

**Tax Division
United States Department of Justice**

FY 2013 Congressional Budget



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I. Overview

A. Introduction

The Tax Division requests a total of 623 permanent positions (370 attorneys), 572 full-time equivalent (FTE) work years and \$106,459,000 for FY 2013.

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 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. At any given time, the Tax Division’s civil trial attorneys have nearly 6,500 civil cases in process. 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. In the last few years, the Division has authorized between 1,300 and 1,800 criminal tax investigations and prosecutions per year.

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’s work has an immediate financial impact on the Federal Treasury. From FY 2008 - FY 2011, the Tax Division’s investment in attorneys has yielded a 14:1 payoff for the Federal Treasury. That is, taking into account solely the tax dollars collected and the tax refunds not paid as a result of our civil tax litigation, the Division’s civil trial attorneys alone have returned \$14 for each dollar invested in Division attorneys.

Yet, significant as these dollars are, they pale in comparison to the long-term financial impact of the Division’s work. The Division is currently defending refund suits that collectively involve over \$11 billion dollars.¹ This amount measures only the amount involved in the lawsuits themselves. It does not include the amounts at issue with the same taxpayers for other years or the amounts at issue with other taxpayers who will be bound by the outcome of the litigation. Decisions in the Division’s cases may reduce the need for future administrative and judicial tax proceedings, by creating binding precedents that settle questions of law that govern millions of taxpayers. Moreover, millions more dollars are saved each year because the Division successfully defends the Government against many other tax-related suits brought by taxpayers and third parties.

¹ See IRS Tax Stats – 2010 Data Book, <http://www.irs.gov/taxstats/article/0,,id=102174,00.html>, Table 27.

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, 87 percent of those surveyed think it is “not at all” acceptable to cheat on taxes.⁴ Also, the Commissioner’s Voluntary Disclosure Initiative, timed to coincide with the Division’s ongoing criminal and civil enforcement concerning unreported offshore accounts, resulted in an unprecedented number of taxpayers, almost 15,000, attempting to “return to the fold” and paying back taxes, interest and penalties due that will likely total in at least the hundreds of millions of dollars. As an integral part of the IRS’s enforcement efforts, the Tax Division is partially responsible for the IRS’ ability to collect over \$2 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 70 years ago still rings true today: “[T]he Department of Justice, as the Government’s chief law office, is in a position to exercise a more judicial and judicious judgment... With taxes forming a heavy and constant burden it is essential that there be this leavening influence in tax litigation. Next to the constant availability of the courts, the existence of the Division is the greatest mainstay for the voluntary character of our tax system.”⁶
4. ***Defending IRS Officials and the United States against Damage Suits.*** The Tax Division vigorously defends IRS agents and officers, and the Government itself, against unmeritorious damage suits. Absent 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

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).

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 2010 Taxpayer Attitude Survey, January, 2011, <http://www.treas.gov/irsob/board-reports.shtml>.

⁵ See Internal Revenue Service Data Book, 2009, Table 1, available at www.irs.taxstats. From the website, select “IRS Data Books” in the “Products, Publications, & Papers” section.

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

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;
- stopping 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.

A solid infrastructure is essential to the Tax Division’s achieving the Department’s performance goals. This infrastructure includes office automation support operations, the Justice Consolidated Office Network (JCONIA) system within the Division, access to adequate litigation support, including courtroom presentation technologies, and the organizational and technical infrastructure to support the use of automated tools for electronic document discovery, trial preparation, electronic filing, and courtroom presentation. The IT investment requested for FY 2013 is 16 FTE and \$7,309,934. No IT enhancements are requested for FY 2013.

Electronic copies of the Department of Justice’s Congressional Budget justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.justice.gov/02organizations/bpp.htm>.

B. Full Program Costs

The following is a brief summary of the Department’s Strategic Goals and Objectives in which the Tax Division plays a role.

DOJ Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law.

- Combat corruption, economic crimes, and international organized crime (2.4)
- Protect the federal fisc and defend the interests of the United States (2.6)

This Strategic Goal defines the two broad programs areas:

- Civil Tax Litigation and Appeals - \$78,779,660
- Criminal Tax Prosecution and Appeals - \$27,679,340

The FY 2013 budget request assumes 74% of the Division’s budget and expenditures can be attributed to its Civil Tax Litigation and Appeals and 26% 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 such green purchasing policies as: (i) mandating the purchase of certain recycled paper products (copier/printer paper, paper towels) and (ii) providing employees responsible for purchasing office supplies training and written guidance on green purchasing. All training and guidance prohibits the purchase of hazardous materials that would potentially damage the environment. In addition, Tax 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 to encourage recycling; (iii) recycling used printer cartridges; (iv) promoting circulating documents in electronic format only; (v) promoting scanning instead of photocopying; and (vi) recycling blackberrys, cell phones, laptops, computers and computer battery packs. The Tax Division also has an environmentally friendly document destruction method where sensitive material that was previously burned is now shredded and recycled. The Tax Division is also looking at best practices for procuring goods and services in other offices in the Department to determine how to improve our processes.

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 respective facilities through the General Services Administration and U.S. Green Building Council. Tax-occupied space in the Judiciary Center Building has been retrofitted with energy-efficient light fixtures and light bulbs, and light sensors have been installed throughout the Patrick Henry Building. Tax also requests contractors who perform construction-related activities in Tax space 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 over \$2.27 trillion annually. Over \$2.21 trillion (or 97% of total collections) results from taxpayers' voluntary compliance with the tax law; the remainder, \$65 billion, comes from enforcement activity. The IRS estimates that the Tax Gap – the difference between the amount of taxes owed and the amount paid voluntarily and timely – is more than \$385 billion every year. More recently, an independent analyst has estimated that the gross Tax Gap may have increased to \$400 billion as of 2006.⁷ The IRS Oversight Board cited reducing the Tax Gap as the “most serious problem facing tax administration today.”⁸ This problem is exacerbated by the vast increase in financial globalization, which has expanded the opportunities for assets and income to be easily hidden offshore.

⁷ See Toder, Eric, “Reducing the Tax Gap: The Illusion of Pain-Free Deficit Reduction,” <http://www.urban.org/publications/411496.html>.

⁸ IRS Oversight Board, FY 2009 Budget Recommendation, Special Report, March 2008.

Any effort to reduce the Tax Gap requires increased enforcement. The challenge is to narrow that gap in a way that not only collects the revenue due, but also assures the public that enforcement actions are vigorous, fair, and uniform.

Internal – Funding the Cost of 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. Congress increased the IRS’s enforcement budget by \$337 million in FY 2009 and an additional \$387 million in FY 2010. Moreover, it is expected that the Division’s case mix – 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.⁹

II. Summary of Program Changes

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
IT Savings	Increase IT management efficiency and comply with OMB’s direction to reform IT management activities, which will result in an offset of \$106,000.	0	0	-\$106	11

⁹ See IRS Strategic Plan 2009-2013 at 21-22, available at <http://www.irs.gov/pub/irs-pdf/p3744.pdf>.

III. Appropriations Language and Analysis of appropriations Language

Please refer to the General Legal Activities Consolidated Justifications.

IV. Decision Unit Justification

<i>Tax Division</i>	Perm. Pos.	FTE	Amount
2011 Enacted	639	582	104,877,000
2012 Enacted	639	582	104,877,000
Adjustments to Base and Technical Adjustments	-16	-10	106,565,000
2013 Current Services	0	0	106,565,000
2013 Program Increases	0	0	0
2013 Program Offsets	0	0	106,000
2013 Request	623	572	106,459,000
Total Change 2012-2013	-16	-10	1,582,000

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 brought against it 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 for 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 being 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 discovery difficult and expensive to pursue. 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 cases the Division defends directly involve millions of dollars in tax revenue, and affect billions of dollars of tax revenue owed by other taxpayers. For example, the Division prevailed in the first DAD¹⁰ shelter case to be tried, *Southgate Master Fund LLC v. United States* (N.D. Tex. 2009), *app. pending* (5th Cir.). The taxpayer's claimed losses from the DAD shelter exceeded \$1.1 billion. The Division has about ten other DAD shelter cases pending. In *Nevada Partners v. United States* (S.D. Miss. 2010), the court determined that the KPMG-marketed FOCUS tax shelter transaction¹¹ "lacked economic substance and served no other purpose than to provide the structure through which [the taxpayer] could . . . reduc[e] . . . his tax burden." The court disallowed the sham losses and imposed a 20% penalty.

As of January 15, 2010, the Division had 78 groups of tax shelter cases.¹² In FY 2010, the

¹⁰ A taxpayer participating in a Distressed Asset/Debt (DAD) shelter purchases, for a small amount of money, an interest in a partnership that contains foreign non-performing (distressed) assets. When some recognition event occurs that triggers a loss, the distressed assets are treated as if they had a basis equal to their original purported cost basis.

¹¹ The FOCUS ("Family Office Customized") tax shelter involves a series of preplanned transactions using foreign-currency straddles and a three-tiered partnership structure to create sham losses, which are intended to offset capital gains.

¹² The Tax Division treats as one "group" two or more tax shelter cases that involve the same scheme and/or the same promoter, are handled by the same opposing lawyer(s), and are filed in the same judicial district, whether or not the cases

Division had five tax shelter trials, each requiring a team staffed by experienced attorneys. The Tax Division anticipates that tax shelters will continue to be contested in the federal district courts and in the Court of Federal Claims over the next several years.

Using John Doe Summonses to Track Down Owners of Unreported Offshore Accounts

The Tax Division is assisting the IRS in attempting to obtain more information about United States persons who maintain undeclared foreign accounts. This assistance primarily takes the form of obtaining court authorization for the IRS to serve John Doe summonses — a summons issued to obtain the identities of unknown taxpayers — and in petitioning for judicial enforcement of the summons.¹³

At the centerpiece of the Division's current efforts is the John Doe summons served on the Swiss banking giant UBS, which does business in the United States. In *United States v. UBS, AG* (S.D. Fla.), filed in July, 2008, the Tax Division successfully obtained court approval for the issuance of a John Doe summons to UBS seeking the names of U.S. account holders with undeclared accounts. The approval and issuance of the summons generated worldwide publicity. When UBS failed to comply with the summons in full, the Tax Division in February, 2009, filed a petition to enforce the summons.

The filing of the enforcement action, and the attendant pressure on the Bank and the Government of Switzerland, resulted in an historic settlement, signed on August 19, 2009. This agreement has dealt fabled Swiss bank secrecy a devastating blow. The agreement has put in place a government-to-government process that should yield information on thousands of U.S. offshore account holders who have high-value accounts in UBS. The agreement also provides a method for the United States to obtain similar account information from other Swiss banks. In addition, the agreement should serve as a template for US government actions taken in connection with banks from other countries.

The publicity surrounding the Tax Division's enforcement action and the subsequent settlement has already produced dramatic enforcement results. Because of worldwide media coverage, an unprecedented number of U.S. taxpayers who held offshore accounts in UBS and other foreign institutions availed themselves of the IRS' voluntary disclosure program so far — nearly 18,000 to date, in an 18-month period, in contrast to fewer than 100 annually in previous years — and the uptick is expected to continue. Part of the voluntary disclosure program requires account holders to identify any other foreign institutions they have used, and also to identify all of those who helped the account holders conceal their accounts. By strategically timing its voluntary disclosure program in tandem with the Tax Division's civil and criminal litigation efforts, the Service was able to obtain significant additional information about those who have helped to facilitate tax fraud, information that is extremely important to tax administration and is expected to lead to additional investigations. Moreover, although hard to measure, the fact that foreign bank secrecy is no longer "secret" should improve voluntary compliance by dissuading many other taxpayers from attempting to maintain hidden offshore accounts in the first

have been consolidated by the court. For example, the 91 so-called Presidio cases pending in the Northern District of California, each involving a "Son of BOSS" tax shelter, facilitated by the same promoter, are treated as one group.

¹³ Before the IRS may serve a John Doe summons, it must obtain authorization from a federal district court judge in an *ex parte* court proceeding. At the court proceeding, the Government must establish that (1) the summons relates to the investigation of a particular person or ascertainable group or class of persons; (2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law; and (3) the information sought to be obtained from the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

instance. Put simply, the word is out that placing assets in foreign accounts no longer provides the protection from disclosure it once did.

In addition to filing the John Doe summons against UBS, Tax Division attorneys have sought and won judicial approval to use the John Doe summons process to gather information from credit card companies, credit card processors, and merchants where the cards were used. With this information the IRS will be able to identify thousands of persons who have credit, charge, or debit cards issued by or paid through banks in various foreign tax haven countries and who may be illegally hiding assets and income in offshore accounts. After the Tax Division obtained approval for the IRS to seek such information from PayPal, a large internet purchase payment company, the IRS opened investigations on more than 2,200 taxpayers, and more than 1,650 settled their resulting tax liabilities with the IRS. The government's victories in these cases not only helped gather necessary documents to identify customers seeking to hide behind a veil of secrecy, but the surrounding publicity reassures law-abiding taxpayers that the tax laws are being enforced.

The IRS is also looking into taxpayers who operate businesses, either online or from a physical location, and who have some or all of their gross sales income deposited directly into a bank account maintained outside the United States. As part of this effort, in *In re John Does (Summons to First Data)* (D. Colo.), the district court on April 15, 2009, issued an order authorizing service of a John Doe summons on First Data Corporation. First Data issues credit, debit, smart card, and stored-value cards, and also provides merchant-transaction processing services, internet commerce solutions, and check processing and verification services to financial institutions in thirty-seven countries, including the United States. The summons authorized by the court requests information regarding merchants that have entered into contractual relationships with First Data or its subsidiaries or affiliates, to deposit payment card sales to offshore merchant bank accounts.

Shutting Down Tax Scams and Fraudulent Return Preparers

The Tax Division has a successful injunction program that has shut down many tax-fraud promoters and fraudulent tax-return preparers. 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. Since the year 2000, the Tax Division has obtained injunctions against more than 500 tax-fraud promoters and return preparers. During FY 2010, the Division has litigated a number of significant injunction suits, including *United States v. Allen Davison* (W.D. Mo.), in which a court in May, 2010, barred Davison, a CPA who the court found had "deliberately advised his clients to break the law, and helped them go about doing so," from promoting a variety of tax-fraud schemes; *United States v. A. Blair Stover* (W.D. Mo.), in which a court in August, 2010, barred Stover, an attorney and equity partner in an accounting firm, from promoting a variety of improper tax schemes, which the court found, using a "very conservative estimate[]," had caused at least \$100 million in tax losses; and three related cases in Texas and Florida, *United States v. George Calvert* (M.D. Fla.), *United States v. Sally Hand-Bostick* (N.D. Tex.), and *United States v. Ronald Fontenot* (E.D. Tex.) in which, as of January, 2011, the Tax Division has obtained injunctions against 28 promoters and preparers who, according to the Government's complaints, have helped customers claim more than \$30 million in bogus federal income tax credits designed for producers of fuel from non-conventional sources.

The schemes the Division has enjoined during the past ten years cost the Federal Treasury billions in lost revenues and placed an enormous administrative burden on the IRS. If permitted to go unchecked, these schemes would undermine public confidence in the integrity of our tax system, and

require the IRS to devote substantial resources to detecting, correcting, and collecting the resulting unpaid taxes.

The Tax Division continues to encourage the Internal Revenue Service to attack these schemes at their source, by targeting and investigating the promoters before they attract more customers and require more IRS examination and collection activity. Division employees have helped train hundreds of Internal Revenue Service agents and lawyers about developing injunction and penalty cases against tax scam promoters.

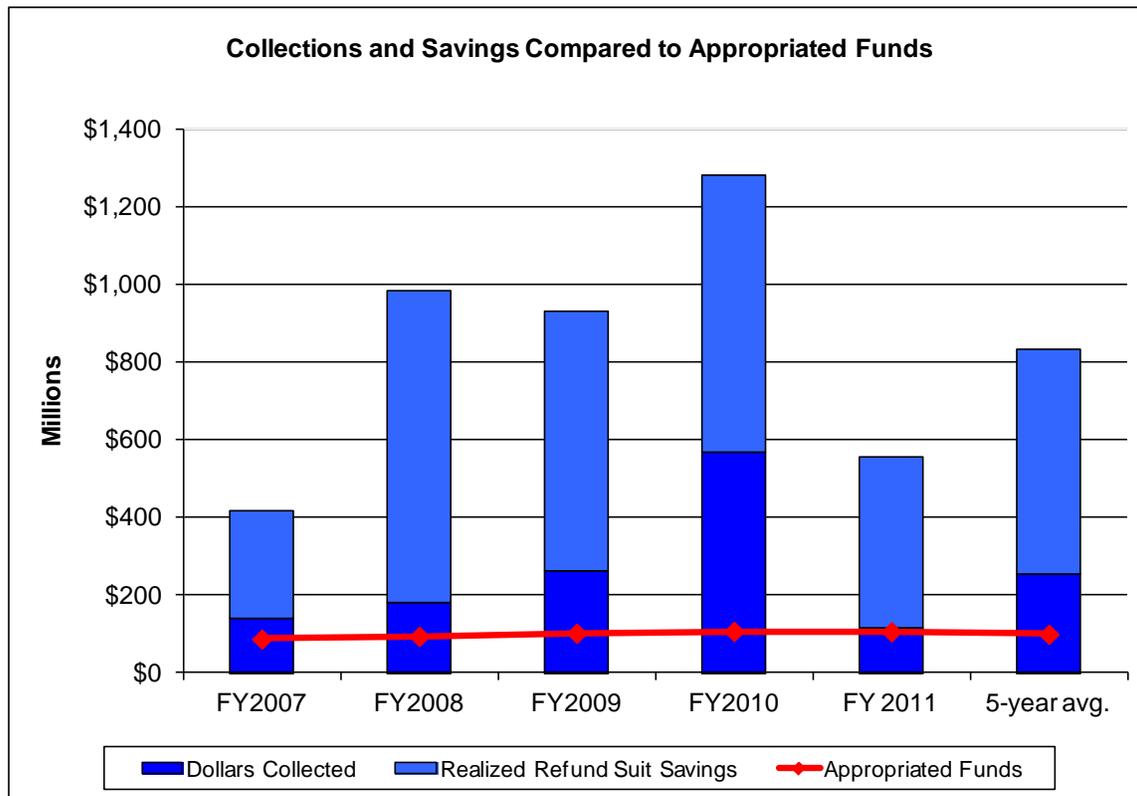
Assisting with IRS Information Collection and Examinations

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 seeking a court order to compel compliance with the summons. These judicial proceedings afford the government the ability to obtain information, while also providing important procedural and substantive rights to those affected by the summons. As the IRS increases its audit activity and criminal investigations and seeks more information from individuals who might be part of the Tax Gap, the Division anticipates being asked to enforce more of the sensitive and complicated summons cases that it currently handles.

The Tax Division's summons enforcement work in the past few years has been very effective. The Division spearheaded enforcing summonses aimed at identifying high-income taxpayers who were playing the audit lottery. For example, when prominent law firms and public accounting firms began marketing tax shelters to corporations and wealthy individuals, the firms rebuffed the IRS's requests for information that the firms were required by law to maintain and provide, essentially stalling as the clock ran out on the IRS.

Collecting Unpaid Taxes

The Division contributes significantly to closing the Tax Gap in its active civil litigation to collect tax debts. The focus and goal of this litigation is to enforce the tax laws and collect taxes that would otherwise go unpaid. Collection suits have a direct, and positive, effect on the Treasury. The Division typically collects more each year than its entire budget, as illustrated by the following chart. Given that the IRS only refers to the Tax Division tax debts that the IRS has been unable to collect through administrative means, the Division's efforts are a tremendous return on investment in collecting the most difficult debts.



While the direct return alone is impressive, the Division’s collection litigation also brings substantial indirect benefits. It assures honest taxpayers that those who engage in illegal activity will suffer the consequences while boosting voluntary compliance by warning scofflaws.

Defending the United States

Tax cases filed against the United States comprise nearly 71% of the Division’s caseload, both in the number of cases to be litigated and in the number of attorney work hours devoted to them each year. The Division has no choice but to defend these lawsuits, which include requests for refund of taxes, challenges to federal tax liens, claims of unauthorized disclosure, and allegations of wrongdoing by IRS agents. The Division’s representation of the government saves the Treasury hundreds of millions of dollars annually by retaining money that taxpayers seek to have refunded and by ensuring that spurious damages claims are denied. As of September 30, 2009, the Division was defending tax refund cases worth approximately \$10.1 billion to the Federal Treasury.¹⁴

Many of these refund suits, like the sophisticated tax shelter cases described earlier, involve issues that affect many individual taxpayers and involve large sums. For example, the Tax Division is currently litigating the issue whether universal service support payments received by taxpayers in the telecommunications industry are to be treated as taxable income, or may be treated as nontaxable contributions to capital. The United States has prevailed on this issue in *United States v. Coastal Utilities, Inc.* (11th Cir. 2008), and in *AT&T, Inc. v. United States* (5th Cir. 2011). The same issue is at stake in *Sprint Nextel v. United States* (D. Kan.). Although less than \$2 million was at issue in *Coastal Utilities*, and about \$500 million in *AT&T*, billions of tax dollars are at stake administratively within the

¹⁴ See IRS 2009 statistics, www.irs.gov/taxstats/article/0,,id=211513.00.html, Table 27.

telecommunications industry, and the precedent resulting from these cases may have a broader impact since the contrived interpretation of “capital contributions” advocated by the taxpayers is appearing in other industries as well. The IRS estimates that, if the Tax Division is not able to develop case law supporting the Government’s position on this issue, the Federal Treasury will have to pay billions of dollars in refunds, and will cease to collect billions more in future years.

Civil Appellate Cases

The Tax Division’s appellate attorneys represent the United States in all appeals involving federal tax statutes in the United States courts of appeals and their state government equivalents (except for appeals from the Southern District of New York). The Division’s appellate attorneys also assist the Solicitor General of the United States by preparing initial drafts of pleadings and briefs in tax cases filed in the Supreme Court. The Division likewise closely reviews all adverse decisions entered by the lower courts in tax cases to determine whether the government should appeal, and prepares a recommendation to the Solicitor General. The appellate section generally recommends appeal only in those cases where there is a substantial likelihood the government will ultimately prevail or where an important principle is at stake. Careful review of these cases not only ensures that Department resources are spent wisely on only meritorious appeals, but also advances the Tax Division’s mission of promoting the fair and correct development, and uniform enforcement of the federal tax laws.

During FY 2010, the Appellate Section won (in whole or in part) over 97% of the taxpayer appeals. Among the most important recent Appellate victories is *Sala v. United States* (10th Cir. 2010), a Government appeal in which the court reversed the adverse judgment of the district court in a Son-of-BOSS tax shelter case. The court held that when a complex, multi-step transaction is designed to generate tax losses, each component of the transaction must be imbued with economic substance to pass muster for tax purposes. In *Stobie Creek Investments v. United States* (Fed. Cir. 2010), another Son-of-BOSS tax shelter case, the court affirmed the favorable judgment of the Court of Federal Claims on similar reasoning. In another Government appeal, *Lantz v. Commissioner* (7th Cir. 2010), the court reversed the reviewed, adverse decision of the Tax Court and sustained the validity of a Treasury regulation that imposed a two-year time limitation on seeking equitable innocent-spouse relief. And in *Bluetooth SIG Inc. v. United States* (9th Cir. 2010), the court affirmed the favorable judgment of the district court determining that Bluetooth is not exempt from federal income taxation as a non-profit business league, board of trade, or similar organization.

CRIMINAL PROSECUTIONS AND APPEALS

The Tax Division authorizes, and either conducts or supervises, almost all prosecutions arising under the federal tax laws.¹⁵ The Division’s twin criminal goals are to prosecute criminal tax violations and to promote a uniform nationwide approach to criminal tax enforcement. In many cases, the Tax Division receives requests from the IRS to prosecute tax violations after the IRS has investigated them administratively. In other cases, the IRS asks the Tax Division to authorize grand jury investigations to determine whether prosecutable tax crimes have occurred. Tax Division prosecutors review, analyze, and evaluate these referrals to assure that uniform standards of prosecution are employed and that criminal tax violations warranting prosecution are prosecuted. After the Division authorizes tax charges, the cases are handled either by a United States Attorney’s Office (USAO) or, in complex or multi-jurisdictional cases or cases in which the USAO is recused or requests assistance, by the Tax Division’s

¹⁵ The Tax Division does not review or supervise most excise tax cases, which are the responsibility of the Criminal Division.

experienced prosecutors. In addition to their substantial litigation caseloads and review work, Tax Division prosecutors also conduct training seminars for IRS criminal investigators and Assistant U.S. Attorneys and often provide advice to other federal law enforcement personnel, including the DEA and FBI.

Criminal workload has grown primarily due to an increasing number of complex cases. The sophistication of the Tax Division's criminal cases has increased steadily over the past few years. A greater proportion of the cases involve high net-worth taxpayers and tax professionals who sell and implement complex tax products. During FY 2010, Division criminal attorneys obtained indictments in 77 cases and convictions in 109 cases.

The Tax Division's criminal trial attorneys investigate and prosecute individuals and corporations that attempt to evade taxes, willfully fail to file returns, submit false tax forms, or otherwise violate the federal tax laws. They also investigate and prosecute tax violations that have been committed along with other criminal conduct, such as securities fraud, bankruptcy fraud, health care fraud, organized crime, public corruption, mortgage fraud, and narcotics trafficking. In addition, Tax Division attorneys investigate and prosecute domestic tax crimes involving international conduct, such as the illegal use of offshore trusts and foreign bank accounts to conceal taxable income and evade taxes. They also conduct terrorism-related and Organized Crime and Drug Enforcement Task Force (OCDETF) criminal investigations, and prosecute organizers of internet scams.

The Tax Division's Criminal Appeals and Tax Enforcement Policy Section (CATEPS) conducts appeals in criminal tax cases prosecuted by Division attorneys and supervises appeals in matters tried by the USAOs around the country. Similar to the initial review of tax cases by criminal trial attorneys, the appellate review plays a vital role in promoting the fair, correct, and uniform enforcement of the internal revenue laws. CATEPS also assists in negotiating international tax assistance treaties and in researching policy issues, such as the application of the sentencing guidelines.

“Pure Tax Crimes”

The core of the Tax Division's criminal work involves so-called “legal source income” cases. These cases encompass tax crimes involving unpaid taxes on income earned legally (*e.g.*, a restaurateur who skims cash receipts or a doctor who inflates deductible expenses.) When these cases involve difficult issues of tax law or complex methods of proof, United States Attorneys' Offices often call upon the special skills that Tax Division prosecutors bring to the Justice Department's goal of combating financial fraud and reducing white-collar crime.

Evasion of taxes on income from legal sources significantly erodes the federal tax base. The Division's enforcement activities are a strong counter to that erosion, providing a significant deterrent to those who contemplate shirking their tax responsibilities. These prosecutions often receive substantial local press and media coverage and assure law-abiding citizens who pay their taxes that tax cheats are not getting away with it. The government's failure to vigorously prosecute such cases would undermine the confidence of law-abiding taxpayers and jeopardize the government's ability to operate a revenue collection system whose cornerstone is voluntary compliance.

During the past year, Division attorneys investigated and/or prosecuted cases involving tax crimes committed by individuals from all walks of life, including corporate executives, business owners, attorneys, doctors, dentists, movie actors, and others.

In January 2010, in *United States v. Pradeep Srivastava*, (D. Md.), the defendant, a cardiologist, was sentenced to nearly four years in prison, based on his conviction for tax evasion and filing a false

tax return. The defendant attempted to evade more than \$16 million in income taxes by filing false income tax returns that failed to report approximately \$42 million in capital gains.

In November 2010, in *United States v. John F. Heard, et al.* (S.D. TX), John F. Heard Jr., Janet F. Heard, and Gary L. Lambert, along with Superior Protection Inc. (SPI), were convicted by a federal jury of conspiracy to defraud the United States of employment taxes totaling more than \$5.7 million. According to court records, from 1987 to 2004, John Heard operated numerous security companies and failed to pay employment taxes of over \$5 million. He and his co-conspirators impeded the ability of the IRS to assess and collect the taxes by opening and closing numerous corporations and using fictitious names on tax returns, corporate documents, bank documents, and payroll checks.

In November 2010, in *United States v. James Demuro, et ux.* (D.N.J.), a jury found James and Theresa Demuro guilty of conspiracy to defraud the United States and twenty-one counts of willful failure to pay over employment taxes in Trenton, New Jersey. The indictment alleges that the Demuros withheld, but failed to pay over, approximately \$500,000 in trust fund taxes from 2002 through 2008. James and Theresa Demuro diverted the withheld employment taxes to pay for business and personal expenses.

Combating Offshore Tax Schemes

The Tax Division continues to play a lead role in investigations and prosecutions involving the use of foreign tax havens. Increased technical sophistication of financial instruments and the widespread use of the internet have made it easy to instantly move money in and out of the United States, around the world, irrespective of national borders. Using tax havens facilitates evasion of U.S. taxes and the commission of related financial crimes.

Offshore tax schemes are often difficult to detect and prosecute, so the IRS has allocated resources to target taxpayers who engage in offshore activity for the purpose of underreporting income. Income tax evaders and other criminals use banks located in countries that have strict bank secrecy laws and that will not, or cannot, provide assistance to investigators for the United States. Sophisticated criminals may also use non-traditional tax haven countries, such as Latvia. Despite these difficulties, the Division has been successful in prosecuting these tax cheats.

In February 2009, in *United States v. UBS AG* (S.D. Fla.), UBS AG, Switzerland's largest bank, entered into a deferred prosecution agreement, admitting guilt on charges of conspiring to defraud the United States by impeding the IRS. As part of the agreement, UBS, based on an order by the Swiss Financial Markets Supervisory Authority, agreed to immediately provide the United States with the identities of, and account information for, a number of United States customers of UBS's cross-border business. Under the agreement, UBS exited the business of providing banking services to United States customers with undeclared accounts and paid \$780 million in fines, penalties, interest, and restitution.

The prosecution results so far have been encouraging. As of January, 2011, approximately 150 grand jury investigations of UBS clients have been initiated, 24 cases have been charged with 6 awaiting trial, 18 guilty pleas having been entered and a number of facilitators who helped clients hide assets offshore have been indicted. In addition, grand jury investigations have been opened into 8 additional offshore banks across the world, with 3 clients already convicted (two after lengthy jury trials) and a number of facilitators who helped clients hide assets offshore at those banks having been indicted. For example, in August, 2009, in *United States v. Bradley Birkenfeld, et. al.*, (S.D. Fla.), Birkenfeld, a former UBS banker, was sentenced to 40 months in prison following his June 2008, guilty plea to conspiring with an American billionaire real estate developer, Swiss bankers, and his co-defendant,

Mario Staggl, to help the developer evade paying \$7.2 million in taxes by assisting in concealing \$200 million of assets in Switzerland and Liechtenstein. In his plea Birkenfeld admitted that between 2001 and 2006, while employed as a director in the private banking division of Swiss bank UBS, he routinely traveled to and had contacts within the United States to help wealthy Americans conceal their ownership in assets held offshore and evade paying taxes on the income generated from those assets. In August 2009, in *United States v. Hansruedi Schumacher, et al.* (S.D. Fla.), a grand jury returned an indictment charging the defendants with conspiracy to defraud the United States. Schumacher allegedly worked as an executive manager at Neue Zuercher Bank ("NZB"), a Swiss private bank located in Zurich, while Rickenbach allegedly worked as a Swiss attorney who provided legal advice and services to U.S. clients. Schumacher and Rickenbach allegedly assisted American clients in concealing income and assets in Switzerland from United States authorities, by creating false and nominee offshore entities to hide the assets while their clients retained control over investment decisions, by serving as cash couriers for their clients, and by creating sham documents to disguise ownership and repatriation.

The Division continues to prosecute UBS clients, using information obtained through the deferred prosecution agreement. For example, in April 2010, in *United States v. Harry Abrahamsen* (D.N.J.), the defendant pleaded guilty to failing to file a Report of Foreign Bank and Financial Account (FBAR) on income he earned on a UBS bank account, and underreporting personal and business income, resulting in a tax loss of between \$325,000 and \$550,000. Also in April 2010, in *United States v. Paul Zabczuk* (S.D. Fla.), the defendant pleaded guilty to filing a false tax return on which he failed to report an offshore UBS bank account and also failed to report income earned on that account. And in April 2010, in *United States v. Jack Barouh* (S.D. Fla.), the defendant was sentenced to 10 months in jail for filing a false 2007 tax return in which he failed to report his financial accounts at UBS. The tax loss associated with two of the accounts approximated \$736,269. In November 2010, in *United States v. Jeffrey Chatfield* (S.D. Cal.), Chatfield pleaded guilty to filing a false tax return related to a Swiss bank account that he maintained at UBS. According to court documents and statements made in court, Chatfield used a series of offshore banks to conceal nearly \$1 million in accounts held in the names of nominee entities.

Prosecutions have not been limited to bankers and UBS customers. In December 2010, in *United States v. Renzo Gadola* (S.D. Fla.), Gadola pleaded guilty to conspiring to defraud the United States. Gadola is a citizen and resident of Switzerland and worked at UBS AG as a private banker from approximately 1995 to 2008. Gadola is a registered investment advisor with the SEC and currently works as an independent investment advisor in Switzerland. According to the charging document, Gadola worked with a former UBS banker to manage undeclared accounts for United States clients. The former UBS banker refused to travel to the United States out of concern of being arrested due to his cross-border banking activities, so the two arranged that Gadola would travel to the United States to meet with the clients. On November 6, 2010, Gadola met in a Miami hotel with a Mississippi client of the former UBS banker. The client had an undeclared account at Basler Kantonalbank, a regional bank in Switzerland. Gadola advised one client not to disclose his account at Basler Kantonalbank to United States authorities, indicating that the likelihood that anyone would find out about the account was "practically zero percent" and that there was no "paper trail" associated with the account. Gadola was arrested on November 8, 2010.

In October 2010, a jury found defendants Mauricio Cohen-Assor and his son, Leon Cohen-Levy, guilty on charges they conspired to defraud the United States, in *United States v. Cohen-Assor, et al.* (S.D. Fla.). The defendants, who were developers and owners of several residential hotels, made extensive use of nominee entities formed in tax haven jurisdictions, including the Bahamas, the British

Virgin Islands, Panama, Liechtenstein and Switzerland, and an account opened at a private bank affiliated with a large international banking firm, all in order to defraud the United States concerning, among other things, taxes pertaining to \$33 million in capital gains.

Prosecuting Abusive Promotions

The Division is actively engaged in prosecuting the promotion or use of fraudulent tax shelters and other schemes to evade taxes and hide assets. The number of taxpayers who use these bogus schemes to improperly reduce, or totally evade, their federal income tax liabilities has increased significantly in recent years. 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.

In January, 2011, in *United States v. Homer Richardson* (S.D. Ohio), Richardson was sentenced to 30 months in prison after having pleaded guilty to corruptly impeding the due administration of the tax laws and to four counts of filing false tax returns for himself and others. Richardson marketed and sold to high-net-worth taxpayers sham domestic and foreign trusts through the Aegis Company. The Chicago-based Aegis investigation has resulted in nationwide convictions of more than 30 defendants, with charges pending against approximately 30 other defendants around the country.

In October 2009 and April 2010, in *United States v. David Plummer, et al.* (D. Ore.), David Plummer, Spencer Plummer, Terry Green, and John Parrott, each pleaded guilty to conspiracy to defraud the United States. The defendants operated, through ClassicStar, LLC, a tax shelter called the Mare Lease Program. The shelter purported to take advantage of a provision of the Tax Code allowing taxpayers who are engaged in a farming activity, in this case breeding thoroughbred horses, to fully deduct prepaid expenses in the year that the expenses are incurred. Taxpayers were wealthy investors who paid only 10% of the supposed breeding expenses in cash and borrowed the rest from a bogus lender. Investors nationwide claimed false farming expenses in the amount of \$595,727,692.

In April 2010, in *United States v. Michael C. Cooper* (D. Kan.), the defendant was sentenced on tax and other charges to 20 years in prison, forfeiture of \$75 million in assets, and restitution to the IRS of \$10.5 million, for his conviction on multiple charges including conspiracy, mail fraud, wire fraud, and money laundering. Cooper was the ringleader of Renaissance, the Tax People, a multilevel marketing company that specialized in selling home-based business packages that falsely promised tax benefits. Cooper and others conspired to defraud Renaissance customers of \$70,000,000, and conspired to defraud the IRS through various means, including the preparation of false federal income tax returns.

Return-Preparer Fraud

Corrupt accountants and unscrupulous tax return preparers present a serious law enforcement concern. Some accountants and return preparers dupe unwitting clients into filing fraudulent returns, while others serve as willing “enablers,” providing a veneer of legitimacy for clients predisposed to cheat. In either case, the professionals often commit a large number of frauds, and their status as professionals may be perceived as legitimizing tax evasion, thereby promoting disrespect for the law. Tax Division attorneys vigorously investigate and prosecute such cases. During the 2010 filing season,

the Division aggressively supported an IRS' return preparer initiative designed to educate return preparers and detect and prosecute unlawful schemes and wrongdoers.

For example, in August 2010, in *United States v. Stephen A. Favato* (D.N.J.), a jury convicted Favato, a tax partner in the Woodbridge, New Jersey, office of BDO Seidman, L.L.P., of corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue laws and willfully aiding and assisting in the preparation and filing of a false tax return. The indictment alleged that Favato counseled his client, the president of a fragrance manufacturer for which Favato and his firm prepared corporate income tax returns, to have his employer reduce his salary payments significantly and to have this compensation paid to the client's limited liability company in the form of purported lease payments for the client's yacht, when in fact the employer had not leased the yacht. This enabled the client to fraudulently deduct personal yacht expenses as business expenses. In addition, Favato advised his client on how to fraudulently eliminate a portion of the gains on properties that he sold and to report inflated charitable contributions.

In September 2010, in *United States v. Catherine Senninger* (D.Co.), Senninger was sentenced to 36 months in prison based on a jury's verdict of guilty on mail fraud false claims charges. According to court records, Senninger was a former tax auditor for the IRS who became the tax preparer for Olympia Financial and Tax Services. Senninger helped taxpayers submit over 100 false amended federal tax returns seeking refunds totaling approximately \$250,000 and 100 false amended state tax returns seeking refunds totaling approximately \$50,000.

National Tax Defier Initiative

To reaffirm and reinvigorate the Tax Division's commitment to investigate, pursue, and, where appropriate, prosecute those who take action to defy and deny the fundamental validity of the tax laws, in April 2008, the Tax Division launched the National Tax Defier Initiative.

One of the goals of the Initiative is increased coordination among IRS, Treasury Inspector General for Tax Administration (TIGTA), and the Tax Division. This coordination allows new or recycled tax defier schemes and arguments to be quickly identified and a global, coordinated strategy developed. For example, soon after the announcement of the Initiative, a working group of DOJ and IRS representatives was convened to develop a response to an increase in the use of false IRS Forms 1099 as a harassment tool against state and federal government employees. Further, in June 2009, the Tax Division hosted a law enforcement summit related to the so-called redemption scheme, an ongoing and growing nationwide tax defier scheme.

In March 2010, two promoters of tax defier schemes were convicted in separate cases. In *United States v. Carel A. Prater* (M.D. Fla.), Prater was convicted of tax crimes arising out of a fraudulent scheme to sell services that he claimed would legally remove his customers from the federal tax system. He also advised his customers to conceal assets and income from the IRS by using shell limited liability companies and unincorporated business trust organizations and by transferring ownership of assets to nominees. In June 2010, the court sentenced Prater to 28 years in prison and ordered restitution to the IRS of \$440,069. In *United States v. Joseph Sweet, et al.* (M.D. Fla.), Sweet and Jack Malone were convicted by a jury of conspiracy, impeding the IRS, and criminal contempt. The defendants promoted various illegal tax schemes, including the use of abusive unincorporated business trust organizations. In June 2010, the court sentenced Malone to 60 months in prison. In October 2010, the court sentenced Sweet to 10 years in prison.

In September 2010, in *United States v. Mark and Sharon Hopkins* (D.N.M.), a jury convicted emergency room physician Mark E. Hopkins and his wife, Sharon J. Hopkins, of multiple counts of tax evasion for concealing their income from the IRS. Dr. Hopkins allegedly directed that the staffing company that employed him make his paychecks, totaling \$3,049,229.00, payable to “Shalom Enterprises.” The couple used sham entities that they called “pure trusts” to hide their income. The couple also set up bank accounts using fictitious EINs (employer identification numbers), sent threatening letters to the IRS, and filed documents in which Dr. Hopkins claimed to be a citizen of the Republic of Texas and Mrs. Hopkins claimed to be a citizen of the New Mexico Republic.

In October 2010, in *United States v. Claudia Hirmer, et al.* (N.D. Fla.) a federal judge in Pensacola, Florida, sentenced Mark and Claudia Hirmer to 15 and 20 years in prison, respectively. A jury found them guilty of tax, wire fraud, and money laundering charges following a month-long trial. The defendants promoted fraudulent schemes under the umbrella organization Pinnacle Quest International (PQI). Some of the PQI vendors, such as Southern Oregon Resource Center for Education (SORCE), sold bogus strategies for tax evasion. For fees starting at \$10,000, SORCE assisted its customers in creating a series of sham business entities in the United States and Panama. Other tax-related PQI vendors denied the legitimacy of the income tax system and provided customers with a purported “reliance defense” that consisted of a paper trail of frivolous correspondence. Another PQI vendor, MYICIS, operated a computerized “warehouse bank” that allowed its clients to hide their assets. MYICIS had over 3,000 clients and close to \$100 million in deposits over three years.

In August 2010, in *United States v. Eddie Ray Kahn, et al.* (D.D.C.), the court sentenced Kahn, the leader of the Florida-based American Rights Litigators/Guiding Light of God Ministries, to serve 20 years in prison for developing and selling tax defier schemes to more than 4,000 customers. These customers were located in all fifty states, the District of Columbia, and several foreign countries. The tax defier schemes consisted mainly of false and fictitious documents, which were mass produced and mailed to government offices across the United States, especially to the IRS and the United States Treasury.

Individuals who have been convicted of tax defier schemes include not just promoters, but also customers. For example, in April 2010, in *United States v. Lindsey Springer, et al.* (N.D. Okla.), Springer, a businessman, and Oscar Amos Stilley, an attorney, were each sentenced on tax charges to 15 years in prison, upon their conviction for conspiracy, tax evasion and failure to file tax returns. Springer earned income by assisting individuals in their civil and criminal interactions with the Internal Revenue Service but, in an attempt to evade his federal income tax responsibilities, he characterized his earnings as donations. Stilley conspired with Springer to evade the assessment, payment, and collection of Springer’s federal income taxes by allowing Springer to use Stilley’s credit card and lawyer trust account.

In November 2009, a Las Vegas businessman who espoused tax defier arguments was sentenced to 15 years in prison in *United States v. Robert Kahre, et al.* (D. Nev.) Following a three-month trial in August 2009, Kahre and three others were convicted of multiple felony tax crimes, including conspiracy to defraud the IRS, tax evasion, and hiding assets from the IRS. Between 1997 and 2003, Kahre owned and operated six construction businesses with hundreds of employees and provided a payroll service to approximately 35 other construction contractors. Robert and Lori Kahre devised and used a payroll scheme that concealed and disguised the true amount of income received by his employees and the employees of the companies for which he provided payroll services. During the course of the scheme,

cash wages of at least \$25 million were paid to Robert Kahre's employees and cash payments of approximately \$95 million were paid to employees of the other contractors. No federal tax withholdings were made from the pay checks, and the wages were not reported to the IRS.

War on 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 the U.S. Attorney's 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 to lead teams of attorneys 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 Tax 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.

Prosecutions of the promoters of fraudulent tax schemes include cases involving accountants and attorneys at national firms. In December 2009, in *United States v. Michael Parker* (S.D. Ohio), the defendant pleaded guilty to conspiracy to defraud the United States by claiming more than \$240 million in fraudulent deductions related to an illegal tax shelter. Parker, the chief operating officer of an investment company, admitted to conspiring with Daryl Haynor, an accountant who was a KPMG tax partner, and Jon Flask, an attorney, to defraud the IRS with regard to the tax shelter transactions.

In January 2010, in *United States v. Robert Coplan, et al.* (S.D. N.Y.), Coplan and Martin Nissenbaum were sentenced to 36 and 30 months in prison, respectively. Richard Shapiro and Brian Vaughn were sentenced to 28 months and 20 months in prison, respectively. In May 2009, Robert Coplan, Martin Nissenbaum, Richard Shapiro, and Brian Vaughn, each a current or former partner of the accounting firm Ernst & Young (E&Y), were found guilty following a ten-week jury trial of conspiracy, tax evasion and other charges relating to the design, marketing and implementation of tax shelters sold by E&Y. All four defendants, as members of E&Y's national individual tax shelter group led an effort to design and market tax shelter transactions used by wealthy individuals to eliminate, reduce, or defer tax liabilities on annual income that generally exceeded \$10 or \$20 million. Between 1999 and 2002, tax shelter transactions implemented by the defendants and their co-conspirators generated billions of dollars in non-economic or paper tax losses that were used to offset actual income or gain recognized by the firm's clients. The defendants and their co-conspirators, which included tax, accounting and financial industry professionals, and law firms, designed, implemented, and defended the transactions in ways intended to conceal the true facts and circumstances from the IRS.

In January 2011, in *United States v. John Ohle and William Bradley* (S.D.N.Y.) a federal court sentenced John Ohle to five years in prison and sentenced William Bradley to one year in prison for conspiracy to defraud the IRS and to commit bank fraud and wire fraud. On June 2, 2010, a jury convicted the pair. The jury also found Ohle guilty of tax evasion. Ohle, an attorney and CPA, was the former head of the Chicago office of a bank's estate and tax planning group for high net worth

individuals. Ohle and others created and sold a fraudulent tax shelter called HOMER (short for “Hedged Options Monetization of Economic Remainder”). The HOMER shelter generated more than \$400,000,000 in phony losses and evaded more than \$100,000,000 in taxes. Ohle, Bradley, and others fraudulently obtained HOMER referral fees by submitting over \$1.2 million in false invoices that fraudulently claimed entitlement to referral fees in a number of HOMER transactions, when in fact they had nothing to do with those transactions.

Mortgage fraud is a growing part of the Tax Division’s criminal case load. For example, in July 2010, in *United States v. Thomas E. Parenteau, et al.* (S.D. Ohio), a jury convicted Parenteau of 11 counts of conspiracy and money laundering related to negotiating and participating in real estate deals in which he and his co-defendants sold luxury homes for a falsely inflated purchase price from the builder in exchange for an undisclosed or disguised kickback. In many of the transactions, the buyers misrepresented their income and assets in order to obtain financing of the inflated purchase price. This scheme was designed to defraud lending institutions out of millions of dollars. Parenteau is awaiting sentencing.

Illegal Source Income

Tax Division attorneys also play significant roles in investigating and prosecuting tax violations committed in the course of other criminal conduct. Where criminals evade taxes on income from illegal sources, tax charges provide a valuable complement to charges for the underlying criminal activity.

In October 2009, in *United States v. Sims Lawson, Jr.* (N.D. Ala.), Lawson was sentenced to 70 months in prison for three counts of filing false tax returns in connection his failure to report income he embezzled from an estate that he managed. In August 2009, in *United States v. Shirland Fitzgerald* (W.D. Va.), following a jury trial, Fitzgerald, who operated a car dealership, was sentenced to 140 months’ imprisonment and forfeited \$1 million. Fitzgerald had used a complex scheme involving nominee purchasers, fictitious receipts and bills of sale, and structuring of cash deposits, to launder drug dealers’ drug proceeds through the sale of luxury automobiles.

International Cooperation to Investigate Evasion of U.S. Taxes

The Tax Division regularly provides advice and assistance to United States Attorneys and IRS agents seeking extradition, information, and cooperation from other countries for both civil and criminal investigations and cases. Occasionally, the Tax Division provides assistance to attorneys from other agencies and offices of the United States government, including the Federal Bureau of Investigation, the Securities and Exchange Commission, and the Department of Homeland Security. The Tax Division is also working closely with IRS Criminal Investigation - International to develop a nationwide continuing professional education class for Special Agents concerning international tax matters.

In addition, the Tax Division 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 both with France and Canada in an effort to improve the exchange of information under our income tax treaties with those countries. The Division periodically hosts visiting delegations of tax officials from countries interested in learning more about federal tax enforcement in the United States. The Division continues to work to increase cooperation between the United States and countries in Latin America and the Caribbean by providing instructors for the International Law Enforcement Academy in El Salvador.

The Tax Division is an important partner in the U.S. negotiating team for Double Taxation Conventions, Tax Information Exchange Agreements, and other international agreements concerning tax information. Recently, the Tax Division participated in the historic negotiations that led to the signing of Tax Information Exchange Agreements with the Principality of Liechtenstein and with Gibraltar. The Tax Division is also involved in negotiations with the governments of Switzerland and Luxembourg concerning historic changes to the exchange of information provisions in our income tax treaties with those countries. Other negotiations are ongoing.

Civil/Criminal Coordination

Finally, as part of its effort to stop abusive tax scheme promotions, the Division uses parallel civil and criminal proceedings, to pursue both civil injunctions and criminal prosecutions against those who promote illegal schemes. To ensure that the IRS and Division attorneys make maximum use of all available legal remedies, the Division has created a Special Counsel for civil/criminal coordination. The Special Counsel provides agents and attorneys with one-on-one assistance in handling parallel civil and criminal proceedings, leads an IRS-DOJ working group formed to promote better coordination of parallel proceedings, conducts training for IRS and Division attorneys, and participates in various bar panels. The Division also maintains an online resource library on criminal tax prosecutions and parallel proceedings.

Performance Tables

PERFORMANCE AND RESOURCES TABLE

Tax Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit/Program: GENERAL TAX MATTERS

DOJ Strategic Objective 2.6 Protect the federal fisc and defend the interests of the United States

WORKLOAD/RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2011		FY 2011		FY 2012 Enacted		Current Services Adjustments and FY 2013 Program Changes		FY 2013 Request	
Workload:											
CRIMINAL	1. Number of Cases received from the IRS and USAO for authorization and review	n/a		1,152		n/a		0		n/a	
CIVIL	Average Number of Significant Litigation Activities per Attorney-Work Year										
	1. Average Number of Appellate Cases Received	200		191							
Total Costs and FTE's *		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
(Brackets indicate reimbursement amount for OCDEF - not included in shown total)		582	\$104,877	570	\$103,988	582	\$104,877	-10	\$1,582	572	\$106,459
		[5]	0	[5]	0	0	0	0	0	0	0
TYPE/Strategic Objective	PERFORMANCE/RESOURCES	FY 2011		FY 2011		FY 2012 Enacted		Current Services Adjustments and FY 2012 Program Changes		FY 2012 Request	
Program Activity	CRIMINAL PROSECUTION & APPEALS - Total Costs & FTE	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		167	\$32,512	155	\$27,077	167	\$27,268	-4	\$411	163	\$27,679
Output	1. Number of Investigations Authorized	n/a		850		n/a		n/a		n/a	
Output	2. Number of Prosecutions Authorized	n/a		1,470		n/a		n/a		n/a	
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division	95%		97%		95%		0%		95%	
Program Activity	CIVIL LITIGATION & APPEALS - Total Costs & FTE	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		415	\$72,365	415	\$75,911	415	\$77,609	-6	\$1,171	409	\$78,780
Outcome	1. Civil Cases Successfully Litigated in the Trial Courts	90%		97%		90%		0%		90%	
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals	85%		96%		85%		0%		85%	
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals	60%		59%		60%		0%		60%	
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions) **	n/a		\$552		n/a		n/a		n/a	

Data Definition Validation, Verification, and Limitations

* Consolidation decision units (from 4 decision units to 1), with 2 program activities criminal and civil that each include appellate functions and a portion of M&A

** Actuals based on activities through September 30, 2006, excludes IRS cases not yet deferred, deterrent effect on other taxpayers, and amounts subsequently collected by the IRS administratively. efficiency when more

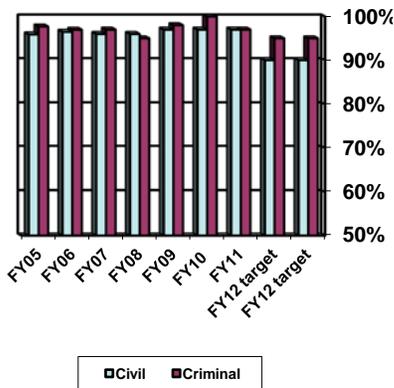
PERFORMANCE MEASURE TABLE

Decision unit: GENERAL TAX MATTERS											
Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY2011
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual
Program Activity	CRIMINAL PROSECUTION & APPEALS										
Output	1. Number of Investigations Authorized	655	568	628	664	757	693	751	883	n/a	850
Output	2. Number of Prosecutions Authorized	1,130	1,381	1,274	1,180	1,284	1,283	1,210	1381	n/a	2320
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division	96%	95%	98%	97%	100%	95%	98%	100%	95%	97%
Program Activity	CIVIL LITIGATION & APPEALS										
Outcome	1. Civil Cases Successfully Litigated in the Trial Courts	95%	95%	96%	96%	96%	95%	95%	96%	90%	97%
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals	93%	97%	95%	97%	99%	97%	96%	96%	85%	96%
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals	67%	78%	60%	78%	56%	68%	72%	60%	60%	59%
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	\$866.2	\$728.0	\$1,500.0	\$878.1	\$424.0	\$981.0	\$928.3	\$1,280.7	n/a	\$552.0

3. Performance, Resources, and Strategies

The General Tax Matters Decision Unit contributes to the Department’s Strategic Goal 2: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People. Within this Goal, the Decision Unit’s resources specifically address Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

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.

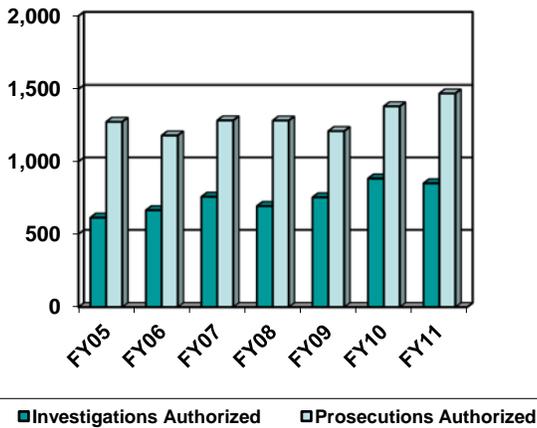
The goals of the Tax Division are to increase voluntary compliance, maintain public confidence in the integrity of the tax system, and promote the sound development of law.

Performance Measure 1: Percentage of Cases Favorably Resolved

FY 2011 Target: 90% for Civil Trial and 95% 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 2011, favorable outcomes were achieved in 97% of all civil and 97% of all criminal cases litigated by the Tax Division, including non-tax cases.

Investigation and Prosecution Referrals Authorized



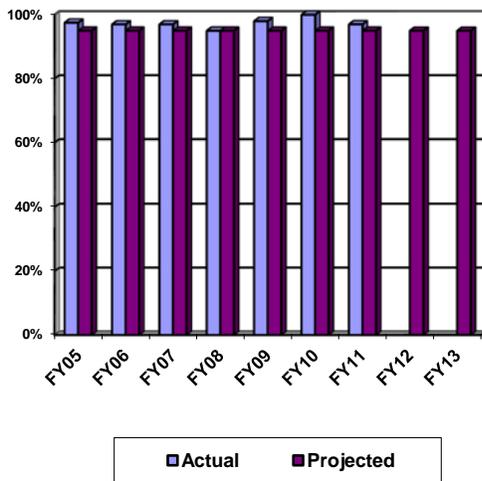
Performance Measure 2: Criminal Investigation and Prosecution Referrals Authorized

FY 2011 Target: N/A

Discussion: The Tax Division also measures the Number of authorized investigation and prosecution referrals in criminal cases. In FY 2011, the Division authorized 850 grand jury investigations and 1,470 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 2012 or FY 2013 performance goal for authorized investigations and prosecutions.

Success Rate for Criminal Tax Cases



Performance Measure 3: Success Rate for Criminal Tax Cases

FY 2011 Target: 95%

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 2011, the Division’s conviction rate was 97% in 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.

For FY 2011, FY 2012, and FY 2013, the Tax Division has established a conviction rate goal of 95%. While the Tax Division is very proud of its conviction rate, the emphasis is on uniform and fair enforcement of the tax laws.

Performance Measure 4: Civil Cases Successfully Litigated

FY 2011 Target: Trial Courts – 90%
 Taxpayer Appeals – 85%
 Government and Cross Appeals – 60%

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.

During the FY 2011, the Division won the following percentages of cases decided:

Trial Courts – 97%
 Taxpayer Appeals – 96%
 Government and Cross Appeals – 59%

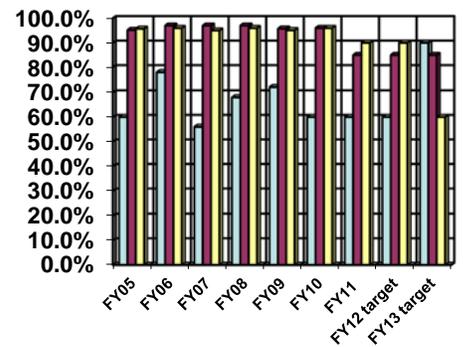
Performance Measure 5: Tax Dollars Collected and Retained

FY 2011 Target: N/A

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 2011, the Division collected \$112 million and retained \$440 million.

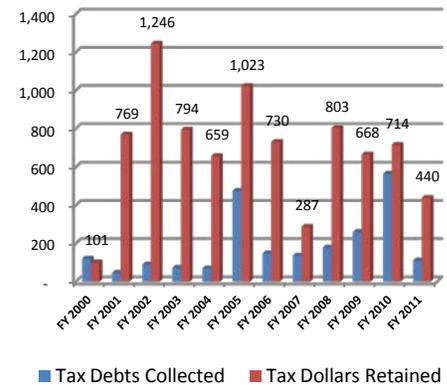
In addition to this measurable impact, the Division’s litigation affects the revenue at issue in many cases being handled administratively by the IRS, and determines tax liabilities of litigants for many tax years not in suit. Its litigation successes also foster overall compliance with the tax laws. 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.

Civil Cases Successfully Litigated [TAX]



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

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



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

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

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

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

a. Strategies to Achieve the FY 2013 Goals:

With the resources requested for FY 2013, the Division will concentrate on curtailing the activity of promoters, enablers, tax defiers, and tax professionals (including return preparers, accountants, and lawyers) who help others avoid taxes illegally. 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. With the implementation of the strategies discussed below, the Tax Division will be well positioned to meet or exceed the Departmental outcome measure, "Percentage of Cases Favorably Resolved." To grow and retain its experienced-attorney workforce, the Division will continue to promote in-house training, both formal and informal, and to foster a collegial and professional work culture in which attorneys are encouraged to assume responsibility for increasingly sophisticated litigation.

Civil Litigation

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.

The Tax Division defends the Federal Treasury against tax refund claims arising from complex and abusive corporate and individual tax shelters that are estimated to cost the Treasury billions of dollars annually. Individual cases frequently involve millions of dollars, and their outcomes affect many similarly situated taxpayers and issues.

The IRS received significant additional funding for enforcement efforts in FY 2009 and FY 2010, a large portion of which is dedicated to the IRS strategic plan goal, "Enhance Enforcement of the Tax Law." In addition to stepping up audits and investigations, the IRS is increasing its use of "settlement initiatives," under which the IRS publicly states the terms to which it would agree to resolve disputes concerning the taxes (and penalties and interest) owing as a result of specific abusive transactions. Tax Division litigation directly supports the effectiveness of IRS settlement initiatives. Its summons enforcement litigation has required shelter promoters to turn over customer lists and transaction documents, permitting the IRS to identify shelter participants who otherwise might evade detection. The civil John Doe summons enforcement proceeding against the Swiss bank UBS was a major factor in the successful IRS voluntary disclosure initiative, discussed earlier. In addition, the Division's litigation challenging the merits of abusive tax shelters allows the IRS to assert the credible threat that shelter participants will lose in court, thereby encouraging settlement on terms favorable to the Government.

The Division also has renewed efforts to target fraudulent tax schemes and those who create and promote them. The Division has obtained numerous injunctions against promoters of these schemes and has obtained enforcement of IRS administrative summonses seeking information and

documents about the schemes, their promoters and participants. During the last several years, the Division sued to enjoin dozens of tax-scheme promoters – who cost the Treasury billions of dollars each year by pushing bogus tax advice (*e.g.*, tax credits for slavery reparations; claims that income earned within the United States was not subject to federal taxation) over the internet and in the media – and has obtained court orders shutting down several multimillion-dollar schemes.

The Tax Division also deals with the fallout from abusive promotions, defending the Government in the hundreds of new cases brought each year that involve frivolous tax-defier claims – many of them the same claims targeted through the Division’s injunction suits. Vigorous and successful defense of these cases is essential to preserve public confidence in the tax system and to assure that honest taxpayers are not discouraged from voluntarily paying their taxes by the perception that those who engage in illegal tax-defier activity have “gotten away with it.” The Division works closely with the IRS to identify holders of bank accounts in offshore, tax haven countries that are used to evade taxes, thus facilitating the prosecution of account-holders who have committed U.S. tax law violations. As part of an IRS Offshore Compliance Initiative, the Tax Division has obtained court orders allowing the IRS to identify U.S. taxpayers who use credit cards issued by offshore banks in tax haven countries by obtaining data from major credit card companies, companies that process credit card transactions and merchants and retailers where the credit cards were used. The Division also handles collection and other enforcement actions against taxpayers identified through that initiative.

Criminal Enforcement

The Division’s criminal enforcement strategy is to vigorously and consistently enforce the criminal tax laws in order to punish offenders, deter future violations, and reassure honest taxpayers that they will not bear an undue share of the federal tax burden.

The Division’s criminal prosecution activity has matched the vigor of its civil litigation efforts, with a similar increased focus on abusive tax schemes and their promoters. The Division has obtained numerous convictions of promoters of large and complex schemes that were widely marketed. Several recent indictments of promoters illustrate the continuing commitment to resolving this growing problem. The schemes identified in these cases involve a variety of illegal practices, including the use of offshore accounts to evade taxes, the refusal by employers to pay withholding taxes on employee wages, bogus trust arrangements, and abusive tax shelters. Additionally, the Tax Division has redoubled its efforts to prosecute tax crime involving income from a legal source—such as the consultant who reports only part of his income, the restaurant owner who skims from the cash register, or the doctor who keeps two sets of bookkeeping records. The IRS estimates that hundreds of millions in tax revenue is lost yearly through the evasion of taxes on income from legal sources.

The Division also concentrates on several other types of tax law violations. Every year, the Division prosecutes a number of tax defiers who evade taxes and harass IRS employees. It also investigates and prosecutes tax violations occurring in the course of other criminal conduct, such as narcotics trafficking (supporting the Organized Crime and Drug Enforcement Task Force (OCDETF)), corporate fraud, securities fraud, bankruptcy fraud, health care fraud, mortgage fraud, organized crime, public corruption, and terrorism.

Program Offsets

Item Name: IT Savings

Budget Decision Unit: Legal Representation

Strategic Goal & Objective: 2.6 - Protect the federal fisc and defend the interests of the United States

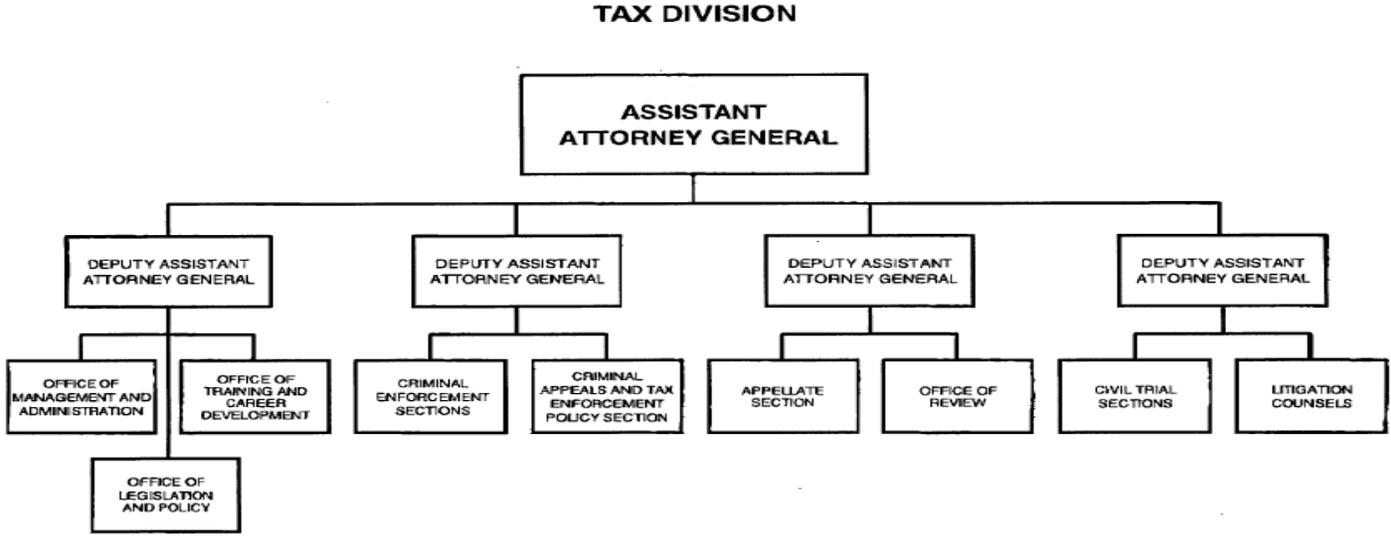
Ranking: N/A

Program Reduction: Dollars (\$106,000)

Description of Item

As part of its effort to increase IT management efficiency and comply with OMB's direction to reform IT management activities, the Department is implementing a cost saving initiative as well as IT transformation projects. To support cost savings, the Department is developing an infrastructure to enable DOJ components to better collaborate on IT contracting; which should result in lower IT expenditures. In FY 2013 the Department anticipates realizing savings on all direct non-personnel IT spending through IT contracting collaboration. These savings will not only support greater management efficiency within components but will also support OMB's IT Reform plan by providing resources to support major initiatives in Cybersecurity, data center consolidation, and enterprise e-mail systems.

A: Organizational Chart



Approved by: *Alberto R. Gonzales* Date: September 12, 2005
ALBERTO R. GONZALES
Attorney General

B: Summary of Requirements

Summary of Requirements
 Tax Division
 Salaries and Expenses
 (Dollars in Thousands)

	FY 2013 Request		
	Perm. Pos.	FTE	Amount
2011 Enacted	639	582	\$104,877
2012 Enacted	639	582	104,877
2012 Rescissions			
Total 2012 Enacted (with Rescissions)	639	582	104,877
Adjustments to Base			
Transfers:			
JCON and JCON/STS			261
Office of Information Policy (OIP) - to GA			(29)
Professional Responsibility Advisory Office (PRAO) - to WCF			(152)
Increases:			
Pay and Benefits			1,189
Domestic Rent and Facilities			419
Subtotal Increases	0	0	1,608
Decreases:			
Non-recurrence of Personnel	(16)	(10)	0
Subtotal Decreases	(16)	(10)	0
Total Adjustments to Base	(16)	(10)	1,688
Total Adjustments to Base and Technical Adjustments	(16)	(10)	1,688
2013 Current Services	623	572	106,565
Offsets:			
IT Savings			(106)
Total Program Changes			(106)
2013 Total Request	623	572	106,459
2012 - 2013 Total Change	(16)	(10)	1,582

NOTE: All FTE numbers in this table reflect authorized FTE, which is the total number of FTE available to a component. Because the FY 2013 President's Budget Appendix builds the FTE request using actual FTE rather than authorized, it may not match the FY 2012 FTE enacted and FY 2013 FTE request reflected in this table.

Summary of Requirements
 Tax Division
 Salaries and Expenses
 (Dollars in Thousands)

Estimates by budget activity	2011 Appropriation Enacted w/Rescissions			2012 Enacted			2013 Adjustments to Base and Technical Adjustments			2013 Current Services			2013 Increases			2013 Offsets			2013 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
General Tax Matters	639	582	104,877	639	582	104,877	(16)	(10)	1,688	623	572	106,565	0	0	0	0	0	(106)	623	572	106,459
Total	639	582	\$104,877	639	582	\$104,877	(16)	(10)	\$1,688	623	572	\$106,565	0	0	\$0	0	0	-\$106	623	572	\$106,459
Reimbursable FTE	0			0			0			0			0			0			0		
Total FTE	582			582			(10)			572			0			0			572		
Other FTE:																					
Total Comp. FTE	582			582			(10)			572			0			0			572		

C: Program Increases/Offsets By Decision Unit

FY 2013 Program Increases/Offsets By Decision Unit

Tax Division

(Dollars in Thousands)

Program Offsets	Location of Description by Decision Unit	General Tax Matters				Total Offsets
		Pos.	Agt./Atty.	FTE	Amount	
IT Savings	General Tax Matters	0	0	0	(106)	(106)
Total Offsets		0	0	0	(\$106)	(\$106)

D: Resources by DOJ Strategic Goal and Strategic Objective

**Resources by Department of Justice Strategic Goal/Objective
Tax Division
(Dollars in Thousands)**

Strategic Goal and Strategic Objective	2011 Appropriation Enacted		2012 Enacted		2013 Current Services		2013				2013 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s		
Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law												
2.6 Protect the federal fisc and defend the interests of the United States	582	104,877	582	104,877	572	106,565	0	0	0	(106)	572	106,459
Subtotal, Goal 2	582	104,877	582	104,877	572	106,565	0	0	0	(106)	572	106,459
GRAND TOTAL	582	\$104,877	582	\$104,877	572	\$106,565	0	\$0	0	(\$106)	572	\$106,459

E. Justification for Base Adjustments

Justification for Base Adjustments Tax Division

	<u>POS</u>	<u>FTE</u>	<u>Amount</u>
<u>Transfers</u>			
<u>Professional Responsibility Advisory Office:</u> The component transfers \$(<u>\$152,000</u>) for the Professional Responsibility Advisory Office (PRAO) into the General Administration appropriation will centralize appropriated funding and eliminate the current reimbursable financing process. The centralization of the funding is administratively advantageous because it eliminates the paper-intensive reimbursement process.	0	0	(152,000)
<u>Office of Information Policy:</u> The component transfers (<u>\$29,000</u>) for the Office of Information Policy (OIP) into the General Administration appropriation will centralize appropriated funding and eliminate the current reimbursable financing process. The centralization of the funding is administratively advantageous because it eliminates the paper-intensive reimbursement process.	0	0	(29,000)
<u>JCON and JCON S/TS:</u> A transfer of <u>\$261,000</u> is included in support of the Department's Justice Consolidated Office Network (JCON) and JCON S/TS programs which will be moved to the Working Capital Fund and provided as a billable service in FY 2013.	0	0	261,000
<u>Increases</u>			
<u>2013 Pay Raise.</u> This request provides for a proposed 0.5 percent pay raise to be effective in January of 2013. The increase only includes the general pay raise. The amount request, <u>\$283,000</u> , represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (<u>\$232,000</u> for pay and <u>\$51,000</u> for benefits.)	0	0	283,000
<u>Retirement.</u> Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on OPM government-wide estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 1.3 percent per year. The requested increase of <u>\$141,000</u> is necessary to meet our increased retirement obligations as a result of this conversion.	0	0	141,000
<u>Employees Compensation Fund.</u> The (<u>\$22,000</u>) increase reflects payments to the Department of Labor for injury benefits paid in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.	0	0	(22,000)
<u>FERS Rate Increase.</u> On June 11, 2010, the Board of Actuaries of the Civil Service Retirement System recommended a new set of economic assumptions for the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS). In accordance with this change, effective October 1, 2011 (FY 2012), the total Normal Cost of Regular retirement under FERS will increase from the current level of 12.5% of pay to 12.7%. The total FERS contribution for Law Enforcement retirement will increase from 27.0% to 27.6%. This will result in new agency contribution rates of 11.9% for normal costs (up from the current 11.7%) and 26.3% for law enforcement personnel (up from the current 25.7%). The amount requested, <u>\$115,000</u> , represents the funds needed to cover this increase	0	0	115,000
<u>Health Insurance.</u> Effective January 2013, this component's contribution to Federal employees' health insurance premiums increased by 10.4 percent. Applied against the 2011 estimate of <u>\$291,000</u> , the additional amount required is <u>\$357,000</u> .	0	0	357,000
<u>Changes in Compensable Days.</u> The decreased cost for one compensable day in FY 2013 compared to FY 2012 is calculated by dividing the FY 2012 estimated personnel compensation <u>\$267,000</u> and applicable benefits <u>\$48,000</u> by 261 compensable days.	0	0	315,000
<u>General Services Administration (GSA) Rent.</u> GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of <u>\$391,000</u> is required to meet our commitment to GSA. The costs associated with GSA rent were derived through the use of an automated system, which uses the latest inventory data, including rate increases to be effective in FY 2013 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provided data on the rate increases.	0	0	391,000

	<u>POS</u>	<u>FTE</u>	<u>Amount</u>
<u>Security Charges.</u> Guard Service includes those costs paid directly by DOJ and those paid to Department of Homeland Security (DHS). The requested increase of <u>\$28,000</u> is required to meet our commitment to DHS and other security costs.	0	0	28,000
Total Increase:	0	0	1,608,000
<u>Decreases</u>			
<u>Non-recurrence of Personnel</u>	-16	-10	0
Total Decrease:	-16	-10	0
Total ATB:	-16	-10	1,608,000

F: Crosswalk of 2011 Availability

Crosswalk of 2011 Availability

Tax Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit	FY 2011 Enacted Without Balance Rescissions			Balance Rescissions			Reprogrammings / Transfers			Carryover Amount	Recoveries Amount	2011 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount			Pos.	FTE	Amount
General Tax Matters	639	582	104,877	0	0	0	0	0	0	914	325	639	582	106,116
TOTAL	639	582	\$104,877	0	0	\$0	0	0	\$0	\$914	\$325	639	582	\$106,116
Reimbursable FTE		0												0
Total FTE		582			0			0						582
Other FTE		0			0			0						0
Total Compensable FTE		582			0			0						582

Footnotes:

Carryover: Funds were carried over from FY 2010 from ALS. The Tax Division brought forward \$914,000 from funds provided in 2010 from ALS.

Recoveries: Funding included \$325,000 in recoveries from ALS.

G: Crosswalk of 2012 Availability

Crosswalk of 2012 Availability

Tax Division
Salaries and Expenses
(Dollars in Thousands)

Decision Unit	FY 2012 Enacted Without Balance Rescissions			Balance Rescissions			Reprogrammings / Transfers			Carryover	Recoveries	2012 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Amount	Amount	Pos.	FTE	Amount
General Tax Matters	639	582	104,877	0	0	0	0	0	0	564	0	639	582	105,441
TOTAL	639	582	\$104,877	0	0	\$0	0	0	\$0	\$564	\$0	639	582	\$105,441
Reimbursable FTE		0			0			0					0	
Total FTE		582			0			0					582	
Other FTE		0			0			0					0	
Total Compensable FTE		582			0			0					582	

Carryover: Funds were carried over from FY 2011 from ALS. The Tax Division brought forward \$564,000 from funds provided in 2011 from ALS.

H: Summary of Reimbursable Resources

Summary of Reimbursable Resources

Tax Division
Salaries and Expenses
(Dollars in Thousands)

Collections by Source	2011 Enacted			2012 Planned			2013 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Internal Revenue Service	0	0	1,500	0	0	0	0	0	0	0	0	0
Debt Collection (3% Fund)	0	0	5,493	0	0	5,967	0	0	0	0	0	(5,967)
Budgetary Resources:	0	0	\$6,993	0	0	\$5,967	0	0	\$0	0	0	(\$5,967)

I: Detail of Permanent Positions by Category

Detail of Permanent Positions by Category
 Tax Division
 Salaries and Expenses

Category	2011 Enacted		2012 Enacted		2013 Request					
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	ATBs	Program Increases	Program Decreases	Total Pr. Changes	Total Authorized	Total Reimbursable
Personnel Management (200-299)	8		8						8	
Clerical and Office Services (300-399)	108		108						108	
Accounting and Budget (500-599)	9		9						9	
Attorneys (905)	377		377		(7)				370	
Paralegals / Other Law (900-998)	125		125		(9)				116	
Library (1400-1499)	1		1						1	
Information Technology Mgmt (2210)	11		11						11	
Total	639	0	639	0	(16)	0	0	0	623	0
Headquarters (Washington, D.C.)	611		611					0	597	0
U.S. Field	28		28						26	
Foreign Field								0	0	
Total	639	0	639	0	0	0	0	0	623	0

J: Financial Analysis of Program Changes

Financial Analysis of Program Changes

Tax Division
Salaries and Expenses
(Dollars in Thousands)

	General Tax Matters		Program Changes	
	IT Savings			
	Pos.	Amount	Pos.	Amount
Grades:				
SES			0	0
GS-15			0	0
GS-14			0	0
GS-13			0	0
GS-12			0	0
GS-11			0	0
GS-10			0	0
GS-9			0	0
GS-8			0	0
GS-7			0	0
GS-5			0	0
Total positions & annual amount	0	0	0	0
Lapse (-)	0	0	0	0
Other personnel compensation	0	0	0	0
Total FTE & personnel compensation	0	0	0	0
Personnel benefits			0	0
Travel and transportation of persons			0	0
Transportation of things			0	0
GSA rent			0	0
Communication, rents, and utilities			0	0
Printing			0	0
Advisory and assistance services		(106)	0	(106)
Other services			0	0
Purchases of goods & services from Government accounts			0	0
Research and development contracts			0	0
Operation and maintenance of equipment			0	0
Supplies and materials			0	0
Equipment			0	0
Total, 2013 Program Changes Requested	0	(\$106)	0	(\$106)

K: Summary of Requirements by Grade

Summary of Requirements by Grade

Tax Division
Salaries and Expenses

	2011 Enacted w/Rescissions		2012 Enacted		2013 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Grades and Salary Ranges								
SES, \$119,554 - 179,700	28		32		32		0	
GS-15, \$123,758 - 155,500	260		271		270		(1)	
GS-14, \$105,211 - 136,771	98		83		102		19	
GS-13, \$89,033 - 115,742	43		49		38		(11)	
GS-12, \$74,872 - 97,333	26		20		10		(10)	
GS-11, \$62,467 - 81,204	38		38		30		(8)	
GS-10, \$56,857 - 73,917	12		12		12		0	
GS-9, \$51,630 - 67,114	43		48		43		(5)	
GS-8, \$46,745 - 60,765	43		44		44		0	
GS-7, \$42,209 - 54,875	27		21		21		0	
GS-6, \$37,983 - 49,375	3		3		3		0	
GS-5, \$34,075 - 44,293	6		6		6		0	
GS-4, \$30,456 - 39,590	5		5		5		0	
GS-3, \$27,130 - 35,269	4		5		5		0	
GS-2, \$24,865 - 31,292	3		2		2		0	
GS-1, \$22,115 - 27,663	0		0		0		0	
Total, Appropriated Positions	639		639		623		(16)	
Average SES Salary		\$171,825		\$177,396		\$177,396		
Average GS Salary		\$106,597		\$107,384		\$109,134		
Average GS Grade		13		13		13		

L: Summary of Requirements by Object Class

Summary of Requirements by Object Class

Tax Division
Salaries and Expenses
(Dollars in Thousands)

Object Classes	2011 Actuals		2012 Availability		2013 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	503	\$54,981	510	\$57,965	500	\$58,873	(10)	\$908
11.3 Other than full-time permanent	45	5,106	72	5,987	72	5,237	0	(750)
11.5 Total, Other personnel compensation	0	640	0	0	0	230	0	230
<i>Overtime</i>							0	0
<i>Other Compensation</i>							0	0
11.8 Special personal services payments							0	0
Total	548	60,727	582	63,952	572	64,340	(10)	388
Other Object Classes:								
12.0 Personnel benefits		16,442		15,988		16,528		540
13.0 Benefits former personnel		300		0		0		0
21.0 Travel and transportation of persons		2,979		3,071		3,265		194
22.0 Transportation of things		992		1,000		1,100		100
23.1 GSA rent		13,422		13,562		13,514		(48)
23.2 Moving/Lease Expirations/Contract Parking		90		80		91		11
23.3 Comm., util., & other misc. charges		1,074		1,400		1,300		(100)
24.0 Printing and reproduction		96		90		100		10
25.1 Advisory and assistance services		5,169		5,570		5,471		(99)
25.2 Other services		0		178		0		(178)
25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc.)		0		0		0		0
25.4 Operation and maintenance of facilities		0		0		0		0
25.5 Research and development contracts		0		0		0		0
25.7 Operation and maintenance of equipment		0		0		0		0
26.0 Supplies and materials		580		350		450		100
31.0 Equipment		218		200		300		100
Total obligations		\$104,515		\$105,441		\$106,459		\$1,582
Unobligated balance, start of year		(914)		(564)				
Unobligated balance, expiring		1,037						
Unobligated balance, end of year		564						
Recoveries of prior year obligations		(325)						
Total DIRECT requirements		104,877		104,877		106,459		
Reimbursable FTE:								
Full-time permanent	22	\$0	0	\$0	0	\$0		
23.1 GSA rent (Reimbursable)		\$0		\$0		\$0		
25.3 DHS Security (Reimbursable)		\$0		\$0		\$0		