tax, employment tax, and a variety of penalties, by bringing affirmative civil litigation against delinquent taxpayers. Most of the affirmative collection suits that the Division handles are factually complex and time-consuming – debts that the IRS has been unable to collect administratively and that frequently involve fraudulent transfers of property or other unlawful attempts by taxpayers to conceal their income or assets or to delay the proceedings. Despite these difficulties, Tax Division attorneys collected over **\$351.1 million** in taxes, interest, and penalties in FY 2021. Indeed, the Division's affirmative litigation typically brings in more each year than the Division's entire budget, as illustrated by the following chart and has averaged \$333.5 million from FY 2017 to FY 2021.



In June 2019, the Tax Division secured agreements to collect the income tax liabilities of Sam Wyly, under which Wyly agreed to pay approximately \$331.0 million, so far including \$137.0 million received in the current fiscal year. The bankruptcy court previously found that Wyly owed \$1.1 billion in income tax liabilities, having conducted tax fraud by concealing assets in offshore trusts. The settlement amount represents the vast bulk of the taxpayer’s assets, and the agreed upon payment is primarily from repatriation of offshore assets. In September 2021, a California district court rejected a taxpayer’s challenge to an expedited tax assessment of \$300 million against him. Successfully defending the expedited assessment improves the prospect of eventually collecting the tax debt. And since January 2022, the Tax Division is defending expedited assessments of \$1.4 billion made against Robert Brockman, who was indicted in October 2021 on several counts of tax evasion as well as for wire fraud, money laundering and other malfeasance.

Civil Appellate Cases. Tax Division’s civil appellate attorneys represent the interests of the United States in all civil tax cases held in federal and state courts of appeals. During FY 2021, the Appellate Section litigated approximately 163 tax appeals, and won (in whole or in part) over 92 percent of taxpayer appeals and 71 percent of Government appeals. In addition to preparing briefs and presenting oral arguments in courts of appeal, Appellate Section attorneys assist the Office of the Solicitor General in preparing briefs in the United States Supreme Court and prepare recommendations to the Solicitor General on whether to file an appeal. When the United States is not a party in cases that may affect the interest of the United States on tax-related issues, Appellate Section attorneys prepare amicus curiae briefs setting forth the Government’s position on those issues.

Criminal Prosecutions and Appeals

The Division’s criminal enforcement goals are to prosecute criminal tax violations and to promote uniform nationwide criminal tax enforcement. In many cases, the Division receives requests from the IRS to prosecute violations after the IRS has completed an administrative investigation. In other cases, the IRS asks the Division to authorize grand jury investigations to

determine whether prosecutable tax crimes have occurred. Division prosecutors review, analyze, and evaluate referrals to ensure that uniform standards of prosecution are applied to taxpayers across the country. In the past few years, the Division has authorized over 1,300 criminal tax investigations and prosecutions each year. After tax charges are authorized, cases are handled by a USAO, by a Division prosecutor, or by a team of prosecutors from both offices. Division prosecutors also conduct training for IRS criminal investigators and AUSAs, and provide advice to other federal law enforcement personnel, such as the Drug Enforcement Administration and the Federal Bureau of Investigation (FBI).

During FY 2021, Division prosecutors obtained 87 indictments and 54 convictions (not including the additional criminal tax prosecutions handled exclusively by USAOs). The conviction rate for cases brought by Tax Division prosecutors for FY 2021 was 100 percent. Vigorous enforcement punishes violators, deters future violations, and reassures honest taxpayers that they will not bear an undue share of the federal tax burden.

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

More than ten banks and financial institutions have entered into guilty pleas, deferred prosecution agreements (DPA) and non-prosecution agreements (NPA) with the Department. Among the most notable are:

- In March 2021, Rahn+Bodmer, Zurich's oldest private bank, entered into a DPA and agreed to pay \$22 million in restitution, forfeiture, and penalties, and will cooperate with DOJ and IRS;
- In April 2020, Bank Hapoalim (Switzerland) Ltd. pleaded guilty and Bank Hapoalim B.M., Israel's largest bank, entered into a DPA for conspiring with U.S. taxpayers and others to hide more than \$7.6 billion in more than 5,500 secret Swiss and Israeli bank accounts and the income generated in these accounts. As part of the resolution, Bank Hapoalim B.M. and Bank Hapoalim (Switzerland) Ltd. (BHS) agreed to pay approximately \$874.27 million to the U.S. Treasury, the Federal Reserve, and the New York State Department of Financial Services;
- UBS AG, Switzerland's largest financial institution, paying approximately \$1.1 billion;
- Wegelin Bank, the oldest private bank in Switzerland, paying approximately \$74.0 million to the United States; and

- Credit Suisse AG, paying a total of \$2.6 billion – \$1.8 billion to the Department of Justice for the U.S. Treasury (as restitution for lost tax revenue), \$100 million to the Federal Reserve, and \$715 million to the New York State Department of Financial Services, and \$196 million in disgorgement, interest and penalties to the Securities Exchange Commission (SEC).

Among the most notable to have entered into DPA are:

- In December 2019, HSBC Private Bank (Suisse) SA, a private bank headquartered in Geneva, paying \$192.35 million in restitution, forfeiture, and penalties, and cooperating with DOJ and IRS;
- Bank Leumi, a major Israeli international bank, paying \$270 million to the United States, providing the names of more than 1,500 of its U.S. account holders, and cooperating with related ongoing investigations, marking the first time an Israeli bank admitted to such criminal conduct;
- Bank Julius Baer & Co Ltd., headquartered in Switzerland, paying \$547 million in restitution, forfeiture and penalties;
- In 2018, Basler Kantonalbank, headquartered in Switzerland, paying \$60.4 million in total penalties, including \$17.2 million in restitution to the IRS, \$29.7 million in disgorgement, and a criminal fine of \$13.5 million; and
- In March 2019, Mizrahi-Tefahot Bank Ltd. and two of its subsidiaries (collectively “Mizrahi-Tefahot”) entered into a DPA with the Department in which Mizrahi-Tefahot agreed to pay \$195 million to the United States. Mizrahi-Tefahot is one of Israel’s largest banks and its subsidiaries operated in Switzerland and the Cayman Islands. Mizrahi-Tefahot’s employees assisted U.S. customers in concealing their ownership and control of assets thereby enabling tax evasion. In addition, Mizrahi-Tefahot admitted that it violated its Qualified Intermediary Agreement (“QI Agreement”) with the IRS.

In addition, through the Swiss Bank Program, the Department has entered into 80 NPAs with 81 banks that collectively paid more than \$1.6 billion in penalties and are providing valuable leads concerning U.S. taxpayers maintaining secret accounts.¹² The Program

¹² These banks are referred to as “Category 2” banks. The Program established four categories of banks. The Program expressly excluded the fourteen banks, referred to in the Program as “Category 1 banks,” that were authorized for investigation in connection with their Swiss banking activity related to U.S. account holders before the Program was announced. Category 2 banks are Swiss banks that were not under investigation as of the date the Program was announced but believed they had committed tax-related offenses. Category 2 banks were required to provide detailed information regarding their cross-border activities, employees and representatives, and U.S.-related accounts, and were required to pay a penalty that could be

(continued...)

encouraged Swiss banks, about which the Department had little or no information, to come forward, disclose conduct and account information related to U.S. offshore accounts, and to cooperate with ongoing offshore enforcement efforts to target U.S. accountholders and the bankers and advisers who facilitated them.

Bank Lombard Odier & Co. Ltd. entered into a NPA with the Department of Justice in December 2015 and paid over \$99 million pursuant to the Agreement. Subsequent to the original agreement, Bank Lombard Odier & Co. Ltd. advised the Department that it had additional, previously undisclosed U.S. Related Accounts. As a result of the Tax Division's continued enforcement efforts, in July 2018, the bank entered an Addendum to its original agreement and agreed to pay an additional \$5.3 million to the Department.

As with Bank Lombard Odier & Co. Ltd., the Tax Division's continued investigation and review resulted in an Addendum to the original agreement with another Swiss bank, Banque Bonhote & Cie SA. In July 2019, Banque Bonhote & Cie SA acknowledged that it should have disclosed additional U.S.-related accounts at the time it signed the NPA with the Department in November 2015. The bank agreed to pay an additional \$1.2 million, double its original penalty.

The Tax Division's offshore compliance efforts extend beyond the Swiss Bank Program. In August 2019, LLB Verwaltung (Switzerland), a Swiss-based private bank formerly known as "Liechtensteinische Landesbank (Schweiz) AG," entered into an NPA with the Department and paid a \$10.6 million penalty for assisting U.S. taxpayers to commit tax evasion. In 2013, LLB-Switzerland was closed, and its banking license returned to the Swiss Financial Market Supervisory Authority.

The Tax Division's efforts extend beyond banks. In April 2019, Zurich Life Insurance Company Ltd. and Zurich International Life Limited entered into a NPA with the Department of Justice and paid \$5.1 million pursuant to the Agreement. The companies used insurance products, sold to U.S. taxpayers, that enabled those taxpayers to commit tax fraud.

The investigation and prosecution of professionals, including lawyers, financial advisors, and return preparers, who facilitate offshore tax evasion is an essential part of the Tax Division's efforts in this area. The Department has publicly charged approximately 42 bankers and advisers with violations arising from offshore banking activities; many remain fugitives. Furthermore, over 120 accountholders have pleaded guilty or been convicted at trial. For example:

- In May 2021, a Palm Beach County, Florida resident was sentenced to 24 months in prison and ordered to pay \$2.78 million in restitution. From 2003 through 2009, Dusko Bruer owned and operated a company that bought U.S.-made agricultural machinery and parts and sold them throughout the world. Bruer's company earned millions of dollars in annual gross receipts. Despite its success, Bruer's company did not file employment or

mitigated if the bank established that a particular account was declared or came into compliance through the IRS offshore voluntary disclosure programs. Category 3 and 4 banks are Swiss banks that did not commit any violations of U.S. law but sought a non-target letter after providing information required under the Program.

corporate tax returns, nor did the company pay employment or income taxes. Bruer directed millions of dollars from the company's bank accounts to pay for his personal expenses, to make foreign investments, and to be transferred to family members;

- In August 2020, a Houston, Texas attorney was sentenced to 24 months in prison, after being convicted at trial of conspiring to defraud the United States and tax evasion by conspiring with a former client to repatriate more than \$18 million in untaxed income that the client had earned;
- In October 2019, a Beverly Hills, California, businessman was sentenced to 21 months in prison, ordered to pay \$612,310 in restitution, and agreed to pay a Foreign Bank and Financial Accounts penalty in the amount of \$7.7 million, for filing false tax returns that failed to report his offshore accounts in Germany and Israel and the income earned on those accounts; and
- In August 2019, a former CPA formerly of Fort Lauderdale, Florida, was indicted for failing to report foreign bank accounts and filing false documents with the IRS relating to a "Streamlined Submission."

The high-profile prosecutions of financial institutions, facilitators, and accountholders created pressure on non-compliant taxpayers to correct their tax returns to report previously undisclosed accounts. According to the IRS, since the inception of the investigation against UBS, over 55,800 taxpayers have reported previously secret accounts through the IRS's offshore voluntary disclosure programs, and an additional 48,000 have made use of separate streamlined procedures to correct prior non-willful omissions. In total, the IRS has collected more than \$11 billion in back taxes, interest, and penalties through these programs. These enforcement efforts not only remedy past wrongdoing, but also bring into the system tax revenue from taxpayers who become compliant going forward. Through the voluntary disclosure programs, taxpayers are required to cooperate, providing leads on banks and facilitators.

International Cooperation to Investigate Tax Evasion. The Tax Division regularly provides advice and assistance to AUSAs and IRS agents seeking extradition, information, and cooperation from other countries for both civil and criminal tax investigations and cases. The Tax Division also assists attorneys from other federal agencies and offices, including the FBI, the SEC, and the Department of Homeland Security as needed.

Pure Tax Crimes. Legal-source income tax cases are the core of Tax Division's criminal enforcement mission. These cases encompass tax crimes where the source of the individual's income is earned through legitimate means, and the examples are legion: a restaurateur who skims cash receipts; a corporation that maintains two sets of books, one reporting its true gross receipts and the other – used for tax purposes – showing lower amounts; a self-employed individual who hides taxable income or inflates deductible expenses to reduce the amount of tax due and owing; or, an individual who, although aware of the duty to file a return, knowingly and intentionally refuses to do so. The focus on legal-source income cases is important because tax crimes of this type significantly erode the tax base and, when such conduct is left unaddressed, have the potential to encourage tax cheating by otherwise law-abiding

citizens. Prosecutions in these cases often receive substantial local media coverage, and convictions assure law-abiding citizens who pay their taxes that those who cheat are punished. During the past year, Tax Division attorneys investigated and prosecuted cases involving tax crimes committed by individuals from all walks of life. Included in these prosecutions, and of special significance to the Tax Division, are emerging fraud schemes in the biofuel area. For example:

- In May 2021, a North Carolina risk consultant was sentenced to 36 months in prison for filing a false tax return and illegally possessing a firearm. From 2011 through 2017, Charles Atkins underreported income from several risk consulting businesses. Atkins was ordered to pay \$809,000 in restitution;
- In April 2021, Walter Rodriguez, of Manchester, aided and abetted several drywall companies that were evading the payment of employment taxes from 2011 to 2013. Rodriguez found workers for the companies for construction jobs. The companies then issued checks in the names of fictitious or fraudulent identities and provided those checks to Rodriguez, who converted the checks to cash at local check-cashing businesses and paid the workers off-the-books. Rodriguez was ordered to pay more than \$416,000 in restitution;
- In April 2021, a Bentonville, Arkansas businessman evaded more than \$1 million in income taxes by concealing his income and assets. James Brassart used three nominee corporations to conduct business and purchase assets. He then filed four false bankruptcy petitions in an attempt to discharge his debt, making false statements and filing fraudulent documents in the bankruptcies. Brassart was ordered to pay \$1.36 million in restitution;
- In December 2020, a New York City restaurateur was sentenced to 24 months in prison for tax evasion. Adel Kellel, the owner of Raffles Bistro, diverted business income for personal expenses, including rent for a high-end Manhattan apartment, college tuition payments for his children, and purchases from luxury retailers. As part of his sentence, Kellel was ordered to pay \$613,478 to the IRS; and
- In January 2020, a Pennsylvania anesthesiologist, James G. Allen Jr., was sentenced to 30 months in prison for filing a false income tax return and for failing to pay more than \$900,000 owed to the IRS.

Employment Tax Crimes. Recently, Tax Division, working in close partnership with CI, sharpened its focus on employers who willfully fail to collect, truthfully account for, and pay over employment taxes to the IRS. Employers have a legal obligation to withhold federal income, Social Security, and Medicare taxes from their employees' wages, hold these funds in trust, and then pay them over, along with a matching amount of Social Security and Medicare tax, to the IRS. Employment and income tax withheld comprise 89.5 percent of the total

revenues collected by the IRS,¹³ and nearly \$60 billion of employment tax reported on quarterly employment tax returns remained unpaid.¹⁴ The Division has handled several notable employment tax cases this year. For example:

- In June 2021, a plumbing contractor was sentenced to 20 months in prison for employment tax crimes. Sergei Denko, of Queens, New York, owned and operated Denko Mechanical Inc. and Independent Mechanical Inc., both contracting businesses that specialized in plumbing. From 2010 through 2014, Denko cashed more than \$5 million in checks made out to companies he owned and operated to fund an “off the books” cash payroll. He did not report the cash wages to the IRS, filed false employment tax returns, and did not pay to the IRS the employment taxes arising from the cash payroll. Denko admitted to causing a total tax loss of \$732,462;
- In May 2021, Trennis Baer of Great Falls, Montana, was sentenced to 15 months in prison for employment tax fraud. Baer owned and operated Baer Construction. From 2010 through 2018, Baer did not file quarterly employment tax returns nor pay to the IRS employment taxes withheld from his employees’ wages. Baer also willfully did not file personal income tax returns for the years 2001 to 2006, 2008, and 2010 to 2018. Baer was ordered to pay \$935,000 in restitution; and
- In February 2020, a Maryland-based operator of companies providing foodservices in government buildings, Steve Choi, was sentenced to 21 months for failing to account for and pay over more than \$10 million in employment and sales tax.

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

- In November 2020, a New Jersey man was sentenced to 78 months in prison for conspiring to defraud the United States, filing false claims, and obstructing the internal revenue laws, following his conviction at trial. According to evidence presented at trial,

¹³ Internal Revenue Service Data Book, 2020 Table 1 Collections and Refunds by Type of Tax, Fiscal Years 2019 and 2020

¹⁴ [Tax Gap Estimates for Tax Years 2011–2013](#): Attachment 1, Tax Gap Map \$6 million annual underpayment times 10 years with the statute of limitations.

between 2015 and 2016, Kenneth Crawford, Jr., and his co-conspirators promoted and sold a “mortgage recover” tax fraud scheme in which they obtained fraudulent refunds from the IRS for their clients. As a result of Crawford’s scheme, more than \$2.5 million in fraudulent refunds were sought from the IRS.

Stolen Identity Refund Fraud. While we have made substantial progress, Stolen Identity Refund Fraud (SIRF) crimes continue to be committed across the country, with many defendants filing thousands of false returns, resulting in millions of dollars in fraudulent refund claims. Moreover, their level of sophistication has risen, with a number of SIRF crimes now involving a cyber component. Victims hail from all segments of our society. Elderly people are particularly vulnerable as a result of their contact with hospitals, assisted living centers, nursing homes, but they are not alone. SIRF victims include state and federal employees, the imprisoned, young children, the infirm, and members of our armed forces deployed overseas.

To deal efficiently with these cases, TAX has delegated to local USAOs the authority to initiate tax-related grand jury investigations in SIRF matters, to charge those involved in SIRF crimes by complaint, and to obtain seizure warrants for forfeiture of criminally derived proceeds arising from SIRF crimes, all without prior authorization from the Tax Division. TAX also formed a SIRF Advisory Board, consisting of experienced Division SIRF prosecutors, which serves as resource for prosecutors in the field and sets a national strategy to investigate and prosecute these crimes.

As a result of our streamlined procedures, USAOs has been able to respond quickly to SIRF type cases, and TAX has authorized more than 1,300 SIRF investigations involving more than 2,000 subjects. The Tax Division and the USAOs have brought approximately 1,000 prosecutions involving more than 1,900 individuals. And the courts are responding with substantial sentences. Among the recent SIRF prosecutions handled by the Division are:

- In October 2020, a Las Vegas, Nevada, man was sentenced to 70 months in prison for mail and wire fraud conspiracy following his jury trials convictions. The trial evidence proved that from January 2009 through April 2011, Terry Williamson and his co-conspirators filed false tax returns with the IRS to fraudulently obtain tax refunds. More than 480 fraudulent tax refund checks totaling almost \$2 million were deposited into Williamson’s account;
- In March 2020, Josiah Ntekume, a Las Vegas resident, was sentenced to 65 months in prison for his role in a stolen identity tax fraud. When Ntekume was arrested on March 13, 2012, he had in his backpack approximately 250 prepaid debit cards in the names of other individuals on which more than more than \$200,000 in fraudulent refunds had been loaded;
- In January 2020, a St. Louis resident was sentenced to 48 months in prison for his role in a stolen identity fraud scheme that claimed \$12 million in tax refunds;
- In October 2019, Tiffany Lewis, an Atlanta, Georgia, woman, was sentenced to 56 months in prison for her role in a scheme to file false tax returns using stolen identities to

claim more than \$11.9 million in fraudulent refunds, and causing the IRS to issue more than \$3.7 million;

- In July 2019, Antoinette Winston, a Kansas City, Missouri woman also known as “Tweety,” stole and used personal identifying information to file fraudulent income tax returns requesting refunds from the IRS and to obtain pre-paid debit cards in the names of those individuals to receive the refunds. The intended tax loss exceeded \$250,000. Winston was sentenced to 34 months in prison;
- In April and May of 2019, three Nevada family members were sentenced to prison for their respective roles in a fraudulent tax refund scheme in which they used the names of fictitious business entities and other individuals - including a long-deceased family member. Chanh Trinh was sentenced to 102 months in prison. Cannedy Trinh was sentenced to 24 months in prison, and Elizabeth Trinh was sentenced to 18 months in prison; and
- In April 2019, a District of Columbia woman, Sheila Scutchings, was sentenced to 54 months in prison for her role in a scheme to file false tax returns with the IRS, which caused a tax loss of over \$1.8 million. Scutchings solicited the Social Security numbers and names of individuals for filing the false tax returns.

Return-Preparer Fraud. Corrupt accountants and tax return preparers continue to present a serious law enforcement concern. Some accountants and return preparers deceive unwitting clients into filing false and fraudulent returns, while others serve as willing “enablers,” providing a veneer of legitimacy for clients predisposed to cheat. In addition to the significant adverse impact these individuals have on the U.S. Treasury, their status as professionals may be perceived as legitimizing tax evasion, thereby promoting disrespect for the law. TAX has prosecuted many such return preparer cases during the past year. Recent cases include:

- In May 2021, Karen Marie Jones, a Durham return preparer, was sentenced to prison for 22 months for conspiring to prepare false returns for clients and causing a tax loss to the IRS of approximately \$1.2 million;
- In June 2021, a Kinston, North Carolina tax preparer was sentenced to 30 months in prison for filing false tax returns for clients. Hildares Parker-Greene conspired with another return preparer to fraudulently inflate clients’ tax refunds by claiming false wages, federal income tax withholdings, and dependents. Parker-Greene’s conduct caused a tax loss of more than \$550,000;
- In March 2021, Aminta Ashley Smith, a Charlotte return preparer, was sentenced to 30 months in prison for preparing tax returns for clients that claimed false education credits, false W-2 wages, and false Schedule C businesses. Smith also falsified her own income tax returns by underreporting the fees she earned from her tax preparation business for tax years 2011 to 2015. In total, Smith generated a \$1.1 million tax loss;

- In February 2021, Adrienne Williams, a Rocky Mount, North Carolina, tax return preparer was sentenced to 50 months for conspiring to defraud the United States, by preparing false returns for clients. The returns claimed fraudulent refunds by including, among other falsities, bogus federal income tax withholdings. In all, Williams and her co-conspirators sought to defend the IRS of more than \$3.5 million;
- In January 2020, a Las Vegas, Nevada tax return preparer, Michael Sandoval, was sentenced to 40 months in prison for tax fraud, which caused over \$3.4 million in tax loss;
- In October 2019, Stacey Anderson, a Texas tax return preparer was sentenced to 87 months in prison for filing false client tax returns claiming false business items and/or education tax credits and seeking more than \$10 million in fraudulent refunds;
- Kenneth Mwase, a Minneapolis based tax return preparer, was sentenced to 121 months in prison in January 2019 for managing and directing a fraudulent return-preparation business. Mwase was extradited from South Africa. Together with co-defendants, Ishmael Kosh of Philadelphia, Pennsylvania, Amadou Sangaray of New York, New York, Francis Saygbay of Minneapolis, Minnesota, and David Mwangi of Arlington, Texas, the co-defendants filed over 2,000 fraudulent individual income tax returns with the IRS and 1,700 fraudulent state income tax returns with the State of Minnesota;
- In May 2019, Teresa Chism, a Mississippi tax return preparer, was sentenced to 60 months in prison for preparing and filing a fraudulent claim for a tax refund with the IRS. Chism was part of a significant tax fraud scheme operated out of the “Mo’ Money” tax return preparation franchise. She prepared more than 550 false income tax returns, seeking over \$3.5 million in fraudulent tax refunds; and
- Francisco Ventura, a Dallas, Texas area tax return preparer, was sentenced to 60 months in prison in July 2019 for conspiring to defraud the United States and for aiding and assisting in the preparation of false tax returns. Venture caused a tax loss exceeding \$8.3 million to the United States. In April 2019, co-defendant Mario Melendez, who pleaded guilty to conspiracy and aiding and assisting in the preparation of false tax returns, was sentenced to 51 months in prison.

National Tax Defier Initiative. Tax defiers, also known as illegal tax protesters, have long been a focus of the Tax Division’s investigative and prosecution efforts. Tax defiers advance frivolous arguments and develop a wide variety of schemes to evade their income taxes, assist others in evading their taxes, and frustrate the IRS, all under the guise of constitutional and other meritless objections to the tax laws. Frivolous arguments used by tax defiers include, for example, spurious claims that an individual is a “sovereign citizen” not subject to the laws of the United States, that the federal income tax is unconstitutional, and that wages are not income. Because a segment of the tax defier community may and has resorted to violence to advance their cause, it is essential that law enforcement be prepared to respond rapidly to threats against agents, prosecutors, and judges. Tax Division has implemented a comprehensive strategy using

both civil and criminal enforcement tools to address the serious and corrosive effect of tax defier and sovereign citizen activity. Led by a National Director, the Tax Division's Tax Defier Initiative facilitates coordination with representatives of IRS Criminal Investigations, Treasury Inspector General for Tax Administration, the FBI Domestic Terrorism Operations Unit, and the Department's National Security Division to attack this problem. TAX has been leaders in developing and implementing a national training program for prosecutors and investigators.

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

- In October 2020, Colorado tax defier Lawrence Birk was sentenced to an additional 78 months in prison for failing to surrender to serve his previously imposed tax evasion prison sentence and for unlawfully possessing firearms. Birk was found guilty at trial of tax evasion in July 2019. After the IRS began collection efforts to collect his longstanding tax debt, Birk sent the IRS threatening correspondence and sought to impede its efforts to seize money from his bank accounts. He did not make any voluntary tax payments for 2006 through 2018. He was originally sentenced to 60 months in prison and ordered to pay \$1.8 million in restitution;
- In May 2020, a La Crosse, Wisconsin dentist was sentenced to 72 months in prison for tax evasion. Frederick G. Kriemelmeyer operated a dental practice and in 2007 was ordered by the U.S. District Court for the Western District of Wisconsin to pay \$135,337 to the IRS in unpaid income taxes. By 2012, the IRS had assessed Kriemelmeyer for more than \$450,000 in taxes, interest, and penalties. From at least 2013 through 2015, to avoid paying his tax delinquency Kriemelmeyer did not file tax returns reporting the income from his dental practice, directed his patients to pay him in cash or by check with blank payee lines, and paid his business and personal expenses with third-party checks and cash; and
- In October 2018, Winston Shrou, then 70 years of age and one of the most prominent sovereign citizen tax defier promoters, was sentenced to 10 years in prison following his conviction after a jury trial in 2017. Shrou was highly influential in the sovereign citizen movement and has a significant following across the country and abroad. From approximately 2008 through 2015, Shrou created and submitted more than 1,000 bogus financial instruments. He held worldwide seminars and private meetings to promote and market the use of these fake financial instruments to pay off debts, including federal taxes. Shrou sold recordings of his seminars, templates for fake financial instruments and other materials through his website.

2. Performance Tables

Performance and Resource Table

| PERFORMANCE AND RESOURCES TABLE | | | | | | | | | | | | |
|---|---------------------|--|---------|-----------|---------|-----------|---------|-----------|--|---------|-------------------|-----------|
| Decision Unit: General Tax Matters | | | | | | | | | | | | |
| RESOURCES | | | | | | | | | | | | |
| | | | Target | | Actual | | Target | | Changes | | Requested (Total) | |
| | | | FY 2021 | | FY 2021 | | FY 2022 | | Current Services Adjustments and FY 2023 Program Changes | | FY 2023 Request | |
| Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total) | | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| | | | 451 | \$111,002 | 451 | \$111,002 | 451 | \$116,169 | 10 | \$5,137 | 461 | \$121,306 |
| TYPE | STRATEGIC OBJECTIVE | PERFORMANCE | FY 2021 | | FY 2021 | | FY 2022 | | Current Services Adjustments and FY 2023 Program Changes | | FY 2023 Request | |
| Program Activity: Criminal Prosecution & Appeals | | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| | | | 127 | \$31,303 | 127 | \$31,303 | 127 | \$32,760 | 0 | \$1,449 | 130 | \$34,208 |
| Performance Measure: Workload | 4.2 | Number of Cases received from the IRS and USAO for Authorization and Review | n/a | | n/a | | n/a | | n/a | | n/a | |
| Performance Measure: Output | 4.2 | Number of Investigations Authorized | n/a | | 462 | | n/a | | n/a | | n/a | |
| Performance Measure: Output | 4.2 | Number of Prosecutions Authorized | n/a | | 604 | | n/a | | n/a | | na/ | |
| Performance Measure: Outcome | 4.2 | Success Rate for Criminal Tax Cases Handled by the Division | 90% | | 100% | | 90% | | n/a | | 90% | |
| Program Activity: Civil Litigation & Appeals | | | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 | FTE | \$000 |
| | | | 324 | \$79,699 | 324 | \$79,699 | 324 | \$83,409 | 10 | \$3,688 | 331 | \$87,098 |
| Performance Measure: Outcome | 4.2 | Civil Cases Successfully Litigated in the Trial Courts | 80% | | 98% | | 80% | | n/a | | 80% | |
| Performance Measure: Outcome | 4.2 | Civil Cases Successfully Litigated - Taxpayer Appeals | 85% | | 92% | | 85% | | n/a | | 85% | |
| Performance Measure: Outcome | 4.2 | Civil Cases Successfully Litigated - Government and Cross Appeals | 60% | | 71% | | 60% | | n/a | | 60% | |
| Performance Measure: Outcome | 4.2 | Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions) | n/a | | 2,239 | | n/a | | n/a | | n/a | |
| <p>Data Collection & Storage: The data sources for all performance data is TaxDoc, the Tax Division's automated case management system.</p> <p>Data Validation and Verification: The Tax Division has established procedures to collect and record reliable and relevant data in TaxDoc.</p> <p>Data Limitations: Some activities that are tracked in TaxDoc lack historical data. Dollars Collected and Retained fluctuates due to the type and stage of litigation resolved during the year.</p> | | | | | | | | | | | | |

Performance Measure Table

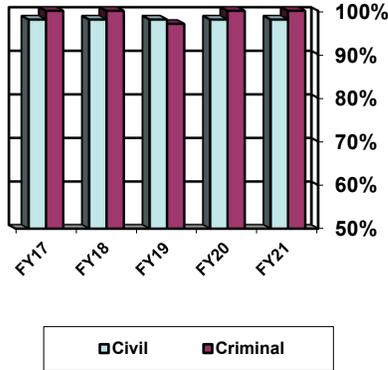
| PERFORMANCE MEASURE TABLE | | | | | | | | | | |
|--|---|--|--|---------|-----------|---------|---------|-----------|---------|---------|
| Decision Unit: General Tax Matters | | | | | | | | | | |
| Strategic Objective | Performance Report and Performance Plan Targets | | FY 2017 | FY 2018 | FY 2019 | FY 2020 | FY 2021 | | FY 2022 | FY 2023 |
| | | | Actual | Actual | Actual | Actual | Target | Actual | Target | Target |
| | 4.2 | Performance Measure | Number of Criminal Investigations Authorized | 467 | 543 | 542 | 588 | n/a | 462 | n/a |
| 4.2 | Performance Measure | Number of Criminal Prosecutions Authorized | 674 | 584 | 815 | 815 | n/a | 604 | n/a | n/a |
| 4.2 | Outcome Measure | Success Rate for Criminal Tax Cases Handled by the Division | 100% | 100% | 97% | 100% | 90% | 100% | 90% | 90% |
| 4.2 | Outcome Measure | Civil Cases Successfully Litigated in the Trial Courts | 98% | 98% | 98% | 98% | 80% | 98% | 80% | 80% |
| 4.2 | Outcome Measure | Civil Cases Successfully Litigated - Taxpayer Appeals | 95% | 97% | 94% | 97% | 85% | 92% | 85% | 85% |
| 4.2 | Outcome Measure | Civil Cases Successfully Litigated - Government and Cross Appeals | 50% | 82% | 60% | 78% | 60% | 71% | 60% | 60% |
| 4.2 | Outcome Measure | Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions) | \$586.2 | \$630.1 | \$1,792.0 | \$870.0 | n/a | \$2,239.3 | n/a | n/a |
| n/a = In accordance with Department guidance, there is no target for this measure. | | | | | | | | | | |

3. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

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

Cases Favorably Resolved (TAX)



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

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

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

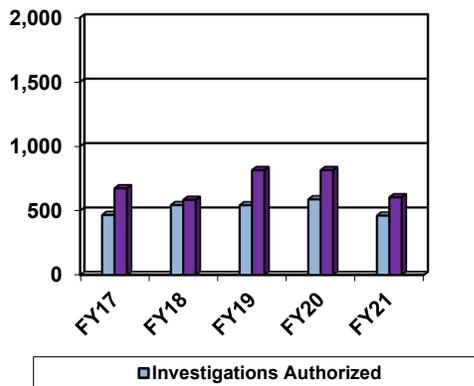
Data Limitations: The Tax Division lacks historical data on some activities that are now tracked in the case management system. The information system may cause variations in the way some statistics are presented.

Performance Measure 1: Percentage of Cases Favorably Resolved

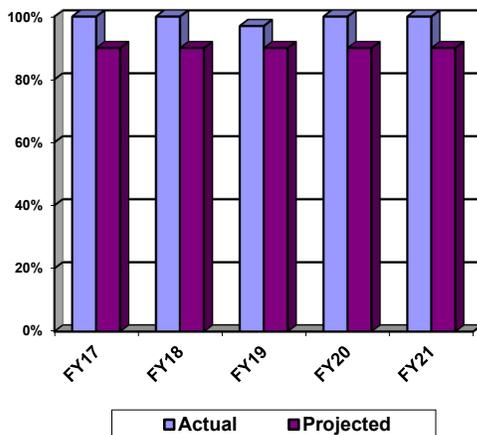
FY 2021 Actual: 98% for Civil Trial and 100% for Criminal.

Discussion: The outcome measure for this decision unit is favorable resolution of all cases. The Department of Justice Strategic Plan sets Department-wide goals for the litigating components: 90 percent of criminal cases favorably resolved Department-wide and 80 percent of civil cases favorably resolved. As illustrated in the chart “Cases Favorably Resolved (TAX),” Tax Division has exceeded the Department’s goal for the last several years. In FY 2021, favorable outcomes were achieved in 98 percent of all civil and 100 percent of all criminal cases litigated by Tax Division, including non-tax cases.

Investigation and Prosecution Referrals Authorized



Success Rate for Criminal Tax Cases



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

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

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

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

Performance Measure 2: Criminal Investigation and Prosecution Referrals Authorized

FY 2021 Actual: 462 Grand Jury Investigations and 604 Prosecutions

Discussion: The Tax Division also measures the number of authorized investigation and prosecution referrals in criminal cases. In FY 2021, the Division authorized 462 grand jury investigations and 604 prosecutions of individual defendants. Changes in the number of authorized investigations are largely proportional to the number of investigations initiated by the Internal Revenue Service.

Consistent with Department guidance, there is no FY 2022 or FY 2023 performance goal for authorized investigations and prosecutions.

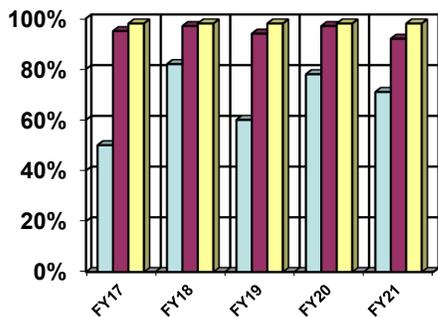
Performance Measure 3: Success Rate for Criminal Tax Cases

FY 2021 Actual: 100%

Discussion: The Tax Division’s Criminal Trial Sections assume responsibility for some cases at the request of the USAOs, generally multi-jurisdictional investigations and prosecutions, and cases with significant regional or national importance. Although many of these cases are difficult to prosecute, the Division has maintained a conviction rate at or greater than 95 percent. In FY 2021, the Division’s conviction rate was 100 percent in tax cases.

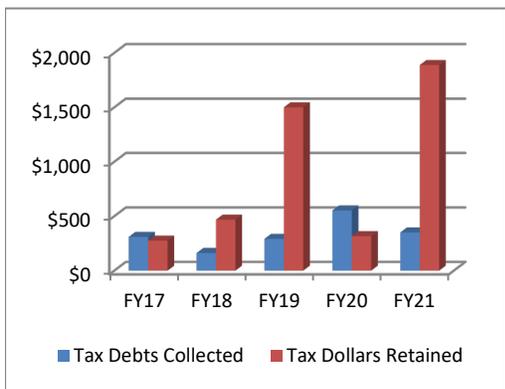
For FY 2022 and FY 2023, the Tax Division has established a conviction rate goal of 90 percent. While the Tax Division is very proud of its conviction rate, our emphasis is on uniform and fair enforcement of the tax laws, and not on meeting numeric targets.

Civil Cases Successfully Litigated [TAX]



■ Appellate Courts - Gov't & Cross Appeals
■ Appellate Courts - Taxpayer Appeals
■ Trial Courts

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



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

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

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

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

Performance Measure 4: Civil Cases Successfully Litigated

FY 2021 Actual:

Trial Courts – 98%

Taxpayer Appeals – 92%

Government and Cross Appeals – 71%

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

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

Performance Measure 5: Tax Dollars Collected and Retained

FY 2021 Actual: \$351.1 Million Collected and \$1,888.2 Million Retained

Discussion: The Tax Division collects substantial amounts for the Federal Government in affirmative litigation and retains even more substantial amounts in defensive tax refund and other litigation. For FY 2021, the Division collected \$351.1 million and retained \$1,888.2 million.

In addition to this measurable impact, the Division's litigation affects the revenue at issue in many cases being handled administratively by the IRS and determines tax liabilities of litigants for many additional tax years. Its litigation successes also foster overall compliance with the tax laws. This substantial financial impact is a consequence of the Division's consistent and impartial enforcement of the tax laws. The Division does not measure these indirect effects of its litigation. Without sufficient resources, the Division will be forced to focus the majority of its resources on defensive cases, which would result in affirmative cases - cases the IRS requests the Division to prosecute - being declined. If this occurs, the Division will not be able to meet its targets for this measure.

b. Strategies to Accomplish Outcomes

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

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

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

V. Program Increase by Item

Increased Enforcement

Program Increase: Positions: 20 Attorneys: 14 Dollars: \$4.3 million

The Tax Division is seeking a budget increase of \$4.3 million and 20 positions and 10 FTE to keep pace with the anticipated increase in workload in FY 2023. The Tax Division's total request is 519 Positions and \$121.3 million.

Funding is sought in two areas:

- Staffing for Increased Tax Enforcement: 20 positions (14 attorneys) and 10 FTE and \$2.244 million to meet new workload demands.
- Modern Automation Tools: \$2.048 million to establish a modern Data Analytics and ALS program in the Tax Division.

The Tax Division is submitting this proposal at a time when both the Administration and Congress are focused on closing the tax gap through increased tax enforcement. President Joe Biden has identified tax compliance and increased funding of the IRS as an integral part of his American Families Plan.^[1] Increased funding of the IRS's enforcement components will necessarily require increased funding of the Tax Division. As the IRS ramps up efforts to combat sophisticated tax evasion, the Tax Division expects a proportional increase in work referred to it by the IRS. Commissioner Rettig in his testimony before the Senate Appropriations Subcommittee on Financial Services on May 19, 2021, noted the need for increased resources for the Tax Division:

“Keep in mind that in the district courts, the claims courts, the bankruptcy courts, and in criminal prosecutions, the Department of Justice handles the matters for us. They represent the interests of the Internal Revenue Service. And if we get a significant

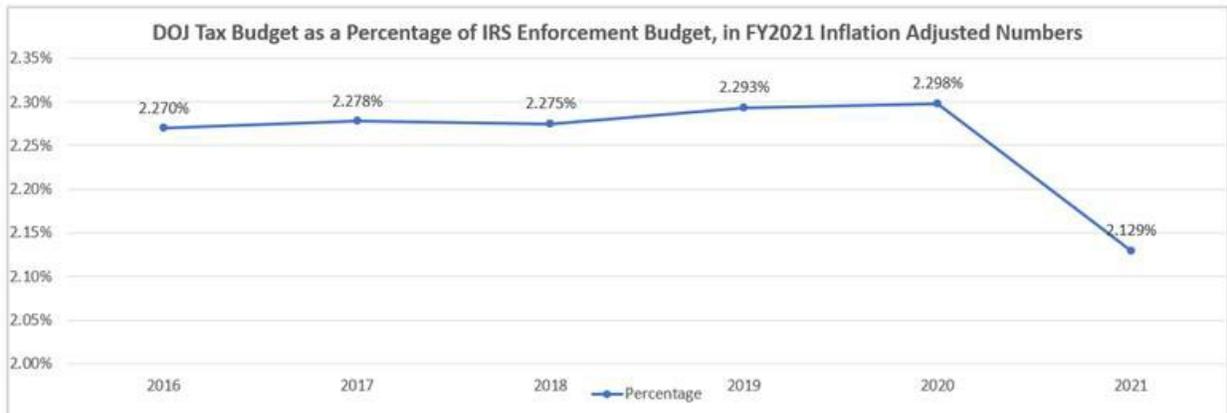
^[1] U.S. Department of the Treasury, *The American Families Plan Tax Compliance Agenda* (May 2021), available at <https://home.treasury.gov/system/files/136/The-American-Families-Plan-Tax-Compliance-Agenda.pdf>. Investments in tax compliance are an important way to raise revenue, improve efficiency, and build a more equitable tax system. *Id.* In a July 2020 report, the Congressional Budget Office estimated that increased funding of the IRS – and in particular, its Enforcement^[1] components – would generate somewhere between \$60 and \$100 billion in additional revenue over a decade. Congressional Budget Office, *Trends in the Internal Revenue Service's Funding and Enforcement* (July 2020), available at <https://www.cbo.gov/publication/56467>. Analyzing the same information, Natasha Sarin and Lawrence Summers have estimated that a commitment to restoring tax compliance efforts to historical levels could generate over \$1 trillion in the next decade. Natasha Sarin and Lawrence H. Summers, *Understanding the Revenue Potential of Tax Compliance Investment* (Sept. 21, 2020), available at <https://ssrn.com/abstract=3695215>

increase in staffing and the Department of Justice, specifically the Tax Division does not, you should anticipate a bottleneck on us giving cases that they are unable to handle because of their staffing issues. They are a significant part of both civil and criminal tax administration in this country.”

This increase is necessary to address the additional cases and complexity of issues that the Tax Division anticipates receiving from the IRS in FY 2023.

The Tax Division also seeks \$2.044 million in new funding for modern automation tools -- Data Analytics, eLitigation, and Automated Litigation Services -- to meet the ongoing and increasing demands of complex tax litigation. Dedicated funding for eLitigation will be a necessary tool to accomplish the President’s priority of focusing enforcement efforts on the tax evasion schemes of sophisticated high net worth taxpayers.

The increase in funding for FY 2023 is in line with historical funding practices. From 2016 to 2020, the Tax Division’s budget has consistently been between 2.270% and 2.298% of the IRS’s Enforcement budget. Similarly, the ratio of Tax Division realized FTEs to IRS Enforcement realized FTEs has remained between 1:71 and 1:79 from 2016 through 2020. As the tax gap is attacked through increased IRS funding and staffing for tax enforcement, the Tax Division’s budget must keep pace to enforce the nation’s tax laws fully, fairly, and uniformly.



Staffing for Increased Tax Enforcement: \$2.244 million and 20 positions (14 attorneys, 6 paralegals and administrative staff) and 10 FTE

New Positions: 20 new positions to hire 14 additional attorneys and staff to meet new workload demands as the IRS staff levels increase.

The IRS is devoting approximately \$340 million in increased resources to enforcement. The Service plans to focus on partnerships and high wealth returns, and examinations of large corporations with balance sheet assets greater than \$10 million. Other initiatives include oversight efforts against cybercrime, Cross Border and Treaty and Transfer Pricing Operations, and the use of data analytics in enforcement activities.

The IRS depends on the DOJ Tax Division to issue John Doe summonses, such as recent petitions to cryptocurrency exchanges Coinbase, Circle, and Kraken. A court must verify that a John Doe summons meets requirements under tax code Section 7609, and that the summons is narrowly focused on information about the targeted taxpayers' possible failure to comply with tax laws. Based on information obtained from the summons to Coinbase, the IRS sent 10,000 letters to taxpayers regarding their obligation to report gains from virtual currency. These "reminder letters" lead to \$15 million in assessed tax liabilities without a single audit.

Commissioner Rettig recently noted that expanded IRS enforcement efforts will "focus on high net-worth individuals, large pass throughs, corporate compliance, employment tax field examinations and non-filers with virtual currency, among others." Another area of focus involves unscrupulous tax preparers who prey on vulnerable taxpayers and those who do not speak English. The IRS focus on these areas will only succeed if the Tax Division has sufficient resources to litigate when these matters reach federal district court.

Modern Automation Tools: \$2.048 million

The Tax Division is requesting \$2,048,000 to fund a new program to meet increasing demands for ALS and data analysis in Tax Division cases. The Division does not have any dedicated appropriated funds for ALS. Instead, the Division relies on a small cache of no-year ALS funds that were reprogrammed from expired GLA funds, and reimbursable funds from the Collection Resources Allocation Board (CRAB). These ephemeral funding sources are both too small and too unreliable to meet our needs to handle the sorts of complex matters that will arise from enforcement aimed at those among high net-worth individuals, large pass throughs, and corporations that may be abusing the internal revenue laws.

The Tax Division must respond to new challenges -- collecting electronic media from online video and web materials, processing structured and unstructured data from banks, and reviewing cell phone and street camera files, in addition to voluminous electronic discovery. These materials must be analyzed to find patterns and associations for privileged information, and to track and identify complex accounting transactions. In offshore tax matters, advanced analytics tools and knowledgeable staff have been crucial to tracing illegal transactions (inflows and outflows) between accounts in dozens of banks around the world.

Cryptocurrency is another area that requires sophisticated analytics to break down complex transactions. As former IRS Criminal Chief Don Fort noted, "It's possible to use Bitcoin and other cryptocurrencies in the same fashion as foreign bank accounts to facilitate tax evasion."

High quality technical support and advice is essential to meet the demands of discovery and to assist with the investigation of sophisticated tax cases. In addition to traditional paper discovery, the Tax Division received more than 10 terabytes of data, or

approximately 500 million pages. This information, must be processed, loaded to a search platform, searched, and hosted. This requires sophisticated software and a highly skilled support staff.

In addition to making sense of these vast and difficult data sets, this funding will provide support to the legal teams in complex cases. This includes participation in Rule 26(f) and other pretrial conferences, advising on E-Discovery best practices, case and fact management, assembling exhibits, and presenting them in court electronically.

The Tax Division also must move to the cloud in order to provide the scalability to support large cases, software tools to integrate office automation tools with modern data analytics to provide an ALS program in the Tax Division.

Base Funding

| FY 2021 Enacted | | | | FY 2022 President’s Budget | | | | FY 2023 Current Services | | | |
|-----------------|------------|------------|----------------|----------------------------|------------|------------|----------------|--------------------------|------------|------------|----------------|
| Pos | Agt/Atty | FTE | Amount (\$000) | Pos | Agt/Atty | FTE | Amount (\$000) | Pos | Agt/Atty | FTE | Amount (\$000) |
| <u>499</u> | <u>377</u> | <u>451</u> | <u>111,002</u> | <u>499</u> | <u>377</u> | <u>451</u> | <u>116,169</u> | <u>499</u> | <u>377</u> | <u>451</u> | <u>117,014</u> |

Personnel Increase Cost Summary

| Type of Position/Series | Positions Requested | Annual Costs per Position* (\$000) | | | FY 2023 Request (\$000) | Annualizations (\$000) | |
|--------------------------------------|---------------------|------------------------------------|------------------------|------------------------------|-------------------------|--------------------------------|--------------------------------|
| | | 1st Year Adjusted Cost | 2nd Year Adjusted Cost | 3rd Year Full Cost (Modular) | | FY 2024 (net change from 2023) | FY 2025 (net change from 2024) |
| Clerical and Office Svcs (0300-0399) | 2 | 177 | 306 | 307 | 177 | 129 | 1 |
| Attorneys (0905) | 14 | 1,709 | 3,476 | 3,483 | 1,709 | 1,767 | 7 |
| Paralegals / Other Law (0900-0999) | 2 | 156 | 262 | 263 | 156 | 106 | 1 |
| Info Technology Mgmt (2210) | 2 | 202 | 356 | 357 | 202 | 154 | 1 |
| Total Personnel | 20 | 2,244 | 4,400 | 4,410 | 2,244 | 2,156 | 10 |

Non-Personnel Increase/Reduction Cost Summary

| Non-Personnel Item | FY 2023 Request (\$000) | Unit Cost (\$000) | Quantity | Annualizations (\$000) | |
|----------------------------|-------------------------|-------------------|----------|--------------------------------|--------------------------------|
| | | | | FY 2024 (net change from 2023) | FY 2025 (net change from 2024) |
| ALS IT Support | 2,048 | | | 0 | 0 |
| Total Non-Personnel | 2,048 | | | 0 | 0 |

Justification for Non-Personnel Annualizations

The non-personnel funding is ongoing ALS IT support to include annual software licenses, cloud storage and hardware that will be updated/refreshed every three years as well as contracted staff and support from companies. All TAX attorneys are authorized a Direct Procurement Authority (DPA) of \$3,500 for expenses directly related to their cases for transcripts, process servers and other costs. In addition, TAX will need to pay for other services from federal sources for additional office space and to the Department for HR, payroll, health clinic and other costs.

Total Request for this Item

| Category | Positions | | | Amount Requested (\$000) | | | Annualizations (\$000) | |
|--------------------|------------|------------|------------|--------------------------|---------------|----------------|--------------------------------|--------------------------------|
| | Count | Agt/ Atty | FTE | Personnel | Non-Personnel | Total | FY 2024 (net change from 2023) | FY 2025 (net change from 2024) |
| Current Services | 499 | 377 | 451 | 66,960 | 50,054 | 117,014 | 0 | 0 |
| Increases | 20 | 14 | 10 | 2,244 | 2,048 | 4,292 | 5,569 | 21 |
| Grand Total | 519 | 391 | 461 | 69,204 | 52,102 | 121,306 | 5,569 | 21 |

Affected Crosscuts

Economic Mortgage Fraud
Transnational/Offshore

VI. Program Offsets by Item

Not applicable.

VII. Exhibits