

**Tax Division
United States Department of Justice**

FY 2011 Congressional Budget



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I. Overview

A. Introduction

The Tax Division requests a total of 639 permanent positions (377 attorneys), 582 full-time equivalent (FTE) work years and \$115,972,000 for FY 2011. 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 be successful in administering the tax laws, the Internal Revenue Service requires Tax Division support to, among other things, enforce its requests for information in ongoing examinations, and to collect and defend its tax assessments when the examinations are complete. At any given time, the Tax Division’s civil trial attorneys have nearly 7,000 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.

Enforcing the tax laws effectively requires not just a civil component, but strong criminal enforcement. 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 the 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 2006 - FY 2009, the Tax Division’s investment in attorneys has yielded a 13:1 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 \$13 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 \$9 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 – 2008 Data Book, www.irs.gov/taxstats/article/0,,id=205182,00.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, nor 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, 89 percent of those surveyed think it is “not at all” acceptable to cheat on taxes – the highest level ever recorded for this question on the survey.⁴ 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 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;

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 2008 Taxpayer Attitude Survey, February, 2009, <http://www.treas.gov/irsob/board-reports.shtml>.

⁵ See Internal Revenue Service Data Book, 2008, 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).

- 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 emerging technologies and automated tools for electronic document discovery, trial preparation, electronic filing, and courtroom presentation. The IT investment requested for FY 2011 is 15 FTE and \$6,635,000. No IT enhancements are requested for FY 2011.

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.usdoj.gov/jmd/2011justification>.

B. Full Program Costs

The Tax Division consists of a single Decision Unit (General Tax Matters) supporting the Department’s Strategic Goal 2 – Prevent Crime, Enforce Federal Laws, and Represent the Rights and interests of the American People.

This Strategic Goal defines the two broad programs areas:

- Civil Tax Litigation and Appeals - \$80,126,000
- Criminal Tax Prosecution and Appeals - \$35,846,000

The FY 2011 budget request assumes 69% of the Division’s budget and expenditures can be attributed to its Civil Tax Litigation and Appeals and 31% 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. 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 estimates that the Tax Gap – the difference between the amount of taxes owed and the amount paid voluntarily and timely – is more than \$345 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 collects over \$2 trillion annually. Over \$1.96 trillion (or 98% of total collections)

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

results from taxpayers' voluntary compliance with the tax law; the remainder, \$47 billion, comes from enforcement activity. The IRS Oversight Board recently 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.

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.

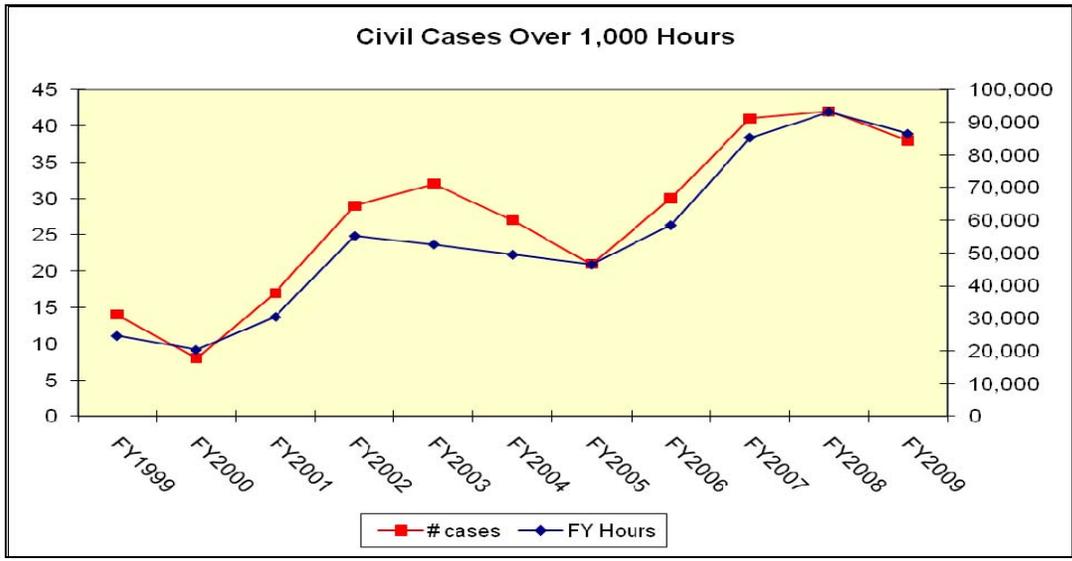
Internal – Retaining an Experienced Workforce to Handle Complex Litigation

The Tax Division's workload is directly related to IRS enforcement efforts. Historically, an increase in IRS enforcement activity leads to increased Division workload, with a lag time of about two years. Congress increased the IRS's enforcement budget by \$175 million in FY 2008, an additional \$337 million in FY 2009, and \$216 million in FY 2010. Based on IRS enforcement numbers, then, the Division is projecting increasing workloads for at least fiscal years 2010 through 2012. 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

Growing and retaining attorneys who can serve as the lead counsel in our most complex cases remains a significant challenge. As can be seen from the following chart, the number of civil cases requiring over 1,000 hours per year has been climbing fairly steadily over the past ten years. During FY 2009, approximately 23% of all civil hours were spent on cases requiring over 1,000 hours per year. The increase in the average hours per case from 1,950 hours in FY 2006 to 2,275 hours in FY 2009, demonstrates the increasing complexity of these cases. Based on its existing caseload, and on the IRS enforcement trends mentioned above, the Tax Division expects that the numbers of these highly complex cases will remain steady or increase over the next three years, and that these cases will continue to consume an outsized number of attorney hours.

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

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



Each of these highly complex cases requires a multi-attorney team, led by the Division’s most experienced attorneys. Consequently, the Division expects that its most experienced litigators will continue to be stretched thinly. This issue is particularly critical, since even in difficult economic times, experienced litigators have many opportunities outside the government.

II. Summary of Program Changes

Item Name	Description	Pos.	FTE	Dollars	Page
General Tax Matters	Fraud Enforcement	0	0	\$2,965	30

Program Changes by Decision Unit to Strategic Goal

Item Name	Strategic Goal	Decision Unit	FTE	Dollars (\$\$\$)	Number and Type of Positions	
					Position Series	No. of Positions in Series
Fraud Enforcement	2	General Tax Matters	0	\$2,965	n/a	0

III. Appropriations Language and Analysis of appropriations Language

Not applicable (Part of General Litigating Activities).

IV. Decision Unit Justification

<i>Tax Division</i> TOTAL	Perm. Pos.	FTE	Amount
2009 Enacted with Rescissions	621	573	101,016
2009 Supplementals	0	0	0
2009 Enacted w/Rescissions and Supplementals	621	573	101,016
2010 President's Budget	639	582	105,877
Adjustments to Base and Technical Adjustments	0	0	7,255
2011 Current Services	639	582	113,132
2011 Program Increases	0	0	2,965
2011 Program Decreases	0	0	-125
2011 Request	639	582	115,972
Total Change 2010-2011	0	0	10,095

1. PROGRAM DESCRIPTION

a) CIVIL TAX LITIGATION

The Tax Division is responsible for 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 *Jade Trading, LLC v. United States* (C.F.C.), *appeal pending*, a "Son of BOSS" shelter case, the court determined the shelter did not have economic substance and that the claimed losses were not deductible.

As of September 30, 2009, the Division had 91 groups of tax shelter cases.¹¹ In FY 2009, for the second year in a row, the Division had a record-breaking six multi-week tax shelter trials, each requiring

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 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 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.

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, and in petitioning for judicial enforcement of the summons.

A John Doe summons is issued to discover the identities of unknown taxpayers. 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.

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 offshore account holders, from UBS and other foreign institutions have availed themselves of the IRS' voluntary disclosure program, and it is expected that many others will do likewise. 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. Obtaining information about those who have helped to facilitate tax fraud is extremely important to tax administration. 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 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 provides credit, debit, smart card, and stored-value card issuing and 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 settle payment card sales to certain 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 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 415 tax-fraud promoters and return preparers. During FY 2009 the Division has litigated some of the most complex tax injunction suits ever.

The schemes the Division has enjoined during the past nine years cost the Federal Treasury more than \$2.5 billion 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. We expect that these training operations will expand in FY 2010 and 2011, as the IRS has recently hired many new agents.

Assisting with IRS Information Collection and Examinations

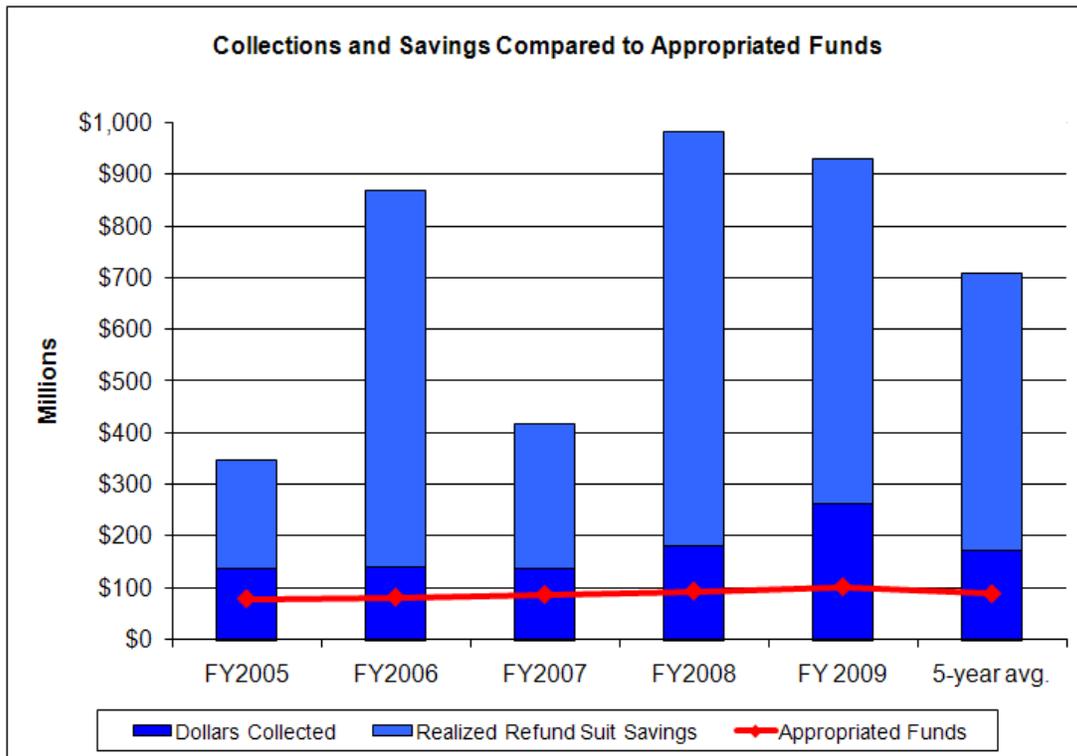
Individuals or businesses sometimes seek to thwart an IRS investigation by refusing to cooperate with IRS administrative summonses requesting information. When that happens, the IRS frequently asks the Tax Division to bring suit in federal court seeking a court order to compel compliance with the summons. 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. By bringing suits against some of the nation’s largest accounting and law firms, the Division enforced IRS summonses issued to Jenkens & Gilchrist, Sidley Austin Brown & Wood, KPMG, BDO Seidman, and Arthur Andersen.

Collecting Unpaid Taxes

Another area in which the Division contributes significantly to closing the Tax Gap is 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 75% 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, 2008, the Division was defending tax refund cases worth approximately \$9.5 billion to the Federal Treasury.¹²

Not all major Tax Division cases involve sophisticated tax shelters. 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* (W.D. Tex. 2009), *app. pending* (5th Cir.). 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 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 2009, the Appellate Section won (in whole or in part) over 97% of the taxpayer appeals. Among the most important recent Appellate victories is *United States v. Textron Inc., and Subsidiaries* (1st Cir. 2009), in which the court granted our petition for rehearing en banc, vacated the adverse ruling of the appellate panel, and held that the work-product privilege does not protect

¹² See IRS 2008 statistics, www.irs.gov/taxstats/article/0,,id=168593,00.html, Table 27.

documents such as tax accrual workpapers, which are prepared to support financial statements and not for litigation, and which the IRS sought to obtain by administrative summons issued during its audit of Textron. In *Xilinx, Inc. v. Commissioner* (9th Cir. 2009), the court reversed the unfavorable decision of the Tax Court and upheld the IRS's interpretation of its regulations in this transfer-pricing case involving Xilinx and its Irish subsidiary. In *Mayo Foundation for Medical Education and Research v. United States* and *Regents of the University of Minnesota v. United States* (8th Cir. 2009), the court reversed adverse decisions of the district court and upheld the IRS's revised regulation redefining "student," for purposes of exclusion from social security taxes, to exclude a full-time employee, such as a medical resident who provides services on a full-time basis. This decision is particularly significant because the regulation was revised in response to the Government's defeat in earlier cases against *Mayo* and others.

CRIMINAL PROSECUTIONS AND APPEALS

The Tax Division authorizes, and either conducts or supervises, almost all prosecutions arising under the federal tax laws.¹³ 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 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. For FY 2009, the average workload of each Division prosecutor, which consists of evaluating and litigating cases, was 2,012 hours. This is well in excess of the 1,776 hour workload baseline discussed earlier. The number of criminal indictments obtained by Tax Division criminal trial attorneys has increased significantly over the past four years. During FY 2009, Division criminal attorneys obtained indictments in 100 cases. Additionally, Division criminal attorneys obtained convictions in 135 cases. In contrast, Division attorneys obtained 127 convictions in FY 2008.

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.

¹³ The Tax Division does not review or supervise most excise tax cases, which are the responsibility of the Criminal Division.

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 the negotiation of international tax assistance treaties and 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.

For example, in March 2009, in *United States v. Glenn E. Lockwood* (D. Alaska), the defendant, a dentist, was sentenced to five years in prison. The defendant was convicted of evading taxes of approximately \$575,000 during tax years 2000 through 2003 following a jury trial in October 2008. The defendant had created a corporation for the purpose of entering into a fictitious offshore executive leasing and deferred compensation scheme to fraudulently reduce his taxable income and to channel his income into offshore investments. He used nominees and sham trusts to disguise his interest in assets, and he used corporate funds to pay for personal expenses that were then fraudulently deducted as business 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, certain United States customers of UBS's cross-border business. Under the agreement, UBS also will expeditiously exit the business of providing banking services to United States customers with undeclared accounts and will pay \$780 million in fines, penalties, interest, and restitution.

The Division has also obtained the return of indictments and convictions of individuals associated with offshore schemes. 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 Staggli, 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 November, 2008, in *United States v. Raoul Weil* (S.D. Fla.), an indictment was returned charging Weil with conspiracy to defraud the United States and the IRS. Weil was allegedly the senior UBS executive in charge of the wealth management business and private banking, who supervised unlawful cross-border activities carried out by bankers and their managers that helped wealthy Americans conceal their income and assets from the IRS. In January 2009, the District Court declared Weil to be a fugitive.

The Division has begun the prosecution of UBS clients, using information obtained through the deferred prosecution agreement. For example, in June 2009, in *United States v. Steven M. Rubinstein* (S.D. Fla.), Rubinstein, an accountant for an international company, pleaded guilty to filing a false tax return for 2004 that failed to report he had a financial account at UBS in Switzerland and failed to report the income he earned on the accounts. In April 2009, in *United States v. Robert Moran* (S.D. Fla.), Moran pleaded guilty to filing a false income tax return. Moran concealed more than \$3 million in assets in a secret bank account at UBS. In July 2009, in *United States v. Jeffrey P. Chernick* (S.D. Fla.), Chernick, another UBS client from Stanfordville, N.Y., pleaded guilty to charges of filing a false tax return.

The prosecution of UBS clients has included cases all over the country. In August 2009, in *United States v. John McCarthy* (C.D. Cali.), McCarthy, a UBS client, agreed to plead guilty to one count of wilfully failing to file a Foreign Bank and Financial Accounts report (FBAR). In September 2009, in *United States v. Jorgen Homann*, (D.N.J.) Jorgen Homann, of Saddle River, New Jersey, pleaded guilty to failure to file a Report of Foreign Bank or Financial Accounts. Homann accepted responsibility for concealing more than \$5 million in Swiss bank accounts. On October 5, 2009, in *United States v. Roberto Cittadini*, (W.D. Wash.) Roberto Cittadini, of Bellevue, Washington, pleaded guilty to one count of filing a false tax return. Cittadini concealed nearly \$2 million in Swiss bank accounts.

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 involve the use of 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 October 2009, in *United States v. Roderick Prescott* (D. Ore.) Roderick Prescott, a former principal of National Trust Services (NTS) was sentenced to 30 months in prison for pleaded tax evasion. Prescott and his former business partner Leroy Fritts earned significant income from the nationwide promotion and sale of abusive trusts through NTS. Prescott and Fritts deposited approximately \$3.5 million into various bank accounts through the sale of such trusts. They also earned income from recruiting clients of NTS to invest in Fountainhead Global Trust (FGT), a purported offshore investment that promised returns as high as 50 percent per year. FGT was a Ponzi scheme which collected approximately \$20 million in investors’ funds from 1995 through 1999. FGT transferred some of the money to an offshore account in the Cayman Islands at the Bank of Bermuda, ostensibly to be invested in high-interest debt through a Florida entity called “Cash 4 Titles.” Prescott and Fritts then funneled part of the money in the account back to themselves. Prescott and Fritts used an array of purported trusts and related bank accounts, including numerous offshore bank accounts at the Bank of Bermuda in the Cayman Islands, to conceal their income from the IRS. Prescott and Fritts also used false or fictitious taxpayer identification numbers and offshore credit cards in fake names issued to them by the Bank of Bermuda in the Cayman Islands.

In May 2008, in *United States v. Michael A. Vallone, et al.* (N.D. Ill.), a jury convicted six defendants of a \$60 million tax fraud conspiracy for participating in a scheme to market and sell to wealthy taxpayers sham domestic and foreign trusts through “The Aegis Company.” The Chicago-based investigation has resulted in nationwide convictions of more than 30 defendants, with charges pending against approximately 30 other defendants around the country. All six defendants were sentenced to at least 10 years in prison. In October 2009, Vallone was sentenced to more than 18 years in prison. In March 2009, co-defendant Edward B. Bartoli was sentenced to 10 years in prison.

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.

For example, in August 2008, in *United States v. Dennis B. Evanson, et al.* (D. Utah), Evanson, an attorney, was sentenced to 10 years in prison and three accountant co-defendants were also sentenced to prison for their \$20 million tax fraud scheme. After a trial in February 2008, Evanson was convicted of conspiracy to commit mail and wire fraud, tax evasion, and other tax crimes. Evanson and his co-defendants conspired to conceal portions of their customers’ income from the IRS and to create false deductions for the purpose of reducing the income taxes paid by their customers.

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 between and within IRS and the Division to allow new or recycled tax defier schemes and arguments to be quickly identified so that a global, coordinated strategy can be developed. For example, soon after the announcement of the initiative, a working group of DOJ, IRS, and Treasury Inspector General for Tax Administration (TIGTA) representatives was convened to develop a response to a perceived increase in the use of false IRS Form 1099 as a harassment tool against state and federal government employees. Those individuals who have been successfully prosecuted for tax defier schemes include not just those who promote the fraudulent products, but also chiropractors, doctors, police officers, and many others who use them.

For example, 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.) In August 2009, following a three-month trial, 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. Robert Kahre claimed to pay employees in gold or silver coins, but the coins were actually immediately exchanged for pre-determined envelopes of cash. The face amount of the coins was one-eighth the amount of pay that the employee actually earned and received in the cash envelope. The defendants told the employees that the income was either not taxable or that they should falsely report to their income to the IRS as the face amount of the gold and silver coins. During the course of the scheme, cash wage payments of at least \$25 million were paid to Robert Kahre's employees and cash payments of approximately \$95 million were paid to the employees of the other contractors. No federal tax withholdings were made from the paychecks, and the wages were not reported to the IRS.

In November 2009, a jury convicted Lindsey Kent Springer, a businessman, and Oscar Amos Stilley, an attorney, of conspiracy, tax evasion and failure to file tax returns with respect to Springer's 2002 and 2004 individual income taxes in *United States v. Lindsey Springer, et al.* (N.D. OK). 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, characterized his earnings as donations. Stilley, a friend of Springer's, conspired with Springer to further Springer's efforts to evade the assessment, payment, and collection of Springer's federal income taxes by utilizing Stilley's credit card and lawyer trust account.

The defendant in *United States v. Roger C. Menner* (E.D. Va.) was sentenced to 63 months in prison in February 2009. The defendant was convicted of five counts of filing false tax returns and one count of corruptly endeavouring to obstruct and impede the due administration of the internal revenue laws following a jury trial in October 2008. The defendant filed tax returns for 1991 through 1995, 1999, and 2001 through 2006 that reported he had "zero" tax liability and no business income for those years. For returns filed for 1991 through 1995, Menner also included false I.R.S Forms 1099, which purported to "void" income previously reported.

War on Terrorism

Tax Division attorneys play an important role in the fight against international terrorism. Prosecution of defendants who utilize the tax laws of the United States in order to help fund terrorism, such as through the use of non-governmental entities to fund terrorism, has become an important priority of the Criminal Enforcement Sections. In FY 2008, the Tax Division hired a Senior Litigation Counsel to manage 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.

For example, trial is currently scheduled for summer 2010 in *United States v. Islamic American Relief Agency, et al.* (W.D. Mo.). The indictment charges the Islamic American Relief Agency, along with five officers, employees, and associates, with illegally transferring funds to Iraq in violation of federal sanctions. The defendants were also charged with stealing government funds and corruptly endeavoring to obstruct the due administration of the Internal Revenue Code by misusing tax-exempt charity status to raise and transfer funds to Iraq in violation of federal sanctions and by attempting to avoid government detection of their illegal activities.

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 participates in the formulation of national policies, programs, strategies and procedures in cooperation with other law enforcement components 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 May 2009, in *United States v. Robert Coplan, et al.* (S.D. N.Y.), 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, worked to design, implement and defend the tax shelter transactions in ways intended to conceal the true facts and circumstances of the transactions from the IRS. In June 2009, in *United States v. Charles W. Bee, Jr.* (S.D. N.Y.), the former head of International Tax at BDO Seidman and the leader of its Tax Solutions Group, Charles Bee, pleaded guilty to conspiracy to defraud the IRS with respect to BDO's tax shelter promotions, tax evasion with respect to a BDO short options strategy client, and perjury for his false testimony in a 2005 deposition in the Jade Trading case in the Court of Federal Claims. Bee, along with co-conspirators Michael Kerekes and Adrian Dicker who have already pleaded guilty, as well as other members of the Tax Solutions Group, helped to design, sell, and implement the short sale and short options tax shelter strategies with lawyers from Jenkens & Gilchrist and a broker at a bank. Bee earned more than \$20 million in profit distributions and bonuses from the tax shelter sales. The tax loss is estimated to be more than \$200,000,000.

In April 2009, two former partners at KPMG and an attorney were sentenced to prison for criminal tax fraud, in *United States v. Robert Pfaff, et al.* (S.D.N.Y.). Robert Pfaff, a former KPMG tax partner, was sentenced to 97 months in prison; John Larson, a former senior KPMG tax manager was sentenced to 121 months in prison; and Raymond J. Ruble, a former partner at the law firm Brown and Wood, was sentenced to 78 months in prison, for federal charges related to the sale of illegal shelters that helped wealthy clients evade hundreds of millions of dollars in taxes. In March 2009, in *United States v. Adrian Dicker* (S.D.N.Y.), a former Vice-Chairman of the BDO Seidman accounting firm, pled guilty to conspiracy to defraud the IRS in relation to the promotion of false and fraudulent tax shelter transactions and one count of tax evasion related to the taxes of a client.

In January 2009, in *United States v. Charles Bolton* (S.D.N.Y.), the defendant pled guilty to a one-count information charging him with conspiracy to impede and impair the IRS and to commit offenses against the United States, including making false and fraudulent statements to the IRS and obstructing and impeding the due administration of the internal revenue laws. Bolton, through a group of financial companies he owned and operated, implemented two tax shelter transactions marketed and sold by the accounting firm Ernst & Young. The tax shelters, known as CDS and CDS Add-On, were used by wealthy taxpayers to fraudulently convert ordinary income into capital gains, and to improperly defer the tax liability on the capital gains.

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. One area where this frequently occurs is narcotics trafficking cases generated by the Organized Crime and Drug Enforcement Task Force program, which the Tax Division actively supports. Tax Division attorneys also fight against international terrorism, and litigate tax charges related to health care fraud, securities fraud, mortgage fraud, public corruption, and money laundering.

In October 2009, in *United States v. Sims Lawson, Jr.* (N.D. AL), Lawson was sentenced to 70 months in prison for three counts of filing false tax returns in connection with an embezzlement scheme. In June 2009, Lawson pleaded guilty to willfully failing to report income embezzled from an estate that he managed. Lawson was hired in 2002 to co-manage the estate and that his duties included managing the books and records of the estate, collecting on loans made by the estate, and determining the estate's value for tax purposes. In 2005, the estate received an ex parte court order removing Lawson from his responsibilities as trustee. It was later determined that, from 2002 until 2004, Lawson had misappropriated at least \$721,417 and failed to report that income on his personal tax returns. The estate also paid Lawson an additional \$297,352, which he failed to report on his personal tax return.

International Cooperation to Investigate Evasion of U.S. Taxes

The Tax Division regularly provides advice and assistance to United States Attorneys, Tax Division 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.

The Tax Division also works to increase cooperation with foreign nations, recognizing that reciprocal engagements ultimately further the Division's mission. For example, the Division has participated in consultations 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 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, who provides agents and attorneys with one-on-one assistance in handling parallel civil and criminal proceedings, and who also 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.

2. Performance Tables

PERFORMANCE AND RESOURCES TABLE
 Tax Division
 Salaries and Expenses
 (Dollars in Thousands)

Decision Unit/Program: GENERAL TAX MATTERS

DOJ Strategic Objective 2.7 Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

WORKLOAD/RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
		FY 2009		FY 2009		FY 2010 Requirements		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Request	
Workload:											
CRIMINAL	1. Number of Cases received from the IRS and USAO for authorization and review	n/a		1,003		n/a		0		n/a	
CIVIL	Average Number of Significant Litigation Activities per Attorney-Work Year										
	1. Average Number of Briefs, Written Pleadings, etc.	96		104		0		0		0	
	2. Average Number of Trials, Arguments, other Hearings per atty. Work Year	15		13		15		0		15	
	3. Average Number of Appellate Cases Received	200		178							
Total Costs and FTE's *		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
(Brackets indicate reimbursement amount for OCDETF - not included in shown total)		573	\$101,016	573	\$101,016	582	\$105,877	0	\$10,095	582	\$115,972
		[5]	[\$327]	[5]	[\$327]	[5]	0	0	0	0	0
TYPE/Strategic Objective	PERFORMANCE/RESOURCES	FY 2009		FY 2009		FY 2010 Requirements		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Request	
Program Activity	CRIMINAL PROSECUTION & APPEALS - Total Costs & FTE	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		160	\$26,264	160	\$26,264	167	\$30,704	0	\$5,142	167	\$35,846
Output	1. Number of Investigations Authorized		n/a		329		n/a		n/a		n/a
Output	2. Number of Prosecutions Authorized		n/a		1,210		n/a		n/a		n/a
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division		95%		98%		95%		0%		95%
Program Activity	CIVIL LITIGATION & APPEALS - Total Costs & FTE	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		413	\$74,752	413	\$74,752	415	\$75,173	0	\$4,953	415	\$80,126
Outcome	1. Civil Cases Successfully Litigated in the Trial Courts		90%		95%		90%		0%		90%
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals		85%		96%		97%		0%		97%
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals		60%		72%		68%		0%		68%
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions) **		n/a		\$928		n/a		n/a		n/a
	EFFICIENCY MEASURE		Target		Actual		Target				Target
	1. Increase the average # of significant civil litigation activities per one civil attorney FTE ***		116.29		117		117.29				118.29

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

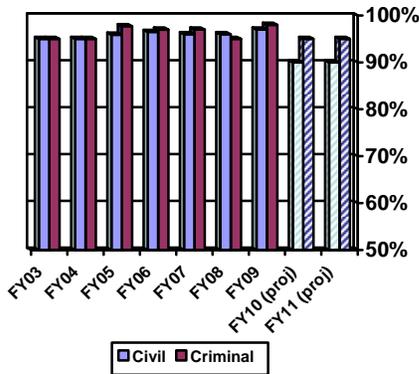
PERFORMANCE MEASURE TABLE

Decision unit: GENERAL TAX MATTERS												
Performance Report and Performance Plan Targets		FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Target
Program Activity	CRIMINAL PROSECUTION & APPEALS											
Output	1. Number of Investigations Authorized	489	628	655	568	628	664	757	693	751	n/a	n/a
Output	2. Number of Prosecutions Authorized	877	967	1,130	1,381	1,274	1,180	1,284	1,283	1,210	n/a	n/a
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division	98%	99%	96%	95%	98%	97%	100%	95%	98%	95%	95%
Program Activity	CIVIL LITIGATION & APPEALS											
Outcome	1. Civil Cases Successfully Litigated in the Trial Courts	96%	96%	95%	95%	96%	96%	96%	95%	95%	90%	90%
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals	89%	97%	93%	97%	95%	97%	99%	97%	96%	85%	85%
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals	68%	72%	67%	78%	60%	78%	56%	68%	72%	60%	60%
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	\$815.2	\$1,335.5	\$866.2	\$728.0	\$1,500.0	\$878.1	\$424.0	\$981.0	\$928.3	n/a	n/a
	EFFICIENCY MEASURE											
	1. Increase the average # of significant civil litigation activities per one civil attorney FTE *				111.29	116.68	123.66	116.68	123.89	116.91	117.29	118.29
* Efficiency measure not required prior to FY04.												

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.

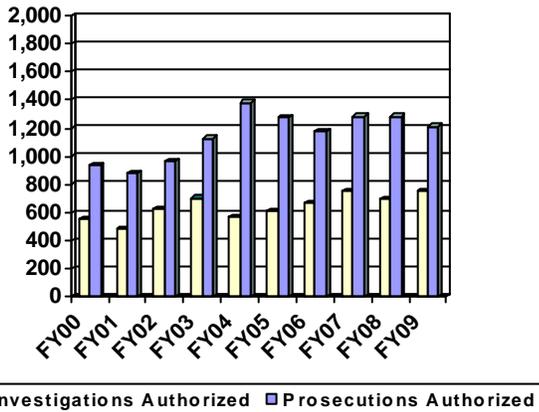
Performance Measure 1: Percentage of Cases Favorably Resolved

FY 2009 Target: 90% for Civil Trial and 95% for Criminal.

FY 2009 Actual: 95% for Civil Trial and 98% for Criminal.

Discussion: The outcome measure for this decision unit is favorable resolution of all cases. The Department of Justice Strategic Plan sets Department-wide goals for the litigating components: 90% of criminal cases favorably resolved Department-wide and 80% of civil cases favorably resolved. As illustrated in the chart “Cases Favorably Resolved (TAX),” the Tax Division has exceeded the Department’s goal for the last several years. In FY 2009, favorable outcomes were achieved in 95% of all civil and 98% of all criminal cases litigated by the Tax Division, including non-tax cases. To meet the targets for this measure, the Tax Division requires \$115,972 thousand. These resources are essential if we are to continue attaining the Department’s targets for this measure. Without sufficient resources, the Division will be forced to focus the majority of its resources on defensive cases which would result in affirmative cases - cases the IRS requests the Division to prosecute - being declined. If this occurs, the Division will not be able to meet its targets for this measure.

Investigation and Prosecution Referrals Authorized



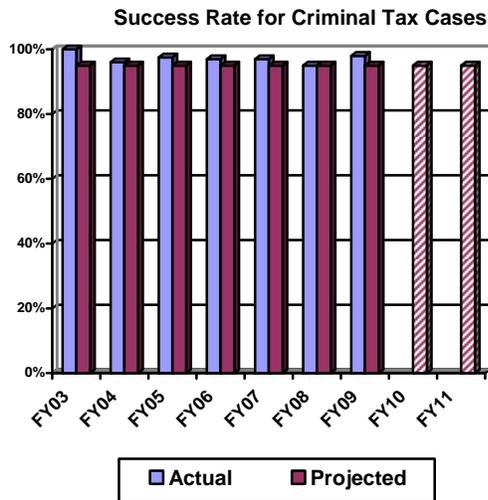
Performance Measure 2: Criminal Investigation and Prosecution Referrals Authorized

FY 2009 Target: N/A

FY 2009 Actual: 751 Investigations
1,210 Prosecutions Authorized

Discussion: The Tax Division also measures the number of authorized investigation and prosecution referrals in criminal cases. In FY 2009, the Division authorized 751 grand jury investigations and 1,210 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 2010 or FY 2011 performance goal for authorized investigations and prosecutions.



Performance Measure 3: Success Rate for Criminal Tax Cases

FY 2009 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 2009, the Division’s conviction rate was 98% in tax cases.

For FY 2009, FY 2010, and FY 2011, 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.

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.

Performance Measure 4: Civil Cases Successfully Litigated

FY 2009 Target: Trial Courts – 90%
 Taxpayer Appeals – 85%
 Government and Cross Appeals – 60%

FY 2009 Actual: Trial Courts – 95%
 Taxpayer Appeals – 96%
 Government and Cross Appeals – 72%

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.

Performance Measure 5: Tax Dollars Collected and Retained

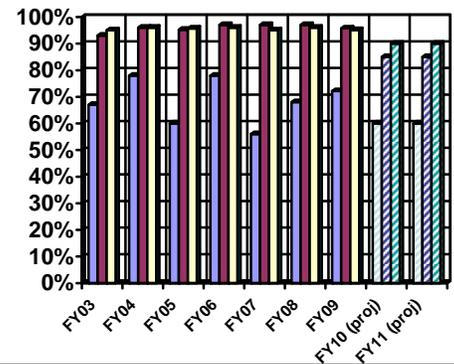
FY 2009 Target: N/A

FY 2009 Actual: \$928 million

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 2009, the Division collected \$261 million and retained \$667 million.

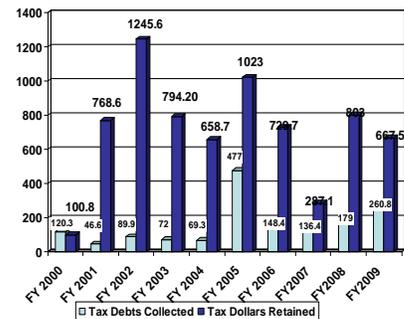
In addition to this measurable impact, the Division’s litigation affects the revenue at issue in many cases being handled administratively by the IRS, and determines tax liabilities of litigants for many tax years not in suit. Its litigation successes also foster overall compliance with the tax laws. 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 2011 Goals:

With the resources requested for FY 2011, 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, both defensively and affirmatively, 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.

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. 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.

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. The Division is seeking to enforce a summons issued to Switzerland’s largest bank, to obtain for the IRS account information for thousands of U.S. taxpayers who have elected to hide these accounts from the IRS. 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 the Initiative.

As part of its representation of the government in the courts, 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.

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. Representatives of the Tax Division are also liaison attorneys with the various regions of OCDETF, and are formal members of its policy-formation body.

V. Program Increases by Item:

Item Name: **Fraud Enforcement and Recovery Act of 2009**

Budget Decision Unit: Tax Division

Strategic Goal & Objective: 2. 7 - Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction

Organizational Program: Tax Division

Information Technology: Yes No x

Program Increase: Positions – 0 FTE – 0 Dollars - **\$2,965**

Description

The Tax Division is requesting \$2,965,000 to support the Fraud Enforcement and Recovery Act of 2009, which will allow Tax Division prosecutors to provide expertise and resources to support the Department’s goal of combating financial fraud.

Justification

Tax charges have long been used to prosecute challenging cases when other criminal conduct was more difficult to prove. Most famously, Al Capone was successfully prosecuted for criminal tax violations. But more relevant and far more current are prosecutions of the countless individuals engaged in mortgage fraud, securities fraud, and other financial fraud. These prosecutions can be strengthened with the addition of tax charges and with the expertise and experience of Tax Division attorneys.

The inclusion of tax charges often strengthens the overall prosecution. For example, using tax charges in securities and bankruptcy fraud cases establishes both the underlying financial motive and strengthens the government’s ability to establish the critical element of willfulness when explanations are offered as justification for questionable business transactions. The Division frequently investigates and establishes that corporate records contain false entries proving funds listed as loans are concealed dividends or unreported income. Additionally, the Division often must establish that purported business deductions are actually disguised false entries to siphon profits to ostensible third parties.

Congress has already expressed its concern about fraud in the First-Time Homebuyer Credit (FTHBC) program. In his opening statement for a hearing on the topic, Louisiana Representative Charles Boustany stated that “Every time Congress creates a new refundable credit, meaning that individuals can get a check from the government whether or not they have actual tax liability, the

incentive for fraud is magnified....”¹⁴ During the same hearing, the Treasury Department’s Inspector General for Tax Administration (TIGTA) stated that a review of the program “identified more than 70,000 questionable claims for First-Time Homebuyer Credits, totaling almost \$480 million.”¹⁵ In response, the IRS provided the following details on audit plans and criminal investigations which demonstrate that it is committed to vigorously pursuing those who intentionally violate the law.

The IRS has:

- Identified 159 possible criminal schemes and has 88 open criminal investigations involving the FTHBC;
- Completed its first successful prosecution -a guilty plea -of a tax practitioner in Jacksonville, Florida who was accused of falsely claiming the FTHBC;
- Frozen 36,000 refunds totaling over \$272 million pending civil examination, and 7,500 refunds totaling over \$50 million for review of potential criminal activity; and
- Commenced 76,000 audits of tax returns claiming the FTHBC where there are indications of risk including audits of frozen refunds, post refund returns, and amended claims.¹⁶

The Tax Division anticipates staffing the investigation and prosecution of a large number of the above cases, and has already authorized criminal tax cases involving the current financial crisis. As reported by the IRS, a tax practitioner has already pleaded guilty to aiding and assisting in the preparation of fraudulent income tax returns for clients. In October 2009 in *United States v. James Otto Price* (M.D. Fla.), this tax return preparer was sentenced to 30 months in prison. In addition to prison, the court also entered a money judgment against Price equal to the loss attributable to Price’s fraudulent conduct. The defendant prepared 15 fraudulent 2008 U.S. Individual Income Tax Returns that falsely claimed that the taxpayers were eligible to receive the \$7,500 First-Time Home Buyer Credit. The Tax Division anticipates that it will receive many more IRS referrals for prosecution of financial fraud cases arising out of the economic stimulus legislation.

This request includes \$2,965,000 in non-personnel resources to support operational, information technology and other infrastructure requirements for the investigation and prosecution of financial fraud cases under the Fraud Enforcement and Recover Act. Over the past decade, our attorneys have steadily moved from processing cases using paper-based methods to utilizing electronic evidence and document images. Our attorneys work in federal courts all over the country, and many of them have mandated the use of multi-media in trials and to expedite court proceedings. Due to the nature and complexity of financial fraud prosecutorial efforts, a great emphasis is placed on ensuring the appropriate collection, easy exploitation and storage of massive amounts of data and documentation that is accumulated throughout these investigations. This will also enable information sharing across other Justice and partner agencies that have a role in financial fraud investigations to eliminate stove-piped systems and provide for greater efficiency in the utilization of limited manpower.

¹⁴ Opening Remarks by Congressman Charles Boustany, House Ways and Means Subcommittee on Oversight, October 22, 2009.

¹⁵ Statement of the Honorable J. Russell George, Treasury Inspector General for Tax Administration before the Committee on Ways and Means Subcommittee on Oversight, October 22, 2009.

¹⁶ See TIGTA report, The Internal Revenue Service Faces Significant Challenges in Verifying Eligibility for the First-Time Homebuyer Credit, September 29, 2009, Reference Number: 2009-41-144.

Litigation costs include expenditures for grand jury proceedings, court reporters, bank records, and litigation support (development and maintenance of automated files supporting litigative activities), as well as other travel requirements, which are often significant. It cannot be predicted which companies and individuals will commit crimes requiring litigation, nor can it be predicted how widespread financial fraud will be. Therefore, additional funds available to the Tax Division will allow us flexibility to handle new cases.

The cost to litigate financial fraud cases, such as those related to tax fraud, mortgage fraud, and securities fraud, can be very expensive. Prosecutions tend to be very complex and often involve financial schemes that cross district, state, and international boundaries. These costs include travel to interview witnesses and court hearings, extensive copying and scanning costs, and transcribing tape recordings. As more courtrooms install computer display systems and as more judges order and/or expect “paperless” trials, the costs of managing litigation documents is increasing. In these cases, the government is oftentimes being outspent by corporate clients for trial preparation litigation costs. This puts the government in a serious disadvantage in trial preparation, as well as in settlement negotiations. This initiative will assist the Tax Division in leveling the playing field in financial fraud cases.

Because the Tax Division must authorize most criminal tax charges, our office routinely interacts with white-collar prosecutors and supervisory attorneys in US Attorneys’ Offices, often assisting them by providing our experienced attorneys to assist in case prosecutions that involve difficult issues of tax law or complex methods of proof. Likewise, we have strong relationships with IRS Criminal Investigation (CI) agents and their managers. Criminal agents for the IRS are widely recognized for their ability to investigate complex, document-intensive cases. Our positive working relationships with IRS agents and white-collar prosecutors allow us to establish quick connections for successful financial fraud prosecutions. The combination of experienced white-collar prosecutors and an established working relationship with IRS-CI is essential to address the financial fraud that has contributed to the current financial crisis.

The Tax Division has participated in the President’s Financial Fraud Enforcement Task Force, which investigates and prosecutes corporate fraud.¹⁷ The Division also cooperates with other law enforcement components in formulating national policies, programs, strategies and procedures for a coordinated attack on financial crime.

The UBS case illustrates the Division’s ability to successfully investigate and prosecute large-scale, international schemes. In February 2009, in *United States v. UBS AG* (S.D. Fla.), UBS AG, Switzerland’s largest bank, entered into a deferred prosecution agreement in which it admitted guilt on charges of conspiring to defraud the United States by impeding the IRS, and agreed to exit the cross-border business and to pay \$780 million in taxes, interest, penalties, and disgorged profits. Evidence and leads produced have already resulted in further prosecutions of bankers and clients. A Tax Division Senior Litigation Counsel led the investigation of UBS and related individuals.

The Tax Division anticipates staffing the investigation and prosecution of a large number of cases resulting from information received as part of the deferred prosecution agreement with UBS. As a result, additional resources will be required to timely handle those cases, without impairing the

¹⁷ The Division is participating in the planning for the new Financial Crisis and Recovery Task Force, which is expected to supersede the Corporate Fraud Task Force.

Division's ability to simultaneously assist United States Attorneys in other complex criminal tax investigations and prosecutions.

Additionally, our trial attorneys work alongside Assistant U.S. Attorneys in complicated investigations and prosecutions of financially sophisticated individuals at large national firms. In September 2008, in *United States v. Peter Cinquegrani* (S.D.N.Y.), Cinquegrani pled guilty to a three-count information charging him with conspiracy to commit tax fraud, aiding and abetting tax evasion, and aiding in the submission of false and fraudulent documents to the IRS in connection with a fraudulent tax shelter called PICO, which was marketed by Big-Four accounting firm Ernst & Young to wealthy clients. Cinquegrani, an attorney formerly employed by Arnold & Porter, authored opinion letters for PICO for fees ranging between \$50,000 and \$100,000, depending on the size of the client's PICO transaction. In February 2009, in *United States v. Michael Kerekes* (S.D.N.Y.), the defendant, an attorney who worked at the accounting firm BDO Seidman, pled guilty to conspiracy to defraud the United States and tax evasion. Kerekes admitted to conspiring with certain tax shelter promoters in connection with tax shelter transactions involving clients of the accounting firm and the law firm Jenkins & Gilchrist (J&G). In total, the fraudulent tax shelter transactions implemented by Kerekes, his accounting firm, J&G, and the financial institution that assisted them, caused clients to report over \$1 billion in false and fraudulent tax losses, resulting in the evasion of over \$200 million of taxes due.

Impact on Performance

The challenge of combating the financial fraud that has helped cause the current financial crisis, as well as the fraud resulting from conduct of individuals who are taking advantage of the disruptions to the economy, requires a well-executed approach and experienced white-collar prosecutors who have the resources to effectively handle large-scale litigation. The Tax Division has attorneys who are well-suited for this task, and funding for this initiative will enable us to help achieve the goal of combating financial fraud. Additionally, we have strong relationships with IRS special agents and the fraud prosecutors in U.S. Attorney's Offices that will allow us to quickly expand ongoing fraud investigations through the use of tax charges. The use of criminal tax charges, whether in conjunction with other criminal charges or standing alone, is a useful tool that has the potential to help the Department's goal of combating financial fraud.

The overarching outcome measure for the Department's litigating components is Percentage of Cases Favorably Resolved. The Tax Division has met or exceeded the goal for this measure since its implementation. Failure to receive the requested funding will jeopardize the Division's ability to continue to attain the targets for this outcome measure, in light of the anticipated increased workload.

Base Funding

FY 2009 Enacted (w/resc./supps)				FY 2010 Enacted				FY 2011 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
0	0	0	0	0	0	0	0	0	0	0	0

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2011 Request (\$000)	FY 2012 Net Annualization (change from 2011) (\$000)
Total Personnel	0	0	0	0

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2011 Request (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
			2,965	0
Total Non-Personnel			2,965	0

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2012 Net Annualization (Change from 2011) (\$000)
Current Services	0	0	0	0	0	0	0
Increases	0	0	0	0	2,965	2,965	0
Grand Total	0	0	0	0	2,965	2,965	0

VI. Program Offsets by Item:

Item Name: **Adjusted Travel Expenditure**

Budget Decision Unit: Tax Division

Strategic Goal & Objective: 2. 7 - Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction

Organizational Program: Tax Division

Information Technology: Yes No x

Program Decrease: Positions – 0 FTE – 0 Dollars - **\$125**

Description

The Department is continually evaluating its programs and operations with the goal of achieving across-the-board economies of scale that result in increased efficiencies and cost savings. In FY 2011, DOJ is focusing on travel as an area in which savings can be achieved. For the Tax Division, travel or other management efficiencies will result in offsets of \$125,000. This offset will be applied in a manner that will allow the continuation of effective law enforcement program efforts in support of Presidential and Departmental goals, while minimizing the risk to health, welfare and safety of agency personnel.