INDICTMENT AND INFORMATION FORMS (REVISED)

Last Updated: October 2015

26 U.S.C. § 7201

Form 1

Individual Taxes – Evasion (Assessment) – False Return as Only Affirmative Act

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[_____________]** District of **[_____________]** and elsewhere, DEFENDANT, a resident of **[City]**, **[State]**, willfully attempted to evade and defeat income tax due and owing by **[him/her]** to the United States of America, for the calendar year **[Year]**[1], by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service. On that tax return, DEFENDANT reported and caused to be reported that **[his/her]** taxable income for the calendar year **[Year]** was $**[________]** and that the amount of tax due and owing was $**[________]**. In fact, as DEFENDANT knew, **[his/her]** taxable income for the calendar year **[Year]**[2] was greater than the amount reported on the tax return, and as a result of such additional taxable income, there was additional tax[3] due and owing to the United States of America.

In violation of Title 26, United States Code, Section 7201.

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[1] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[2] If the defendant is married and resides in a community property state, his/her and his/her spouse's income may be computed based on that state's rules for community property. If so, it may be appropriate to insert the phrase ", computed on a community property basis,".

[3] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

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Form 2

Joint Taxes – Evasion (Assessment) – False Return as Only Affirmative Act

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[_____________]** District of **[_____________]** and elsewhere, DEFENDANT, a resident of **[City]**, **[State]**, willfully attempted to evade and defeat income tax due and owing by **[him/her]** and **[his/her]** spouse to the United States of America, for the calendar year **[Year]**[4], by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service. On that tax return, DEFENDANT reported and caused to be reported that **[his/her]** and **[his/her]** spouse's joint taxable income for the calendar year **[Year]** was $**[________]**, and that the amount of tax due and owing was $**[________]**. In fact, as DEFENDANT knew, DEFENDANT and **[his/her]** spouse had joint taxable income for the calendar year **[Year]** that was greater than the amount reported on the tax return, and as a result of such additional taxable income, there was additional tax[5] due and owing to the United States of America.

In violation of Title 26, United States Code, Section 7201.

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[4] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[5] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

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Form 3

Individual Taxes – Evasion (Assessment) – False Return and Other Affirmative Acts

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[_____________]** District of **[_____________]** and elsewhere, DEFENDANT, a resident of **[City]**, **[State]**, willfully attempted to evade and defeat income tax[6] due and owing by **[him/her]** to the United States of America, for the calendar year **[Year]**[7], by committing the following affirmative acts, among others:

(a) preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service; and

(b) – (…) **[insert other affirmative acts[8]]**.

In violation of Title 26, United States Code, Section 7201.

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[6] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

[7] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[8] For examples of affirmative acts, see *Criminal Tax Manual* § 8.06[1].

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Form 4

Joint Taxes – Evasion (Assessment) – False Return and Other Affirmative Acts

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[_____________]** District of **[_____________]** and elsewhere, DEFENDANT, a resident of **[City]**, **[State]**, willfully attempted to evade and defeat income tax[9] due and owing by **[him/her]** and **[his/her]** spouse to the United States of America, for the calendar year **[Year]**[10], by committing the following affirmative acts, among others:

(a) preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service; and

(b) – (…) **[insert other affirmative acts[11]]**.

In violation of Title 26, United States Code, Section 7201.

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[9] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

[10] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[11] For examples of affirmative acts, see *Criminal Tax Manual* § 8.06[1].

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Form 5

Individual Taxes – Evasion (Assessment) – Spies Evasion

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year **[Year]**[12], DEFENDANT, a resident of **[City]**, **[State]**, received taxable income[13], upon which there was income tax[14] due and owing to the United States of America. Knowing the foregoing facts and failing to make an income tax return[15] on or before April 15[16], 20__, as required by law, to any proper officer of the Internal Revenue Service, and to pay the income tax to the Internal Revenue Service, DEFENDANT, from on or about **[_____________]** through on or about **[_____________]**, in the **[_____________]** District of **[_____________]** and elsewhere, willfully attempted to evade and defeat income tax due and owing by **[him/her]** to the United States of America, for the calendar year **[Year]**, by committing the following affirmative acts, among others:

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[12] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[13] If the defendant is married and resides in a community property state, his/her and his/her spouse's income may be computed based on that state's rules for community property. If so, it may be appropriate to insert the phrase ", computed on a community property basis."

[14] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

[15] It is important to note that *failing* to file a tax return is not an affirmative act and should not be alleged as such in a tax evasion indictment where a return was not submitted to the Internal Revenue Service.

[16] If April 15 of the appropriate year fell on a weekend or holiday, then the filing deadline would be the next day that was not a weekend day or holiday. Also, if the defendant requested and received a filing extension, then the due date may need to be changed to October 15 (or later, if October 15 was a weekend or holiday).

(a) – (…) [**insert affirmative acts**[17]**]**.

In violation of Title 26, United States Code, Section 7201.

[17] For examples of affirmative acts, see *Criminal Tax Manual* § 8.06[1].

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Form 6

Individual Taxes – Evasion (Payment)

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[_____________]** District of **[_____________]** and elsewhere, DEFENDANT, a resident of **[City]**, **[State]**, willfully attempted to evade and defeat the payment of income tax[18] due and owing by **[him/her]**[19] to the United States of America, for the calendar year**[s]**[20] **[Year(s)]**[21], by committing the following affirmative acts, among others:

(a) **–** (…) **[insert affirmative acts[22]]**.

In violation of Title 26, United States Code, Section 7201.

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[18] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

[19] If the defendant is charged with evading the income taxes of him/her and his/her spouse, then insert "and **[his/her]** spouse." Likewise, if the defendant is charged with evading the income taxes of another, then replace "him" or "her" with the name or initials of that person.

[20] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[21] If the evasion relates to multiple calendar (or fiscal) years, then the prosecutor should make the statement plural. *Criminal Tax Manual* § 8.07[2].

[22] For examples of affirmative acts, see *Criminal Tax Manual* § 8.06[1].

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Form 7

Corporation Taxes – Evasion (Assessment) – False Return as Only Affirmative Act

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[_____________]** District of **[_____________]** and elsewhere, DEFENDANT willfully attempted to evade and defeat income tax due and owing by **[Name of Corporation]**,[23] a corporation that had its principal place of business in **[City]**, **[State]**, to the United States of America, for the calendar year **[Year]**[24], by preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service. On that tax return, the corporation reported that its taxable income for the calendar year **[Year]** was $**[________]** and that the amount of tax due and owing was $**[________]**. In fact, as DEFENDANT knew, the corporation's taxable income for the calendar year **[Year]** was greater than the amount reported on the tax return, and as a result of such additional taxable income, there was additional tax[25] due and owing to the United States of America.

In violation of Title 26, United States Code, Section 7201.

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[23] This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

[24] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[25] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

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Form 8

Corporation Taxes – Evasion (Assessment) – False Return and Other Affirmative Acts

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[_____________]** District of **[_____________]** and elsewhere, DEFENDANT willfully attempted to evade and defeat income tax[26] due and owing by **[Name of Corporation]**,[27] a corporation that had its principal place of business in **[City]**, **[State]**, to the United States of America, for the calendar year **[Year]**[28], by committing the following affirmative acts, among others:

(a) preparing and causing to be prepared, and by signing and causing to be signed, a false and fraudulent **[Form Title]**, Form **[Form Number]**, which was submitted to the Internal Revenue Service; and

(b) – (…) **[insert other affirmative acts.**[29]**]**

In violation of Title 26, United States Code, Section 7201.

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[26] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

[27] This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

[28] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[29] For examples of affirmative acts, see *Criminal Tax Manual* § 8.06[1].

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Form 9

Corporation Taxes – Evasion (Assessment) – Spies Evasion

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

During the calendar year **[Year]**[30], **[Name of Corporation]**,[31] a corporation that had its principal place of business in **[City]**, **[State]**, received taxable income, upon which there was income tax[32] due and owing to the United States of America. Knowing the foregoing facts, and that **[Name of Corporation]** neither made an income tax return[33] on or before March 15, 20__,[34] as required by law, to any proper officer of the Internal Revenue Service, nor paid the income tax to the Internal Revenue Service, DEFENDANT, from in or about **[Month Year]** through in or about **[Month Year]**, in the **[____________]** District of **[____________]** and elsewhere, willfully attempted to evade and defeat income tax due and owing by **[Name of Corporation]** for the calendar year **[Year]**, by committing the following affirmative acts, among others:

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[30] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[31] This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

[32] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

[33] This form should be used when the corporation has not filed a return. It is important to note that *failing* to file a tax return is not an affirmative act and should not be alleged as such in a tax evasion indictment where a return was not submitted to the Internal Revenue Service.

[34] Generally, a corporation must file its income tax return by the 15th day of the third month after the end of its tax year. For a corporation that operates on a calendar year, the due date is March 15 of the following year. However, if the due date falls on a Saturday, Sunday, or legal holiday, the return is due on the next business day. Also, if the corporation requested and received a filing extension, then the due date may need to be changed to the date upon which the tax return was due once the extension was granted.

(a) – (…) **[insert affirmative acts.[35]]**

In violation of Title 26, United States Code, Section 7201.

[35] For examples of affirmative acts, see *Criminal Tax Manual* § 8.06[1].

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Form 10

Corporation Taxes – Evasion (Payment)

THE [GRAND JURY/UNITED STATES ATTORNEY] CHARGES:

From in or about **[Month Year]** through in or about **[Month Year]**, in the **[______________]** District of **[______________]** and elsewhere, DEFENDANT willfully attempted to evade and defeat the payment of income tax[36] due and owing by **[Name of Corporation]**,[37] a corporation that had its principal place of business in **[City]**, **[State]**, to the United States of America, for the calendar year**[s]**[38] **[Year(s)]**[39], by committing the following affirmative acts, among others:

(a) – (…) **[insert affirmative acts.**[40]**]**

In violation of Title 26, United States Code, Section 7201.

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[36] Although the statutory language of 26 U.S.C. § 7201 does not contain the word "substantial," some circuits require the United States to prove that the tax due and owing was substantial. Other circuits have explicitly held that the United States need not prove substantiality. *Criminal Tax Manual* § 8.07[3].

[37] This form should only be used if the corporation in question is a Subchapter C corporation since a Subchapter S corporation does not pay taxes at the corporate level.

[38] If the relevant tax period is a fiscal year rather than a calendar year, substitute "fiscal year that ended on **[Date]**."

[39] If the evasion relates to multiple calendar (or fiscal) years, then the prosecutor should make the statement plural. *Criminal Tax Manual* § 8.07[2].

[40] For examples of affirmative acts, see *Criminal Tax Manual* § 8.06[1].