

Tax Division
United States Department of Justice

FY 2016 OMB Budget



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I. Overview

A. Introduction

The Tax Division has one purpose: to enforce the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation. To accomplish this, the Tax Division requests a total of 639 permanent positions (377 attorneys), 534 full-time equivalent (FTE) work years and \$113,078,000 for FY 2016.

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

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

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

1. ***Financial Impact: Immediate as well as Long-Term.*** The Division's work has an immediate financial impact on the Federal Treasury. From FY 20010 - FY 2014, the Tax Division's investment in attorneys has yielded a 12:1 payoff for the Federal Treasury. That is, taking into account the tax dollars collected and the tax refunds not paid as a result of our tax litigation, the Division's trial attorneys have returned \$12 for each dollar invested

Return on Investment for Tax Division Attorneys

	2010	2011	2012	2013	2014
Collections in millions	\$566	\$112	\$292	\$235	\$112
Refund Suit Savings in millions*	\$174	\$440	\$1,139	\$977	\$253
Total in millions	\$1,280	\$552	\$1,431	\$1,212	\$365
Attorney FTE	394	389	373	356	330
Dollars collected, refunds saved per attorney FTE	\$ 3,248,731	\$ 1,419,023	\$ 3,836,461	\$ 3,404,494	\$ 1,106,061
Modular cost per attorney FTE	\$ 199,639	\$ 199,639	\$ 224,000	\$ 224,000	\$ 224,000
Return on Investment per Attorney FTE	16:1	7:1	17:1	15:1	5:1
5 year Average	12:1				
4 year Average	14:1		11:1		
*Includes only amounts involved in litigation completed during each fiscal year					

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 \$8.9 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.

2. **Improving Voluntary Compliance.** The Tax Division's success rate in its litigation – more than 90% – has an enormous effect on voluntary tax compliance.² By law, the IRS cannot make public the fact of an IRS audit, or its result. By contrast, the Tax Division's important tax litigation victories receive wide media coverage, leading to a significant multiplier effect on voluntary compliance.³ Efforts of the IRS and the Tax Division are having a positive effect on voluntary compliance. According to the most recent survey by the IRS Oversight Board, 86 percent of those

¹ See IRS Data Books 2013, <http://www.irs.gov/uac/SOI-Tax-Stats-Data-Book>, Table 27.

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).

surveyed think it is “not at all” acceptable to cheat on taxes.⁴ The public attitude that it is not at all acceptable to cheat on your income taxes increased between 2011 and 2013 from 84 percent to 86 percent, while tolerance for tax cheating dropped from 14 percent to 12 percent. Also, the Commissioner’s Offshore Voluntary Disclosure Initiatives, operating alongside the Division’s ongoing criminal and civil enforcement actions concerning unreported offshore accounts, have resulted in an unprecedented number of taxpayers – over 40,000 since 2009 – attempting to “return to the fold” by paying back taxes, interest and penalties totaling over \$6 billion dollars. As an integral part of the IRS’s enforcement efforts, the Tax Division is partially responsible for the IRS’s 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 effectively 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;
 - combating financial fraud as part of the President’s Financial Fraud Enforcement Task Force;
 - reducing drug trafficking as part of the Organized Crime and Drug Enforcement Task Force (OCDETF); and investigating public corruption by working on prosecution teams with attorneys from various United States Attorney’s Offices and the Department’s Criminal Division.

4 See IRS Oversight Board 2013 Taxpayer Attitude Survey, February, 2014, <http://www.treasury.gov/irsob/reports/Pages/default.aspx>.

5 See Internal Revenue Service Data Book, 2013, Table 1, <http://www.irs.gov/uac/SOI-Tax-Stats-IRS-Data-Book>.

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

B. Full Program Costs

The FY 2016 budget request assumes 72% of the Division's budget and expenditures can be attributed to its Civil Tax Litigation and Appeals and 28% percent to Criminal Tax Prosecution and Appeals. This budget request incorporates all costs, including mission costs related to cases and matters, mission costs related to oversight and policy, and overhead.

C. Environmental Accountability

The Tax Division has in place existing policies to incorporate environmental accountability in its day-to-day operations. These include green purchasing policies such as: (i) mandating the purchase of recycled paper products (copier/printer paper, paper towels) and (ii) training and written guidance on green purchasing for those employees responsible for purchasing office supplies. In addition, the Tax Division reduces waste and environmental impact by: (i) setting the default on printers to two-sided printing; (ii) placing recycling bins for paper, glass, aluminum, and plastic in central locations and providing paper recycling containers for individual employee use; (iii) recycling used printer cartridges; (iv) promoting distribution of documents in electronic format only; (v) promoting scanning instead of photocopying; and (vi) recycling Blackberries, cell phones, laptops, computers and computer battery packs. The Tax Division has an environmentally sound destruction method in which sensitive materials that previously were burned are now shredded and recycled.

The Division continues to work to reduce the environmental impact of its buildings. The Division is working with each building's Property Manager as they pursue LEED Certifications for their facilities through the General Services Administration and U.S. Green Building Council. On May 25, 2012, the Patrick Henry Building earned a Prestigious "LEED Silver Certification. Tax-occupied space in the Judiciary Center Building has been retrofitted with energy-efficient light fixtures and light bulbs, and motion sensors have replaced light switches throughout the Patrick Henry Building. The Division works with construction and maintenance contractors to use green materials whenever possible.

D. Performance Challenges

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

External – Reducing the Tax Gap amid Increasing Globalization

The IRS collects more than \$2.27 trillion annually. More than \$2.21 trillion (or 97% of total collections) results from taxpayers' voluntary compliance with the tax law; the remainder, \$65 billion, comes from enforcement activity. The IRS estimates that the annual tax gap – the difference between taxes owed and taxes paid voluntarily and timely – is more than \$450 billion, an increase of \$105 billion over the last estimate. The new tax gap estimate represents the first full update of the report since the last review in 2007. The IRS Oversight Board cited "Reducing the Tax Gap" as the "most serious problem facing tax administration today."⁷ This problem is exacerbated by the vast increase in financial globalization, which has expanded the opportunities for assets and income to be easily hidden offshore.

⁷ IRS Oversight Board, FY 2009 Budget Recommendation, Special Report, March 2008.

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

Internal – Retaining an Experienced Workforce to Handle Complex Litigation

The Tax Division’s workload is directly related to IRS enforcement efforts. Historically, an increase in IRS enforcement activity leads to increased Division workload, with a lag time of about two years. Moreover, it is expected that the Division’s 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.

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

II. Summary of Program Changes

None

III. Appropriations Language and Analysis of Appropriations Language

The Tax Division is not proposing new appropriations language for the FY 2016 President’s Budget.

IV. Decision Unit Justification

<i>Tax Division</i>	Direct Pos.	Estimate FTE	Amount
2014 Enacted	639	534	104,470
2015 Current Services	639	534	106,674
Adjustments to Base and Technical Adjustments	0	0	6,404
2016 Current Services	639	534	113,078
2016 Program Increases	0	0	0
2016 Program Offsets	0	0	0
2016 Request	639	534	113,078
Total Change 2015-2016	0	0	6,404

<i>Tax Division-Information Technology Breakout (of Decision Unit Total)</i>	Direct Pos.	Estimate FTE	Amount
2014 Enacted	15	15	6,370
2015 Current Services	15	15	6,405
Adjustments to Base and Technical Adjustments	0	0	0
2016 Current Services	19	19	6,171
2016 Program Increases	0	0	0
2016 Program Offsets	0	0	0
2016 Request	19	19	6,171
Total Change 2015-2016	4	4	(234)

1. PROGRAM DESCRIPTION

a) CIVIL TAX LITIGATION

The Tax Division is responsible for litigating all matters arising under the internal revenue laws in all state and federal trial courts, except the Tax Court, and in appeals from all trial courts, including the Tax Court. Tax Division trial attorneys *defend* the United States in suits brought against it relating to the tax laws, including tax shelter cases, refund suits, and other suits seeking monetary or other relief. Tax Division trial attorneys also *bring* suits that the IRS has requested, including suits to stop tax scam promoters and preparers; suits to collect unpaid taxes; and suits to allow the IRS to obtain information needed for tax enforcement. Tax Division civil appellate attorneys represent the United States in all appeals from trial court decisions.

Halting the Spread of Tax Shelters

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

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

The Tax Division plays a critical role in the government's efforts to combat abusive tax shelters. Defense of these cases involves more than a billion dollars in tax revenue, and affects billions more owed by other taxpayers. For example, the United States recently prevailed in another foreign-tax-credit-generator shelter, involving BB&T Corporation's claim for more than \$660 million in tax benefits based on a sham transaction known as Structured Trust Advantaged Repackaged Securities (STARS). *Salem Financial, Inc. v. United States* (Fed. Cl. 2013). The court ruled that BB&T was not entitled to \$660 million in tax benefits and also imposed \$112 million in penalties. Barclays Bank PLC and KPMG LLP jointly developed and marketed the STARS transaction to subvert the foreign tax credit rules and generate illicit tax benefits to be shared among the transaction's participants. In another significant case, The Dow Chemical Company had engaged in a transaction in which it had claimed approximately \$1 billion in tax deductions that were generated by a partnership known as Chemtech. *Chemtech Royalty Assoc. LLP v. United States* (M.D. La. 2013). Dow sought to obtain deductions for making royalty payments to itself, and depreciation deductions for a chemical plant that it had already depreciated. In February 2013, the court determined that Dow's transactions lacked economic substance and that the Chemtech partnership should be disregarded because it had no purpose other than to create tax benefits. The court also imposed penalties. The Tax Division also prevailed in thirteen consolidated cases involving "business protection insurance." *Salty Brine I, Ltd. v. United States* (N.D. Tex. 2013). The court held that the "premiums" paid to purchase business protection insurance did not qualify for deduction as

business expenses and were in fact nothing more than transfers to offshore life insurance companies for estate planning purposes.

In December 2013, in a case involving a COBRA shelter, the Supreme Court reversed an adverse Fifth Circuit decision and held that the 40% gross valuation misstatement penalty is applicable when a transaction is disregarded in its entirety for lack of economic substance. *United States v. Woods* (Sup. Ct. 2013). The decision addressed a thorny TEFRA jurisdictional issue and held that the Tax Court had jurisdiction to determine the applicability of the 40% penalty in a partnership-level proceeding, distinguishing between the “applicability” determination and the ultimate imposition of the penalty on partners. The *Woods* decision has favorably impacted several cases pending in various appellate courts including the recent favorable decision by the Fifth Circuit in *NPR Investments v. United States*. In 1998, attorneys Nix Patterson and Roach sued Big Tobacco and won \$600 million in attorneys’ fees, to be paid over a period of time, as well as \$68 million in connection with tobacco litigation in other states. With this money in hand, the partners sought ways to shelter themselves from tax liability, and formed a partnership, NPR Investments, to invest in foreign currency. An audit ultimately found, however, that the investment scheme had virtually no way for the partners to make a profit. Rather, it generated \$65 million in artificial losses for tax-deduction purposes as a “well-recognized ‘abusive’ tax shelter.” The 5th Circuit found that the partnership and partners must pay penalties for underpaying the Internal Revenue Service through this investment scheme and, pursuant to the Supreme Court’s recent decision in *Woods*, NPR was subject to a 40 percent gross valuation misstatement penalty. The court also determined that the individual partners must pay a “20 percent penalty for the portion of underpayment of tax that is attributable to any substantial understatement of income tax.”

Finally, the Tax Division prevailed in two cases involving “sale-in/lease-out” and “lease-in/lease-out” (SILO/LILO) tax shelters: *UnionBanCal Corp. & Subsidiaries v. United States* (Fed. Cl.) and *Consolidated Edison Co. v. United States* (Fed. Cir. 2013).⁸ In October 2013, the Court of Federal Claims issued a favorable opinion in *UnionBanCal* concerning a LILO transaction involving a public arena in Anaheim, California. The taxpayer had sought a refund of approximately \$91 million. In *Consolidated Edison*, the Federal Circuit unanimously reversed the lone trial court decision that had upheld the purported tax benefits of the LILO shelter. In 2008, the United States prevailed in several LILO shelter cases: *BB&T v. United States* (4th Cir. 2008), *Fifth Third Bank v. United States* (S.D. Ohio 2008), and *AWG Leasing Trust v. United States* (N.D. Ohio 2008). After those victories, the IRS announced a settlement initiative, with government-favorable terms, that resolved approximately 80% of the IRS’s inventory of SILO/LILO cases. The Division has since continued to win cases involving taxpayers who chose not to settle, including *Wells Fargo v. United States* (Fed. Cir. 2011), *Altria Group v. United States* (2d Cir. 2011), and the two *Consolidated Edison Co.* and *UnionBanCal* referenced above.

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.

Shutting Down Tax Scams, Shelter Promoters, and Fraudulent Return Preparers

The Tax Division has a successful injunction program that shuts down tax-fraud promoters and fraudulent tax-return preparers. Some of the cases involve parallel criminal proceedings. These

⁸ Sale-in/lease-out (SILO) and lease-in/lease-out (LILO) transactions involve either a lease or a sale of assets, and then a lease-back of those assets, from a tax-indifferent entity (e.g., a foreign entity or a U.S. non-profit) to a U.S. taxpayer, with no change in the use of the assets, but generating immediate tax benefits for the U.S. taxpayer.

promoters range from tax defiers selling frivolous packages that falsely promise to eliminate customers' income tax entirely, to lawyers and accountants selling sophisticated, complex tax shelters to wealthy business owners. Since the year 2000, the Tax Division has obtained injunctions against more than 500 tax-fraud promoters and unscrupulous tax-return preparers.

In 2013, the Tax Division concluded civil actions resulting in permanent injunctions against ITS Financial LLC, the parent company of the Instant Tax Service franchise located in Dayton, Ohio, and against Instant Tax franchises in Las Vegas, Kansas City, Los Angeles, and Indianapolis. Instant Tax Service claimed to be the fourth-largest tax-preparation firm in the nation. In entering the permanent injunction in November 2013 ordering ITS Financial LLC to cease operating, the court found, "defendants' harm to the public is extensive and egregious, indeed appalling," and "especially so given the nature of Instant Tax Service's core customer - the working poor - who are particularly vulnerable to [the] Defendants' fraudulent practices." *United States v. ITS Financial, LLC et al.* (S.D.Ohio 2013). Similarly, in September 2013 the Tax Division obtained injunctions that permanently barred the owners as well as a former manager of Mo' Money Taxes, the Memphis-based tax-preparation chain that at one time operated as many as 300 offices in 18 states, from preparing tax returns for others and owning or operating a tax return preparation business. *United States v. Granberry et al.* (W.D.Tenn. 2013). Earlier, in March 2013 a federal district court in Tennessee permanently shut down a Nashville, Tennessee licensee of Memphis-based Mo' Money Taxes LLC and MoneyCo USA LLC. *United States v. Fields et al.* (M.D.Tenn. 2013). We have obtained permanent injunctions against more than 60 other return preparers in Indiana, Maryland, Missouri, Texas, Georgia, South Carolina, Florida, and California, who were engaging in fraudulent practices.

The Tax Division also obtained injunctions against a number of fraudulent tax-scheme promoters. For example, in October 2013, a federal court permanently barred Tobias Elsass and his companies from preparing federal tax returns, promoting the availability of theft loss deductions, or engaging in any other tax-related business. *United States v. Elsass, et al.* (S.D.Ohio 2013). The court found that Elsass and Fraud Recovery Group promoted a nationwide scheme falsely informing their customers that they were entitled to claim large theft loss tax deductions, and then preparing the tax returns that improperly claimed such deductions. The court stated "there can be no doubt that the collective transgressions represent concerted and conscious attempts to game the Nation's income tax system not necessarily for the benefit of FRG's customers, but for the profit of Elsass himself." At the Tax Division's urging, federal courts also enjoined a real estate appraiser who allegedly inflated easement values on historic properties to help customers claim millions in improper deductions (*United States v. Ehrmann, et al.* (N.D.Ohio)), and a Chicago lawyer from promoting tax fraud schemes and from preparing various types of tax returns for individuals, estates and trusts, partnerships or corporations to help facilitate the schemes (*United States v. Stern* (N.D.Ill. 2013)).

The schemes the Division has enjoined during the past ten years cost the Federal Treasury billions in lost revenues and placed an enormous administrative burden on the IRS. If permitted to continue 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.

Injunctions to stop pyramiding of federal employment taxes

In addition to shutting down fraudulent return preparers and abusive tax scams, the Tax Division also brings injunction actions to stop employers who are “pyramiding” their federal employment tax liabilities. Employers are responsible for employment taxes, some of which are withheld from the employee’s wages and paid over to the government, and others that are the direct obligation of the employer to pay. When employers fail to pay these employment taxes for many quarters, interest and penalties begin to accrue, which can result in “pyramiding” – tax liabilities accruing at a rate that makes it unlikely that the employer will be able to bring its accounts current. The unpaid balance can reach several billion dollars. When the IRS is unable to bring compliance, the Tax Division brings injunction actions to compel employers to pay employment taxes. Such actions help to keep employers on track with their tax obligations, and ensure that taxes withheld from employees’ wages make their way to the Treasury and are not diverted for other purposes.

Assisting with IRS Information Collection and Examinations

Individuals or businesses sometimes seek to thwart an IRS investigation by refusing to cooperate with an IRS administrative summons requesting information. When that happens, the IRS 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. The Division anticipates more sensitive and complicated summons matters, including summons cases related to offshore banking activities of U.S. taxpayers, as well as summons requests made by foreign tax authorities pursuant to treaty-based information exchange agreements.

The IRS is increasingly attempting to obtain information about United States persons who maintain undeclared foreign accounts. In 2013 the district court in the Southern District of New York authorized three John Doe summonses aimed at U.S. taxpayers who hold or held interests in offshore financial accounts at Wegelin & Co., the oldest bank in Switzerland, Zurcher Kantonalbank, and The Bank of N.T. Butterfield & Son Limited. *In re Tax Liabilities of John Does*. (S.D. N.Y. 2013). The Division also obtained an order from district court in the Northern District of California authorizing the IRS to summon information from Canadian Imperial Bank of Commerce FirstCaribbean International Bank. *In re John Does (CIBC FirstCaribbean International Bank)* (N.D. Calif.). These John Doe summonses, and the information they provide, have an immediate and direct effect in bringing taxpayers into compliance who were trying to evade taxation in the United States, as well as assure people who pay their taxes that the government is pursuing those who do not. As one commentator noted, although the Foreign Account Tax Compliance Act (FATCA) is in the news frequently as the cause of global bank transparency, in reality, “bank secrecy was really broken by the John Doe summonses.”

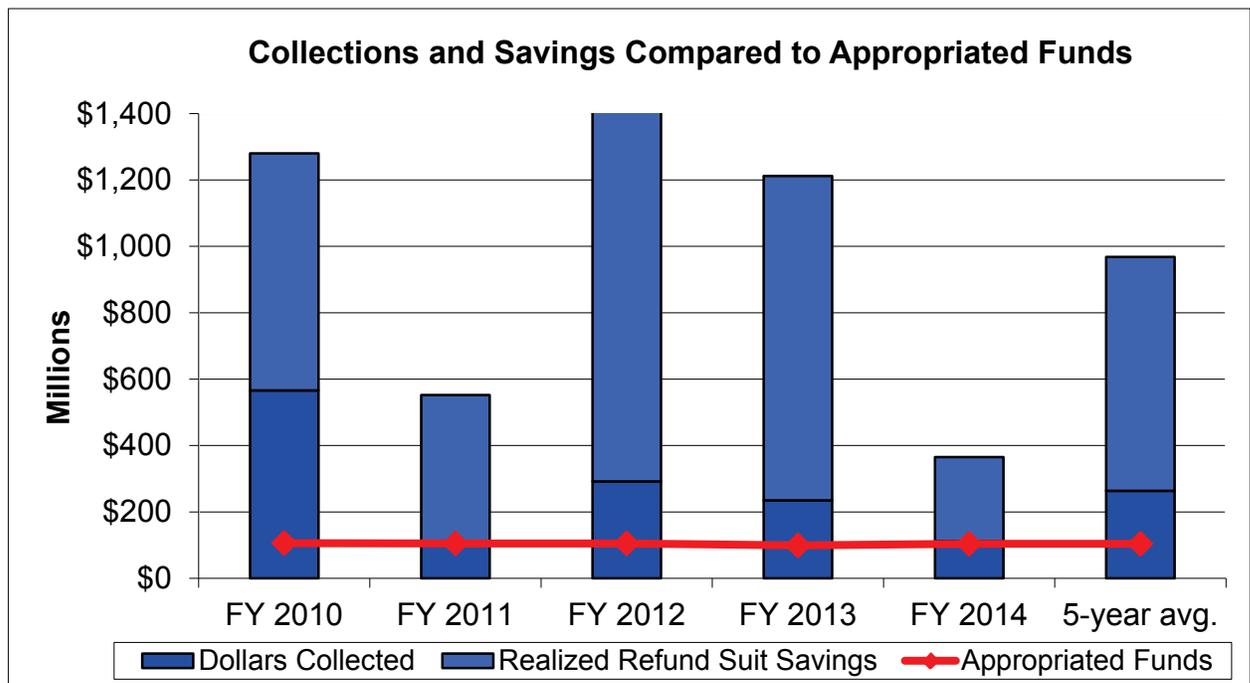
The Tax Division has also obtained authorization from numerous district courts to serve John Doe Summonses on U.S. financial institutions seeking information requested by United States’ treaty partners. For example, we filed ten petitions seeking authorization to serve John Doe summonses on nineteen U.S. financial institutions seeking information requested by Norway pursuant to the United States/Norway Convention. *In the Matter of the Tax Liabilities of John Doe, Norwegian Taxpayer*. The district court also recently denied a petition to quash IRS summonses issued to two banks under a treaty request from India. *Kalra v. United States* (N.D. Ill.) The Tax Division’s assistance in these types of cases is essential to continuing cooperation with our treaty partners in the global effort to combat tax evasion.

The Tax Division’s summons enforcement work in the past few years has been very effective. The Division enforced summonses aimed at identifying high-income taxpayers who were “playing the audit lottery.” By pursuing John Doe summonses, the Tax Division is able to secure the information needed to conduct proper taxpayer examinations, and to defend IRS exam determinations in court proceedings. The Division’s work in the area of summons enforcement is vital to tax compliance.

Collecting Unpaid Taxes

The Tax Division contributes to closing the tax gap through its 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, for example, because ownership of assets has been transferred away from the taxpayer through fraudulent conveyances, title is clouded due to the presence of alter-ego or nominee title holders, or assets are subject to competing lien interests that present complex questions at the intersection of state and federal law, the Division’s efforts represent a considerable return on investment in collecting the debts owed by the most recalcitrant taxpayers.

In addition to collection cases, the Tax Division also brings affirmative litigation to challenge the discharge of tax debts in bankruptcy proceedings. The bankruptcy laws provide exceptions to discharge where a fraudulent return has been made or where a taxpayer has acted to evade or defeat the assessment or collection of tax. Where acts of fraud or evasion are present, the Division works to ensure that unscrupulous taxpayers will not be allowed to avoid their tax obligations through bankruptcy filings.



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 consequences, and boosts voluntary compliance by providing a deterrent to potential scofflaws.

Defending the United States

Tax cases filed against the United States comprise nearly 70% of the Division's caseload, both in the number of cases and the number of attorney work hours each year. The Tax Division has no choice but to defend these lawsuits, which include requests for refund of taxes, challenges to final partnership administrative adjustments (FPAAs) issued by the IRS, challenges to federal tax liens, petitions to quash summonses, objections to tax claims in bankruptcy, 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, 2013, the Division was defending tax refund cases worth approximately \$9.5 billion to the Federal Treasury.⁹

Many of these refund suits, like the sophisticated tax shelter cases described earlier, involve issues that affect many taxpayers and involve large sums. For example, the Tax Division prevailed in a case involving a utilities' attempt to accelerate \$1.7 billion in cost basis and other deductions based on future decommissioning cost liabilities. *AmerGen v. United States* (Fed. Cl.). AmerGen purchased three plants in 1999 and 2000, and assumed the liability for decommissioning them in the future according to Nuclear Regulatory Commission rules. (NRC allows up to 60 years for decommissioning.) AmerGen estimated the cost to meet that liability to be \$1.7 billion (in 1999 and 2000 dollars). AmerGen sought to add that estimate to its cost basis in the plants as of the acquisition dates, and take additional depreciation and goodwill amortization deductions based on that inflated basis. The court ruled in our favor and found that AmerGen could not add \$1.7 billion of estimated future decommissioning costs to the cost basis of the three nuclear power plants.

The Tax Division has also litigated the significant question of the tax impact of insurance company demutualization. Demutualization is a process by which a mutual insurance company converts to a stock company. In the late 1990s and early 2000s, more than 30 mutual insurance companies converted into stock companies through demutualization, raising tax issues for their more than 30 million shareholders who faced the amount of gain they needed to recognize from the demutualization. The government did not prevail in the first case decided because the court applied the open transaction doctrine in *Fisher v. United States*, 82 Fed. Cl. 780 (Fed. Cl. 2008). And, after *Fisher* was decided, numerous taxpayers filed refund claims with untold millions at issue. Shortly thereafter, another taxpayer filed a refund action in the United States District Court for the District of Arizona related to taxes paid on the sale of stock received in the demutualization of five insurance companies, and in 2013 the United States District Court for the District of Arizona rejected the analysis of *Fisher* and held that the open-transaction doctrine did not apply to determine the basis of stock received by taxpayers in the demutualization of insurance companies. *Dorrance v. United States* (D. Ariz. 2013). In *Reuben v. United States* (C.D. Cal. 2013), the court granted summary judgment in favor of the United States and found that the open transaction doctrine did not apply in determining the basis of stock received in an insurance company demutualization and that plaintiff failed to meet his burden that insurance premium payments were attributable to membership rights. As a result, the court determined that plaintiff had zero basis in the shares.

⁹ See IRS Tax Stats – 2013 Data Book.

The insurance company demutualization litigation is an example of the Division's work to both make the law clear for taxpayers, as well as protect the federal fisc. Hundreds of millions of dollars have been protected through the Division's work.

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.

From 2009 through 2013, the Division's Appellate Section won (in whole or in part) over 94% of taxpayer appeals. Some of the more important recent appellate victories have been in tax shelter cases. In *Scott Blum v. Commissioner* (10th Cir.), for example, the Government prevailed on appeal in which the taxpayer claimed a \$45 million loss generated by an abusive tax shelter. In *WFC Holdings Corp. v. United States* (8th Cir. 2013), Wells Fargo, utilizing a contingent-liability tax shelter promoted by KPMG, (i) created high-basis/low-value stock by transferring 21 "underwater" leases with an expected \$430 million liability from one subsidiary to a second subsidiary, along with an offsetting asset, in exchange for the second subsidiary's stock, and then (ii) sold the stock to Lehman Brothers, recognizing a \$423 million loss on the stock sale. The Eighth Circuit affirmed that the loss-generating transaction satisfied the literal terms of the corporate-basis provisions of the Code, but lacked economic substance.

CRIMINAL PROSECUTIONS AND APPEALS

The Tax Division authorizes, and either conducts or supervises almost all prosecutions arising under the federal tax laws.¹⁰ The Division's twin 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 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.

¹⁰ 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 workload has grown and the sophistication of criminal cases has increased steadily over the past few years. A greater proportion of cases now involve high net-worth taxpayers and tax professionals who sell and implement complex tax products. During FY 2013, Division prosecutors obtained 125 indictments and 107 convictions.

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

The Tax Division's Criminal Appeals and Tax Enforcement Policy Section (CATEPS) is responsible for appeals in criminal tax cases prosecuted by Division attorneys and supervises aspects of appeals in matters tried by USAOs around the country. Similar to the initial review of tax cases by criminal trial attorneys, the appellate review plays a vital role in promoting the fair, correct, and uniform enforcement of the internal revenue laws. CATEPS also assists in negotiating international tax assistance treaties and in researching numerous 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 prosecute such cases effectively 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. For example, in February 2013, James and Michael Farnell were sentenced to imprisonment of 42 months and 18 months, respectively, for tax evasion. The Farnell brothers sold stock in the name of nominee trusts and did not report the capital gains or pay the taxes on the capital gains.

Stolen Identity Refund Fraud

The nationwide reach of the Tax Division's centralized criminal tax enforcement serves another important goal: it facilitates the Government's ability to respond efficiently and forcefully to often-changing patterns of wrongdoing. The recent explosion in the use of stolen social security numbers and other personal identification information to file false tax returns seeking fraudulent refunds is an example of this type of challenge.

Referred to as stolen identity refund fraud or SIRF, the crime may be simple to describe, but has proven complex both in its reach and in the extent of the criminal enterprises involved. The most vulnerable members of our communities - the elderly, the infirm and grieving families - have been the victims when social security numbers have been stolen or bought from institutions such as hospitals, nursing homes, and public death lists. In a very real sense, every taxpayer is a victim when the IRS issues a fraudulent refund to these thieves.

In recognition of the severity of the problem, the Tax Division, in conjunction with the IRS and United States Attorneys nationwide, has prioritized the investigation and prosecution of individuals who engage in SIRF. The Division is targeting individuals involved in all stages of these schemes, including those who illegally obtain the personal identifying information, those who file the false returns with the IRS, those who knowingly facilitate cashing the checks or otherwise obtaining the refunds, and those who mastermind or promote these scams. Depending on the facts of a particular case, the Government can bring a variety of charges, including aggravated identity theft and theft of government property, in addition to traditional tax charges such as filing false claims for refund and filing false tax returns.

Our prosecutors have obtained significant sentences in these cases. In October 2013, a corrupt U.S. Postal Service mail carrier was sentenced to serve 111 months in prison for his role in a SIRF scheme. A Louisiana woman who operated a tax preparation business was sentenced to 132 months in July 2013 for her SIRF crimes. An Alabama state employee who had access to state databases stole identities for use in a SIRF scheme, and she was sentenced to 94 months in prison in September 2013.

Recognizing the need for streamlined procedures for SIRF cases, the Department implemented expedited procedures to enable law enforcement to move swiftly to shut down SIRF crimes, share expertise and resources, and provide the IRS with information to intercept fraudulent refund claims before the money is sent. Having been in place for over a year, U.S. attorneys request that the procedures have successfully allowed quick enforcement efforts to shut down SIRF schemes.

Because stolen identity refund fraud is affecting many jurisdictions, the Department is working closely with many United States Attorneys and the IRS to ensure effective information sharing and investigative cooperation as permitted by law. The approach is yielding significant results. In October and November 2013, two individuals pleaded guilty to SIRF-related charges in Tampa, Fla. The case began when traffic stops performed by local law enforcement revealed stolen personal identifying information and numerous prepaid debit cards in the names of others. The Tax Division recently announced the establishment of a SIRF Advisory Board to develop and implement a national strategy to ensure consistent and effective nationwide enforcement and to deter future SIRF crimes. The SIRF Advisory Board will engage in the gathering and sharing of information among the Tax Division, the IRS, U.S. Attorneys' Offices, and other agencies, as well as provide training and assistance.

Combating Offshore Tax Schemes

The Tax Division continues to play a leading 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 move money around the world. Using tax havens facilitates evasion of U.S. taxes and the commission of related financial crimes. According to a 2008 Senate report, the use of secret offshore accounts to evade U.S. taxes costs the Treasury at least \$100 billion annually.

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. Despite these difficulties, the Division has been successful in prosecuting these tax cheats.

In March 2013, Wegelin & Co., a Swiss private bank, was sentenced and ordered to pay approximately \$58 million to the United States for conspiring with U.S. taxpayers and others to hide approximately \$1.5 billion in Secret Swiss bank accounts from the IRS. The Tax Division has also successfully prosecuted individuals who hide money in offshore accounts. Sameer Gupta was sentenced to 19 months in prison in July 2013 for diverting funds from his wholesale merchandise business to undisclosed foreign accounts at HSBC in India among other places.

The Department of Justice announced in August 2013 a program to encourage Swiss banks to cooperate with the Department's ongoing investigations of the use of foreign bank accounts to commit tax evasion. Under the program, which is available only to banks that are not currently under investigation by the Department for their offshore activities, participating Swiss banks will be required to: agree to pay substantial penalties; make a complete disclosure of their cross-border activities; provide detailed information on an account-by-account basis for accounts in which U.S. taxpayers have a direct or indirect interest; cooperate in treaty requests for account information; provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed; and agree to close accounts of account holders who fail to come into compliance with U.S. reporting obligations. Banks meeting all of the above requirements will be eligible for non-prosecution agreements.

As part of the deferred prosecution agreement the Tax Division negotiated in 2009 with UBS, Switzerland's largest bank, as well as a 2009 agreement negotiated between the United States, UBS, and the Swiss government to settle a civil summons enforcement proceeding brought by the Tax Division, the IRS continues to receive account information about thousands of the most significant tax cheats among the U.S. taxpayers who maintain secret Swiss bank accounts. Indeed, the IRS credits the publicity surrounding the offshore enforcement efforts with prompting a huge increase in the number of taxpayers who have "come in from the cold" and voluntarily disclosed to the IRS their previously hidden foreign accounts. According to the IRS, its offshore voluntary disclosure programs have resulted in the collection of more than \$6 billion in back taxes, interest and penalties from over 40,000 voluntary disclosures.

Prosecuting Abusive Promotions

The Division is actively engaged in prosecuting the promotion or use of fraudulent tax shelters and other schemes to evade taxes and hide assets. The number of taxpayers who use these bogus schemes to improperly reduce, or totally evade, their federal income tax liabilities has increased significantly in recent years. Some schemes use domestic or foreign trusts to evade taxes. Promoters of these schemes often use the Internet to aggressively market these trusts to the public, and rely upon strained, if not demonstrably false, interpretations of the tax laws. Employing what they often call "asset protection trusts" (ostensibly designed to guard an individual's assets from legitimate creditors, including the IRS), these promoters are in fact assisting taxpayers to fraudulently assign income and conceal ownership of income-producing assets in order to evade paying their taxes.

In November 2013, Paul Daugerdas was convicted by a jury of a multibillion-dollar criminal tax fraud scheme. Daugerdas, a lawyer, certified public accountant, and the former head of the tax practice at the Jenkens & Gilchrist law firm, designed, marketed, and implemented fraudulent tax shelters used by wealthy individuals to avoid paying taxes to the IRS. The ten-year scheme generated over \$10 billion of fraudulent tax losses and netted Daugerdas approximately \$95 million in profits. Numerous

other individuals connected to this scheme were also convicted and sentenced to prison. For instance, Donna Guerin, a former attorney at Jenkins & Gilchrist, pleaded guilty for her role in the scheme and was sentenced in March 2013 to eight 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.

John T. Hoang was sentenced to 48 months in prison in December 2013 for preparing false income tax returns for himself and others. Hoang, who was a certified public accountant and an attorney, prepared false tax returns for his clients by creating wholly fictitious business income and expenses for what seemed to be a technology licensing business. The false information resulted in the clients reporting fake losses that decreased the tax liability.

National Tax Defier Initiative

A certain segment of our citizenry flatly refuses to accept its tax obligations. These individuals manufacture frivolous arguments against the clear language of the law. They also frequently devise complicated schemes to mask their activities. Often, they are affiliated with sovereign citizen movements, who challenge the United States Government in numerous ways.

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

Because of this risk of violence, it is essential that local law enforcement be prepared to respond rapidly to threats against agents, prosecutors, and judges. The Tax Division has thus implemented a comprehensive strategy, using both civil and criminal enforcement tools, to address the serious and corrosive effect of tax defier activity. The Division’s Tax Defier Initiative facilitates coordination among nationwide law enforcement efforts. This coordination allows new or recycled tax defier schemes and arguments to be quickly identified and a global, coordinated strategy to be developed.

For example, the “sovereign citizen” ideology overlaps with, and is often indistinguishable from, tax defier rhetoric and tactics. Through the Tax Defier Initiative, the Division has leveraged our expertise to develop a government-wide approach to monitoring and combating these crimes. As a result, our National Director for the Tax Defier Initiative, working with representatives of IRS Criminal Investigation, the Treasury Inspector General for Tax Administration, the FBI Domestic Terrorism Operations Unit, and the Department’s National Security Division, developed and implemented a national training program for prosecutors and investigators. The close working relationships fostered by

our Initiative have enabled us to identify and respond more quickly and efficiently to such trends in the tax defier community.

In July 2013, James Timothy Turner was sentenced to 18 years in prison for promoting a tax fraud scheme. Turner, the self-proclaimed “president” of a sovereign citizen group called the “Republic for the United States of America,” traveled the country conducting seminars teaching attendees how to defraud the IRS by preparing and submitting fictitious “bonds” in payment of federal taxes. Turner also taught people how to file retaliatory liens against government officials who interfered with the processing of the fictitious “bonds.”

Counter Terrorism

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

Corporate Fraud and other Financial Crimes

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

International Cooperation to Investigate Evasion of U.S. Taxes

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

In addition, the Tax Division works to increase cooperation with foreign nations, recognizing that reciprocal engagements ultimately further the Division’s mission. For example, the Division has participated in consultations both with France and Canada in an effort to improve the exchange of information under our income tax treaties with those countries. The Division periodically hosts visiting delegations of tax officials from countries interested in learning more about federal tax enforcement in the United States. The Division continues to work to increase cooperation between the United States and countries in Latin America and the Caribbean by providing instructors for the International Law Enforcement Academy in El Salvador.

The Tax Division is an important partner in the U.S. negotiating team for Double Taxation Conventions, Tax Information Exchange Agreements, and other international agreements concerning tax information. For example, 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. Other negotiations are ongoing.

Civil/Criminal Coordination

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

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: General Tax Matters		Strategic Goal 2/Strategic Objective 2.6 - Protect the federal fisc and defend the interests of the United States										
RESOURCES												
			Target		Actual		Target		Changes		Requested (Total)	
			FY 2014		FY 2014		FY 2015		Current Services Adjustments and FY 2016 Program		FY 2016 Request	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			534	\$104,470	465	\$104,470	534	\$106,674	0	\$6,404	534	\$113,078
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2014		FY 2014		FY 2015		Current Services Adjustments and FY 2016 Program		FY 2016 Request	
Program Activity: Criminal Prosecution & Appeals			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			154	\$30,128	134	\$30,128	154	\$30,764	0	\$1,847	154	\$32,611
Performance Measure: Workload	2.6	Number of Cases received from the IRS and USAO for Authorization and Review	n/a		n/a		n/a		n/a		n/a	
Performance Measure: Output	2.6	Number of Investigations Authorized	n/a		n/a		n/a		n/a		n/a	
Performance Measure: Output	2.6	Number of Prosecutions Authorized	n/a		n/a		n/a		n/a		na/	
Performance Measure: Outcome	2.6	Success Rate for Criminal Tax Cases Handled by the Division	95%		99%		90%		n/a		90%	
Program Activity: Civil Litigation & Appeals			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			380	\$74,342	331	\$74,342	380	\$75,910	0	\$4,557	380	\$80,467
Performance Measure: Outcome	2.6	Civil Cases Successfully Litigated in the Trial Courts	90%		96%		80%		n/a		80%	
Performance Measure: Outcome	2.6	Civil Cases Successfully Litigated - Taxpayer Appeals	85%		94%		85%		n/a		85%	
Performance Measure: Outcome	2.6	Civil Cases Successfully Litigated - Government and Cross Appeals	85%		64%		60%		n/a		60%	
Performance Measure: Outcome	2.6	Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	n/a		\$365		n/a		n/a		n/a	

Performance Measure Table

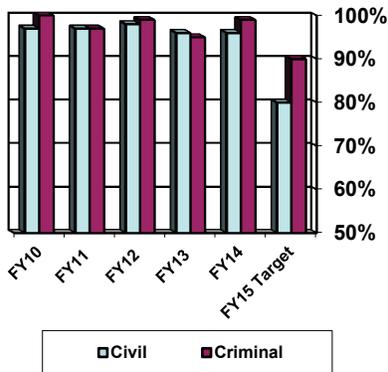
PERFORMANCE MEASURE TABLE									
Decision Unit: General Tax Matters									
Strategic Objective	Performance Report and Performance Plan Targets		FY 2010	FY 2011	FY 2012	FY 2013		FY2015	FY2016
			Actual	Actual	Actual	Actual	Actual	Target	Target
2.6	Performance Measure	Number of Criminal Investigations Authorized	883	850	938	749	664	n/a	n/a
2.6	Performance Measure	Number of Criminal Prosecutions Authorized	1,381	2,320	1,751	1,495	1,233	n/a	n/a
2.6	Outcome Measure	Success Rate for Criminal Tax Cases Handled by the Division	100%	97%	99%	95%	99%	90%	90%
2.6	Outcome Measure	Civil Cases Successfully Litigated in the Trial Courts	96%	97%	96%	96%	96%	80%	80%
2.6	Outcome Measure	Civil Cases Successfully Litigated - Taxpayer Appeals	85%	96%	98%	97%	94%	85%	85%
2.6	Outcome Measure	Civil Cases Successfully Litigated - Government and Cross Appeals	60%	59%	55%	68%	64%	60%	60%
2.6	Outcome Measure	Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	\$1,280.7	\$552.0	\$1,430.4	\$1,212.2	\$365.2	n/a	n/a
n/a = In accordance with Department guidance, there is no target for this measure.									

3. Performance, Resources, and Strategies

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

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

Cases Favorably Resolved (TAX)



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

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

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

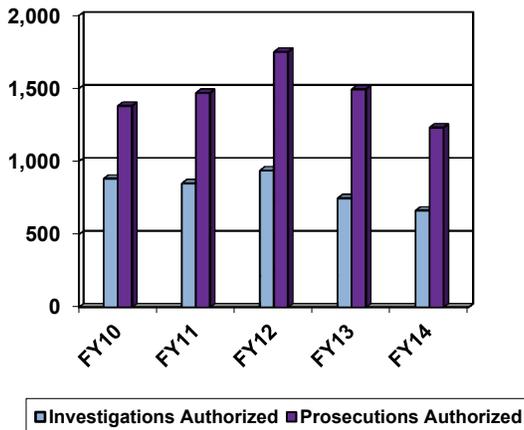
Data Limitations: The Tax Division lacks historical data on some activities that are now tracked in the case management system. The information system may cause variations in the way some statistics are presented.

Performance Measure 1: Percentage of Cases Favorably Resolved

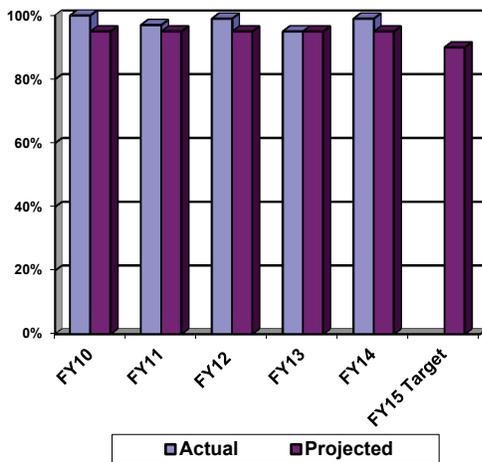
FY 2014 Actual: 96% for Civil Trial and 99% for Criminal.

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 2014, favorable outcomes were achieved in 96% of all civil and 99% of all criminal cases litigated by the Tax Division, including non-tax cases. To meet the targets for this measure, the Tax Division requires \$113,078 thousand. These resources are essential if we are to continue attaining the Department’s targets for this measure.

Investigation and Prosecution Referrals Authorized



Success Rate for Criminal Tax Cases



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

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

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

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

Performance Measure 2: Criminal Investigation and Prosecution Referrals Authorized

FY 2014 Actual: 664 Grand Jury Investigations and 1,233 Prosecutions

Discussion: The Tax Division also measures the number of authorized investigation and prosecution referrals in criminal cases. In FY 2014, the Division authorized 664 grand jury investigations and 1,233 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 2015 or FY 2016 performance goal for authorized investigations and prosecutions.

Performance Measure 3: Success Rate for Criminal Tax Cases

FY 2014 Actual: 99%

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 2014, the Division’s conviction rate was 99% in tax cases.

For FY 2015, and FY 2016, the Tax Division has established a conviction rate goal of 95%. While the Tax Division is very proud of its conviction rate, the emphasis is on uniform and fair enforcement of the tax laws.

Performance Measure 4: Civil Cases Successfully Litigated

FY 2014 Actual: Trial Courts – 96%
 Taxpayer Appeals – 94%
 Government and Cross Appeals – 64%

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

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

Performance Measure 5: Tax Dollars Collected and Retained

FY 2014 Actual: \$112 Million Collected and \$253 Million Retained

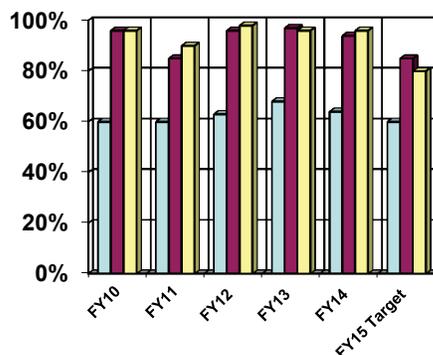
Discussion: The Tax Division collects substantial amounts for the federal government in affirmative litigation, and retains even more substantial amounts in defensive tax refund and other litigation. For FY 2014, the Division collected \$112 million and retained \$235 million.

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. 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.

a. Strategies to Achieve the FY 2016 Goals:

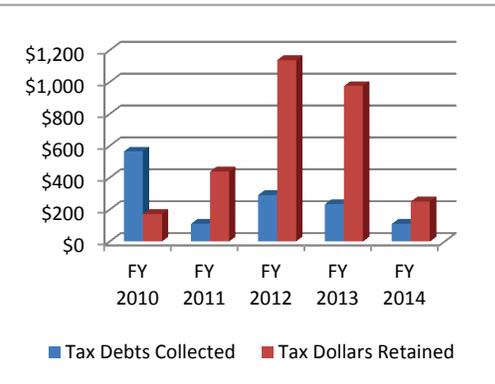
A strong tax system is vital to our national strength. It is essential that taxpayers believe, with good reason, in the integrity

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.

of the tax system. It is fundamental that we meet our obligations to our citizens to ensure the full, fair, and consistent enforcement of our tax laws. The Division's long-standing coordinated approach to tax enforcement is a particularly effective component to the Administration's goal to reduce the tax gap. Because the Tax Division's work already encompasses the elements of an effective tax enforcement program, the organization is well suited to expand existing programs with greater benefits in return.

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

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