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33.00 *BANK DEPOSITS*

33.00 *BANK DEPOSITS*

33.01 *GENERALLY*

The bank deposits method of proof is one of two traditional indirect methods of proof used by the government in computing taxable income, the other being the net worth method of proof. *See* Section 31.00, *supra*. ***United States v. Boulet***, 577 F.2d 1165 (5th Cir. 1978), *cert. denied*, 439 U.S. 1114 (1979), contains a good description of the mechanics of a bank deposits computation:

> To prove its charges, the government relied upon one of the two traditional indirect methods of proof, analysis of the taxpayer's bank deposits and cash expenditures. Under this method, all deposits to the taxpayer's bank and similar accounts in a single year are added together to determine the gross deposits. An effort is made to identify amounts deposited that are non-taxable, such as gifts, transfers of money between accounts, repayment of loans and cash that the taxpayer had in his possession prior to that year that was deposited in a bank during that year. This process is called "purification." It results in a figure called net taxable bank deposits.
>
> The government agent then adds the amount of expenditures made in cash, for example, in this case, cash the doctor received from fees, did not deposit, but gave to his wife to buy groceries. The total of this amount and net taxable bank deposits is deemed to equal gross income. This is in turn reduced by the applicable deductions and exemptions. The figure arrived at is considered to be "corrected taxable income." It is then compared with the taxable income reported by the taxpayer on his return.

Boulet, 577 F.2d at 1167.

The bank deposits and the net worth methods of proof have certain features in common. Both methods are approximations which seek to show by circumstantial means that the taxpayer had income that was not reported. ***Holland v. United States***, 348 U.S. 121, 129 (1954); ***United States v. Hall***, 650 F.2d 994, 999 (9th Cir. 1981); ***United States v. Bray***, 546 F.2d 851, 856 (10th Cir. 1976) ("the bank deposits method of proof is not an exact science").

However, the focus in a bank deposits case is on funds deposited during the tax year, while

the net worth method considers year-end bank balances, as well as asset acquisitions and liabilities. But while "the mechanics of arriving at an income figure are different, both methods involve similar underlying assumptions and afford much of the same inferences for and against the accused." ***Hall***, 650 F.2d at 999.

33.01[1] ***Consistently Approved Method of Proof***

The bank deposits method of proof was approved in the still frequently cited case of ***Gleckman v. United States***, 80 F.2d 394 (8th Cir. 1935), *cert. denied*, 297 U.S. 709 (1936). Since that time, the bank deposits method of proof has "received consistent judicial approval." ***United States v. Morse***, 491 F.2d 149, 151 (1st Cir. 1974); ***United States v. Slutsky***, 487 F.2d 832, 840 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974); ***United States v. Nunan***, 236 F.2d 576, 587 (2d Cir. 1956), *cert. denied*, 353 U.S. 912 (1957); ***United States v. Venuto***, 182 F.2d 519, 521 (3d Cir. 1950); ***Morrison v. United States***, 270 F.2d 1, 2 (4th Cir.), *cert. denied*, 361 U.S. 894 (1959); ***Skinnett v. United States***, 173 F.2d 129 (4th Cir. 1949); ***United States v. Tafoya***, 757 F.2d 1522, 1528 (5th Cir.), *cert. denied*, 474 U.S. 921 (1985); ***United States v. Normile***, 587 F.2d 784, 785 (5th Cir. 1979); ***United States v. Horton***, 526 F.2d 884, 887 (5th Cir.), *cert. denied*, 429 U.S. 820 (1976); ***United States v. Parks***, 489 F.2d 89, 90 (5th Cir. 1974); ***United States v. Moody***, 339 F.2d 161, 162 (6th Cir. 1964); ***United States v. Ludwig***, 897 F.2d 875, 878 (7th Cir. 1990); ***United States v. Esser***, 520 F.2d 213, 216 (7th Cir. 1975), *cert. denied*, 426 U.S. 947 (1976); ***United States v. Stein***, 437 F.2d 775, 779 (7th Cir.), *cert. denied*, 403 U.S. 905 (1971); ***United States v. Lacob***, 416 F.2d 756, 759 (7th Cir. 1969), *cert. denied*, 396 U.S. 1059 (1970); ***United States v. Mansfield***, 381 F.2d 961, 965 (7th Cir.), *cert. denied*, 389 U.S. 1015 (1967); ***United States v. Abodeely***, 801 F.2d 1020, 1023 (8th Cir. 1986); ***United States v. Vannelli***, 595 F.2d 402, 404 (8th Cir. 1979); ***United States v. Stone***, 770 F.2d 842, 844 (9th Cir. 1985); ***United States v. Soulard***, 730 F.2d 1292, 1296 (9th Cir. 1984); ***United States v. Hall***, 650 F.2d 994, 999 (9th Cir.

1981); ***United States v. Helina***, 549 F.2d 713, 720 (9th Cir. 1977); ***Percifield v. United States***, 241 F.2d 225, 229 & n.7 (9th Cir. 1957); ***United States v. Bray***, 546 F.2d 851, 853 (10th Cir. 1976); *see also* ***United States v. Black***, 843 F.2d 1456, 1458 (D.C. Cir. 1988) (recognized bank deposits method in order to distinguish it from the specific items method used in that case).

33.01[2] ***Used Alone or With Other Methods***

Proof of unreported income by the bank deposits method alone is sufficient. It is not necessary to use another method of proof as corroboration. ***United States v. Stein***, 437 F.2d 775, 779 (7th Cir.), *cert. denied*, 403 U.S. 905 (1971), and cases cited.

The bank deposits method can, however, be used as corroboration of other methods of proof. *See* ***United States v. Tafoya***, 757 F.2d 1522, 1528 (5th Cir.), *cert. denied*, 474 U.S. 921 (1985), where the primary method of proof was the specific items method, and "bank deposits evidence was admitted only to corroborate the evidence of specific payments." Similarly, in ***United States v. Horton***, 526 F.2d 884, 887 (5th Cir.), *cert. denied*, 429 U.S. 820 (1976), a specific items prosecution, "evidence of total bank deposits during the years in question was properly admissible as corroborative evidence." Where the bank deposits method of proof is used as corroboration, however, the jury should be instructed to limit its consideration of the bank deposits evidence to corroboration of the other method of proof. ***Tafoya***, 757 F.2d at 1528; ***Horton***, 526 F.2d at 887.

In ***United States v. Hall***, 650 F.2d 994, 996-97 (9th Cir. 1981), "the prosecution elicited testimony from its experts establishing appellants' income by both the 'net worth' and the 'bank deposits' methods of proof." The conviction was reversed, not because two methods of proof were used, but because of a failure to give explanatory instructions to the jury on the indirect methods of proof used by the government. ***Hall***, 650 F.2d at 999.

Many cases use the bank deposits method of proof in conjunction with the specific items method. For example, in ***United States v. Procario***, 356 F.2d 614, 616 (2d Cir.), *cert. denied*,

384 U.S. 1002 (1966):

> The government relied for proof partly on direct evidence from patients and their cancelled checks, and partly on the bank deposit method, modified so as to yield the rest of appellant's professional income.

Procario, 356 F.2d at 616.

See also ***United States v. Nunan***, 236 F.2d 576, 582, 586 (2d Cir. 1956), *cert. denied*, 353 U.S. 912 (1957), where the government introduced evidence in the form of the bank deposits method of proof and also introduced evidence of specific items of taxable income which had been omitted from the defendant's returns -- "proof relative to the specific items of taxable income which were omitted from the returns in the light of the evidence as a whole was of itself sufficient to support the verdict." ***Nunan***, 236 F.2d at 586.

33.01[3] ***Cross Reference***

It will help in understanding the discussion of the bank deposits method of proof which follows if reference is made to the sample bank deposits computation reproduced in Section 33.12, *infra*.

Reference also should be made to Section 31.00, *supra*, treating the net worth method of proof since, as noted above, a number of the underlying assumptions in the bank deposits method of proof are the same as those in the net worth method of proof.

Finally, reference should be made to the Manual section, *supra*, on the specific violation under consideration, since the bank deposits method of proof merely concerns the computation of income and not the other elements of a given offense.

33.02 ***PRELIMINARY FOUNDATION FOR USE***

The classic bank deposits case is ***Gleckman v. United States***, 80 F.2d 394 (8th Cir. 1935), *cert. denied*, 297 U.S. 709 (1936). As noted in ***Gleckman***, "the bare fact, standing alone, that a man has deposited a sum of money in a bank would not prove that he owed income tax on the amount; nor would the bare fact that he received and cashed a check for a large amount, in and of itself, suffice to establish that income tax was due on account of it." *Id.* at 399. The court in ***Gleckman*** went on to describe the foundation for using the bank deposits method of proof as follows:

> On the other hand, if it be shown that a man has a business or calling of a lucrative nature and is constantly, day by day and month by month, receiving moneys and depositing them to his account and checking against them for his own uses, there is most potent testimony that he has income, and, if the amount exceeds exemptions and deductions, that the income is taxable.

Gleckman, 80 F.2d at 399.

The teaching of ***Gleckman*** and its progeny is that to use the bank deposits method of proof, the government must initially introduce evidence showing that:

1. The taxpayer was engaged in a business or income-producing activity from which the jury can infer that the unreported income arose;
2. Periodic and regular deposits of funds were made into accounts in the taxpayer's name or over which the taxpayer had dominion and control;
3. An adequate and full investigation of those accounts was made in order to distinguish between income and non-income deposits;
4. Unidentified deposits have the inherent appearance of income, *e.g.*, the size of the deposits, odd or even amounts, fluctuations in amounts corresponding to seasonal fluctuations of the business involved, source of checks deposited, dates of deposits, accounts into

which deposited, etc.

United States v. Morse, 491 F.2d 149, 152 (1st Cir. 1974); ***United States v. Slutsky***, 487 F.2d 832, 841-42 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974); ***United States v. Venuto***, 182 F.2d 519, 521 (3d Cir. 1950); ***United States v. Abodeely***, 801 F.2d 1020, 1023 (8th Cir. 1986); ***United States v. Stone***, 770 F.2d 842, 844 (9th Cir. 1985); ***United States v. Helina***, 549 F.2d 713, 720 (9th Cir. 1977).

33.03 ***BUSINESS OR INCOME-PRODUCING ACTIVITY***

In the first instance, it must be shown that during the tax years in question the taxpayer was engaged in an income-producing business or calling. This is relatively simple and ordinarily does not present a problem -- the taxpayer was or was not involved in an income-producing activity.

As can be imagined, the cases involve a wide range of income-producing activities, including, for example: attorney, politician, and former Commissioner of Internal Revenue, ***United States v. Nunan***, 236 F.2d 576, 579 (2d Cir. 1956), *cert. denied*, 353 U.S. 912 (1957); personal injury attorney, ***United States v. Lacob***, 416 F.2d 756, 758 (7th Cir. 1969), *cert. denied*, 396 U.S. 1059 (1970); doctors, ***United States v. Boulet***, 577 F.2d 1165, 1167 (5th Cir. 1978), *cert. denied*, 439 U.S. 1114 (1979), and ***United States v. Esser***, 520 F.2d 213, 215 (7th Cir. 1975), *cert. denied*, 426 U.S. 947 (1976); partners in a resort hotel in the Catskill Mountains, ***United States v. Slutsky***, 487 F.2d 832, 835 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974); dealer in wholesale meat, ***United States v. Stein***, 437 F.2d 775, 776 (7th Cir.), *cert. denied*, 403 U.S. 905 (1971); operator of a retail meat store, slaughterhouse, and rental properties, ***United States v. Venuto***, 182 F.2d 519, 520 (3d Cir. 1950); retailers, ***United States v. Hall***, 650 F.2d 994, 996 (9th Cir. 1981), and ***Graves v. United States***, 191 F.2d 579, 581 (10th Cir. 1951); seller of ice cream franchises, ***United States v. Soulard***, 730 F.2d 1292, 1296 (9th Cir. 1984); operator of a gambling casino, ***Percifield v. United States***, 241 F.2d 225, 226 (9th Cir. 1957); and, dealer in gravestones, ***United States v. Fowler***,

605 F.2d 181, 182 (5th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980).

The income-producing business can be an illegal activity, *e.g.*, bribes, ***Malone v. United States***, 94 F.2d 281, 287-88 (7th Cir.), *cert. denied*, 304 U.S. 562 (1938); prostitution, ***United States v. Abodeely***, 801 F.2d 1020, 1025 (8th Cir. 1986); embezzlement, ***United States v. Vanelli***, 595 F.2d 402, 406 (8th Cir. 1979); and, income from attempted assassinations, ***United States v. Tafoya***, 757 F.2d 1522, 1526-27 (5th Cir.), *cert. denied*, 474 U.S. 907 (1985). Caution must be exercised, however, in the use and presentation of evidence relating to an illegal source of income. *See* Section 31.12(3), *supra*, Illegal Sources of Income.

33.04 ***ANALYSIS OF DEPOSITS***

33.04[1] ***Generally***

The basic underlying assumption in the bank deposits method of proof is that if a taxpayer is in an income-producing activity and regularly and periodically makes deposits to bank accounts, then those deposits, after adjustments, constitute taxable income. ***United States v. Morse***, 491 F.2d 149, 152 (1st Cir. 1974); ***Gleckman v. United States***, 80 F.2d 394, 399 (8th Cir. 1935), *cert. denied*, 297 U.S. 709 (1936).

Heavy reliance is placed on an analysis of deposits in establishing a relationship between the deposits and the income-producing activity. The composition of each deposit is determined, to the extent possible, based on obtainable bank records, third-party records, and any admissions of the taxpayer.

The government then generally shows by direct evidence that a number of the deposited items are, in fact, taxable receipts. The number so verified varies from case to case. *See*, *e.g.*, ***United States v. Venuto***, 182 F.2d 519, 520 (3d Cir. 1950), where, in addition to the government introducing evidence that receipts from defendant's businesses were deposited regularly and currently, government agents testified that they analyzed the bank accounts and defendant's

check stubs and cancelled checks, verifying through third-party suppliers, actual purchases of merchandise bought for sale. In addition, the defendant's real estate income was verified through statements of receipts and disbursements prepared by the real estate firm that managed the defendant's business. *See also* ***United States v. Esser***, 520 F.2d 213, 217 (7th Cir. 1975), *cert. denied*, 426 U.S. 947 (1976).

There is, however, no fixed requirement that the government verify a certain percentage of the defendant's deposits as income items. All that the government has to prove is that the defendant was engaged in an income-producing business, that regular deposits of funds having the appearance of income were in fact made to bank accounts during the year in question, and that the government did everything that was fair and reasonable to identify and deduct any non-income items. ***Esser***, 520 F.2d at 217. Obviously, the jury may feel more comfortable with a higher percentage of verified deposits.

For an example of an investigation of a sampling of total deposits, *see* ***United States v. Stone***, 770 F.2d 842, 844 (9th Cir. 1985), involving a doctor, where Internal Revenue Service agents obtained bank copies of signature cards, monthly statements, and deposit slips, and contacted a number of insurance companies requesting copies of checks issued to the defendant for medical services and claim forms submitted for medical services. The agents then analyzed the bank records of the checks deposited into the defendant's accounts:

> In order to discover what portion of Stone's total deposits represented payment for medical services rendered, the IRS selected 12 large deposits -- one for every other month in 1976 and 1977 -- as a representative sample, and had the bank produce a copy of every check deposited with those deposits.
>
> The IRS attempted to verify that these checks were payments for medical services rendered by writing or calling the makers of the checks. Although the IRS was only able to verify a small portion of the checks, almost all the checks so verified in the sampling process were payments for medical services. Checks that were for

> nonincome items were identified by the IRS and excluded from gross receipts from the medical practice.

Stone, 770 F.2d at 844.

33.04[2] ***Currency Deposits***

The usual bank deposits case will involve a mixture of check and cash deposits. If the case does include currency deposits, then any cash withdrawals or checks made payable to cash or the taxpayer and subsequently cashed must be deducted from the total amount of deposits, unless it can be shown that the cash withdrawals and the checks cashed were not used to make the currency deposits. If the taxpayer is not given credit under these circumstances for such potential redeposits, a duplication can result, yielding an inflated figure for taxable income.

For example, assume that during the year the taxpayer earned $25,000, which is in the form of $15,000 in checks and $10,000 in cash, all of which was deposited in the taxpayer's bank account. Assume further that during the year the taxpayer made out checks to cash totalling $7,000 and deposited the resulting cash into the account. The total amount of deposits would be $32,000 ($25,000 plus $7,000), indicating gross receipts of $32,000. This inflated amount is caused by a duplication -- the $7,000 was counted when it was deposited initially and again when it was redeposited, after having been withdrawn. In the example given, it would be necessary to deduct $7,000 from the total deposits in order to prevent duplication, *i.e.*, $32,000 minus $7,000 equals $25,000, which is what the taxpayer earned. Note that if the taxpayer had issued checks to cash totaling only $3,000, then it would be necessary to subtract only $3,000 from total deposits, since $3,000 would be the maximum amount of currency that could have been redeposited.

Additionally, if the taxpayer had checks to cash totalling $12,000, then it would not be necessary to subtract that amount. At most, $10,000 could have been redeposited, since that was the total amount of currency deposits for the year, and only $10,000 need be subtracted. Be careful, however, because this situation would leave the taxpayer with an additional $2,000 in cash that

could be redeposited in a subsequent year and create a duplication. If the $2,000 cannot be accounted for in an expenditure and the taxpayer has currency deposits in the following year, then this $2,000 may have to be subtracted from total currency deposits the following year depending on the circumstances of the case.

On the other hand, there would be no duplication and no need to subtract cash withdrawn from the total of the deposits if there were no currency deposits made during the year, since any checks to cash were obviously not cashed and deposited in the account. And even where there are currency deposits, it is still not necessary to subtract cash withdrawals from the total currency deposits if the resulting cash can be traced to a use other than the redepositing of the funds. Thus, if it can be shown that all currency deposits for the year precede the dates of any cash withdrawals or checks to cash, then no elimination is required. The timing establishes that the source of the currency deposits must have been funds other than those withdrawn from the account. In a similar fashion, no elimination of currency deposits is necessary if it can be shown that cash withdrawals were used for food, clothing, etc., and thus were not funds redeposited in the taxpayer's bank account. *See* ***Beard v. United States***, 222 F.2d 84, 87-88 (4th Cir.), *cert. denied*, 350 U.S. 846 (1955).

Although ***United States v. Caserta***, 199 F.2d 905 (3d Cir. 1952), is an expenditures case, the principles discussed are applicable to a bank deposits case. ***Caserta*** contains an excellent explanation of the duplication that can result in an expenditures case where deposits and withdrawals are not properly accounted for. In the words of the court:

> If a man has a bank account and puts everything he receives into the account, his expenditures are pretty well shown by what he spends it for in checking it out. But suppose he withdraws from his bank account a sum in cash, a check made payable to himself or an impersonal payee. Does that show expenditure? It may well do so if we proceed on the ordinary assumption that people do not draw money from bank accounts unless they are going to spend the money

> for something. On the other hand, suppose a man writes a check to "cash" for $500. and the same day buys an overcoat for $100. and a suit of clothes for the same amount. Now what do we charge him with, an expenditure of $700.? If cash withdrawals from a bank account are to be treated as cash receipts to a person, surely it is incorrect to charge individual items for which he has paid cash to his list of expenditures unless it is shown that the cash bank withdrawals had nothing to do with the individual items. Otherwise, a man doubles his taxable income when he writes a check for "cash" and spends the money he gets from his bank. This would be a very happy way of increasing one's income if it could be done.

Caserta, 199 F.2d at 907.

For the same reasons given in the ***Caserta*** case, it is error to charge a taxpayer in a bank deposits case with currency deposits, unless it can be shown that the source of the currency deposits was not funds withdrawn from the taxpayer's bank account.

33.04[3] ***Missing or Incomplete Bank Records***

An effort obviously should be made to obtain all of the bank records for a given year. This is not always possible. The effect of missing or unavailable records will depend on the nature of the missing records and whether a thorough government investigation and analysis can overcome the gap in records.

In ***Beard v. United States***, 222 F.2d 84 (4th Cir.), *cert. denied*, 350 U.S. 846 (1955), there were currency deposits made to one of the defendant's accounts, and the government agents were unable to identify withdrawals from this account since they did not have access to the defendant's cancelled checks. In affirming the conviction, the court pointed out that the agents conducted an "exhaustive search to ascertain what deductions should be made for possible duplications, business expenses, and amounts not attributable to the defendant's gambling operations" and, in addition, an extensive investigation was conducted to demonstrate the source of deposited items. ***Beard***, 222 F.2d at 86-88.

In ***United States v. Esser***, 520 F.2d 213, 216 (7th Cir. 1975), *cert. denied*, 426 U.S. 947 (1976), "it was virtually impossible to introduce the deposit slips due to their poor quality, unreliability, and unavailability." The government introduced the bank statements and passbooks as the most reliable evidence available. On cross-examination, the defendant attempted to establish that the deposit slips and underlying items were capable of retrieval. The question was left as one of fact for the jury. The court rejected the argument that a failure by the government to specifically identify and analyze the defendant's deposit slips and underlying items was fatal to the government's case. The full investigation of the deposits and underlying items and the taking of reasonable steps to identify and deduct non-income items was sufficient. ***Esser***, 520 F.2d at 217. *Accord* ***United States v. Abodeely***, 801 F.2d 1020, 1025 (8th Cir. 1986).

A similar argument was rejected in ***United States v. Soulard***, 730 F.2d 1292, 1297 (9th Cir. 1984), where the defendant argued that the trial court erroneously admitted the government's bank deposits analysis because the government failed to establish that it had introduced into evidence complete sets of the defendant's bank records. The court rejected the argument, holding that the issue of the completeness of bank records goes to the jury's determination of the weight of the evidence, not its admissibility. ***Soulard***, 730 F.2d at 1298. *Cf.* ***United States v. Stone***, 770 F.2d 842, 844-45 (9th Cir. 1985) (IRS selected twelve large deposits as a representative sample, and had the bank produce a copy of every check deposited with those deposits).

33.05 *ELIMINATION OF NON-INCOME ITEMS*

33.05[1] *Generally*

An adequate and full investigation of the taxpayer's accounts must be conducted to distinguish between income and non-income deposits to support the inference that the unexplained excess in deposits is currently taxable income. ***United States v. Morse***, 491 F.2d 149, 152 (1st Cir. 1974); ***United States v. Lawhon***, 499 F.2d 352, 356 (5th Cir. 1974), *cert. denied*, 419 U.S. 1121 (1975).

The government is not required, however, to negate every possible non-income source of each deposit, particularly where the source of the funds is uniquely within the knowledge of the taxpayer and the government has checked out those explanations given by the taxpayer that are reasonably susceptible of investigation. ***United States v. Boulet***, 577 F.2d 1165, 1171 (5th Cir. 1978), *cert. denied*, 439 U.S. 1114 (1979).

The adequacy of the investigation necessarily turns on the circumstances of each case. ***United States v. Slutsky***, 487 F.2d 832, 841 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974). The rule is one of practicality. Although the government is not required to negate all possible non-income sources of deposits to the taxpayer's accounts, ***United States v. Slutsky***, 487 F.2d at 841, "[T]he agent does have an overall burden to prove that he has done the best he can to discover, and exclude, all non-income items from the reconstructed income," ***Morse***, 491 F.2d at 154. For examples of the investigative steps taken to distinguish between income and non-income deposits, *see* ***United States v. Venuto***, 182 F.2d 519, 520 (3d Cir. 1950); ***United States v. Stein***, 437 F.2d 775, 778 (7th Cir.), *cert. denied*, 403 U.S. 905 (1971); ***United States v. Hall***, 650 F.2d 994, 1000 (9th Cir. 1981); ***United States v. Helina***, 549 F.2d 713 (9th Cir. 1977).

33.05[2] *Proof of Non-Income Items*

If the analysis categorizes certain deposits as "non-income", the direct evidence the agent

relied upon to make that determination must be introduced. It is error to rely merely on hearsay testimony of the investigating agent. ***United States v. Morse***, 491 F.2d 149, 152-55 (1st Cir. 1974).

In ***Morse***, the agent testified that after completing a thorough investigation, he identified non-income deposits into the defendant's bank accounts from loan proceeds, inter-bank transfers, proceeds from the transfer of land, and proceeds from the sale of a truck. ***Morse***, 491 F.2d at 153.

However, the government did not introduce available corroborating or related documents upon which the agent had relied, on the grounds that since the items were a credit to the defendant, no prejudice would result. The appellate court reversed because of the possible prejudice to the defendant if the government underestimated the amounts of the non-income deposits. ***Morse***, 491 F.2d at 154. The court stated "[w]here direct evidence is available as to their existence and magnitude, there is no need to rely on the agent's hearsay assertion that they were no larger than he had accounted for. Accordingly, we cannot accept the government's position." *Id*.

In ***Morse***, for example, although bank ledger cards were available to prove loan proceeds, the government did not introduce them, which deprived the court and jury of any knowledge of the particular banks from which the defendants received the loans, the dates of the loans, and the amount of each loan. ***Morse***, 491 F.2d at 154. Similarly, the court pointed out that the agent's hearsay testimony also affected non-income deposits regarding inter-bank transfers, returned checks, and sales proceeds. ***Morse***, 491 F.2d at 155 n.10.

The foregoing should be distinguished from the situation where the investigation does not disclose any non-income deposits or any non-income deposits in addition to those allowed. "To be sure, the court must rely on mere assertion when the agent testifies that he could find no evidence of other non-income items, but then, of course, no better evidence would exist." ***Morse***, 491 F.2d at 154 n.8.

33.05[3] ***Good Faith Errors***

In a bank deposits computation, as in any other tax case, unreported income which results from good faith accounting errors and the like (*i.e.*, a mathematical error by an accountant) should not be included in the computation of unreported income. ***United States v. Stein***, 437 F.2d 775, 777 (7th Cir.), *cert. denied*, 403 U.S. 905 (1971). *See also* ***United States v. Altruda***, 224 F.2d 935, 940 (2d Cir. 1955); ***United States v. Allen***, 522 F.2d 1229, 1231 (6th Cir. 1975), *cert. denied*, 423 U.S. 1072 (1976). *See* Section 31.11, *supra*.

33.06 ***UNIDENTIFIED DEPOSITS***

After seeking to identify the sources of the bank deposits, those deposits which have not been established as either income or non-income deposits are denominated as "unidentified deposits". To the extent that such unidentified deposits have the inherent appearance of current income, they are included with identified income deposits in determining the taxpayer's income.

In ***Gleckman v. United States***, 80 F.2d 394, 397 (8th Cir. 1935), *cert. denied*, 297 U.S. 709 (1936), the bank deposits computation included over $92,000 in untraceable cash deposits and unidentified deposits. The defendant argued that those deposits "may just as well have been drawn from nontaxable transactions as from services or business." ***Gleckman***, 80 F.2d at 399. Rejecting this argument, the court pointed out that there was substantial circumstantial evidence in the record that the defendant had an unreported business, and that some of the deposits were derived from this business. Thus, the deposits were sufficiently shown to be of a taxable nature. ***Gleckman***, 80 F.2d at 399-400. Note that in ***Gleckman***, the government demonstrated that the defendant had an illegal business apart from the business described in his tax return, that property statements showed that the defendant's net worth had increased, and that the government auditor had spent weeks with the defendant's agent in unsuccessfully attempting to find explanations for the deposits that would justify eliminating them from taxable income. ***Gleckman***, 80 F.2d at 400.

United States v. Slutsky, 487 F.2d 832, 841 (2d Cir. 1973), *cert. denied*, 416 U.S. 937

(1974), involved approximately $18 million in total deposits over a three-year period and, of the total charged as income, approximately $8.6 million was in unidentified deposits and $1 million was in currency. The court held that the government's investigation was sufficient to support the inference that unexplained excess receipts were attributable to currently taxable income and that the government was not required to negate all possible non-income sources of the deposits. ***Slutsky***, 487 F.2d at 841. Holding that the government's investigation was "clearly sufficient under the particular circumstances of the case", the court found that the investigation included a detailed check of every item in an amount greater than $1,000, with very few specified exceptions, and a random check of 1447 items in amounts less than $1,000, with the analyzed items found to constitute income in virtually every instance. ***Slutsky***, 487 F.2d at 841-42. In addition, almost every item in an amount under $1,000 was reflected by a check with a room number encircled on the back (the defendants operated a resort in the Catskill Mountains). ***Slutsky***, 487 F.2d at 842. Commenting on the government investigation, the court concluded:

> To hold the government to a stricter duty of investigation than it performed here would be to ignore both the "reasonableness" and "fairness" strictures that have been imposed; it would also result in an exercise in diminishing returns in terms both of the provision of relevant information to the fact-finder and of the protection of the rights of taxpayers.

Slutsky, 487 F.2d at 842.

In ***United States v. Lacob***, 416 F.2d 756, 758 (7th Cir. 1969), *cert. denied*, 396 U.S. 1059 (1970), the court upheld as adequate an investigation involving total deposits of $99,000 in one year by a lawyer who specialized in personal injury claims and received fees of 20% or 33 1/3% of the recovery obtained, depending on whether the case was a workmen's compensation claim or a personal injury claim. There were approximately $39,000 in unidentified and unexplained checks deposited. The defendant was charged with income equal to 20% of these checks, based on the assumption, in the absence of other proof, that these were the proceeds of the defendant's cases and that his fee was the lower of the two fee bases he used. Similarly, in ***United States v. Procario***, 356 F.2d 614, 617-18 (2d Cir.), *cert. denied*, 384 U.S. 1002 (1966), the defendant was a doctor, and more than one-third of the total alleged professional receipts were in the form of deposits not identified by the government. Rejecting the defendant's argument that there was no evidence from which the jury could have inferred that the unidentified deposits represented income from professional services, the court said:

> The government relied on the fact that it excluded all possible dividends, on the small size and relative frequency of the deposits, similar to deposits and other income proven to be professional receipts, and on the fact that appellant had patients other than those whose payments were included in Items 4 and 6, the directly proven items of income. This was sufficient.

Procario, 356 F.2d at 618.

The basis of the government's case in ***Graves v. United States***, 191 F.2d 579, 581-82 (10th Cir. 1951), was that the defendant, who operated drug stores, realized income that was not deposited in the store bank accounts, not entered in the books, and not reported on his return. The "purported income" was represented by currency deposits in various special and personal bank accounts of the defendant and his wife, the purchase of government bonds, the sale of cattle, a loan of money, and a personal check from a store manager representing store receipts. The court agreed with the defendant that currency deposits in the defendant's bank account, standing alone, did not

prove unreported income but went on to say that "currency deposits from unidentified sources which are not reflected in the books and records from which income tax returns are made and tax liability determined are substantial evidence of an understatement of income and it is incumbent upon the taxpayer to overcome the logical inferences which may be drawn from these proven facts." ***Graves***, 191 F.2d at 582.

In ***United States v. Ludwig***, 897 F.2d 875, 882 (7th Cir. 1990), the Seventh Circuit upheld a conviction based partly on unidentified deposits, which the defendants claimed were "irregular, not specifically identified as coming from any particular income source, were made to a personal rather than business account, and were placed in an account that [one defendant] had no control over." The court of appeals held that the jury was properly instructed that "the duty to reasonably investigate applies only to suggestions or explanations made by the defendant or to reasonable leads which otherwise turn up. The government is not required to investigate every possible source of non-taxable funds". ***Ludwig***, 897 F.2d at 882.

On the other hand, it is necessary that the facts and circumstances put in evidence by the government justify, by reasonable inference at least, that the unidentified deposits represent income items. ***Kirsch v. United States***, 174 F.2d 595, 601 (8th Cir. 1949). In reversing the conviction in ***Kirsch***, the court criticized the failure of the government to make any effort to investigate the unidentified deposits. The agent testified at the trial that he was aware that all of the deposits were not income, and instead of making an effort to find out the amounts of nonincome deposits, he simply assumed that all deposits were income. In doing so, he shifted the burden to the defendant to show how much was not income or suffer the consequences. This procedure, said the court, "cannot be approved." ***Kirsch***, 174 F.2d at 601. *See also* ***Paschen v. United States***, 70 F.2d 491, 497 (7th Cir. 1934). Ultimately, whether unidentified deposits are accepted as current receipts will depend on the strength of the evidence supporting the relationship of the deposits to an income-producing activity, the completeness of the analysis of deposits, and the thoroughness of

the investigation conducted.

33.07 *BANK DEPOSITS PLUS UNDEPOSITED CURRENCY EXPENDITURES*

33.07[1] *Generally*

In some cases it will be found that a taxpayer engaged in a business or income-producing activity, made regular and periodic deposits to a bank account and, in addition, made a number of cash expenditures by using cash that was never deposited in the taxpayer's bank account. In this situation, as explained in ***United States v. Boulet***, 577 F.2d 1165, 1167 (5th Cir. 1978), *cert. denied*, 439 U.S. 1114 (1979), after the bank deposits have been added together and nontaxable amounts are eliminated, the amount of expenditures made in cash (but not deposited) is added to derive gross income. Applicable deductions and exemptions are then subtracted, resulting in corrected taxable income. ***Boulet***, 577 F.2d at 1167. *See also* ***United States v. Morse***, 491 F.2d 149, 152 (1st Cir. 1974) (after totalling deposits and eliminating non-income items, "[t]he Government then includes any additional income which the taxpayer received during the tax year but did not deposit in any bank account"); ***United States v. Nunan***, 236 F.2d 576, 580 (2d Cir. 1956), *cert. denied*, 353 U.S. 912 (1957); ***United States v. Ayers***, 673 F.2d 728, 730 (4th Cir. 1982); ***Morrison v. United States***, 270 F.2d 1, 23 (4th Cir.), *cert. denied*, 361 U.S. 894 (1959); ***Bostwick v. United States***, 218 F.2d 790, 794 (5th Cir. 1955); ***United States v. Abodeely***, 801 F.2d 1020, 1024 (8th Cir. 1986); ***United States v. Berzinski***, 529 F.2d 590, 592 (8th Cir. 1976); ***Percifield v. United States***, 241 F.2d 225, 229 (9th Cir. 1957).

The underlying theory in including expenditures made with cash that did not go through the bank account in the analysis is that it may be inferred that the cash expenditures were made with current income, unless they are shown to have been made from non-income sources. *But see* ***Abodeely***, 801 F.2d at 1024 (government must demonstrate beyond a reasonable doubt that the unreported income came from a taxable source). ***Abodeely*** does not, however, require the

government to negate absolutely all possible sources of non-taxable income. Quoting ***United States v. Esser***, 520 F.2d 213, 217 (7th Cir. 1975), the court in ***Abodeely*** stated that the government must "'do everything that is reasonable and fair . . . [in] the circumstance to identify any non-income transactions . . . .'" Alternatively, the government may prove a likely source of the income. ***Abodeely***, 801 F.2d at 1025. Technically, it should not be necessary to establish cash on hand in a bank deposits case, because the method is grounded on the concept that if the taxpayer is in an income-producing business and makes regular and periodic deposits to a bank account, any deposits remaining after eliminating non-income items represent taxable income. Where cash expenditures are added to deposits, however, the cases indicate that the government must establish the amount of cash the taxpayer had on hand at the start of the prosecution period. *See, e.g.*, ***United States v. Slutsky***, 487 F.2d 832, 842 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974); ***Boulet***, 577 F.2d at 1168; ***United States v. Soulard***, 730 F.2d 1292, 1298 (9th Cir. 1984). *See* Section 33.08, *infra*, Cash on Hand. This is done to prevent charging the taxpayer with income for expenditures made not with current income but with nontaxable prior accumulated funds.

The "bank deposits and cash expenditures" method is not an amalgamation of the "bank deposits" method and the "expenditures" method. ***Abodeely***, 801 F.2d at 1024. There is no need to show net worth when using this method. *Id*.

33.07[2] ***Amount of Cash Expenditures***

There are two ways of establishing the amount of cash expenditures. The first is by direct proof of specific currency expenditures from undeposited funds uncovered during the investigation. The second is by the indirect method of comparing known total disbursements for specific categories claimed on the tax return (*e.g.*, business expenses) with checks written for such disbursements, with any amount claimed on the return in excess of check expenditures treated as a currency expenditure. As to cash expenditures uncovered during the investigation, the proof consists of merely establishing that the currency expenditures were made with nondeposited funds. Thus, either through testimony or documents it is established that the taxpayer made expenditures in cash and not through a checking account. If the taxpayer has withdrawn cash from a bank account during the year, however, then any such cash withdrawals must be subtracted from the currency expenditures unless it can be shown that the withdrawn cash was not used to make a currency expenditure. Once this is done, the theory is that the undeposited currency expenditures were made with and represent current taxable income, after the elimination of any non-income items, in the same way that deposits represent taxable income.

The indirect method of establishing undeposited currency expenditures is to start with an expenditure claimed by the taxpayer on the tax return and compare this amount with checks written for the expenditure. If it can be shown that the taxpayer's checks do not account for all or a part of the expenditure, then any amount not paid by check must have been paid in cash. For example, if the taxpayer has claimed business expenses of $20,000, and checks can be shown as accounting for only $12,000 in business expenses, then it follows that the remaining $8,000 was paid in cash. Under these circumstances, the $8,000 paid in cash would be added to deposits in arriving at taxable income. For an example of the application of this method of establishing cash expenditures, *see* ***Greenberg v. United States***, 295 F.2d 903 (1st Cir. 1961):

> This leads us into the serious evidentiary objections. Gray's theory

> of building up the company's gross receipts by deducting from the merchandise expense item on the returns the amount paid for merchandise by check and attributing the balance to non-bank account cash, which, in turn, he labelled additional gross receipts, was entirely fair.

Greenberg, 295 F.2d at 903.

The conviction in ***Greenberg*** was reversed, however, because of hearsay testimony by the agent. Thus, in ***Greenberg***, the government sought to prove the purpose of checks drawn by the taxpayer solely through the conclusory testimony of the special agent that the checks he selected represented payments for merchandise and that any excess amount claimed on the return as a merchandise expense represented a cash expenditure. ***Greenberg***, 295 F.2d at 906. The special agent's analysis of the checks was based on inquiries which he had made previously to the payees of the checks. No payee or other third party, however, testified at the trial. Further, no records or admissions of the defendant as to the purpose of the checks was introduced. ***Greenberg***, 295 F.2d at 904. The court held that it was elementary that the purpose of the checks could not be established by what third parties had told the agent out of court, or by the agent's testimony of what he concluded from his examination of the checks. ***Greenberg***, 295 F.2d at 908. In the example given above, it would thus be error for the agent merely to review and classify certain checks as being for business purposes. It would be necessary to call the third-party payees as witnesses or to introduce other testimonial or documentary evidence establishing the purpose of the checks.

Note that where the agent has interviewed the taxpayer and the taxpayer states the purpose for which a check was issued, this constitutes an admission, and it is not necessary to call in the third parties. Fed. R. Evid. Rule 801(d)(2)(A). In this situation, it is common for the agent to prepare a check spread on the basis of the taxpayer's admissions and introduce the schedule, as an admission, into evidence.

33.08 ***CASH ON HAND***

33.08[1] ***Generally***

The rationale of the bank deposits method of proof supports the reasoning that affirmative proof as to opening cash on hand is not necessary. Net worth need not be established in a bank deposits case. ***United States v. Abodeely***, 801 F.2d 1020, 1024 (8th Cir. 1986). Therefore, cash on hand should be relevant not as an asset, but as a potential source of deposits. The underlying evidence introduced to establish the relationship between deposits and the income-producing activity is often sufficient to support a finding that the deposits are current receipts. This argument is strongest when a substantial number of deposits are identified as income and there are not significant currency deposits or cash expenditures involved in the bank deposits analysis.

In ***United States v. Slutsky***, 487 F.2d 832, 842 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974), the Second Circuit, in affirming a conviction for tax evasion, suggested that an essential element in all bank deposits cases is the establishment of cash on hand. However, the need for an adequate starting point was necessary in ***Slutsky*** because the case involved both currency deposits and the existence of a "cash on hand account" in proving unreported receipts. It would not seem appropriate to extend the rationale of ***Slutsky*** to all bank deposits cases, especially those cases not involving currency deposits or a cash on hand account.

A blind adherence to ***Slutsky*** can lead to an unrealistic and fanciful result. Thus, in ***United States v. Birozy***, 74-2 T.C. 9564 (E.D.N.Y. 1974), the trial judge entered a judgment of acquittal on the basis that the government failed to establish a starting cash on hand amount for the defendant. However, the record indicates that there was only $2,300 in cash deposits out of apparently some $200,000 in total deposits, and even if the $2,300 in cash deposits was eliminated, there still existed a substantial tax due and owing.

For a more realistic approach, *see* ***Scanlon v. United States***, 223 F.2d 382, 388-89 (1st Cir. 1955) (even if reasonable lead is assumed to be true, it accounted for only $3,000 out of $23,466, and the evidence was therefore sufficient to convict). The better and correct view would seem to be

that whether the government must establish the taxpayer's cash on hand will depend on the circumstances of a given case. Generally speaking, if the bank deposits computation does not include any currency deposits and undeposited cash expenditures are not added to deposits in arriving at taxable income, then it should not be necessary to establish the taxpayer's cash on hand. Under these circumstances, a cash hoard defense would be irrelevant because, even if there were a cash hoard, it could not have played a role in the bank deposits computation.

There can be exceptions to this general rule, depending on the facts of a given case. For example, in theory, a taxpayer could have a cash hoard, purchase a cashier's check with the cash hoard and then deposit that check in his bank account. This is a theoretical possibility, but unless the taxpayer volunteers such an explanation, the government should not have a duty to refute it. "The government is not required to negate all possible non-income sources of the deposits, particularly where the source of the income is uniquely within the knowledge of the taxpayer", and it is shown that a thorough investigation was conducted. ***United States v. Boulet***, 577 F.2d 1165, 1168-69 (5th Cir. 1978), *cert. denied*, 439 U.S. 1114 (1979). *See also* ***Slutsky***, 487 F.2d at 842.

On the other hand, if the bank deposits computation includes currency deposits, the cases indicate that the government must establish a beginning cash on hand figure. The underlying principle is that if the taxpayer deposited pre-existing cash into his bank accounts during the tax years in question, then this could explain the "excessive" deposits and reduce or eliminate the claimed understatement of income. ***United States v. Soulard***, 730 F.2d 1292, 1298 (9th Cir. 1984); ***United States v. Shields***, 571 F.2d 1115, 1120 (9th Cir. 1978). Similarly, cash on hand must be established where nondeposited cash expenditures are added to deposits in arriving at taxable income, unless it can be demonstrated clearly that any pre-existing cash on hand was not the source of the expenditures. *See* ***Boulet***, 577 F.2d at 1168.

33.08[2] ***Proof Of Cash On Hand***

The government is not obligated to prove cash on hand "with mathematical exactitude." ***United States v. Boulet***, 577 F.2d 1165, 1170 (5th Cir. 1978), *cert. denied*, 439 U.S. 1114 (1979). It is only required that the government prove cash on hand "with reasonable certainty." ***United States v. Slutsky***, 487 F.2d 832, 842 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974); ***United States v. Normile***, 587 F.2d 784, 785 (5th Cir. 1979). Where a thorough government investigation does not develop any evidence of cash on hand, it is proper to "use a cash on hand figure of zero." ***United States v. Shields***, 571 F.2d 1115, 1120-21 (9th Cir. 1978). In the final analysis, the existence of any cash on hand presents a factual issue for determination by the jury. ***United States v. Parks***, 489 F.2d 89, 90 (5th Cir. 1974).

For an extended discussion of concepts relating to cash on hand, reference should be made to Sections 31.06 and 31.07, *supra*.

33.09 ***REASONABLE LEADS***

The government must investigate reasonable, relevant leads furnished by a taxpayer, reasonably susceptible of being checked, which, if true, would establish the taxpayer's innocence. ***United States v. Slutsky***, 487 F.2d 832, 843 n.14 (2d Cir. 1973), *cert. denied*, 416 U.S. 937 (1974) ("[t]he contention that the 'leads' doctrine should be confined to a net worth case is no longer tenable"); ***United States v. Boulet***, 577 F.2d 1165, 1169 (5th Cir. 1978), *cert. denied*, 439 U.S. 1114 (1979); ***United States v. Ludwig***, 897 F.2d 875, 882 (7th Cir. 1990); ***United States v. Esser***, 520 F.2d 213, 217 (7th Cir. 1975), *cert. denied*, 426 U.S. 947 (1976); ***United States v. Stein***, 437 F.2d 775, 778 (7th Cir.), *cert. denied*, 403 U.S. 905 (1971); ***United States v. Hall***, 650 F.2d 994, 1000 (9th Cir. 1981); ***United States v. Ramsdell***, 450 F.2d 130, 132 (10th Cir. 1971).

If the government fails to investigate a reasonable lead furnished timely by the defendant, the trial court may consider the defendant's version as true and so instruct the jury. ***United States v. Hall***, 650 F.2d 994, 1000 (9th Cir. 1981); *see also* ***Holland v. United States***, 348 U.S. 121, 136

(1954). There is, however, a rule of reason and "the government's investigators are not obliged to track down every conceivable lead offered by the taxpayer to justify the non-income designation of a particular item." ***Esser***, 520 F.2d at 217. *See* ***United States v. Normile***, 587 F.2d 784, 786 (5th Cir. 1979) (agents not obliged to check every bank in the area nor to check every deposit slip in taxpayer's account to find "lead" to wife's account); ***Ludwig***, 897 F.2d at 882; ***United States v. Lenamond***, 553 F. Supp. 852, 855, 860 (N.D. Tex. 1982) (agents obliged to check lead regarding correctness of reported inventory figures, because lead was provided more than two years before trial and was reasonably verifiable, and the reported inventory figures were "astonishing" and "truly anomalous").

Leads furnished by a taxpayer must be both timely and reasonably susceptible of being checked. ***United States v. Procario***, 356 F.2d 614, 617 (2d Cir.), *cert. denied*, 384 U.S. 1002 (1966) (leads furnished "on the eve of indictment" were too late); ***Normile***, 587 F.2d at 786 ("[t]he government was not obliged to bay down rabbit tracks").

In considering questions concerning the reasonable leads doctrine, reference should be made to Section 31.13, *supra*.

33.10 *USE OF SUMMARY CHARTS AND SCHEDULES*

In a bank deposits case, just as in a net worth case, at the close of its case, the government calls to the stand a summary expert witness, who summarizes the evidence and presents schedules reflecting the government's bank deposits computation.

It is well established that a government agent can summarize the evidence and present computations and schedules reflecting the bank deposits computations. ***United States v. Morse***, 491 F.2d 149, 152-53 (1st Cir. 1974); ***United States v. Esser***, 520 F.2d 213, 217 (7th Cir. 1975), *cert. denied*, 426 U.S. 947 (1976); ***United States v. Stein***, 437 F.2d 775, 780 (7th Cir.), *cert. denied*, 403 U.S. 905 (1971) ("challenges advanced by defendant to the use of such summaries have

been long since considered and rejected by the Supreme Court"); ***United States v. Lacob***, 416 F.2d 756, 762 (7th Cir. 1969), *cert. denied*, 396 U.S. 1059 (1970); ***United States v. Soulard***, 730 F.2d 1292, 1300 (9th Cir. 1984) (summary charts are not to be admitted in evidence or used by the jury during deliberations but can be used as "testimonial aids" during the agent's testimony and during closing arguments); ***Graves v. United States***, 191 F.2d 579, 584 (10th Cir. 1951) (government agent's schedule "was clearly admissible").

The agent's schedules must be based on evidence in the record and should not contain captions that are "anymore conclusionary or impressive than required to make the summaries understandable." ***United States v. Lacob***, 416 F.2d 756, 762 (7th Cir. 1969), *cert. denied*, 396 U.S. 1059 (1970); ***United States v. Esser***, 520 F.2d 213, 218 (7th Cir. 1975), *cert. denied*, 426 U.S. 947 (1976) ("record shows that the summary witness relied only upon the evidence received during the trial and that he was available for full cross-examination").

The testifying agent need not be involved in the investigation or original preparation of the government's case. Thus, a "summary expert" can be called to the witness stand to present the government's bank deposits analysis as long as the witness is qualified as an expert. ***Soulard***, 730 F.2d at 1299.

The same principles applicable to schedules and summaries in a net worth case are also applicable in a bank deposits case. ***Stein***, 437 F.2d at 780. Accordingly, reference should be made to Section 31.16, *supra*, Sample Net Worth Schedule.

33.11 *JURY INSTRUCTIONS*

The defendant is "clearly entitled to a special explanatory charge" when the government proceeds on the bank deposits method of proof. ***Greenberg v. United States***, 295 F.2d 903, 907 (1st Cir. 1961); ***United States v. Wiese***, 750 F.2d 674, 678 (8th Cir. 1984) ("[w]hen the government uses the bank deposit method, a trial court should instruct the jury on the nuances of that method of accounting"); ***United States v. Hall***, 650 F.2d 994, 999 (9th Cir. 1981) ("comprehensive explanatory instructions must be given when the bank deposits method of proof is used, just as is required by ***Holland*** for the net worth method").

For a sample bank deposits jury instruction, *see* the section on jury instructions, *infra*.

33.12 *SAMPLE BANK DEPOSITS COMPUTATION*

Reproduced on the page which follows is a hypothetical bank deposits summary computation. Note that ancillary schedules such as an analysis of deposits are not included in the example.

SAMPLE BANK DEPOSITS SUMMARY COMPUTATION

Bank Deposits plus Cash Expenditures and Specific Items Not Deposited

1992 Tax Year

Total Bank (Brokerage) Account Deposits				$100,675.00
Less: *Nontaxable receipts*				
Transfers from other accounts	$ 1,500.00			
Redeposits (Bad checks)	200.00			
Proceeds from borrowings (Loans)	1,000.00			
Proceeds from repayment of loan	500.00			
Gift	200.00			
Inheritance	2,000.00			
Other deposits - eliminated				1,500.0
Net Deposits				$ 93,775.00
Plus: Cash expenditures		$10,200.00		
Specific Items of Income -				
Not Deposited		5,100.00	15,300	
Gross Receipts				$109,075.00
Less: Business Expenses				*-21,000.00
Net Profit From Business				$ 88,075.00
Less: Itemized deductions				*-5,075.00
				$ 83,000.00
Less: Exemptions (4) x $1,000				-4,000.00
Corrected Taxable Income				$ 79,000.00
Less: Taxable Income per return				-41,000.00
Unreported Taxable Income				$ 38,000.00

* Generally determined from tax return filed. However, if investigation establishes amounts greater than those claimed on return(s) the larger amounts are used for criminal computation purposes.