

Tax Division
United States Department of Justice

FY 2017 Congressional Budget



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I. Overview

A. Introduction

The Tax Division has one purpose: to enforce the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation. To accomplish this, the Tax Division requests a total of 639 permanent positions (377 attorneys), 534 full-time equivalent (FTE) work years and \$114,135,000 for FY 2017.

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

The Tax Division represents the United States in virtually all litigation – civil and criminal, trial and appellate – arising under the internal revenue laws, in all state and federal courts except the United States Tax Court. To assist the Internal Revenue Service (IRS or the Service) in effectively enforcing the tax laws, Tax Division litigators must support the Service's investigations and determinations in civil cases and also prosecute criminal violations of the revenue laws. Tax Division civil litigators enforce the Service's requests for information in ongoing examinations, and collect and defend tax assessments when the Service's examinations are complete. The Civil sections of the Tax Division have, on average, nearly 6,600 civil cases in process annually. In any given year, the Tax Division's civil appellate attorneys handle about 700 civil appeals, about half of which are from decisions of the Tax Court, where IRS attorneys represent the Commissioner. To help achieve uniformity in nationwide standards for criminal tax prosecutions, the Tax Division's criminal prosecutors authorize almost all grand jury investigations and prosecutions involving violations of the internal revenue laws. Alone or in conjunction with Assistant United States Attorneys, Tax Division prosecutors investigate and prosecute these crimes. The Division authorizes between 1,300 and 1,800 criminal tax investigations annually.

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

1. ***Financial Impact: Immediate as well as Long-Term.*** The Division is currently defending refund suits that collectively involve over \$10.6 billion dollars.¹ This amount measures only the amount involved in the lawsuits themselves. It does not include the amounts at issue with the same taxpayers for other years or the amounts at issue with other taxpayers who will be bound by the outcome of the litigation. Decisions in the Division's cases may reduce the need for future administrative and judicial tax proceedings, by creating binding precedents that settle questions of

¹ See IRS Data Books 2014, <http://www.irs.gov/uac/SOI-Tax-Stats-Data-Book>, Table 27.

law that govern millions of taxpayers. Moreover, millions more dollars are saved each year because the Division successfully defends the Government against many tax-related suits brought by taxpayers and third parties.

2. ***Improving Voluntary Compliance.*** The Tax Division’s success rate in its litigation – more than 90% – has an enormous effect on voluntary tax compliance.² By law, the IRS cannot make public the fact of an IRS audit, or its result. By contrast, the Tax Division’s important tax litigation victories receive wide media coverage, leading to a significant multiplier effect on voluntary compliance.³ Efforts of the IRS and the Tax Division are having a positive effect on voluntary compliance. According to the most recent survey by the IRS Oversight Board, 86 percent of those surveyed think it is “not at all” acceptable to cheat on taxes.⁴ The public attitude that it is not at all acceptable to cheat on your income taxes increased between 2011 and 2013 from 84 percent to 86 percent, while tolerance for tax cheating dropped from 14 percent to 12 percent. Also, the Commissioner’s Offshore Voluntary Disclosure Initiatives, operating alongside the Division’s ongoing criminal and civil enforcement actions concerning unreported offshore accounts, have resulted in an unprecedented number of taxpayers – over 40,000 since 2009 – attempting to “return to the fold” by paying back taxes, interest and penalties totaling over \$6 billion dollars. As an integral part of the IRS’s enforcement efforts, the Tax Division contribute to the nation’s ability to collect over \$3 trillion in taxes each year.⁵
3. ***Fair and Uniform Enforcement of Tax Law.*** The Tax Division plays a major role in assuring the public that the tax system is enforced uniformly and fairly. Because the Division independently reviews the merits of each case the Internal Revenue Service requests be brought or defended, it is able to ensure that the Government’s litigating positions are consistent with applicable law and policy. An observation about the Division made nearly 75 years ago still rings true today: “[T]he Department of Justice, as the Government’s chief law office, is in a position to exercise a more judicial and judicious judgment. With taxes forming a heavy and constant burden it is essential that there be this leavening influence in tax litigation. Next to the constant availability of the courts, the existence of the Division is the greatest mainstay for the voluntary character of our tax system.”⁶

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

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

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

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

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

4. ***Defending IRS Officials and the United States against Damage Suits.*** The Tax Division effectively defends IRS agents and officers, and the Government itself, against unmeritorious damage suits. Without successful representation of the quality provided by the Division, these suits could cripple or seriously impair effective tax collection and enforcement.
5. ***Expertise in Complex Financial Litigation.*** The Division's investigations, prosecutions, and civil trials often involve complex financial transactions and large numbers of documents. The Division is able to use the unique expertise its attorneys have developed in litigating complex tax cases to assist in other important areas of law enforcement, including:
 - fighting terrorism as part of the Joint Terrorism Task Force, by investigating and prosecuting people and organizations that funnel money to terrorists;
 - combating financial fraud as part of the President's Financial Fraud Enforcement Task Force;
 - reducing drug trafficking as part of the Organized Crime and Drug Enforcement Task Force (OCDETF); and investigating public corruption by working on prosecution teams with attorneys from various United States Attorney's Offices and the Department's Criminal Division.

B. Full Program Costs

The FY 2017 budget request assumes 72% of the Division's budget and expenditures can be attributed to its Civil Tax Litigation and Appeals and 28% percent to Criminal Tax Prosecution and Appeals. This budget request incorporates all costs, including mission costs related to cases and matters, mission costs related to oversight and policy, and overhead.

C. Environmental Accountability

The Tax Division has in place existing policies to incorporate environmental accountability in its day-to-day operations. These include green purchasing policies such as: (i) mandating the purchase of recycled paper products (copier/printer paper, paper towels) and (ii) 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: (i) setting the default on printers to two-sided printing; (ii) placing recycling bins for paper, glass, aluminum, and plastic in central locations and providing paper recycling containers for individual employee use; (iii) recycling used printer cartridges; (iv) promoting distribution of documents in electronic format only; (v) promoting scanning instead of photocopying; and (vi) recycling cell phones, laptops, computers and computer battery packs. The Tax Division has an environmentally sound destruction method in which sensitive materials that previously were burned are now 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 Council. On May 25, 2012, the Patrick Henry Building earned a Prestigious "LEED Silver Certification. Tax-occupied space in the Judiciary Center Building has been retrofitted with energy-efficient light fixtures and light bulbs, and motion sensors have replaced light switches throughout the Patrick Henry Building. The Division works with construction and maintenance contractors to use green materials whenever possible.

D. Performance Challenges

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

External – Reducing the Tax Gap amid Increasing Globalization

The IRS collects more than \$3 trillion annually. Enforcement actions brought in almost \$34.2 billion for FY2014. The IRS estimates that the annual tax gap – the difference between taxes owed and taxes paid voluntarily and timely – is \$450 billion. The IRS Oversight Board cited “Enforcement programs allow the IRS to further voluntary compliance, help reduce the estimated \$450 billion tax gap, and provide much needed dollars to the federal purse.”⁷ Improving compliance is the number one priority in the IRS Strategic Plan. 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.

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 – Retaining an Experienced Workforce to Handle Complex Litigation

The Tax Division’s workload is directly related to IRS enforcement efforts. Historically, an increase in IRS enforcement activity leads to increased Division workload, with a lag time of about two years. Moreover, it is expected that the Division’s cases – both civil and criminal – will continue to become increasingly complex, as the IRS focuses its enforcement efforts on offshore issues and on taxpayer populations with more sophisticated tax issues, such as flow-through entities, high-income individuals, and corporations.

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

II. Summary of Program Changes

None

III. Appropriations Language and Analysis of Appropriations Language

The Tax Division is not proposing new appropriations language for the FY 2017 President’s Budget.

⁷ IRS Oversight Board, FY 2015 Budget Recommendation, Special Report, May 2014.

IV. Decision Unit Justification

<i>Tax Division</i>	Direct Pos.	Estimate FTE	Amount
2015 Enacted	639	534	106,674
2016 Enacted	639	534	106,979
Adjustments to Base and Technical Adjustments	0	0	7,156
2017 Current Services	639	534	114,135
2017 Program Increases	0	0	0
2017 Program Offsets	0	0	0
2017 Request	639	534	114,135
Total Change 2016-2017	0	0	7,156

<i>Tax Division-Information Technology Breakout (of Decision Unit Total)</i>	Direct Pos.	Estimate FTE	Amount
2015 Enacted	20	20	7,805
2016 Enacted	20	20	7,805
Adjustments to Base and Technical Adjustments	0	0	0
2017 Current Services	20	20	7,805
2017 Program Increases	0	0	0
2017 Program Offsets	0	0	0
2017 Request	20	20	7,805
Total Change 2016-2017	0	0	0

1. PROGRAM DESCRIPTION

a) Civil Tax Litigation

The Tax Division is responsible for litigating all matters arising under the internal revenue laws in all state and federal trial courts, except the Tax Court, and in appeals from all trial courts, including the Tax Court. Tax Division trial attorneys *defend* the United States in suits relating to the tax laws, including tax shelter cases, refund suits, 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.

Halting the Spread of Tax Shelters

The proliferation of abusive tax shelters is a significant problem confronting our tax system. Abusive tax shelters used by large corporations and high-income individuals cost the government billions of dollars annually, according to Treasury Department estimates.

Tax shelter litigation is among the most sophisticated and important litigation handled by the Tax Division. Tax shelters are designed to generate large purported tax benefits using multiple entities and complex financial transactions that lack a real business purpose or any real economic substance. Shelter cases often involve well-disguised transactions and tax-indifferent parties located in other countries, making case development and document discovery difficult and expensive. Successfully defending in federal trial and appellate courts the IRS's disallowance of sham tax benefits is critical to the government's efforts to combat abusive tax shelters. Because tax shelters typically involve enormous sums of money and often attract significant media attention, a coordinated and effective effort is essential to prevent substantial losses to the Treasury and deter future use of such tax shelters by other taxpayers.

The Tax Division plays a critical role in the government's efforts to combat abusive tax shelters by defending in federal trial and appellate courts the IRS's disallowance of sham tax benefits. The Division has in place a coordinated and effective strategy to litigate tax shelter cases. Tax shelter cases are staffed by litigation teams headed by the Division's most experienced litigators. Since 2003, the Division has had a Tax Shelter Coordinator, who is the principal reviewer for substantive tax shelter briefs and who works closely with Division management, Division line attorneys, and IRS Chief Counsel lawyers to ensure that all legal positions taken in tax shelter cases are uniform and incorporate the latest judicial decisions, and that the briefs and oral arguments submitted are as persuasive and polished as possible. The Division's Tax Shelter Coordinator assists the Division in these cases by reviewing draft briefs, providing important comments to the trial teams handling these cases, and organizing moot courts, roundtables, post mortems, and similar training efforts.

In December 2013, in a case involving a Current Options Bring Reward Alternatives (COBRA) shelter, the Supreme Court reversed an adverse Fifth Circuit decision and held that the 40% gross valuation misstatement penalty is applicable when a taxpayer engages in an abusive tax shelter transaction that is disregarded in its entirety for lack of economic substance. *United States v. Woods* (Sup. Ct. 2013). The decision also addressed a thorny partnership jurisdictional issue and held that the

district court had jurisdiction to determine the applicability of the 40% penalty in a partnership-level proceeding, distinguishing between the “applicability” determination and the ultimate imposition of the penalty on partners. The *Woods* decision has favorably impacted several other tax shelter cases pending in various appellate courts.

The Division notched some significant victories over shelters at the trial level in 2015. On August 12, 2015, the Court of Federal Claims issued an opinion sustaining the United States’ position in a distressed asset/debt tax shelter. In *Russian Recovery Fund v. United States* (Fed. Cl.), the underlying transaction involved trying to shift \$230 million of losses on near-worthless Russian government bonds from a tax-indifferent foreign entity to U.S. taxpayers who could use the losses to shelter their own income. The court held that the transaction lacked economic substance and that one of the partnerships in the purportedly loss-generating transaction was a sham. In another distressed asset/debt shelter case, a court upheld \$4.6 million in penalties against the taxpayers after rejecting the taxpayers’ claim to have had reasonable cause to believe that the shelter was legal. *McNeill v. United States* (D. Wyo.).

On November 19, 2015, a district court granted the United States’ motion for partial summary judgment. *Austin Investment Fund v. United States* (D.D.C.). The underlying transaction involved the Chinese government’s purchase, through one state-owned bank, China Orient, of a non-performing loan portfolio in order to prop up another state-owned bank, Bank of China. China Orient overpaid for the loan portfolio. It then “contributed” the loans to a partnership, and the partnership attempted to transfer the loans to U.S. taxpayers who could claim losses on the portfolio from the difference between China Orient’s purchase price and the portfolio’s actual value. The court held that because the two state-owned banks were both controlled by China, the IRS could adjust the partnership’s basis in the loan to reflect an arms’-length price.

On December 19, 2014, the court granted our motion for summary judgment in a number of Bond Linked Issue Premium Structure (BLIPS) related tax shelter cases, *Shasta Strategic Investment Fund v. United States* (N.D. Calif.), whose main architects of the transactions were John Larson, Robert Pfaff and D. Amir Makov. These cases involve a total of 91 strategic investment funds Pfaff and Larson created to engage in various BLIPS transactions. Pfaff and Larson were convicted of 12 counts of tax evasion in the *Stein* criminal case, including 10 counts involving BLIPS transactions at issue here. Makov pleaded guilty to conspiracy and cooperated with the government. The court had already granted summary judgment with regard to the 9 strategic investment funds (10 BLIPS transactions) at issue in *Stein*, based on collateral estoppel. Earlier, the court also granted judgment in favor of the United States on the remainder of the strategic investment funds on the issues of whether the BLIPS transactions lacked economic substance and on several penalty issues. In the court’s most recent order in December 2014, it granted judgment denying deductions for losses from foreign currency trading activity, management fees and guaranteed payment expenses associated with the tax shelter, and provisionally applied the substantial understatement penalty. Importantly, the court distinguished the decision in *Klamath v. United States*, 472 F. Supp. 2d 885, which had allowed deductions for the trading losses for the same BLIPS shelter. As for the substantial understatement penalty, citing the recent Supreme Court decision in *Woods*, the court found that the penalty applied provisionally at the partnership level because it relates to an adjustment of a partnership item and because there are no disputes of material fact as to any defenses to the penalty. Certain aspects of the Court’s decision are on appeal, but not the decision that the BLIPS transaction lacked economic substance.

Moreover, there are four cases in various stages of litigation that deal with the abusive tax shelter known as Structured Trust Advantaged Repackaged Securities, or STARS, designed to generate large foreign tax credits⁸ for U.S. taxpayers, and jointly promoted by Barclays Bank PLC and KPMG LLP:

- In ***Salem Financial, Inc. (BB&T) v. United States*** (Fed. Cir.), the Court of Federal Claims, following a lengthy trial, held that the STARS transaction lacked economic substance and denied BB&T's claim to a \$660 million tax benefit. The Federal Circuit upheld the disallowance of the foreign tax credits, noting that the STARS shelter transaction not a genuine business transaction involving economic risk, but merely a "money machine." The Federal Circuit also affirmed the application of accuracy-related penalties to the underpayment of tax resulting from the claimed foreign tax credits.
- In ***Bank of New York Mellon Corp. v. Commissioner*** (2d Cir.), the Tax Court held that the STARS transaction lacks economic substance and denied the Bank of New York's claim to a \$199 million tax benefit, but allowed the deduction of interest payments made as part of the transaction. The Second Circuit affirmed, explaining that the STARS transaction lacked economic substance because it was unprofitable without the foreign tax credits and was based on meaningless circular cash flows. The Court further held that the Bank lacked a legitimate business purpose for engaging in the STARS transaction.
- ***Santander Holdings (Sovereign Bank) v. United States*** (D. Mass.), involves a tax benefit of approximately \$337 million from a STARS transaction. The district court granted Sovereign Bank's partial motion for summary judgment that a certain payment in the transaction was pretax profit. The parties filed supplemental briefs regarding whether the ruling moots the remaining issues, and that issue is pending before the court.
- In ***Wells Fargo v. United States*** (D. Minn.), Wells Fargo seeks approximately \$177 million in refunds. It filed four motions for partial summary judgment and three *Daubert* motions. The district court denied Wells Fargo's summary judgment motions in November 2015. A jury trial is expected to commence in 2016.

Separately, the Division also prevailed in two cases involving "sale-in/lease-out" and "lease-in/lease-out" (SILO/LILO) tax shelters:⁹ ***UnionBanCal Corp. & Subsidiaries v. United States*** (Fed. Cl.) and ***Consolidated Edison Co. v. United States*** (Fed. Cir. 2013). In October 2013, the Court of Federal Claims issued a favorable opinion in *UnionBanCal* concerning a LILO transaction involving a public arena in Anaheim, California. The taxpayer had sought a refund of approximately \$91 million. In *Consolidated Edison*, the Federal Circuit unanimously reversed the lone trial court decision that had upheld the purported tax benefits of the LILO shelter.

⁸ Foreign-tax-credit-generator tax shelters involve international transactions between a U.S. taxpayer and a foreign taxpayer in which a special-purpose entity is created to exploit inconsistencies between the U.S. and the foreign tax system, so that two parties to the transaction are both treated as paying a single foreign tax, where the underlying economic transaction would have subjected the U.S. taxpayer to little or no foreign tax.

⁹ Lease In/Lease Out and Sales In/Lease Out transactions involve either a lease or sale followed by lease-back of assets from a U.S. tax-indifferent entity (e.g., a foreign entity or a U.S. nonprofit) to a U.S. taxpayer, with no change in the use of the assets, but immediate tax benefits for the U.S. taxpayer. Many transit agencies around the country became involved in LILO or SILO transactions, as the tax-indifferent entity.

Despite these significant victories, the Tax Division anticipates that tax shelters will continue to be contested in both the federal district courts and in the Court of Federal Claims over the next several years.

Shutting Down Tax-Fraud Schemes and Fraudulent Return Preparers

The Tax Division has a successful program to put tax-fraud promoters and fraudulent tax preparers out of business. Some of the cases involved parallel criminal proceedings as well. The promoters sued range from tax defiers selling frivolous packages that falsely promise to eliminate customers' income tax entirely, to lawyers and accountants selling sophisticated, complex tax shelters to wealthy business owners. The Division also supports the IRS's assessments of penalties against promoters. In one recent example, *In re Canada* (Bankr. N.D. Tex.), the United States is defending the IRS's assessment of more than \$40 million in penalties against an attorney who promoted so-called "Son of BOSS" tax shelters.

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

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

In the past few years, the Division has litigated a number of significant injunction suits. In *United States v. ITS Financial LLC, et. al.* (S.D. Ohio), the court, on November 6, 2013, entered a permanent injunction ordering ITS Financial LLC, the parent company of the Instant Tax Service franchise, to cease operating. Instant Tax Service, based in Dayton, Ohio, claimed to be the fourth-largest tax-preparation firm in the nation. The court stated: "Defendants' harm to the public is extensive and egregious, indeed appalling. This is especially so given the nature of Instant Tax Service's core customer – the working poor – who are particularly vulnerable to Defendants' fraudulent practices."

On November 23, 2015, the Division filed two civil injunction suits to shut down nationwide allegedly fraudulent tax schemes. The first suit, *United States v. RaPower-3* (D. Utah), concerns a scheme to take the solar energy credit through "revolutionary" technology. In fact, the technology is a sham; the purported solar facility does not produce energy that can be collected and used as required by the Internal Revenue Code. The second suit is *United States v. Tarpey et al.* (D. Mont.) James Tarpey operates Donate for a Cause, a tax-exempt entity that encourages customers to donate unwanted timeshares—but it provides the customers with a false and inflated appraisal to enable the customers to claim a tax deduction far in excess of the value of the timeshare.

In *United States v. Markey Granberry, Derrick Robinson, Eumora Reese, doing business as Mo' Money Taxes* (W.D. Tenn.), the district court entered an injunction in September, 2013

permanently barring the defendants from preparing tax returns for others and owning or operating a return-preparation business. We brought this injunction suit seeking to shut down Mo' Money Taxes, a Memphis-based tax-preparation chain that at one time operated as many as 300 offices in 18 states. Granberry, Robinson, and Reese encouraged Mo' Money preparers to falsely claim the earned-income credit; claim improper filing status; claim bogus education credits, improperly prepare returns using paystubs rather than employer-issued W-2 forms; fabricate bogus W-2 forms; file tax returns without customers' consent; sell false and deceptive loan products; and charge deceptive and unconscionable fees. The injunction not only bars Granberry, Robinson, and Reese from owning and operating these businesses, but also from managing, working in, controlling, licensing, or franchising a return-preparation business. In a related case, in *United States v. Toney Fields and Trumekia Shaw (Fields Mo' Money)* (M.D. Tenn), we sought an injunction to prevent Fields and Shaw from using pay stubs to prepare returns. On March 1, 2013, the court entered a permanent injunction prohibiting Fields and Shaw from preparing federal income tax returns.

In September 2014, we filed 8 suits against Walner G. Gachette, the founder of Orlando-based tax preparation company LBS Tax Services, seven LBS Tax Services franchisees, and three LBS Tax Services managers from owning, operating, or franchising a tax return preparation business and preparing tax returns for others. *LBS Tax Services cases* (M.D. Fla & S.D. Fla). According to the complaints, in 2013, LBS Tax Services operated at least 239 stores (192 owned by the named defendants) in Florida, North Carolina, South Carolina, Georgia, Texas, Tennessee, Alabama and Mississippi. LBS Tax Services prepared more than 55,000 federal income tax returns in 2013, according to our suit. According to the suits, the IRS estimates that the tax loss from the defendants' stores for the 2012 tax year alone is in the tens of millions of dollars. The complaints also requests that the court order the defendants to disgorge the fees that they obtained through their alleged fraudulent tax return preparation. In February 2015, a federal court in Orlando, Florida, permanently barred two of these managers from preparing tax returns for others and from owning or operating a tax return preparation business. The Divisions' efforts to shut down similar operations continued in 2015.

Additionally, the Division and U.S. Attorney's Offices have successfully prosecuted several enjoined promoters and preparers for criminal contempt after they violated injunctions. The Division also anticipates launching a pilot program in 2016 to ensure that preparers who have been enjoined are abiding by the courts' orders.

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.

One key set of cases involves the IRS's audit of Microsoft Corporation's tax liabilities. The IRS hired law firm Quinn Emanuel to assist it with the audit; Microsoft cried foul, claiming that its use of Quinn Emanuel was improper. On November 20, 2015, the United States prevailed in the summons proceeding and the court entered an order enforcing summonses for testimony and documents. *United States v. Microsoft Corp.* (W.D. Wash.). The case continues, with further litigation over compliance with the summonses.

Importantly, the IRS is increasingly attempting to obtain information about United States persons who maintain undeclared foreign accounts. On December 19, 2014, a court in the Southern District of New York granted our petition to issue John Doe summonses to eight institutions, mostly delivery services and banking institutions, for information related to taxpayers that used the services of *Sovereign Management & Legal* (SML) to establish, maintain or conceal foreign accounts, assets and entities. Specifically, the IRS received permission to serve these John Doe summonses on FedEx Express, FedEx Ground, DHL, UPS, Western Union, the Federal Reserve Bank of New York, the Clearing House Payments Company LLC, and HSBC USA. The IRS uses John Doe summonses to obtain information about possible tax fraud by individuals whose identities are unknown. SML is a multi-jurisdictional offshore services provider that offers clients, among other things, the formation and administration of anonymous corporations and foundations in Panama as well as offshore entities. Related services include the maintenance and operation of offshore structures, mail forwarding, the availability of virtual offices, re-invoicing, and the provision of professional managers who appoint themselves directors of the client's entity while the client maintains ultimate control over the assets. As a result of a DEA investigation of online narcotics trafficking known as OPERATION ADAM BOMB, the IRS learned that SML was involved in assisting U.S. clients with tax evasion. During the IRS's investigation of SML's conduct, one taxpayer, making a voluntary disclosure of tax non-compliance to avoid prosecution, reported that SML helped the taxpayer form an anonymous corporation in Panama that the taxpayer used to control assets without appearing to own them. The John Doe summonses direct these eight entities to produce records that will assist the IRS in identifying U.S. taxpayers who, from the years 2005 through 2013, used SML's services in a variety of ways.

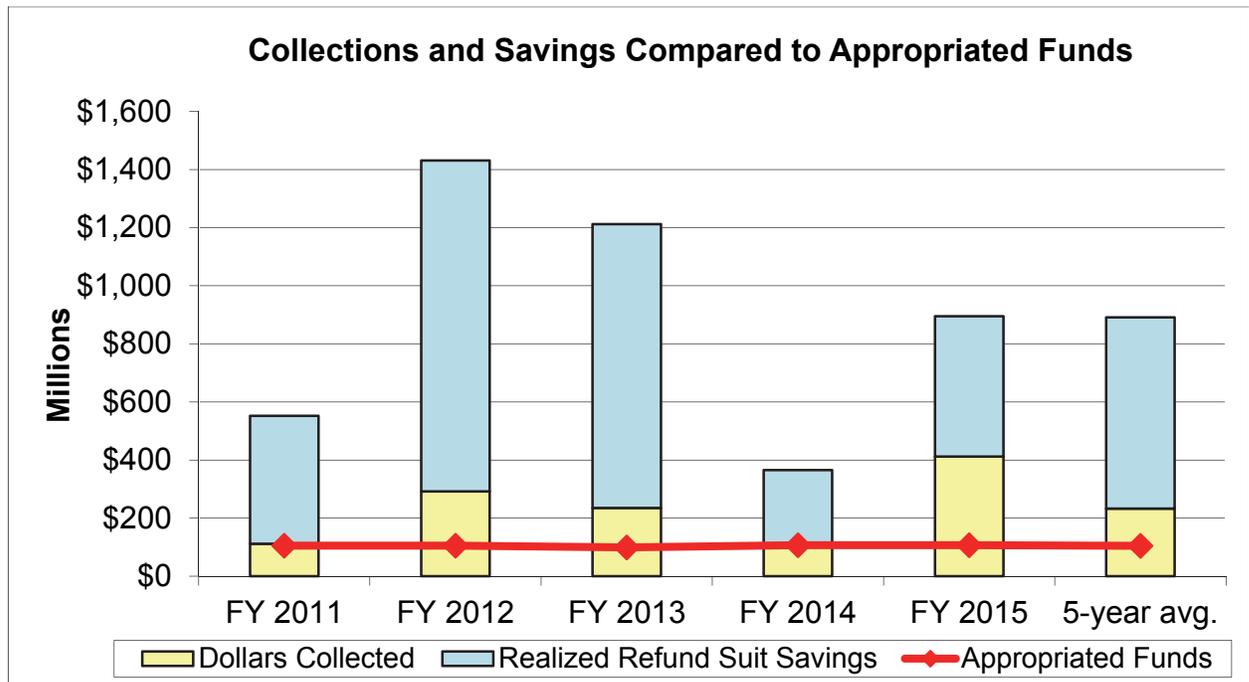
On January 28, 2013 the district court authorized issuance of a John Doe Summons to UBS for records of Wegelin's correspondent account. *United States v. Wegelin* (S.D.N.Y.). On April 29, 2013, a district court authorized issuance of a John Doe Summons to Wells Fargo for records of CIBC FirstCaribbean International Bank correspondent account. *United States v. CIBC FirstCaribbean International Bank* (N.D. Calif.). On November 7, 2013, a district court authorized the issuance of a John Doe Summons to several banks (including, Citibank NA, JPMorgan Chase Bank, National Association, The Bank of New York Mellon; HSBC Bank USA, and Bank of America) with respect to any financial accounts maintained at, monitored by, or managed through Zurcher Kantonalbank or Butterfield Bank, financial accounts maintained at, monitored by, or managed through other financial institutions that were permitted to transact client business with these banks through each bank's United States correspondent accounts at Citibank NA, JPMorgan Chase Bank, National Association; The Bank of New York Mellon; HSBC Bank USA, and the Bank of America. *John Does Summons Cases*

(S.D.N.Y.) Following up on this success, on September 16, 2015, a district court approved the IRS’s petition to issue John Doe Summonses to Bank of America, N.A., and Citibank, N.A., for records pertaining to their correspondent accounts for Belize Bank International Limited. *John Does Summons Case* (S.D. Fla.).

In an earlier, ground-breaking petition filed in *United States v. UBS, AG* (S.D. Fla. 2008), the Tax Division successfully obtained court approval for the issuance of a John Doe summons to Swiss banking giant UBS seeking the names of U.S. account holders with undeclared accounts. The approval and issuance of the summons led ultimately to a settlement among the United States, UBS, and the Swiss government on a process leading to unprecedented disclosure of account information for accounts held by U.S. persons – a case that is still paying dividends, as described above.

Collecting Unpaid Taxes

The Division collects unpaid tax liabilities 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 \$112 million in taxes, interest, and penalties in FY 2014. Indeed, the Division’s affirmative litigation typically brings in more each year than the Division’s entire budget, as illustrated by the following chart.



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

One particularly notable collection case involved a suit for the failure to file Reports of Foreign Bank and Financial Accounts (“FBAR”). These penalties help prevent the use of offshore accounts for tax evasion. Accordingly, ensuring that the penalties are collected is an important (and growing) part of the Division’s caseload. In one important early case, we filed suit against Carl R. Zwerner to reduce to judgment FBAR penalties assessed against him for his willful failure to report his financial interest in a Swiss bank account for four years, 2004 to 2007. The IRS assessed the maximum penalty against Zwerner: 50% of the value of his account at the time of each violation. A jury in Miami found Zwerner responsible for civil penalties for willfully failing to file required FBARs for tax years 2004 through 2006. The jury, however, found that Zwerner’s failure to report the account was not willful for 2007, returning a verdict in his favor for that year. According to evidence introduced at trial, the balance of the bank account during each of the years at issue exceeded \$1.4 million. ***United States v. Carl R. Zwerner*** (S.D. Fla.). The Division has filed several other suits to collect FBAR penalties this year, and anticipates more in the future.

Defending the United States

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

The Division handles a panoply of important defensive cases:

- ***Cencast Svcs. L.P, et al. v. United States*** (Fed. Cir.). On September 10, 2013 the Federal Circuit affirmed the favorable judgment of the Court of Federal Claims in these consolidated cases addressing whether certain payroll service providers, which provided administrative services to production companies in the motion picture industry, could treat themselves as the employers of its clients’ employees for purposes of applying the FICA and FUTA tax wage bases. If they could, that would have had the effect of reducing the employer portion of FICA and FUTA tax liability associated with workers who worked for more than one production company in a given year. In addition, the cases addressed the attempt to raise the argument that the employees were, instead, independent contractors and thus not subject to withholding. The Federal Circuit concluded that the FICA and FUTA “wage caps should be calculated by treating the employees as being in employment relationships with the common law employers,” rather than the payroll service providers. As to the independent-contractor theory, the court agreed with the lower court that the failure to raise the theory until 15 years after first learning of the potential issue was an unreasonable delay.
- ***AmerGen v. United States*** (Fed. Cl.). On September 17, 2013 the Court of Federal Claims granted our motion for summary judgment and denied AmerGen’s cross-motion, holding that AmerGen could not add \$1.7 billion of estimated future decommissioning costs to the cost basis of three nuclear power plants. AmerGen had purchased three plants in 1999 and 2000, and assumed the liability to decommission them in the future according to Nuclear Regulatory Commission rules. (NRC allows up to 60 years for decommissioning.) AmerGen estimated the cost to meet that liability to be \$1.7 billion (in 1999 and 2000 dollars). AmerGen sought to add that estimate to its cost basis in the plants as of the acquisition dates, and take additional

depreciation and goodwill amortization deductions based on that inflated basis. The court agreed with us that: (i) § 461(h) applies throughout the Code to determine when liabilities are “incurred,” including when they may be added to acquisition cost basis; (ii) the economic performance requirement was not met for the future decommissioning liabilities as of the plant acquisition dates; (iii) even if § 461(h) were ambiguous, the regulations apply the three-pronged all-events test to acquisition cost basis timing determinations; and (iv) even if the regulations were ambiguous, the court would defer to the government’s interpretation of them. On March 11, 2015, the Federal Circuit affirmed the favorable judgment of the Court of Federal Claims, agreeing that the plain language of the statute controls, and that AmerGen’s argument would effectively circumvent the statutory scheme.

- ***Crawford et al. v. United States*** (S.D. Ohio). In this suit, several plaintiffs, including Senator Rand Paul, are challenging the constitutionality of FBAR penalties and the operation of the new Foreign Account Tax Compliance Act (FATCA). FATCA is designed to require foreign financial institutions to report the financial activity of U.S. taxpayers at the institution in order to detect and deter offshore tax evasion. The plaintiffs asked for a preliminary injunction to block FATCA’s implementation, but the court denied their motion on September 29, 2015. Our motion to dismiss the case is pending.

There are four groups of cases that have been filed with respect to the IRS’s handling of applications for section 501(c) tax-exempt status: (1) damage/injunction actions; (2) challenges under the Administrative Procedure Act (APA); (3) Freedom of Information Act (FOIA) actions; and, (4) allegations of wrongful disclosure.

- Damages/Injunctive Relief. Four cases in which plaintiffs seek injunctive relief and damages against the United States in various forms are: ***Linchpins of Liberty et al. v. United States et al.*** (D.D.C. – D.C. Cir.), ***NorCal Tea Party Patriots v. IRS et al.*** (S.D. Ohio– 6th Cir.), ***True the Vote, Inc. v. IRS et al.*** (D.D.C. – D.C. Cir.), and ***Freedom Path, Inc. v. Lerner et al.*** (S.D. Tex). In *NorCal*, the Government’s motion to dismiss was partially granted, and the district court thereafter certified the class. The United States has filed a petition for writ of mandamus regarding a pre-certification discovery order regarding the compelled disclosure of certain tax return information, which is scheduled to be argued before the Sixth Circuit in March 2016 and discovery is commencing, including class action discovery and depositions of IRS personnel. On October 23, 2014, the district court dismissed claims in *True the Vote* and *Linchpins*, both stemming from the IRS’s alleged targeting of tax-exempt status applications based on the applicants’ viewpoints, seeking (1) declaratory and injunctive relief under the APA and/or directly under the Constitution, (2) a determination of tax-exempt status for plaintiffs that had pending applications under section 501(c)(3), (3) damages for the alleged unauthorized collection of return information, and (4) *Bivens* damages against individually named IRS employees. The court dismissed the claims for declaratory and injunctive relief as moot on the ground that the IRS no longer is engaging in the practices that served as the bases for the plaintiffs’ claims, having suspended its use of its “BOLO” list among other changes. It also largely dismissed as moot plaintiffs’ claims for a determination of tax-exempt status because most of the applications had been granted. The court allowed plaintiffs to litigate the applications that remained pending, but only on the administrative record. Next, the court ruled that plaintiffs failed to state a claim based on the IRS’s collection of information, because the Internal Revenue Code does not restrict the collection of return information, only the unauthorized inspection and/or disclosure of it. Finally, the court dismissed the *Bivens* claims against the individually named IRS employees, because circuit precedent does not permit

creating a *Bivens* remedy against those defendants. Both *True the Vote* and *Linchpins* are on appeal to the U.S. Court of Appeals for the D.C. Circuit.

- APA. The plaintiff in *Z Street v. Koskinen* (D.D.C. - D.C. Cir.) claims that the IRS was discriminating against its application for tax-exempt status under an alleged “Israel special policy,” in violation of the First Amendment. The district court denied our motion to dismiss, which asserted that, *inter alia*, the suit was barred by the Anti-Injunction Act or the Declaratory Judgment Act. We sought and received an interlocutory appeal, and on June 19, 2015, the D.C. Circuit affirmed the district court’s decision.
- FOIA. Various plaintiffs have filed suits under FOIA seeking documents relating to the IRS’s selection and examination of section 501(c) applications: *Tea Party Patriots, Inc. v. IRS & Dep’t of Treasury* (D.D.C.), *Republican Nat’l Committee v. IRS* (D.D.C.), *Cause of Action v. IRS*, No. 1:13-cv-00920 (D.D.C.), *Cause of Action v. TIGTA* (D.D.C.), *Cause of Action v. IRS*, No. 1:14-cv-00178 (D.D.C.), *Cause of Action v. IRS et al.*, No. 1:14-cv-1407 (D.D.C.), *Judicial Watch, Inc. v. IRS*, No. 13-cv-1559 (D.D.C.), *Judicial Watch, Inc. v. IRS*, No. 13-cv-1759 (D.D.C.), *Judicial Watch v. IRS*, No. 14-cv-1039 (D.D.C.), *Judicial Watch v. Department of Justice* (D.D.C.), and *Citizens for a Strong New Hampshire v. Internal Revenue Service*, No. 14-cv-487 (D.N.H.).
- Wrongful Disclosure. There have been three damages suits filed based on the IRS’s alleged wrongful disclosure of return information: *Citizen Awareness Project v. IRS* (D. Colo.), *Freedom Path v. IRS* (S.D. Tex), and *National Organization for Marriage (NOM) v. IRS* (E.D. Va.). The district court largely granted our motion for summary judgment in *CAP*, except for a minimal amount of actual damages allegedly resulting from the disclosure. Trial on the actual damages claim is set to occur later this year. In *NOM*, the district court dismissed the claim for punitive damages, and the Government settled the claim for actual damages. The parties then litigated the only remaining issue – plaintiff’s claim for approximately \$700,000 in attorneys’ fees, with the district court denying plaintiff any fees. *NOM* has appealed the denial of attorneys’ fees to the U.S. Court of Appeals for the Fourth Circuit. In one count of a several-count complaint seeking damages, Freedom Path alleges that the IRS violated § 6103, first, by releasing to ProPublica a copy of its pending Application for Exemption, and, second, by performing unauthorized inspections of tax return information produced by Freedom Path in response to the IRS’s requests for additional information, and by unspecified additional unauthorized disclosures. We admitted Freedom Path is entitled to \$1,000 in statutory damages for the disclosure to ProPublica, but denied the remainder of the claims. We also moved to dismiss the second category of allegations, contending that Freedom Path failed to state sufficiently detailed factual allegations to raise a right to relief above the speculative level, and that § 7431 does not authorize a claim for inspection of information that Freedom Path submitted to the IRS voluntarily. On February 24, 2015, the court granted our motion to dismiss on the failure to plead sufficiently grounds, but did not address our arguments on the merits. Freedom Path’s claim for actual and punitive damages is pending.

The Freedom From Religion Foundation, Inc., which advocates atheism and the separation of church and state, has challenged special preferences purportedly enjoyed by tax-exempt religious organizations. In *Freedom From Religion Foundation, Inc. v. Lew* (7th Cir.), the Foundation and its individual co-presidents assert that the tax exemption under section 107(2) for a rental allowance paid to a “minister of the gospel” as part of his compensation, violates the Establishment Clause of the First

Amendment. The district court agreed, and rejected our argument that the Foundation and its individual co-presidents lacked standing to sue. We appealed, and the U.S. Court of Appeals for the Seventh Circuit reversed, holding that the plaintiffs lacked standing. In ***Freedom From Religion Foundation, Inc. v. Koskinen, et al.*** (W.D. Wisc.), the Foundation alleged that the IRS has a policy of declining to enforce the Internal Revenue Code’s electioneering ban against churches and other religious organizations, and sought to enjoin the IRS from following that policy. Early in pre-trial discovery, the Foundation agreed to dismiss the action without prejudice, which the court did. Several third parties have since claimed there must be some private “settlement” between the IRS and Foundation regarding how the IRS will enforce the electioneering ban. There is no such agreement. In ***Freedom From Religion Foundation, et al. v. Koskinen*** (W.D. Wis.), the district court, on December 17, 2014 and after the 7th Circuit’s decision above, dismissed plaintiffs’ complaint for lack of standing. Plaintiffs had alleged that the IRS violated the Establishment Clause and equal protection principles by requiring it to prepare and file IRS Form 990 to maintain its tax exempt status under 26 U.S.C. § 501(c)(3), whereas some churches are statutorily exempt from filing any form.

Finally, although they are not strictly tax-related, the Division represents the United States in suits for recovery of payments under § 1603 of the American Recovery and Reinvestment Act of 2009. Section 1603 provides for a payment in lieu of a tax credit for certain alternative energy projects. In one case, the plaintiff contends that although the Treasury has already paid out about \$400 million, it owes another \$200 million. ***Desert Sunlight 300, LLC v. U.S. Dep’t of Treasury*** (D.D.C.).

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

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

- ***In re Wyly*** (N.D. Tex.). These cases are two consolidated bankruptcy cases, one by Samuel Wyly, the other by Caroline D. Wyly, the widow of Charles Wyly. The Wyllys are challenging their liability for more than \$2 billion in tax, penalty, and interest. Sam and Charles Wyly created a number of Isle of Man trusts, each of which owned subsidiary companies. The Wyllys held considerable stock options and warrants in several companies, and they transferred the options and warrants to the offshore companies and trusts in exchange for private annuities. After the transfers were complete, they disclaimed beneficial ownership of the securities in SEC filings, even while the offshore trusts and companies exercised the options and warrants. In addition to violating securities disclosure laws, they failed to report income from the assets held by the trusts or report to the IRS their interest in the trusts. The case is being tried in January 2016.
- ***In re William M. (Trip) Hawkins, III*** (N.D. Cal. – 9th Cir.). In a divided published opinion, the Ninth Circuit reversed the district court’s affirmance of the favorable bankruptcy court opinion determining the debtor’s taxes to be nondischargeable for his willful attempt to evade or defeat them under 11 U.S.C. § 523(a)(1)(C). The debtor invested in FLIP and OPIS shelters to offset \$66 million in gains from the sale of his stock in video game company Electronic Arts, Inc., which he had co-founded. After the IRS commenced an audit of his shelter losses and announced that it was disallowing losses from similar shelters, the debtor continued to spend vast sums on a private jet, vacations, homes, cars, and his new company, 3DO, which failed. The bankruptcy court determined that the taxes arising from disallowance of the losses were nondischargeable, based on the debtor’s “truly exceptional” expenditures, and statements by his attorney acknowledging the liabilities and expressing the debtor’s intention to discharge them in

bankruptcy rather than to pay them. The district court affirmed. The Ninth Circuit held that a specific intent to evade taxes is required in order to demonstrate a willful attempt to evade or defeat taxes under 11 U.S.C. § 523(a)(1)(C). The court based its decision on comparable language in 26 U.S.C. § 7201, the felony tax evasion statute. The court acknowledged that its view differed from that of other circuits, which do not require specific intent in interpreting the § 523(a)(1)(C) exception. The court remanded the case for further proceedings.

- ***Ana DeBeck v. United States v. Dr. Robert Beck, et al.*** (W.D. Tex.). The court entered a judgment, findings of fact, and conclusions of law, after a March 2014 bench trial, holding that the taxpayer, Dr. Robert Beck, is the owner of a 108-acre ranch in San Antonio titled in the name of JB Vega Corporation (Beck's alter ego), which is encumbered by our tax liens. At trial, Beck invoked the Fifth Amendment and declined to answer our questions. Byron Davenport, the purported owner of JB Vega, did not list his ownership of JB Vega as an asset on a financial statement he had recently submitted to the VA. Also, Davenport testified at trial that he agreed that the ranch could be sold to pay Beck's taxes. The court also found that Beck, not his wife's company, AGB, another Beck alter ego, was the true owner of Beck's dental practice, and that the IRS levy on AGB's account was not wrongful. The court also allowed us to add another \$400,000 of Beck's income tax liabilities, based on recent returns filed by Beck, to our judgment, bringing the judgment amount to approximately \$4 million. Between the March trial, and the entry of the judgment by the district court, Beck filed a Chapter 13 bankruptcy, which we were successful in having dismissed with prejudice as a bad faith filing, with a two-year injunction against refiling.
- ***United States v. Philip Hart (In re Hart)*** (Bankr. D. Idaho). On September 2, 2014, the bankruptcy court clarified when settlements must be made public in a bankruptcy case. We filed a foreclosure suit against Philip L. Hart, a former Idaho state legislator and tax defier. He filed Chapter 13 bankruptcies twice and a Chapter 7 bankruptcy. In the Chapter 7 case, we objected to Hart's discharge and sought a determination that his tax liabilities were not dischargeable. After the adversary proceeding was filed, the district court granted partial summary judgment to the United States in the foreclosure suit. The parties held a settlement conference before a magistrate judge and reached an agreement. One term was that the settlement be kept confidential until Hart had an opportunity to file a motion to seal the agreement before the bankruptcy court. However, we opposed Hart's motion. The bankruptcy court denied Hart's motion. It noted first that settlements between creditors and a debtor in a chapter 7 case ordinarily do not require court review, because they are not settlements with a "trustee" under Rule 9019. However, the court found that because the settlement would waive our section 727 claim against Hart, it was required to be transmitted to all of the other creditors in the case. Furthermore, the court found that Hart had failed to present a "compelling reason" that would override the presumption that filings in federal court are to be open to public access, so it declined to seal the settlement.

B) Appellate

Civil Appellate Cases

During FY 2015, the Appellate Section litigated approximately 500 tax appeals before the United States Courts of Appeals and a variety of state appellate courts, and won (in whole or in part) over 94% of taxpayer appeals and over 61% of Government appeals. Included among these cases are a diverse set

of victories in the Supreme Court. In *Woods v. United States*, the Supreme Court unanimously reversed the unfavorable decision of the Fifth Circuit in this Son-of-BOSS tax shelter case, rejecting the so-called *Heasley* rule adopted by the Fifth and Ninth Circuits, that the 40-percent penalty for “gross valuation misstatements” was inapplicable as a matter of law to a transaction that was disregarded for lack of economic substance. The Court also held that, contrary to the decisions of the D.C. and Federal Circuits, that there was jurisdiction in a partnership level proceeding to determine the applicability of a gross-valuation misstatement penalty because the economic substance determinations and a partner’s basis misstatement as part of the Son-of-BOSS transaction are inextricably intertwined. Both aspects of the *Woods* opinion have had a significant impact, particularly in other tax-shelter litigation.

The Supreme Court also handed down a unanimous favorable opinion in *United States v. Quality Stores*. There, the Court reversed the Sixth Circuit’s decision, holding that severance payments are “wages” subject to tax under the Federal Insurance Contributions Act (FICA), which impacted more than 2,400 refund claims then outstanding worth more than \$1 billion in total.

In *United States v. Michael Clarke*, the Supreme Court again issued a unanimous favorable opinion, reversing the Eleventh Circuit’s judgment, based on circuit precedent, that an unsupported allegation that the IRS issued a summons for an improper purpose entitles an opponent of the summons to an evidentiary hearing to question IRS officials about their reasons for issuing the summons. The Supreme Court brought the Eleventh Circuit in line with every other court of appeals by rejecting its categorical rule, and setting forth a standard under which the taxpayer must “point to specific facts or circumstances plausibly raising an inference of bad faith.”

Finally, the Supreme Court recently denied a petition for writ of *certiorari* from the Second Circuit’s favorable decision in *TIFD III-E v. United States*. This case was the third appeal stemming from G.E. Capital’s implementation of a marketed tax shelter that allowed it to effectively re-depreciate fully depreciated aircraft and thereby shelter \$300 million from tax. The Second Circuit found that G.E. Capital lacked a reasonable basis for its return position and determined that an accuracy-related penalty for negligence applied.

At the court of appeals level, Appellate won a series of important victories in intermediary tax shelter cases, in which, as a general matter, a taxpayer, who owns a company holding property with a large built-in tax liability, sells his shares to an intermediary that pays the taxpayer a premium for the shares, immediately sells the corporate property, and then dissolves the company without paying the resulting liability. In *Diebold Foundation v. Commissioner*, the Second Circuit vacated the unfavorable decision of the Tax Court that taxpayers participating in such a transaction could not be held liable, and remanded the case to address whether taxpayers had constructive knowledge of the overall scheme, which would result in the transaction being recharacterized as a liquidation and distribution under state law (and would subject taxpayers to liability as transferees). The Ninth Circuit held in another intermediary shelter case that the taxpayers had constructive knowledge of the shelter, as necessary to establish their liability as transferees under state law. *Salus Mundi v. Commissioner* (9th Cir.). The Ninth Circuit also reversed an unfavorable judgment in *Stone v. Commissioner*, holding that the lower court had incorrectly applied the substance-over-form doctrine in evaluating the intermediary tax shelter at issue. In *Feldman v. Commissioner*, the Seventh Circuit became the first circuit to recognize that the purported stock sale at the heart of an intermediary tax shelter was, in substance, a liquidation, making the former shareholders transferees of the corporation.

Appellate successfully defended several significant victories relating to other types of tax shelters as well. In *Humboldt Shelby Holding Corp. v. Commissioner*, the Second Circuit affirmed a Tax Court ruling regarding a Son-of-BOSS tax shelter, which involved a claimed loss of \$74 million and a \$10 million accuracy-related penalty. The Second Circuit agreed that the transaction lacked economic substance because the potential profit (\$510,000) was insubstantial compared to the guaranteed tax loss in excess of \$70 million (which would generate a tax benefit of \$25 million) created by the shelter. In *Kearney Partners, LLC v. United States*, the Eleventh Circuit affirmed a favorable district court decision involving an abusive basis-inflating tax shelter, known as FOCus (Family Office Customized Partnership), marketed by KPMG to high net-worth individuals. The Eleventh Circuit affirmed the district court's determination that the FOCus shelter was motivated by tax avoidance, and that there was no reasonable probability of making profits from any step of the transaction.

Other significant victories include *Ford Motor Co. v. United States*, in which the Sixth Circuit, on remand from the Supreme Court, affirmed the favorable judgment of the District Court denying taxpayer's claim for \$450 million in additional overpayment interest. The Sixth Circuit held that deposits remitted by taxpayer and subsequently converted into tax payments bore overpayment interest only from the date of conversion (rather than from the earlier date of remittance, as taxpayer argued). In *Florida Bankers Association v. United States Department of the Treasury*, the D.C. Circuit issued a favorable opinion dismissing a challenge to Treasury regulations requiring U.S. banks to report the amount of interest earned by account holders residing in foreign countries or be subject to a penalty. Plaintiffs contended that the regulations, promulgated in 2012 in furtherance of the Foreign Account Tax Compliance Act, violate the Administrative Procedure Act and the Regulatory Flexibility Act principally on account of the purported harm the regulations will do to banks. Although the District Court had granted summary judgment to the Government on the merits of this challenge, the D.C. Circuit affirmed on the alternative ground that the Anti-Injunction Act applied to bar this suit. In *Maimonides Medical Center v. United States*, the Second Circuit affirmed the District Court's favorable judgment that the interest rate applicable to tax overpayments by corporations applies to non-profit corporations. This was an issue of first impression in the courts of appeals, and hundreds of cases presenting this issue remain pending administratively. Lastly, in *Chemtech Royalty Associates LP v. United States*, the Fifth Circuit rejected The Dow Chemical Company's effort to claim over \$1 billion in income tax deductions from a long-running tax shelter, and reversed the denial of the 40% penalty in light of the previously discussed Supreme Court opinion in *Woods*.

C) Criminal Prosecutions and Appeals

During FY 2015, Division prosecutors obtained 95 indictments and 131 convictions (not including the additional criminal tax prosecutions handled exclusively by United States Attorneys' Offices). The conviction rate for cases brought by Tax Division prosecutors for FY 2015 was nearly 98%.

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

For the Tax Division's criminal enforcement sections, one of the top litigation priorities is identifying, investigating and holding accountable U.S. taxpayers who conceal foreign financial accounts in an effort to evade U.S. reporting and tax obligations. Use of foreign tax havens by U.S. taxpayers has been on the rise, aided by increasingly sophisticated financial instruments and the ease of moving money around the globe, irrespective of national borders. While the Division's enforcement

focused initially on cross-border activities in Switzerland, it has expanded to include wrongdoing by U.S. accountholders, financial institutions, and other facilitators globally, including publicly disclosed enforcement concerning banking activities in India, Israel, Liechtenstein, Luxembourg, Belize, and the Caribbean.

Offshore Tax Evasion

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

Since 2009, when the Tax Division reached a ground-breaking deferred prosecution agreement with UBS AG, Switzerland's largest financial institution, the Department has publicly charged over 100 accountholders and approximately 42 bankers and advisors with violations arising from offshore banking activities. Over 100 accountholders have pleaded guilty or been convicted at trial, and several are either awaiting trial or in fugitive status. Approximately 14 bankers and financial advisors have either pleaded guilty or been convicted at trial; many remain fugitives.

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

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

The Tax Division also remains committed to holding foreign banks accountable for their role in facilitating attempts to evade U.S. tax and reporting obligations. Since announcing the UBS deferred prosecution agreement in February 2009, the Tax Division has continued to investigate this activity, and,

as described below, has taken public action against other financial institutions and external asset management firms.

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

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

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

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

In December 2014, Bank Leumi, a major Israeli international bank, admitted that it conspired to aid and assist U.S. taxpayers to prepare and present false tax returns to the IRS by hiding income and assets in offshore bank accounts in Israel and elsewhere around the world. A deferred prosecution agreement between Bank Leumi Group and the Department of Justice required the bank to pay \$270

million to the United States, provide the names of more than 1,500 of its U.S. account holders, and cooperate with related ongoing investigations. This unprecedented agreement marks the first time an Israeli bank has admitted to such criminal conduct which spanned over a 10 year period and included an array of services and products designed to keep U.S. taxpayer accounts concealed at Bank Leumi Group's locations in Israel, Switzerland, Luxembourg and the United States.

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

The high profile prosecutions of financial institutions, facilitators, and accountholders created pressure on non-compliant taxpayers to correct their tax returns to report previously undisclosed accounts. According to the IRS, since the inception of the investigation against UBS, over 54,000 taxpayers have reported previously secret accounts through the IRS's offshore voluntary disclosure programs, and have paid over \$8 billion in back taxes, interest, and penalties. These enforcement efforts not only remedy past wrongdoing, but also bring into the system tax revenue from taxpayers who become compliant going forward.

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

Swiss Bank Program

The investigation and prosecution of offshore tax evasion requires the IRS and the Tax Division to obtain foreign evidence, most often through a tax information exchange agreement or a mutual legal assistance or other treaty. A fundamental issue with respect to obtaining information about accounts located in Switzerland has been the degree to which Swiss law permits disclosure under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed on October 2, 1996. Swiss banks often contend, in response to our investigations, that Swiss law prohibited meaningful cooperation (most notably, the disclosure of the names of bank employees and of U.S. accountholders). As part of our efforts to obtain information from these banks, the Department and the IRS engaged in a series of discussions with representatives of the Swiss government. Our central focus in these discussions was to obtain information from the banks that would serve our law enforcement goals of encouraging voluntary disclosure and compliance by U.S. account holders, prosecuting account holders who fail to come forward and into compliance, and identifying the methods by which, and jurisdictions in which, U.S. taxpayers sought to conceal foreign accounts and evade their U.S. tax obligations. We also sought to maintain the integrity of pending U.S. law enforcement matters and the ability to prosecute those persons who assisted U.S. taxpayers in evading the law.

On August 29, 2013, the Department announced the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Program"), which is designed to encourage Swiss banks, about which the Department had little or no information, to come forward, disclose conduct and account

information related to U.S. offshore accounts, and to cooperate with our ongoing offshore enforcement efforts in exchange for the possibility of a non-prosecution agreement. The Program expressly excludes the fourteen banks, referred to in the Program as “Category 1 banks,” that were authorized for investigation in connection with their Swiss banking activity related to U.S. account holders before the Program was announced. Second, the Program expressly excludes all individuals. No Swiss banker or professional advisor is offered any sort of protection or immunity, and no U.S. account holder is covered by the Program.

The Program established three additional categories of eligibility. Category 2 banks are Swiss banks that were not under investigation as of the date the Program was announced but believe they have committed tax-related offenses. Category 2 banks must provide detailed information regarding their cross-border activities, employees and representatives, and U.S.-related accounts, and are required to pay a penalty that can be mitigated if the bank establishes that a particular account was declared or has come 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 seek a non-target letter after providing information required under the Program. These banks were allowed to request participation in the Program starting on July 1, 2014. In 2015, the Tax Division focused on the Category 2 banks, and it will address Category 3 and 4 banks in 2016.

The Tax Division received 106 Letters of Intent (out of approximately 330 banks in Switzerland) before the December 31, 2013, deadline for Category 2 banks. The Department had little or no information regarding a significant number of these banks prior to receipt of the Letters of Intent. These banks were required to fully disclose their cross-border businesses relating to U.S. taxpayers by providing documents and making in-person presentations to the Tax Division by the end of June 2014 (which included a 60-day extension that was requested by each bank). Thereafter, it was anticipated that the parties would execute non-prosecution agreements and that the Tax Division would begin making requests under the U.S.-Swiss tax treaty for account information. This process was delayed as a result of the reluctance of many banks to adequately disclose their conduct. This issue was resolved, and the Program moved forward.

Since January 2014, approximately two dozen banks have withdrawn from the Program for a variety of reasons. For example, some banks submitted a protective letter of intent prior to December 31, 2013, and withdrew from the Program after their internal investigations uncovered no illegal conduct. Others banks withdrew because they ceased operations. To the extent a bank is outside the Program and has engaged in criminal conduct, the Tax Division is considering all available options on a case-by-case basis.

On March 30, 2015, with the signing of the first non-prosecution agreement with BSI, SA, the Department announced its goal to reach final resolutions by the end of 2015 with banks eligible for non-prosecution agreements under Category 2 of the Program. As of December 31, 2015, the Department had signed 75 agreements with 77 Category 2 banks and proposed agreements to the few remaining Category 2 banks. All remaining agreements were signed in January 2016, including an agreement with Union Bancaire Privée, UBP SA, imposing a penalty of \$187 million, the second largest penalty to date. In total, the Department has imposed more than \$1.3 billion in penalties under the Program.

The Tax Division also has submitted more than 150 treaty requests to Switzerland covering 31 different banks, and continues to submit requests as additional information is received. These treaty requests are being submitted under the current 1996 U.S.-Swiss tax treaty under which the Swiss will grant assistance only in cases where the information is sought because of tax fraud, as that term is

narrowly interpreted by Swiss legal authorities. A new Protocol amending the 1996 tax treaty was signed but has been stalled in the Senate for several years. Once the Protocol is ratified, Switzerland will begin granting assistance in cases where the information is foreseeably relevant to a civil or criminal tax investigation. The “foreseeably relevant” standard is far more lenient and would result in hundreds of, if not more than one thousand, successful treaty requests.

The Swiss are responding promptly to the tax treaty requests that we are submitting under the 1996 treaty. To date, the Tax Division has received more than 85 responses to the treaty requests. The Tax Division is working closely with the IRS to review the information received in response to the treaty requests and from the banks in the Program, as well as from whistleblowers and cooperators, to pursue investigations against individual account holders, bankers and other facilitators, both within and beyond Switzerland. The Tax Division believes that these investigations will result in a number of criminal prosecutions in the coming months.

Pure Tax Crimes

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

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

In March 2015, Paul DiLorenzo, a doctor in New Jersey, was sentenced to 46 months in prison and ordered to pay restitution to the IRS in the amount of \$304,293 following his guilty plea to structuring cash transactions and filing false tax returns. Between 2009 and 2010, DiLorenzo received more than \$2 million in cash payments from his patients. His office received payments exceeding \$10,000 in a single day on at least 35 occasions. DiLorenzo deposited \$1 million in cash into banks accounts in his name and in the name of his business. The deposits included 150 separate transactions, all but one for less than \$10,000, thereby evading Currency Transaction Report filing requirements. DiLorenzo also substantially understated his business income on his 2010 and 2011 tax returns.

In the Eastern District of Michigan, multiple defendants were sentenced to prison in July 2015 for their role in a tax fraud scheme involving a chain of pizza franchises in Michigan, Ohio, and Illinois. Happy Asker, the founder of Happy’s Pizza, was sentenced to 50 months in prison and ordered to pay \$2.5 million in restitution after a jury in the Eastern District of Michigan convicted him of conspiracy to defraud the United States, filing and aiding in the filing of false tax returns, and corruptly endeavoring to obstruct the IRS. Asker conspired with franchise owners and employees to divert more than \$6.1 million in gross receipts from 35 pizza stores. In total, Asker and certain employees and franchise owners failed to report approximately \$3.84 million of gross income and approximately \$2.39 million in

payroll taxes from the various Happy's Pizza franchises to the IRS. Four co-conspirators also pleaded guilty for their role in the scheme.

Following one of the Tax Division's trial victories in 2015, Thomas Jackson and Preston Harrison, the co-founders of a company that manufactured a product called OXYwater, were sentenced to prison for wire fraud, money laundering, and tax crimes. Jackson and Harrison developed OXYwater, a beverage that they claimed was an all-natural, vitamin-enhanced sports drink that contained added oxygen for improved physical performance. They engaged in a scheme to deceive investors about the company's finances, and misappropriated approximately \$2 million in investors' funds for their own personal use, including purchasing jewelry, luxury vehicles, weapons, clothing, home improvements, and a swimming pool. Harrison and his wife, Lovena Harrison, who was also charged, diverted a portion of the funds into an account in the name of a day care business and failed to report this income on their 2011 tax return. In August and October 2015, Jackson and Preston Harrison were each sentenced to 83 months in prison. Lovena Harrison received a sentence of 12 months and one day in August. Preston Harrison was also ordered to forfeit \$1.1 million.

In January 2016, Albert Hee, a Honolulu businessman, was sentenced to 46 months in prison and ordered to pay restitution to the IRS in the amount of \$431,793, following his conviction in July of corruptly endeavoring to obstruct the IRS and filing false individual income tax returns for the years 2007-2012. Hee caused his company to pay more than \$2 million of his personal expenses, including vacations, massages, and college tuition for his children, falsely claimed these expenditures as business expenses on the corporate tax returns, and failed to report the payments as income on his personal tax returns.

Employment Tax Crimes

During FY 2015, the Tax Division sharpened its focus on employers who willfully fail to collect, truthfully account for, and pay over employment taxes to the IRS. Employers have a legal obligation to withhold federal income, Social Security, and Medicare taxes from their employees' wages, hold these funds in trust, and then pay them over, along with a matching amount of Social Security and Medicare tax, to the IRS. Employment and income tax withheld comprise 70% of the total revenues collected by the IRS, and as of September 2015, nearly \$59 billion of employment tax reported on quarterly employment tax returns remained unpaid.

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

- In May 2015, Kevin Bertram, the former CEO of a wireless technology firm in the District of Columbia, was sentenced to 30 months in prison. As part of his guilty plea, Bertram admitted to willfully failing to pay over more than \$900,000 in employment taxes. At the same time that Bertram was failing to pay over to the IRS the income and other taxes withheld from employees' paychecks, he spent hundreds of thousands of dollars of company funds on sporting event tickets and personal luxury goods.
- In June 2015, Eric Anderson, the owner of three construction companies, was sentenced to 18 months in prison in an employment tax case that caused a loss of more than \$1 million to the IRS. From 2006 through 2008, Anderson used a commercial check cashing service to cash more than \$10.5 million in checks paid to his companies representing gross receipts of the

businesses. Anderson used a portion of the cash to pay his employees “under the table” wages. During this time period, Anderson failed to collect or pay over to the IRS the employment taxes that were due quarterly on his employees’ cash wages.

- In July 2015, Maria Elizabeth Townsend, the owner of an electrical contractor that employed over 100 individuals, was sentenced to 40 months in prison. Earlier in the year, a jury in Spokane, Washington convicted her of failing to pay over to the IRS \$3.3 million in withheld employment taxes over a four-year period. Instead of remitting these funds to the IRS, Townsend disbursed more than \$260,000 in funds to family members, and spent \$22,000 to construct a pool at her residence, \$30,000 to purchase a boat, \$30,000 to purchase a Cadillac Escalade, and \$42,982 to purchase a Jeep Commander. Townsend also used withheld taxes to pay the company’s vendors and employees.
- In October 2015, James Pielsticker, former CEO and president of Arrow Trucking Company, was sentenced to serve 7 ½ years and ordered to pay \$21 million in restitution for conspiring to defraud the US and to commit bank fraud, and for attempting to evade his individual income taxes. Pielsticker, his CFO, James Moore, and others withheld Arrow’s employees’ federal income tax withholding, Medicare and social security taxes, but did not report or pay over the tax to the IRS, despite knowing they were required to do so. The conspirators paid Pielsticker’s personal expenses and submitted fraudulent invoices to induce a bank to pay unwarranted funds. The conspiracy cost the US nearly \$10 million. On October 16, after cooperating with the government and testifying against Pielsticker, Moore was sentenced to 35 months in prison.

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

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

Stolen Identity Refund Fraud

Stolen Identity Refund Fraud (SIRF) crimes have hit epidemic levels, with many defendants filing thousands of false returns, resulting in millions of dollars in fraudulent refund claims. Victims hail from all segments of our society. The elderly are particularly vulnerable as a result of their contact with hospitals, assisted living centers, nursing homes, but they are not alone. SIRF victims include state and federal employees, the imprisoned, young children, the infirm, and members of our armed forces deployed overseas. Concerted and coordinated efforts among law enforcement partners are needed now more than ever.

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

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

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

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

Since Directive 144 was issued, USAOs, have been able to respond quickly to SIRF type cases, and the Tax Division has authorized more than 1,200 SIRF investigations involving more than 1,800 subjects. As a result, the Tax Division and the U.S. Attorneys' Offices have brought approximately 800 prosecutions involving more than 1,700 individuals. And the courts are responding with substantial sentences. In addition, in February 2014, the Tax Division formed a SIRF Advisory Board, consisting of experienced SIRF prosecutors and designed to develop and implement a national strategy to ensure consistent and effective enforcement and prosecution.

Throughout 2015 and continuing into 2016, the Tax Division has worked in collaboration with the U.S. Attorney's Office for the District of Columbia to aggressively pursue a massive SIRF scheme that targeted vulnerable victims. This sophisticated scheme involves an extensive network of more than 130 individuals and resulted in the filing of at least 12,000 fraudulent federal income tax returns for the tax years 2005 through 2012 that sought refunds of more than \$40 million. The co-conspirators filed returns in the names of individuals whose identities had been stolen, including the elderly, people in assisted living facilities, drug addicts, and the incarcerated. Multiple defendants have pleaded guilty for their role in this scheme, and several have received substantial prison sentences, including the following:

- In January 2015, Yvette Haden, a Suntrust bank employee, was sentenced to 87 months and ordered to pay restitution to the IRS of nearly \$1 million. She used her position at the bank to open accounts into which fraudulently obtained refund checks were deposited.
- In May 2015, James Nelson received a sentence of more than three years in jail. Over a four year period, Nelson used his residential address to receive tax refund checks generated as part of the scheme, and recruited others to receive checks at their addresses. Approximately 360 returns listing Nelson's address were filed with the IRS.

- In October 2015, Alvalonzo Graham was sentenced to 46 months in prison. Graham prepared and mailed fraudulent federal income tax returns to the IRS, deposited the fraudulently-obtained tax refund checks into his own bank account, and recruited, coordinated, directed and compensated others in the execution of the scheme, including a bank teller.
- In January 2016, Marc Bell, a former employee of the D.C. Department of Youth Rehabilitation Services. Bell admitted to using his position to steal the names of at least 645 juveniles who were under court supervision. Bell then sold those names to co-conspirators, who used the information to file false tax returns.

In another far-reaching conspiracy, several defendants were sentenced to lengthy prison terms in the Middle District of Alabama for using stolen identities of state and federal workers, including soldiers deployed to Afghanistan, to file fraudulent returns. In September 2015, Keisha Lanier, the ringleader of the scheme, was sentenced to 15 years in prison. Lanier worked with Tracy Mitchell, who was sentenced to 159 months in prison on August 7, and other conspirators to file more than 9,000 false federal income tax returns seeking \$24 million in refunds. Mitchell accessed the identification data of military personnel through her employment at the hospital in Fort Benning, Georgia. Another participant in the scheme, Tamika Floyd, received an 87-month prison term in May 2015 for her role, which included theft of personal information from Alabama state agencies. In addition to filing false tax returns, the scheme also involved a complex money laundering operation. Nearly \$10 million in fraudulent tax refund checks were cashed at several businesses located in Alabama, Georgia and Kentucky. One of the scheme participants was recruited because she worked at a Walmart money center, where she cashed checks for customers as part of her job. In an attempt to conceal the crime from Walmart, the defendants had multiple individuals bring the tax refund checks to the store. In total, 11 participants in this fraud were sentenced to a combined prison term of approximately 66 years.

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

Prosecuting Abusive Promotions

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

In March 2015, three promoters of a scheme called the National Audit Defense Network (NADN) were sentenced to substantial prison terms for conspiring to defraud the United States and aiding in the preparation of false tax returns. Alan Rodrigues, a former casino owner, was sentenced to 72 months in prison; Weston Coolidge, a former Las Vegas businessman was sentenced to 70 months; and former NFL punter Joseph Prokop received an 18-month prison term. These sentences follow the

defendants' May 2014 conviction following a six-week jury trial in the District of Nevada. A fourth co-conspirator, California businessman Daniel Porter, pleaded guilty to conspiracy to defraud the United States and was sentenced on April 10 to 55 months in prison. Porter created a product called Tax Break 2000 and conspired with Rodrigues, Coolidge, and Prokop to promote the product by falsely representing to customers that buying Tax Break 2000 would allow them to claim income tax credits and deductions under the Americans with Disabilities Act by modifying the customers' websites to be more accessible to the disabled. As part of the conspiracy, the defendants trained return preparers working for NADN to prepare false tax returns that claimed these bogus credits and deductions. Between 2001 and 2004, the defendants sold Tax Break more than 18,000 times to thousands of customers throughout the United States. In 2004, the Tax Division also filed a civil suit to enjoin NADN's activities.

Return-Preparer Fraud

Corrupt accountants and unscrupulous 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.

In January 2015, Rony Maurival, the operator of a tax return preparation business in the Southern District of Florida, was sentenced to 81 months in prison for filing false tax returns, theft of government funds, and aggravated identity theft. Maurival admitted to including false information on clients' income tax returns to illegally maximize the Earned Income Tax Credit. His actions resulted in a tax loss to the U.S. Treasury of between \$1 million and \$2.5 million. Maurival also filed income tax returns using stolen identities and directed that the IRS deposit the fraudulent tax refunds in his bank accounts. Maurival also filed false tax returns for himself for tax years 2009 and 2010, on which he failed to report more than \$250,000 in tax return preparation fees.

National Tax Defier Initiative

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

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

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

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

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

In February 2015, Donna Marie Kozak, a former college instructor from Nebraska, was sentenced to 36 months in prison following her conviction for tax obstruction, filing a false claim and filing false retaliatory property liens. In addition to hiding assets from the IRS, filing a false claim for an income tax refund, and applying for tax exempt status for a sham entity, Kozak filed a false lien for \$19 million against the federal judge who presided over the criminal tax prosecution of two of her associates. After she was indicted, Kozak filed additional false liens against another federal judge, the U.S. Attorney for the District of Nebraska, two Assistant U.S. Attorneys and an IRS-Criminal Investigation special agent. Kozak was a member of the "Republic for the United States of America" (RuSA), a sovereign citizen group, and was the group's designated "governor of Nebraska." James Timothy Turner, the self-proclaimed "President" of RuSA was sentenced to 18 years in prison in July 2013. Turner was convicted by a jury of conspiracy to defraud the United States, attempting to pay taxes with fictitious financial instruments, attempting to obstruct and impede the IRS, failing to file a 2009 federal income tax return, and falsely testifying under oath in a bankruptcy proceeding.

In May 2015, Gerrit Timmerman, III and Carol Jean Sing were sentenced to 48 months and 36 months, respectively, after a jury in Utah convicted them of promoting a tax fraud scheme. Timmerman and Sing conspired to defraud the United States by marketing entities called "corporations sole," which they falsely told their clients were exempt from United States income tax laws, had no obligation to file tax returns and had no obligation to apply for tax exempt status. They further claimed that individuals could render their own income non-taxable by assigning it to the corporation sole, could draw a tax-free stipend from their corporation sole, and could render property immune from IRS collection activity by transferring property to the corporation sole. The IRS has publicized the fact that corporations sole have been abused by promoters, and has even included corporations sole on their "dirty dozen" tax scams in prior years.

In January 2016, Canadian citizen Kevin Cyster was sentenced to 135 months in prison for his role in a tax fraud scheme that attempted to defraud the government out of approximately \$10 million. Cyster and other Canadian citizens living in Canada filed tax returns that claimed refunds based on false

Forms 1099-OID. On these tax returns, Cyster and his co-conspirators falsely claimed that nearly \$10 million in federal income taxes had been withheld on their behalf by various Canadian financial institutions and paid over to the IRS. Brekke was sentenced to 12 years in prison for promoting the 1099-OID scheme, which the IRS has listed among its “dirty dozen” tax scams.

Counter Terrorism

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

Corporate Fraud and other Financial Crimes

Through the President’s Financial Fraud Enforcement Task Force, the Division investigates and prosecutes financial crimes such as corporate fraud and mortgage fraud. The Division also cooperates with other law enforcement components in formulating national policies, programs, strategies and procedures in a coordinated attack on financial crime.

For example, in January 2016, five residents of Detroit, Michigan were sentenced to lengthy terms of incarceration and ordered to pay restitution to financial institutions following convictions for conspiracy to commit bank fraud. Between January 2006 and December 2008, the defendants purchased single-family homes in Detroit, Michigan for approximately \$5,000 to \$40,000 each and re-sold the homes to third party individuals, referred to as “straw buyers,” that they recruited. The defendants then caused fraudulent mortgage loan applications in the names of the straw buyers to be submitted to financial institutions. In addition to these five defendants, an individual who served as a straw buyer and a mortgage broker who assisted in the preparation of false mortgage loan applications also pleaded guilty and received terms of incarceration.

International Cooperation to Investigate Tax Evasion

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

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

Civil/Criminal Coordination

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

2. Performance Tables

Performance and Resource Table

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: General Tax Matters Strategic Goal 2/Strategic Objective 2.6 - Protect the federal fisc and defend the interests of the United States												
RESOURCES												
			Target		Actual		Target		Changes		Requested (Total)	
			FY 2015		FY 2015		FY 2016		Current Services Adjustments and FY 2017 Program Changes		FY 2017 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
			534	\$106,674			534	\$106,979	0	\$7,156	534	\$114,135
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2015		FY 2015		FY 2016		Current Services Adjustments and FY 2017 Program		FY 2017 Request	
Program Activity: Criminal Prosecution & Appeals			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			154	\$30,128			154	\$30,168	0	\$2,018	154	\$32,186
Performance Measure: Workload	2.6	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	2.6	Number of Investigations Authorized	n/a		n/a		n/a		n/a		n/a	
Performance Measure: Output	2.6	Number of Prosecutions Authorized	n/a		n/a		n/a		n/a		na/	
Performance Measure: Outcome	2.6	Success Rate for Criminal Tax Cases Handled by the Division	95%		99%		90%		n/a		90%	
Program Activity: Civil Litigation & Appeals			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			380	\$76,546	0	\$0	380	\$76,811	0	\$5,138	380	\$81,949
Performance Measure: Outcome	2.6	Civil Cases Successfully Litigated in the Trial Courts	90%		96%		80%		n/a		80%	
Performance Measure: Outcome	2.6	Civil Cases Successfully Litigated - Taxpayer Appeals	85%		94%		85%		n/a		85%	
Performance Measure: Outcome	2.6	Civil Cases Successfully Litigated - Government and Cross Appeals	85%		64%		60%		n/a		60%	
Performance Measure: Outcome	2.6	Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	n/a		\$895		n/a		n/a		n/a	

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

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

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

Performance Measure Table

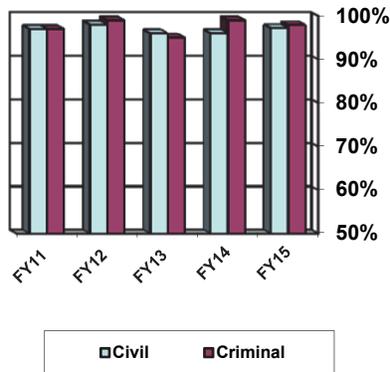
PERFORMANCE MEASURE TABLE									
Decision Unit: General Tax Matters									
Strategic Objective	Performance Report and Performance Plan Targets		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
			Actual	Actual	Actual	Actual	Actual	Target	Target
	2.6	Performance Measure	Number of Criminal Investigations Authorized	850	938	749	664	590	n/a
2.6	Performance Measure	Number of Criminal Prosecutions Authorized	2,320	1,751	1,495	1,233	1,073	n/a	n/a
2.6	Outcome Measure	Success Rate for Criminal Tax Cases Handled by the Division	97%	99%	95%	99%	98%	90%	90%
2.6	Outcome Measure	Civil Cases Successfully Litigated in the Trial Courts	97%	96%	96%	96%	96%	80%	80%
2.6	Outcome Measure	Civil Cases Successfully Litigated - Taxpayer Appeals	96%	98%	97%	94%	94%	85%	85%
2.6	Outcome Measure	Civil Cases Successfully Litigated - Government and Cross Appeals	59%	55%	68%	64%	61%	60%	60%
2.6	Outcome Measure	Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	\$552.0	\$1,430.4	\$1,212.2	\$365.2	\$907.0	n/a	n/a
n/a = In accordance with Department guidance, there is no target for this measure.									

3. Performance, Resources, and Strategies

The General Tax Matters Decision Unit contributes to the Department’s Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and enforce Federal Law. Within this Goal, the Decision Unit’s resources specifically address Strategic Objective 2.6: Protect the federal fisc and defend the interests of the United States.

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.

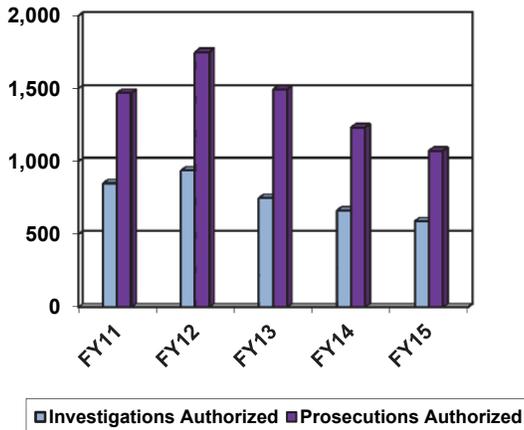
Data Limitations: The Tax Division lacks historical data on some activities that are now tracked in the case management system. The information system may cause variations in the way some statistics are presented.

Performance Measure 1: Percentage of Cases Favorably Resolved

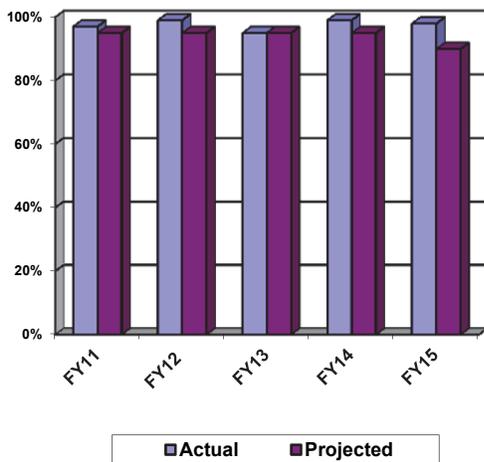
FY 2015 Actual: 97% for Civil Trial and 98% for Criminal.

Discussion: The outcome measure for this decision unit is favorable resolution of all cases. The Department of Justice Strategic Plan sets Department-wide goals for the litigating components: 90% of criminal cases favorably resolved Department-wide and 80% of civil cases favorably resolved. As illustrated in the chart “Cases Favorably Resolved (TAX),” the Tax Division has exceeded the Department’s goal for the last several years. In FY 2015, favorable outcomes were achieved in 97% of all civil and 98% of all criminal cases litigated by the Tax Division, including non-tax cases. To meet the targets for this measure, the Tax Division requires \$114,135 thousand dollars. These resources are essential if we are to continue attaining the Department’s targets for this measure.

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 2015 Actual: 590 Grand Jury Investigations and 1,073 Prosecutions

Discussion: The Tax Division also measures the number of authorized investigation and prosecution referrals in criminal cases. In FY 2015, the Division authorized 590 grand jury investigations and 1,073 prosecutions of individual defendants. Changes in the number of authorized investigations are largely proportional to the number of investigations initiated by the Internal Revenue Service.

Consistent with Department guidance, there is no FY 2016 or FY 2017 performance goal for authorized investigations and prosecutions.

Performance Measure 3: Success Rate for Criminal Tax Cases

FY 2015 Actual: 98%

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%. In FY 2015, the Division’s conviction rate was 98% in tax cases.

For FY 2015, and FY 2016, the Tax Division has established a conviction rate goal of 95%. 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.

Performance Measure 4: Civil Cases Successfully Litigated

FY 2015 Actual: Trial Courts – 97%
 Taxpayer Appeals – 95%
 Government and Cross Appeals – 61%

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

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

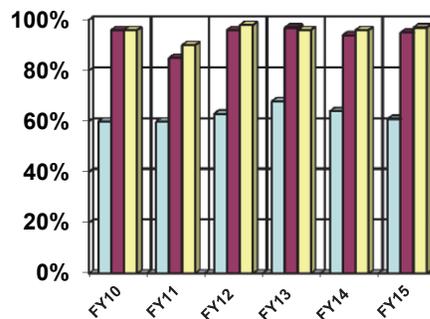
Performance Measure 5: Tax Dollars Collected and Retained

FY 2015 Actual: \$412 Million Collected and \$483 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 2015, the Division collected \$412 million and retained \$483 million.

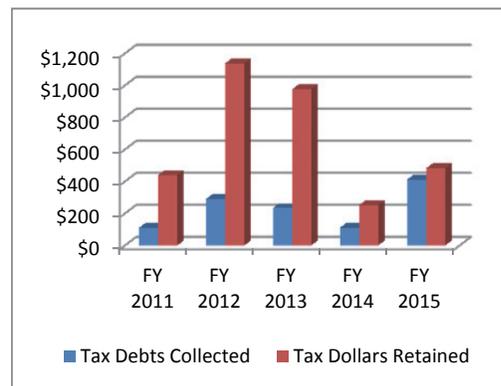
In addition to this measurable impact, the Division’s litigation affects the revenue at issue in many cases being handled administratively by the IRS, and determines tax liabilities of litigants for many additional tax years. Its litigation successes also foster overall compliance with the tax laws. 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.

Civil Cases Successfully Litigated [TAX]



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

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



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

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

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

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

a. Strategies to Achieve the FY 2017 Goals:

A strong tax system is vital to our national strength. It is essential that taxpayers believe, with good reason, in the integrity of the tax system. It is fundamental that we meet our obligations to our citizens to ensure the full, fair, and consistent enforcement of our tax laws. The Division's long-standing coordinated approach to tax enforcement is a particularly effective component to the Administration's goal 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.