

CRIMINAL TAX MANUAL

[Note: The Indictment forms are being updated. Page numbers and form numbers have changed and may not be consistent; please verify that you are using the applicable form.]

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Form 1

26 U.S.C. § 6531

Complaint to Toll Statute of Limitations

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF)
AMERICA)
)
v.) COMPLAINT
)
_____)

COMPLAINT FOR VIOLATION OF SECTION 7201¹
INTERNAL REVENUE CODE OF 1986 (26 U.S.C.)

Before [*Magistrate Judge's Name*], United States Magistrate Judge,
[*Judicial District*].

The undersigned complainant, being duly sworn, states:

That he [she] is a Special Agent [*or Revenue Agent*] of the Internal Revenue Service and, in the performance of the duties imposed on him [her] by _____, he [she] has conducted an investigation of the Federal income tax liability of [*Defendant's Name*] of [*City*], [*State*], for the calendar year² 20____, by examining the taxpayer's tax return for the calendar year 20____, and other years; [*e.g., by examination and audit of the taxpayer's business and financial books and records; by identifying and interviewing third parties with whom the taxpayer did business; by consulting public and private records reflecting the taxpayer's income; and/or by interviewing third persons having knowledge of the taxpayer's financial condition.*]³

¹ When drafting complaints for violation of other Sections of the Internal Revenue Code, refer to the appropriate indictment form as a guide.

² If a fiscal year is involved, substitute "fiscal year ended , [*Date*], 20____". Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

³ The bracketed descriptions of the kinds of investigation conducted by the subscribing agent may all be used if they correctly reflect the facts. Otherwise, the inapposite description(s) should, of course, be deleted. When appropriate, the description of a different investigative course should be added or substituted based on the facts. See *Jaben v. United States*, 381 U.S. 214 (1965).

That based on this investigation, the complainant has personal knowledge that on or about the day of , 20_____, at [City], [State] in the _____ District of _____, [Defendant's Name] did unlawfully and willfully attempt to evade and defeat the income taxes due and owing by him [her] to the United States of America for the calendar year 20___, by preparing and causing to be prepared, and by signing and causing to be signed in the _____ District of _____, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service. In that return, [Defendant's Name] stated that his [her] taxable⁴ [or adjusted gross] income for the calendar year 20___ was \$_____, and that the amount of tax due and owing thereon was the sum of \$_____, when in fact, as he [she] knew, his [her] taxable [or adjusted gross] income for the calendar year⁵ was the sum of \$_____, upon which taxable⁴ [or adjusted gross] income he [she] owed to the United States of America an income tax of \$_____.

6
Title of Subscribing Internal
Revenue Service Officer

Sworn to before me and subscribed in my presence, this _____ day of
20_____.

United States Magistrate Judge

⁴ Forms 1040 for some years do not use the phrase "taxable income" or "tax table income." However, what constitutes taxable income as defined in 26 U.S.C. § 63, is actually computed on the appropriate line of the return. That line may vary, and the line on the return showing the amount on which the actual tax was computed should be used.

⁵ If a fiscal year is involved, substitute "fiscal year ended [Date] , 20_____".

⁶ To be sworn to by an Internal Revenue Service Officer having knowledge of the facts.

[Note: The indictment forms are being updated. The updated forms for 26 U.S.C. § 7201 are available in the [separate chapters version of the Manual.](#)]

26 U.S.C. § 7201

Form 2 [Revised October 2015]

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 tax³ due and owing to the United States of America.

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

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\[3\]](#).

26 U.S.C. § 7201

Form 3 [Revised October 2015]

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 tax⁵ due and owing to the United States of America.

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

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\[3\]](#).

26 U.S.C. § 7201

Form 4 [Revised October 2015]

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 tax⁶ 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 acts⁸].

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

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\[1\]](#).

26 U.S.C. § 7201

Form 5 [Revised October 2015]

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 tax⁹ 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 acts¹¹].

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

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\[1\]](#).

26 U.S.C. § 7201

Form 6 [Revised October 2015]

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 income¹³, upon which there was income tax¹⁴ due and owing to the United States of America. Knowing the foregoing facts and failing to make an income tax return¹⁵ on or before April 15¹⁶, 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:

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 acts¹⁷]**.

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

¹⁷ For examples of affirmative acts, see [Criminal Tax Manual § 8.06\[1\]](#).

26 U.S.C. § 7201

Form 7 [Revised October 2015]

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 tax¹⁸ 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 acts²²].

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

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\[1\]](#).

26 U.S.C. § 7201

Form 8 [Revised October 2015]

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 tax²⁵ due and owing to the United States of America.

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

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\[3\]](#).

26 U.S.C. § 7201

Form 9 [Revised October 2015]

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 tax²⁶ 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.

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\[1\]](#).

26 U.S.C. § 7201

Form 10 [Revised October 2015]

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 tax³² due and owing to the United States of America. Knowing the foregoing facts, and that [Name of Corporation] neither made an income tax return³³ 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:

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\[1\]](#).

26 U.S.C. § 7201

Form 11 [Revised October 2015]

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 tax³⁶ 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.

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\[1\]](#).

26 U.S.C. § 7202

Form 12

Failure to Account for and Pay Over Withholding and F.I.C.A. (Social Security) Taxes

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7202
_____)

The grand jury charges:

[Defendant's Name], a resident of [City], [State], conducted a business as a sole proprietorship under the name [Put in name of business], with its principal place of business in [City], [State]. During the first quarter of the year 20____, ending _____, 20____, he [she] deducted and collected from the total taxable wages of his [her] employees federal income taxes and Federal Insurance Contributions Act taxes in the sum of \$_____. On or about [Month] [Day], [Year], in the _____ District of _____, he [she] did willfully fail to truthfully account for and pay over to the Internal Revenue Service the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America for the quarter ending _____, 20_____.

In violation of Title 26, United States Code, Section 7202.

A True Bill.

Foreperson

United States Attorney

1 If taxpayer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law

2 Designate the appropriate quarter.

26 U.S.C. § 7202

Form 13

Failure to Account for and Pay Over Withholding and F.I.C.A. (Social Security) Taxes

Sole Proprietorship

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7202
_____)

The grand jury charges:

[Defendant's Name], a resident of [City], [State], conducted a business as a sole proprietorship under the name _____, with its principal place of business in [City], [State]. During the _____ quarter of the year 20____, ending _____, 20____, [Defendant's Name] deducted and collected from the total taxable wages of his [her] employees federal income taxes and Federal Insurance Contributions Act taxes in the amount of \$_____. On or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], did willfully fail to truthfully account for and pay over to the Internal Revenue Service the federal income taxes and Federal Insurance Contributions Act taxes withheld and due and owing to the United States of America for the quarter ending _____, 20_____.

In violation of Title 26, United States Code, Section 7202.

1 If taxpayer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

2 Designate appropriate quarter.

A True Bill.

Foreperson

United States Attorney

26 U.S.C. § 7202

Form 14

Failure to Pay Over Withholding and F.I.C.A. (Social Security) Taxes Sole Proprietorship

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7202
_____)

The grand jury charges:

[Defendant's Name], a resident of [City], [State], conducted a business as a sole proprietorship under the name _____, with its principal place of business in [City], [State]. During the _____ quarter of the year 20____, ending _____, 20____, [Defendant's Name] deducted and collected from the total taxable wages of his [her] employees, and truthfully accounted for, federal income taxes and Federal Insurance Contributions Act taxes in the amount of \$_____. However, on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], did willfully fail to pay over to the Internal Revenue Service the federal income taxes withheld and Federal Insurance Contributions Act taxes due and owing to the United States of America for the quarter ending _____, 20_____.

In violation of Title 26, United States Code, Section 7202.

1 If taxpayer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

2 Designate appropriate quarter.

A True Bill.

Foreperson

United States Attorney

26 U.S.C. § 7202

Form 15

Failure to Truthfully Account for and Pay Over Withholding and F.I.C.A. (Social Security) Taxes Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
 v.) No. _____
) 26 U.S.C. § 7202
 _____)

The grand jury charges:

Introductory Allegations
Parties and Entities

1. At all times relevant to this indictment, [**Business Name**] was a corporation doing business in [**City**], [**State**], which is within the _____ District of _____. [**Business Name**] was in the business of [**Describe type of business**].

2. In or about [**Month Year**], defendant [**Name**] acquired control of [**Business Name**]. [**Business Name**] was purchased by an entity known as “[**Nominee**],” which also involved other individuals, but it was essentially controlled by defendant [**Name**].

3. Beginning in or about [**Month Year**], and continuing until on or about [**Month Year**], defendant [**Name**] acted as [**Business Name**]’s general manager. Defendant [**Name**] exercised control over every aspect of [**Business Name**]’s business affairs, including approving all payments by the company and controlling all of [**Business Name**]’s bank accounts.

4. During the period [**Month Year**] through [**Month Year**], defendant [**Name**] caused [**Business Name**] to make thousands of dollars of expenditures for defendant’s personal benefit while, at the same time, failing to pay over to the Internal Revenue Service payroll tax withheld from [**Business Name**]’s employees’ paychecks and, further, failing to remit monies withheld from [**Business Name**]’s employees’ paychecks for various employee benefits, including health

insurance, dental coverage, and group life insurance. For example, [*Name*] caused [*Business Name*] to spend thousands and thousands of dollars for [*List items*] for [*Name*] and members of [*Name*]'s family.

Employment Tax Withholding

5. At all times relevant to this Indictment, [*Business Name*] withheld taxes from its employees' paychecks, including federal income taxes, medicare and social security taxes (often referred to as Federal Insurance Contribution Act or "FICA" taxes). These taxes will be referred to in this Indictment collectively as "payroll taxes."

6. [*Business Name*] was required to make deposits of the payroll taxes to the Internal Revenue Service on a periodic basis. In addition, [*Business Name*] was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Income Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of income tax withheld, the total amount of social security and Medicare taxes due, and the total tax deposits.

7. As general manager of [*Business Name*], defendant [*Name*] was a "responsible person," that is, he had the corporate responsibility to collect, truthfully account for, and pay over [*Business Name*]'s payroll taxes.

8. Throughout the calendar years [*Year*] and [*Year*], [*Business Name*] withheld tax payments from its employees' paychecks. However, beginning in approximately [*Month Year*], [*Business Name*] made no payments to the Internal Revenue Service, which were due [set forth deposit requirement].

9. Beginning in [*Year*], [*Business Name*] further failed to file quarterly employment tax returns (Forms 941) with the Internal Revenue Service. Each Form 941 was due to be filed at the end of the month following the end of each calendar quarter. For example, the Form 941 for the ____ quarter of [*Year*] was due on or before [*Date*], since the ____ calendar quarter ended on [*Date*].

10. Altogether, during the five calendar quarters alleged in Counts 1-5 of this Indictment, [*Business Name*] failed to account for and pay over approximately \$_____ in payroll taxes, as set forth below:

Fourth Quarter of 20_____	\$_____
First Quarter of 20_____	\$_____
Second Quarter of 20_____	\$_____
Third Quarter of 20_____	\$_____
Fourth Quarter of 20_____	\$_____

Counts 1-5

Failure to Account For and Pay Over Employment Tax

Beginning on or about [*Date*], and continuing up to and including on or about [*Date*], in the _____ District of _____, the defendant, [*Name*], did willfully fail to truthfully account for and pay over to the Internal Revenue Service all of the federal income taxes withheld and Federal Insurance Contributions Act ("FICA") taxes due and owing to the United States on behalf of [*Business Name*] and its employees, for each of the following quarters, with each calendar quarter constituting a separate count of this Indictment:

Count 1	Fourth quarter of 20_____
Count 2	First quarter of 20_____
Count 3	Second quarter of 20_____
Count 4	Third quarter of 20_____
Count 5	Fourth quarter of 20_____

Each of these counts is a separate violation of Title 26, United States Code, Section 7202.

Foreperson

United States Attorney

26 U.S.C. § 7203

Form 16

Individual Return - Failure to File

I

N THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20____, [Defendant's Name], who was a resident of [City], [State],² had and received gross income of \$_____.³ By reason of such gross income, he [she] was required by law, following the close of the calendar year 20__ and on or before April 15, 20__,⁴ to make an income tax return to the Internal Revenue Service Center, at [City], [State], to a person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue, stating specifically the items of his [her] gross income and any deductions and credits to which he [she] was entitled. Well knowing and believing all of the foregoing, he [she] did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make an income tax return.

¹ If a fiscal year is involved, substitute "fiscal year ended _____, 20____." Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² If venue is based on defendant's principal place of business, substitute for residence, "whose principal place of business was in [City], [State]."

³ If the amount of gross income is not to be alleged, substitute "had and received gross income in excess of \$_____ [minimum filing requirement]." For definition of gross income, see 26 U.S.C. § 61.

⁴ If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

26 U.S.C. § 7203

Form 17

Individual Return - Failure to File Filing Requirement Based on Joint Income of Taxpayer and Spouse where (1) Taxpayer and Spouse were entitled to file a joint return and (2) Had the Same Residence as Their Household at the Close of the Taxable Year

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
 v.) No. _____
) 26 U.S.C. § 7203
 _____)

The United States Attorney charges:

During the calendar year¹ 20____, [**Defendant’s Name**], who was a resident of [**City**], [**State**],² and his [her] spouse had and received gross income totaling \$_____.³ By reason of that gross income, he [she] was required by law, following the close of the calendar year 20____ and on or before April 15, 20____,⁴ to make an income tax return to the Internal Revenue Service Center, at [**City**], [**State**], to a person assigned to receive returns at the local

¹ If a fiscal year is involved, substitute “fiscal year ended _____, 20__.” Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² If venue is based on the defendant’s principal place of business, substitute for residence, “whose principal place of business was in [**City**], [**State**].”

³ If the amount of gross income is not to be alleged, substitute “had and received gross income in excess of \$_____ [**minimum filing requirement**].” With respect to the filing requirement for a married individual, 26 U.S.C. 6012(a)(1) provides that “a return shall not be required of an individual . . . (iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount [see 26 U.S.C. § 151(d)] plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home. Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).” For the definition of gross income, see 26 U.S.C. § 61.

⁴ If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots’ Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

office of the Internal Revenue Service at [*City*], [*State*], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue, stating specifically the items of his [her] gross income and any deductions and credits to which he [she] was entitled. Well knowing and believing all the foregoing, he [she] did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make an income tax return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

26 U.S.C. § 7203

Form 18

Individual Return - Failure to File Community Property State Alternative

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20____, the defendant, [Defendant’s Name], and his [her] spouse, [Spouse’s Name], who were husband and wife and were residents of [City], [State],² which is a community property state, had and received gross income computed on the community property basis of \$_____ and \$_____, respectively.³ By reason of such income, the law required the defendant, following the close of the calendar year 20____ and on or before April 15, 20____,⁴ to make an income tax return to the person assigned to receive returns at

¹ If a fiscal year is involved, substitute “fiscal year ended _____, 20__.” Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

² If venue is based on the defendant’s principal place of business, substitute for residence, “whose principal place of business was in [City], [State].”

³ If the amount of gross income is not to be alleged, substitute “had and received gross income in excess of \$_____ [minimum filing requirement].” With respect to the filing requirement for a married individual, 26 U.S.C. 6012(a)(1) provides that “a return shall not be required of an individual . . . (iv) who is entitled to make a joint return and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount [see 26 U.S.C. § 151(d)] plus the basic standard deduction applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home. Clause (iv) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(c).” For spouses residing in a community property state, each spouse’s gross income is computed on the community property basis. For definition of gross income, see 26 U.S.C. § 61.

⁴ If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots’ Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

the local office of the Internal Revenue Service at [*City*], [*State*], or to the Internal Revenue Service Center, at [*City*], [*State*], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue, stating specifically the items of his [her] gross income and any deductions and credits to which he [she] was entitled. Well knowing and believing all the foregoing, the defendant did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make an income tax return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

26 U.S.C. § 7203

Form 19

Partnership Return - Failure to File

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20____, [Defendant's Name] conducted a business as a partnership under the name of _____, with its principal place of business at [City], [State]. He [she] therefore was required by law, following the close of the calendar year 20____ and on or before April 15, 20____,² to make, for and on behalf of the partnership, a partnership return of income to the Internal Revenue Service Center, at [City], [State], stating specifically the items of the partnership's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, he [she] did willfully fail, on or about April 15, 20____, in the _____ District of _____ and elsewhere, to make a partnership return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

¹ If a fiscal year is involved, substitute "fiscal year ended _____, 20____".

² Fiscal year partnership returns must be filed on or before the 15th day of the fourth month following the close of the fiscal year. 26 U.S.C. §§ 6031, 6072(a). Note that if the fifteenth day fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

26 U.S.C. § 7203

Form 20

Corporation Return - Failure to File

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20___, the defendant, [Defendant's Name],² was the [Position Held in Corporation] of [Name of Corporation], a corporation not expressly exempt from tax, with its principal place of business at [City], [State]. He [she] [it] therefore was required by law, after the close of the calendar year 20___ and on or before March 15, 20___,³ to make an income tax return, for and on behalf of the corporation, to the Internal Revenue Service Center, at [City], [State], or to the person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], stating specifically the items of the corporation's gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, he [she] [it] did willfully fail, on or about March 15, 20___,³ in the _____ District of _____ and elsewhere, to make an income tax return at the time required by law.

¹If a fiscal year is involved, substitute "fiscal year ended _____, 20___."

² If the corporation is named as the defendant, substitute the name of the corporation.

³ Fiscal year corporation income tax returns must be filed on or before the 15th day of the third month following the close of the fiscal year. 26 U.S.C. § 6072(b). Note that if the fifteenth day fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that the date the return was due should include any authorized extensions of time for filing. 26 U.S.C. § 7503.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

26 U.S.C. § 7203

Form 21

Failure to File Individual - Information

Return

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year 20___, the defendant, [Defendant's Name], made payments of [e.g., Rent, Salaries, Wages, Premiums, Annuities, Compensations, Remunerations, Gains, Profits, or Income] to the persons and in the amounts following:

Table with 3 columns: NAME, ADDRESS, AMOUNT. Three rows of blank lines for data entry.

By reason of those payments, [Defendant's Name] was required by law to make, to the Internal Revenue Service, at [City], [State],¹ on or before February 28, 20___,² a return on United States Treasury Department Internal Revenue Service Form(s) 1099, setting forth the information shown in the table above, and on United States Treasury Department Internal Revenue Service Form 1096, setting forth, among other things, the total amount of payments and the number of accompanying Form(s) 1099. Well knowing all of the foregoing, [Defendant's Name] did

¹Use Internal Revenue Service Center where Form 1096 was required to be filed. See Instructions for Forms 1096; Treas. Reg. 1.6041-6 (26 C.F.R.).

²Returns made under section 6041 on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 (March 31 if filed electronically) of the following year with any of the Internal Revenue Service Centers, the addresses of which are listed in the instructions for such forms.

willfully fail, on or about February 28, 20____,³ in the _____ District of _____ to make such a return.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

³ See footnote 2.

By virtue of his receipt of [*Amount of Cash*] on [*Date of Cash Transaction*], defendant [*Defendant's Name*] was required by law, pursuant to Title 26, United States Code, Section 6050I, and Treas. Reg. §1.6050I-1 (26 C.F.R.), to file with the Internal Revenue Service office specified by the Secretary of the Treasury, at [*City*], [*State*], in the _____ District of _____, within 15 days of his [her] receipt of the [*Amount of Cash*], a return on IRS Form 8300 in the manner and form stated thereon, stating, among other things, the name, address, and taxpayer identification number of the person from whom he [she] received the cash; the amount of cash received; and the date and nature of the transaction.

Well knowing all of the foregoing facts, defendant [*Defendant's Name*] did willfully fail to file the required return with the Internal Revenue Service.

In violation of Title 26, United States Code, Section 7203.

A True Bill.

Foreperson

United States Attorney

(3) Subsequent payments. In addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed \$10,000. The report must be made within 15 days after receiving the payment in excess of \$10,000 or the payment that causes the aggregate amount received in the 12- month period to exceed \$10,000. (If more than one report would otherwise be required for multiple cash payments within a 15-day period that relate to a single transaction (or two or more related transactions), the recipient may make a single combined report with respect to the payments. The combined report must be made no later than the date by which the first of the separate reports would otherwise be required to be made.) A report with respect to payments of \$10,000 or less that are reportable under this paragraph (b)(3) and are received after December 31, 1989, but before July 10, 1990, is due July 24, 1990.

law to make a return on United States Treasury Department Internal Revenue Service Form 8300 on or before [*Month*] [*Day*], [*Year*], to the Internal Revenue Service office specified by the Secretary of the Treasury, at [*City*], [*State*], in the _____ District of _____, stating specifically the identity of the individual from whom the cash was received, the person on whose behalf the transaction was conducted, the description of the transaction and method of payment, and the business that received the cash. Well knowing and believing all of the foregoing, [*Defendant's Name*] did willfully fail to make such a return to an office of the Internal Revenue Service at the required time and place.

In violation of Title 26, United States Code, Sections 6050I and 7203, and § 1.6050I-1 (26 C.F.R.).

A True Bill.

Foreperson

United States Attorney

the date by which the first of the separate reports would otherwise be required to be made.) A report with respect to payments of \$10,000 or less that are reportable under this paragraph (b)(3) and are received after December 31, 1989, but before July 10, 1990, is due July 24, 1990.

26 U.S.C. § 7203

Form 24

Individual - Failure to Pay Tax

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the calendar year¹ 20___, [Defendant's Name], who was a resident of [City], [State], had and received taxable income of \$_____, on which taxable income there was owing to the United States of America an income tax of \$_____. He [she] was required by law to pay, on or before April 15, 20___,² that income tax to the Internal Revenue Service Center, at [City], [State], to a person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing all of the foregoing, he [she] did willfully fail, on April 15, 20___², in the _____ District of _____ and elsewhere, to pay the income tax due.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

1 If a fiscal year is involved, substitute "fiscal year ended _____, 20___." Fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

2 If April 15th fell on a Saturday, Sunday, or legal holiday, the appropriate date in the information would be the next succeeding day that was not a Saturday, Sunday, or legal holiday. 26 U.S.C. § 7503. Note that taxpayers who file at the Andover Service Center receive an extra day to file in those years when the filing date coincides with Patriots' Day in Massachusetts, which falls on the third Monday of April. Also note that fiscal year individual returns must be filed on or before the 15th day of the fourth month after the end of the fiscal year. 26 U.S.C. § 6072(a).

26 U.S.C. § 7203

Form 25

Failure to File-- Sole Proprietorship or Partnership Employer's Quarterly Return

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
v.) No. _____
) 26 U.S.C. § 7203
_____)

The United States Attorney charges:

During the period from [Date] to [Date], inclusive, [Defendant's Name], a resident of [City], [State], was an employer of labor1 and a person required under the provisions of the Internal Revenue Code to make a return of federal income taxes withheld from wages and Federal Insurance Contributions Act (F.I.C.A.) taxes. During that period, he [she] paid wages to his [her] employees which were subject to withholding of federal income taxes and Federal Insurance Contributions Act taxes in the sum of \$_____ and \$_____, respectively. He [she] therefore was required by law, after [Last Day of Period], and on or before [Return Due Date],2 to make an Employer's Quarterly Federal Tax Return, Form 941, to the Internal Revenue Service Center, at [City], [State], to a person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing and believing all of the foregoing, he [she] did willfully fail, in the _____ District of _____ and elsewhere, to make such a return at the time required by law.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

1 If employer is a corporation, refer to Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

2 Forms 941 are due on the last day of the month that follows the end of the quarter.

2. The allegations of paragraph "1." herein are repeated and realleged for Counts I through _____, inclusive, of this Information, as though fully set forth therein:

<u>COUNT</u>	<u>QUARTER ENDED</u>	<u>DUE DATE</u>	<u>TOTAL WAGES</u>	<u>FICA TAXES (EMPLOYER'S & EMPLOYEES')</u>	<u>INCOME TAXES WITHHELD</u>	<u>TOTAL (FICA AND INCOME TAX LIABILITY)</u>
I.	_____	_____	_____	_____	_____	_____
II.	_____	_____	_____	_____	_____	_____
III.	_____	_____	_____	_____	_____	_____

In violation of Title 26, United States Code, Section 7203.

 United States Attorney

26 U.S.C. § 7203

Form 27

Sole Proprietorship or Partnership Excise Tax Return - Failure to File

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)

)

v.)

No. _____

) 26 U.S.C. § 7203

)

The United States Attorney charges:

During the period from [Date] to [Date], [Defendant's Name]¹ conducted a business as a [Sole Proprietorship or Partnership] under the name of _____, with its principal place of business in [City], [State], and sold at retail² [Article], upon which sales there were due and owing to the United States of America retail dealer's³ excise taxes in the amount of \$_____. He [she] therefore was required by law, after [Last Day Of Period], and on or before [Return Due Date], to make a Quarterly Federal Excise Tax Return⁴ to the Internal Revenue Service Center, at [City], [State], to the person assigned to receive returns at the local office of the Internal Revenue Service at [City], [State], or to another Internal Revenue Service office permitted by the Commissioner of Internal Revenue. Well knowing and believing all of the foregoing, he [she] did willfully fail, in the _____ District of _____ and elsewhere, to make a Quarterly Federal Excise Tax Return at the time required by law.

In violation of Title 26, United States Code, Section 7203.

United States Attorney

¹ If the defendant is a corporation, refer to [Form 13](#) as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

² Designate appropriate business, e.g., manufacturing.

³ For other excise taxes, see 26 U.S.C. § 4041, et seq.

⁴ Designate appropriate IRS form.

26 U.S.C. § 7204

Form 28

Failure to Furnish Employee's Withholding Statement, Form W-2

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7204
_____)

The United States Attorney charges:

During the calendar year 20___, [Defendant's Name],¹ a resident of [City], [State], employed [Name of Employee], a resident of [City], [State]. [Defendant's Name] was required under the Internal Revenue laws to deduct and withhold federal income taxes and Federal Insurance Contributions Act taxes with respect to the wages of [Name of Employee] and to furnish him [her] on or before January 31, 20___, with a written statement showing the amount of wages paid and taxes deducted and withheld during the calendar year 20___. On or about the day of , 20___, in the _____ District of _____, [Defendant's Name] did willfully fail to furnish the required statement to the employee, [Name of Employee], in the manner and at the time required by law.

In violation of Title 26, United States Code, Section 7204.

United States Attorney

¹ If the employer is a corporation, refer to language in Form 13 as a guide in charging appropriate corporate officials with an offense involving violation of a corporation's obligations under the law.

26 U.S.C. § 7204

Form 29

Furnishing False and Fraudulent Employee's Withholding Statement, Form W-2

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7204
_____)

The United States Attorney charges:

During the calendar year 20___, [Defendant's Name],¹ a resident of [City], [State], employed [Name of Employee], a resident of [City], [State]. [Defendant's Name] was required under the Internal Revenue laws to deduct and withhold federal income taxes and Federal Insurance Contributions Act taxes with respect to the wages of [Name of Employee] and to furnish him [her] on or before January 31, 20___, with a written statement showing the amount of wages paid and taxes deducted and withheld during the calendar year 20___. On or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name] did willfully furnish to [Name of Employee] a false and fraudulent statement, showing that the total wages paid were \$_____, that the income taxes deducted and withheld were \$_____, and that the Federal Insurance Contributions Act taxes deducted and withheld were \$_____, whereas, as [Defendant's Name] then and there knew, the total wages paid were \$_____, the income taxes deducted and withheld were \$_____, and the Federal Insurance Contributions Act taxes deducted and withheld were \$_____.

In violation of Title 26, United States Code, Section 7204.

United States Attorney

¹ If the employer is a corporation, refer to language in Form 13 as a guide in charging appropriate corporate officers with an offense involving violation of a corporation's obligations under the law.

26 U.S.C. § 7205

Form 30

False Withholding Allowance Certificate, Form

W-4

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7205
_____)

The United States Attorney charges:

During the calendar year 20___, [Defendant's Name], a resident of [City], [State], was employed by [Name of Employer], a resident of [City], [State]. [Defendant's Name] was required under the Internal Revenue laws to furnish [Name of Employer], on or about the date of the commencement of employment by [Name of Employer], with a signed Employee's Withholding Allowance Certificate, Form W-4, setting forth the number of withholding allowances claimed. On or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name] did willfully supply a false and fraudulent Employee's Withholding Allowance Certificate, Form W-4, to [Name of Employer], on which [Defendant's Name] claimed withholding allowances,¹ whereas, as [Defendant's Name] then and there knew, he [she] was entitled to claim only withholding allowances.²

In violation of Title 26, United States Code, Section 7205.

United States Attorney

¹ Where appropriate, the following language should be substituted: "he [she] claimed exemption from withholding."

² Where appropriate, the following language should be substituted: "he [she] was not exempt from withholding."

COMMENTS

1 The Government does *not* have to prove the number of allowances that the defendant could claim. See *United States v. McDonough*, 603 F.2d 19, 23-24 (7th Cir. 1979).

2 The Fifth Circuit has ruled that "withholding exemptions" and "withholding allowances" are the same in the context of the sufficiency of a Section 7205 indictment. *United States v. Anderson*, 577 F.2d 258, 261 (5th Cir. 1978).

COMMENT

1 The Seventh Circuit has approved this type of form as sufficiently charging a § 7206(1) offense. *United States v. Marrinson*, 832 F.2d 1465, 1476 (7th Cir. 1987).

2 It is the Tax Division's view that no additional allegations are required for an electronically filed return. Internal Revenue Code (26 U.S.C.) Section 6061(b)(1) provides that the Secretary of the Treasury "shall develop procedures for the acceptance of signatures in digital or other electronic form" and that "until such time as such procedures are in place, the Secretary may . . . (B) provide for alternative methods of signing or subscribing, a particular type or class of return, declaration, statement, or other document required or permitted to be made or written under internal revenue laws or regulations." Subsection (b)(2) of the statute further provides that "[n]otwithstanding any other provision of law, any return, declaration, statement, or other document filed and verified, signed, or subscribed under any method adopted under paragraph (1)(B) shall be treated for all purposes (both civil and criminal, including penalties for perjury) in the same manner as though signed or subscribed."

COMMENT

1 The Seventh Circuit has approved this type of form as sufficiently charging a § 7206(1) offense. *United States v. Marrinson*, 832 F.2d 1465, 1476 (7th Cir. 1987).

A True Bill.

Foreperson

United States Attorney

26 U.S.C. § 7206(1)

Form 35

Individual - 26 U.S.C. 6050I Returns Relating to Cash Received in Trade or Business

Filing False Return

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No.
) 26 U.S.C. § 7206(1)
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully make and subscribe a return on United States Treasury Department Internal Revenue Service Form 8300, for a cash payment in excess of \$10,000 received on [Date], which was verified by a written declaration that it was made under the penalties of perjury. [Defendant's Name] did not believe that the return on United States Treasury Department Internal Revenue Service Form 8300, which was filed with the Internal Revenue Service, was true and correct as to every material matter in that the return reported [State Each False Item Reported, e.g., Name of Payor, Cash Received in the Amount of \$_____]. In fact, as he [she] then and there well knew he [she] received [State Each False Item But Not Amount, e.g., Name of Payor, Cash Received in Excess of Amount Reported], in addition to that stated on the Form 8300.

In violation of Title 26, United States Code, Sections 6050I and 7206(1), and 26 Code of Federal Regulations, Section 1.6050I-1.

A True Bill.

Foreperson

United States Attorney

<u>COUNT</u>	<u>DATE OF OFFENSE</u>	<u>TAXPAYER</u>	<u>CALENDAR TAX YEAR</u>	<u>FALSELY CLAIMED ITEM¹</u>	<u>AMOUNT CLAIMED</u>
--------------	------------------------	-----------------	--------------------------	---	-----------------------

I.

II.

III.

In violation of Title 26, United States Code, Section 7206(2).

A True Bill.

Foreperson

United States Attorney

¹ Where the fraudulent deductions (generally itemized deductions) consist of alleged payments to individuals or organizations, list each fraudulent payment, rather than totaling such payments in the deduction category under which they were claimed on the return. For example, list "Medical Expenses Dr. Jones-\$500; Dr. Smith-\$500," not, "Medical Expenses \$1,000." This will prevent a defense that additional, unclaimed deductions in the same deduction category are available to offset the false items.

26 U.S.C. § 7207

Form 43

False Documents Submitted to I.R.S. Venue in District Where Documents Submitted

Tabular Form Information

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7207
_____)

The United States Attorney charges:

1. That on or about the dates hereinafter specified, in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully deliver and disclose by submitting to an Officer(s) of the Internal Revenue Service, United States Treasury Department, at [Place], [Location], documents described below.2 The defendant then and there knew that the documents were fraudulent and false as to a material matter, as set forth below.

2. The allegations of paragraph "1." are repeated and realleged in Counts I through _____, inclusive, of this Information, as though fully set forth therein.

Table with 4 columns: COUNT, DATE OF OFFENSE, DESCRIPTION OF DOCUMENT, FALSITY. Rows I, II, III.

In violation of Title 26, United States Code, Section 7207.

United States Attorney

NOTES

¹ Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

² A separate count should be charged for each false document.

26 U.S.C. § 7207

Form 44

False Documents Submitted to I.R.S. Venue in District of Mailing Tabular Form Information

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7207
_____)

The United States Attorney charges:

1. That on or about the dates hereinafter specified, in the _____ District of _____, [Defendant's Name], a resident of [City], [State], did willfully deliver and disclose by mailing and causing to be mailed, to an Officer(s) of the Internal Revenue Service, United States Treasury Department, documents described below.2 The defendant then and there knew that the documents were fraudulent and false as to a material matter, as set forth below.

2. The allegations of paragraph "1." are repeated and realleged in Counts I through ____, inclusive, of this Information, as though fully set forth therein.

Table with 4 columns: COUNT, DATE OF OFFENSE, DESCRIPTION OF DOCUMENT, FALSITY. Rows I, II, III.

In violation of Title 26, United States Code, Section 7207.

United States Attorney

NOTES

¹ Department policy generally limits Section 7207 prosecutions to cases involving the falsification of documents other than U.S. tax returns.

² A separate count should be charged for each false document.

26 U.S.C. § 7210

Form 45

Failure to Appear in Response to Summons

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 26 U.S.C. § 7210
_____)

The United States Attorney charges:

On or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], was required under the Internal Revenue laws, by reason of being duly summoned, to appear to testify^1 at on that date at the office of _____. Well knowing and believing all of the foregoing, he [she] willfully failed to appear to testify^1 at the time and place required by the summons.

In violation of Title 26, United States Code, Section 7210.

United States Attorney

^1 Where appropriate, add or substitute "and produce [Describe Documents Summoned]".

which [Defendant's Name] claimed money rewards for the reporting of alleged violations of the tax laws allegedly committed by these individuals; and (7) filing with the Internal Revenue Service a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for the calendar year 1989, which claimed a tax refund due of \$_____, whereas [Defendant's Name] was not entitled to a tax refund in this amount.]

In violation of Title 26, United States Code, Section 7212(a).

A True Bill.

Foreperson

United States Attorney

the collection, to deposit the taxes into a separate bank account established by him [her] in trust for the United States. The notice further advised [*Defendant's Name*] that the taxes were required to be kept in that bank account until paid over to the United States.

4. Within the _____ District of _____, [*Defendant's Name*] unlawfully failed to comply with the provisions of Title 26, United States Code, Section 7512, in that, after receiving delivery of the notice referred to in paragraph "3.", he [she] paid wages and was required to collect and deposit the said taxes, but failed to deposit said taxes into a separate bank account in trust for the United States, by the dates and in the amounts specified below:

<u>COUNT</u>	<u>DATE WAGES PAID</u>	<u>DATE DEPOSIT REQUIRED</u>	<u>AMOUNT OF DEPOSIT REQUIRED</u>
I.	_____	_____	\$ _____
II.	_____	_____	\$ _____
III.	_____	_____	\$ _____
IV.	_____	_____	\$ _____

In violation of Title 26, United States Code, Section 7215.

United States Attorney

18 U.S.C. § 287

Form 48

False Claim for Refund

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 18 U.S.C. § 287
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [Defendant's Name], a resident of [City], [State], made and presented to the Internal Revenue Service, an agency of the United States Department of the Treasury, a claim against the United States for payment of a refund of taxes in the amount of \$ _____, which he [she] then and there knew to be false, fictitious, and fraudulent. [Defendant's Name] made the claim by preparing and causing to be prepared,1 and presenting and causing to be presented to said agency, a U.S. Individual Income Tax Return, Form 10402 for the year _____ which requested a refund to which the defendant knew he [she] was not entitled.

In violation of Title 18, United States Code, Section 287.

A True Bill.

Foreperson

United States Attorney

1 If venue is to be placed in the district of filing, modify this form in accordance with language in Form 2 and related footnote 2. If venue is based on mailing, substitute "by mailing and causing to be mailed".

2 The appropriate IRS form should be designated here -- e.g., U.S. Corporation Income Tax Return, Form 1120.

18 U.S.C. § 287

Form 49

False Claim for Refund (Form 1099-OID)

IN THE UNITED STATES DISTRICT COURT
FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
)
v.) No. _____
) 18 U.S.C. § 287
_____)

The grand jury charges:

That on or about [Month] [Day], [Year], in the _____ District of _____, [and elsewhere if applicable], Defendants

[Names]

residents of [City], [State], [together with others known and unknown to the grand jury, if applicable] made and presented to the United States a claim for payment of a fraudulent tax refund in the amount of [\$ _____] with the knowledge that such claim was false, fictitious, and fraudulent. The defendant(s) made the false claim by [electronically, if applicable] submitting a [describe document submitted, i.e., 2010 (joint, if applicable) U.S. Individual Income Tax Return, Form 1040], with [Describe how the tax return information related to the Forms 1099-OID in the case being indicted, e.g. "Attached" or "Based on previously filed", etc.] fictitious Forms 1099-OID, Original Issue Discount, to the United States Department of the Treasury through the Internal Revenue Service.

In violation of Title 18, United States Code, Section 287.

A True Bill.

Foreperson

United States Attorney

18 U.S.C. § 286/287

Form 50

Conspiracy to File False Claims for Refund/False Claims for Refund

NOTE: This indictment provides sample language to charge a violation of 18 U.S.C. 286 in a commonly encountered type of Electronic Filing (ELF) scheme. Modification of the language will be necessary in cases involving different fact patterns. Modification of the format used may be desirable to conform to local practice.

IN THE UNITED STATES DISTRICT COURT FOR THE _____ DISTRICT OF _____

UNITED STATES OF AMERICA)
v.) No. _____
) 18 U.S.C. § 286:
) Conspiracy; 18 U.S.C.
_____) § 287: False Claim to
_____) a Government Agency
_____)

The grand jury charges:

COUNT ONE

[18 U.S.C. § 286]

Beginning in or about [month], 20__, and continuing until in or about [month], 20__, within the _____ District of _____, (and elsewhere, if appropriate) defendants [name(s) of defendant(s)], and others known and unknown to the grand jury, agreed, combined, and conspired to defraud the United States by obtaining and aiding to obtain the payment or allowance of [a] false, fictitious and fraudulent claim[s] on behalf of themselves and others by submitting false claims for income tax refund with the United States Department of Treasury through the Internal Revenue Service.

The conspiracy was accomplished, in part, by the following acts:

[Describe how the conspiracy was accomplished or intended to be accomplished. Some examples of acts undertaken follow.]

1. Defendants *[insert relevant names]* recruited customers into the *[fraudulent Form 1099-OID]* scheme through seminars and one-on-one consultations.
2. Defendants *[insert relevant names]* charged each scheme customer up to *[\$x,xxx]* *[describe what customer got for the fee; avoid referring to membership]*.
3. Defendants *[insert relevant names]* paid a fee to others for referring a paying customer.
4. Defendants *[insert relevant names]* required that scheme customers pay them a portion of the fraudulently-obtained refunds.
5. Defendants *[insert relevant names]* required that each scheme customer provide specific paperwork, including but not limited to, copies of his or her driver's license and social security card; a voided check; IRS transcripts and tax returns for specific years; a signed IRS Form 8821, granting Defendant permission to inspect his/her IRS records; and a promissory note and trust deed for each piece of real property that the customer owned.
6. Defendants *[insert relevant names]* electronically transmitted the fraudulent *[Form 1099-OID]* information to the IRS.

[Other schemes may include such acts as using stolen Social Security Numbers or claiming as dependents individuals who are not dependents of the filer. Include additional acts if warranted.]

In violation of Title 18, United States Code, Section 286.

COUNTS TWO THROUGH TEN
[18 U.S.C. §§ 287, 2]

The grand jury charges:

That on or about the dates listed below, within the _____ District of _____, *[Defendants' Names]* made and presented and caused to be made and presented to the Internal Revenue Service, an agency of the United States Department of the Treasury, claims against the United States for payment of a refund of taxes, which they then and there knew to be false, fictitious, and fraudulent. *[Defendant's Name]* made the claims by preparing and causing to be prepared,¹ and presenting and causing to be presented to said agency, U.S. Individual Income Tax Returns, Forms 1040², for the individuals and amounts described below knowing that the claim was false, fictitious, and fraudulent in that the named individual was not entitled to the refund which was being requested.

<u>COUNT</u>	<u>NAME</u>	<u>DATE</u>	<u>YEAR</u>	<u>TAX REFUND AMOUNT CLAIMED</u>
TWO	_____	__/__/__	_____	\$ _____
THREE	_____	__/__/__	_____	\$ _____
FOUR	_____	__/__/__	_____	\$ _____
FIVE	_____	__/__/__	_____	\$ _____
SIX	_____	__/__/__	_____	\$ _____
SEVEN	_____	__/__/__	_____	\$ _____
EIGHT	_____	__/__/__	_____	\$ _____
NINE	_____	__/__/__	_____	\$ _____
TEN	_____	__/__/__	_____	\$ _____

In violation of Title 18, United States Code, Section 287 and Section 2.

¹ If venue is to be placed in the district of filing, modify this form in accordance with language in [Form 2](#) and related [footnote 2](#). If venue is based on mailing, substitute "by mailing and causing to be mailed".

² The appropriate IRS form should be designated here -- e.g., U.S. Corporation Income Tax Return, Form 1120.

the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes [*or other relevant taxes, e.g., excise taxes*].⁵

PARTIES, PERSONS AND ENTITIES

At all relevant times,

2. [*E.g., Defendants John Smith and Tom Smith were president and vice-president of Smith, Inc., a corporation, and each owned 50% of the stock of Smith, Inc.*]

3. [*E.g., Defendant Sam Jones was a certified public accountant who prepared the income tax returns of Smith, Inc., a corporation, and its officers.*]

4. [*E.g., Smith, Inc., was a Massachusetts corporation, formed in 1975 by defendant John Smith to market real estate limited partnerships.*]

5. [*Continue to describe all defendants and all persons and entities that are significant to an understanding of the conspiracy.*]

MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

6. [*Describe manner or means, e.g., To divert corporate receipts to their own use, defendant John Smith presented false books and records to the corporate accountant for use in preparing the corporate income tax returns of Smith, Inc., for the calendar years 1988, 1989, and 1990.*]

⁵ Strike the remaining portion of this paragraph beginning with the phrase "to defraud the United States" and substitute appropriate language if conspiracy is to commit a substantive offense. *E.g.*, "to commit offenses against the United States: to wit, to violate Title 26, United States Code, Sections 7201 and 7206(1)." In the case of a conspiracy to commit a substantive offense, this paragraph must allege that the defendant had the intent required for the substantive offense. *United States v. Bedford*, 536 F.3d 1148, 1155 (10th Cir. 2008).

The Tax Division advises against charging a conspiracy to defraud and a conspiracy to commit substantive tax offenses in the same count or indictment. This is rarely necessary and tends to unduly complicate the trial, especially with respect to the jury instructions.

7. *[E.g., By backdating documents so as to conceal from the Internal Revenue Service defendant John Smith's ownership and interest in real property.]*

8. *[E.g., By making false statements and representations to agents of the Internal Revenue Service for the purpose of concealing the interest of defendant John Smith in property, stock, etc.]*

9. *[Continue to describe general manner and means used to carry out the conspiracy.]*⁶

OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the _____ District of _____, and elsewhere:

10. *[E.g., On or about July 20, 1988, defendant Tom Smith and Jane Smith met in the offices of Smith Realty Co. at 33 Main Street, Boston, Massachusetts, and discussed how to backdate real estate contracts.]*

11. *[E.g., In or about the week of July 20, 1988, defendants John Smith and Tom Smith went to the A & B Bank in Boston, Massachusetts, and removed cash from the safe deposit box of defendant John Smith.]*

In violation of Title 18, United States Code, Section 371.

A True Bill.

Foreperson

United States Attorney

⁶ When charging a *Klein* conspiracy (and not a conspiracy to commit a substantive offense), the means must include deceit, craft, and/or trickery, or at least means that are dishonest. *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924).

United States Attorney

<u>Count</u>	<u>Approximate Dollar Amounts</u>
I.	\$ _____
II.	\$ _____
III.	\$ _____