

26 U.S.C. § 7203
Sole Proprietorship or Partnership
Employer's Quarterly Return
Failure to File - Tabular Form Information
Venue in District of Service Center 1

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

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

The United States Attorney charges:

1. That during the period from [Date] to [Date], inclusive, [Defendant's Name], a resident of [City], [State], was an employer of labor **2** 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; that during said period he [she] paid wages to his [her] employees which were subject to withholding of federal income taxes and Federal Insurance Contributions Act taxes; that by reason of such facts he [she] was required by law, after the close of each calendar quarter and on or before each due date, to make an Employer's Quarterly Federal Tax Return, Form 941, to the Director, Internal Revenue Service Center, at [City], [State], in the _____ District of ___, or to the District Director of the Internal Revenue Service for the Internal Revenue District of _____, at ___, **1** or other proper officer of the United States; and that well-knowing and believing all of the foregoing, he [she] did willfully fail to make to said Director of the Internal Revenue Service Center, to said District Director of the Internal Revenue Service, or to any other proper officer of the United States, said Employer's Quarterly Federal Tax Return, Form 941, for each of the calendar quarters hereinafter set forth during the period from [Date] to [Date].

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 DUE ENDED DATE</u>	<u>TOTAL WAGES</u>	<u>FICA TAXES (EMPLOYER'S & EMPLOYEE'S)</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

NOTES

1 If employer is a corporation, refer to Forms - 25 as a guide in charging appropriate corporate officials with failure to file returns on behalf of corporation.

2 If venue is to be placed in the judicial district of the District Director, modify this form in accordance with language at Forms - 33.

26 U.S.C. § 7203
Sole Proprietorship or Partnership
Excise Tax Return - Failure to File
Venue in District of Service Center 1

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

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

The United States Attorney charges:

That during the period from [Date] to [Date], [Defendant's Name] 2 conducted a business as a [Sole Proprietorship or Partnership] under the name and style of _____, with its principal place of business in [City], [State], and sold at retail 3 [Article], upon which sales there were due and owing to the United States of America retail dealer's 4 excise taxes in the amount of \$_____; that by reason of such fact he [she] was required by law, after [Last Day Of Period], and on or before [Return Due Date], to make a Quarterly Federal Excise Tax Return 5 to the Director, Internal Revenue Service Center, at [City], [State], in the _____ District of _____, or to the District Director of the Internal Revenue Service for the Internal Revenue District of _____, at _____, 1 or other proper officer of the United States; that well-knowing and believing all of the foregoing, he [she] did willfully fail to make said return to said Director of the Internal Revenue Service Center, to said District Director of the Internal Revenue Service, or to any other proper officer of the United States.

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

United States Attorney

NOTES

1 If venue is to be placed in the judicial district of the District Director, modify this form in accordance with language at Forms - 33.

2 If taxpayer is a corporation, refer to Forms - 25 as a guide in charging appropriate corporate officials with failure to file return on behalf of corporation.

3 Designate appropriate business, *e.g.*, manufacturing.

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

5 Designate appropriate IRS form.

26 U.S.C. § 7204
Employee's Withholding Statement, Form W-2
Failure to Furnish

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

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

The United States Attorney charges:

That on or about the ___ day of _____, 19__, in the _____ District of _____, [*Defendant's Name*], **1** a resident of [*City*], [*State*], who during the calendar year 19__ employed [*Name of Employee*], a resident of [*City*], [*State*], and who 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, 19__, with a written statement showing the amount of wages paid and taxes deducted and withheld during the calendar year 19__, did willfully fail to furnish said statement to said employee in the manner and at the time required by law.

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

United States Attorney

NOTES

1 If employer is a corporation, refer to language at Forms - 25 as a guide in charging appropriate corporate officials with failure to furnish a withholding statement on behalf of the corporation.

26 U.S.C. § 7204
Employee's Withholding Statement, Form W-2
Furnishing False and Fraudulent Statement

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

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

The United States Attorney charges:

That on or about the ___ day of _____, 19__, in the _____ District of _____, [Defendant's Name], 1 a resident of [City], [State], who during the calendar year 19__ employed [Name of Employee], a resident of [City], [State], and who 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, 19__, with a written statement showing the amount of wages paid and taxes deducted and withheld during the calendar year 19__, did willfully furnish a false and fraudulent statement to said employee showing that the total wages paid were \$_____ and 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 well knew and believed, the total wages paid were \$_____, and 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

NOTES

1 If the employer is a corporation, refer to language at Forms - 25 as a guide in charging appropriate corporate officers with furnishing a false and fraudulent withholding statement on behalf of the corporation.

26 U.S.C. § 7205
False Withholding Allowance Certificate, Form W-4

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

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

The United States Attorney charges:

That on or about the ____ day of _____, 19__, in the ____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], who during the calendar year 19__ was employed by [*Name of Employer*], a resident of [*City*], [*State*], and who was required under the Internal Revenue laws to furnish [*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 the date of the commencement of employment by [*Name of Employer*], did willfully supply a false and fraudulent Employee's Withholding Allowance Certificate, Form W-4, to [*Name of Employer*], on which he [she] claimed withholding allowances, **1** whereas, as [*Defendant's Name*] then and there well knew and believed, he [she] was entitled to claim only ____ withholding allowances. **2**

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

United States Attorney

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).

NOTES

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."

26 U.S.C. § 7206(1)
Making and Subscribing a False
Return, Statement, or Other Document
Venue in District of Filing

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

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

)

The grand jury charges:

That on or about the ____ day of _____, 19__, in the _____ District of ____, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully make and subscribe **1** a [*Describe Document*], which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Director, Internal Revenue Service Center, at [*City*], [*State*], **2** which said [*Describe Document*] he [she] did not believe to be true and correct as to every material matter in that the said [*Describe Document and the False Fact(s)*], whereas, as he [she] then and there well knew and believed, [*Describe Correct Fact(s)*].

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

Foreperson

United States Attorney

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).

NOTES

1 An aider and abettor may be jointly charged with the principal under 18 U.S.C., § 2. If this is done, the language "and did willfully aid, abet, assist, and cause to be so made and subscribed" should be inserted after the word "subscribe" and appropriate reference made to 18 U.S.C., § 2, as well as to 26 U.S.C., § 7206(1).

2 If the Service Center was not the place of filing, substitute "with the District Director of the Internal Revenue Service for the Internal Revenue District of _____, at _____"; or "with the Representative of the District Director of the Internal Revenue Service for the Internal Revenue District of _____, at _____".

26 U.S.C. § 7206(1)
Making and Subscribing a False
Return, Statement, or Other Document
Venue in District of Preparation and Signing

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

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

)

The grand jury charges:

That on or about the _____ day of _____, 19__, in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully make and subscribe **1** a [*Describe Document*], which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said [*Describe Document*] he [she] did not believe to be true and correct as to every material matter in that the said [*Describe Document and the False Fact(s)*], whereas, as he [she] then and there well knew and believed, [*Describe Correct Fact(s)*].

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

Foreperson

United States Attorney

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).

NOTES

1 An aider and abettor may be jointly charged with the principal under 18 U.S.C., § 2. If this is done, the language "and did willfully aid, abet, assist, and cause to be so made and subscribed" should be inserted after the word "subscribe" and appropriate reference made to 18 U.S.C., § 2, as well as to 26 U.S.C., § 7206(1).

26 U.S.C. § 7206(1)
Making and Subscribing a False Return
False Amount Not Specified - Open Ended Indictment

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

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

)

The grand jury charges:

That on or about the ____ day of _____, 19__, in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully make and subscribe **1** a [*joint*] U.S. Individual Income Tax Return, **2** for the calendar year **3** 19__, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, **4** which said income tax return he [she] did not believe to be true and correct as to every material matter in that the said return reported [*State Each False Item of Income Reported, e.g., Dividend Income in the Amount of \$____, Interest Income in the Amount of \$____,*] whereas, as he [she] then and there well knew and believed, he [she] received [*State Each False Item But Not Amount, e.g., Interest Income and Dividend Income*] in addition to that heretofore stated.

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

Foreperson

United States Attorney

NOTES

1 An aider and abettor may be jointly charged with the principal under 18 U.S.C., § 2. If this is done, the language "and did willfully aid, abet, assist, and cause to be so made and subscribed" should be inserted after the word "subscribe" and appropriate reference made to 18 U.S.C. (§ 2, as well as to 26 U.S.C.) § 7206(1).

2 Where appropriate, substitute correct tax return, *e.g.*, U.S. Corporation Income Tax Return.

3 If fiscal year is involved, substitute "fiscal year ended _____, 19_".

4 If venue is to be placed in the district of filing, modify this form in accordance with language at Forms - 63.

26 U.S.C. § 7206(1)
Making and Subscribing a False Return
Failure to Disclose a Business

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

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

)

The grand jury charges:

That on or about the ____ day of _____, 19__, in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully make and subscribe a [*joint*] U.S. Individual Income Tax Return, for the calendar year 19__, **1** which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, **2** which said income tax return he [she] did not believe to be true and correct as to every material matter in that the said return failed to disclose that he [she] was engaged in the operation of a business activity from which he [she] derived gross receipts or sales and incurred deductions, whereas, as he [she] then and there well knew and believed, he [she] was required by law and regulation to disclose the operation of this business activity, the gross receipts or sales he [she] derived therefrom, and the deductions he [she] incurred.

In violation of Title 26, United States Code, Section 7206(1).

A True Bill.

Foreperson

United States Attorney

NOTES

1 If fiscal year is involved, substitute "fiscal year ended _____, 19_".

2 If venue is to be placed in the district of filing, modify this form in accordance with language at Forms - 63.

26 U.S.C. § 7206(1)
Individual - 26 U.S.C. 6050I
Returns Relating to Cash Received in Trade or Business
Failing False Return

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

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

)

The grand jury charges:

That on or about the ____ day of _____, 19__, 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 and was filed with the Internal Revenue Service, which said return on United States Treasury Department Internal Revenue Service Form 8300 he [she] did not believe to be true and correct as to every material matter in that the said return [*State Each False Item Reported, e.g., Name of Payor, Cash Received in the Amount of \$_____*], whereas, as he [she] then and there well knew and believed, 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 heretofore stated.

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

26 U.S.C. § 7206(2)
*Aiding and Assisting in the Preparation and Presentation
of a False and Fraudulent Return, Statement, or Other Document*

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

UNITED STATES OF AMERICA)
)
) v.) No.
)) 26 U.S.C., § 7206(2)
_____)

The grand jury charges:

That on or about the ____ day of _____, 19__, in the _____ District of _____, the defendant, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of a U.S. Individual Income Tax Return, Form 1040, 1 of [*Taxpayer's Name*] for the calendar year 2 19__, which was false and fraudulent as to a material matter, in that [*Describe False Fact(s), e.g., it represented that the said (Taxpayer's Name) was entitled under the provisions of the Internal Revenue laws to claim deductions in the total sum of \$_____*], whereas, as the defendant then and there well knew and believed, [*Describe Correct Fact(s), e.g., the total deductions which the said (Taxpayer's Name) was entitled to claim for said calendar year were in the total sum of \$ _____*].

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

A True Bill.

Foreperson

United States Attorney

NOTES

1 Designate appropriate document if not a tax return, *e.g.*, a financial statement.

2 If fiscal year is involved, substitute "fiscal year ended _____, 19_".

26 U.S.C. § 7206(2)
Aiding and Assisting in the Preparation and Presentation
of False and Fraudulent Individual Income Tax Returns
Containing False Deductions - Tabular Form Indictment

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

UNITED STATES OF AMERICA)
v.) No.
_____) 26 U.S.C., § 7206(2)

The grand jury charges:

1. That on or about the dates hereinafter set forth, in the _____ District of _____, the defendant, [Defendant's Name], a resident of [City], [State], did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of U.S. Individual Income Tax Returns, Forms 1040, either individual or joint, for the taxpayers and calendar years hereinafter specified, which were false and fraudulent as to material matters, in that they represented that the said taxpayers were entitled under the provisions of the Internal Revenue laws to claim deductions for items and in amounts hereinafter specified, whereas, as the defendant then and there well knew and believed, the said taxpayers were not entitled to claim deductions in said amounts, but of lesser amounts.

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

DATE OF CALENDAR FALSELY AMOUNT
COUNT OFFENSE TAXPAYER TAX YEAR CLAIMED ITEM 1 CLAIMED

I. _____
II. _____
III. _____

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

A True Bill.

Foreperson

United States Attorney

NOTES

1 Where the fraudulent deductions (generally itemized deductions) consist of alleged payments to individuals or organizations, list each fraudulent payment, rather than totalling 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. § 7206(4)
Removal or Concealment of Goods or Commodities
With Intent to Evade or Defeat
The Assessment or Collection of a Tax

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

UNITED STATES OF AMERICA)	
)	
v.	)	No.
	)	26 U.S.C., § 7206(4)
_____)	

The grand jury charges:

That on or about the ____ day of _____, 19__, in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], with intent to evade and defeat the collection of income taxes assessed against him [her] on or about _____, 19__, by the Internal Revenue Service, **1** did knowingly and unlawfully remove and conceal [*Describe Property*], upon which levy was authorized by Section 6331 of the Internal Revenue Code.

In violation of Title 26, United States Code, Section 7206(4).

A True Bill.

Foreperson

United States Attorney

NOTES

1 Where appropriate, substitute "evade and defeat the assessment of income taxes against him [her] by the Internal Revenue Service."

26 U.S.C. § 7206(5)(A)
Concealment of Assets in Connection
with a Compromise or Closing Agreement

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

UNITED STATES OF AMERICA)
)
) v.) No.
)) 26 U.S.C., § 7206(5)(A)
_____)

The grand jury charges:

That on or about the ___ day of _____, 19_, in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], in connection with an offer of compromise **1** relating to his [her] liability for [*Type of Tax*] taxes due and owing by him [her] to the United States of America for the calendar year(s) _____, **2** did willfully conceal from [*Specify Particular Officer, with Job Title*] and all other proper officers and employees of the United States, [*Describe Property Belonging to Taxpayer or Other Person Liable for the Tax*].

In violation of Title 26, United States Code, Section 7206(5)(A).

A True Bill.

Foreperson

United States Attorney

NOTES

1 Where appropriate, substitute "a compromise"; or "a closing agreement"; or "an offer to enter into a closing agreement".

2 If fiscal year is involved, substitute "fiscal year(s) ended _____, 19_".

**26 U.S.C. § 7206(5)(B)
Withholding, Falsifying, or Destroying Records
or Making a False Statement in Connection with
a Compromise or Closing Agreement**

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

UNITED STATES OF AMERICA)
)
) v.)
)) No.
)) 26 U.S.C., § 7206(5)(B)

)

The grand jury charges:

That on or about the ___ day of _____, 19__, in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], in connection with an offer of compromise **1** relating to his [her] liability for [*Type of Tax*] taxes due and owing by him [her] to the United States of America for the calendar year(s) _____, **2** did willfully [*(receive) (withhold) (destroy) (mutilate) or (falsify)*], *Describe Book, Document, or Record Involved* **3**.

In violation of Title 26, United States Code, Section 7206(5)(B).

A True Bill.

Foreperson

United States Attorney

NOTES

1 Where appropriate, substitute "a compromise"; or "a closing agreement"; or "an offer to enter into a closing agreement".

2 If fiscal year is involved, substitute "fiscal year(s) ended _____, 19_".

3 Where false statement is the crime, substitute "make a false statement to [*Name Appropriate Official, with Job Title*], at [*Place*], [*Location*], wherein [*Defendant's Name*] stated that [*Describe False Statement Relating to the Estate or Financial Condition of Taxpayer*], whereas, as he [she] then and there well knew and believed, [*Describe Correct Fact(s) Relating to False Statement*]".

26 U.S.C. § 7207
False Document Submitted to I.R.S.
Venue in District Where Document Submitted

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

UNITED STATES OF AMERICA)
)
) v.)
) No.
) 26 U.S.C., § 7207 **1**
)

The United States Attorney charges:

That on or about the ____ day of _____, 19__, 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*], a [*Describe Document, e.g., List, Account, Statement, or Other Document*], **2** which was known by the defendant to be fraudulent and false as to a material matter in that [*Describe the False Fact(s)*], whereas, as he [she] then and there well knew and believed, [*Describe the Correct Fact(s)*].

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. In some very limited instances, however, the Tax Division will authorize 7207 charges where a false tax return is involved. See Tax Division Directive No. 75 in Section 3.00, *supra* and Section 16.03, Policy Limiting The Use Of § 7207, *supra*.

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

**26 U.S.C. § 7207
False Document Submitted to I.R.S.
Venue in District of Mailing**

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

UNITED STATES OF AMERICA)
)
) v.)
)) No.
)) 26 U.S.C., § 7207 **1**

)

The United States Attorney charges:

That on or about the ____ day of _____, 19__, 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, a [*Describe Document, e.g., List, Account, Statement, or Other Document*], **2** which was known by the defendant to be fraudulent and false as to a material matter in that [*Describe the False Fact(s)*], whereas, as he [she] then and there well knew and believed, [*Describe the Correct Fact(s)*].

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. In some very limited instances, however, the Tax Division will authorize 7207 charges where a false tax return is involved. See Tax Division Directive No. 75 in Section 3.00, *supra* and Section 16.03, Policy Limiting The Use Of § 7207, *supra*.

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

26 U.S.C. § 7207
False Documents Submitted to I.R.S.
Venue in District Where Documents Submitted
Tabular Form Information

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

UNITED STATES OF AMERICA)
)
) v.)
) No.
) 26 U.S.C., § 7207 1

)

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 hereinafter specified, **2** known by the defendant to be fraudulent and false as to a material matter, as hereinafter specified.

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

COUNT	DATE OF OFFENSE	DESCRIPTION OF DOCUMENT	FALSITY
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. In some very limited instances, however, the Tax Division will authorize 7207 charges where a false tax return is involved. See Tax Division Directive No. 75 in § 3.00, *supra* and § 16.03, Policy Limiting The Use Of § 7207, *supra*.

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

**26 U.S.C. § 7207
False Documents Submitted to I.R.S.
Venue in District of Mailing
Tabular Form Information**

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

UNITED STATES OF AMERICA)
)
) v.)
) No.)
) 26 U.S.C., § 7207 **1**)
_____)

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 hereinafter specified, **2** known by the defendant to be fraudulent and false as to a material matter, as hereinafter specified.

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

COUNT	DATE OF OFFENSE	DESCRIPTION OF DOCUMENT	FALSITY
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. In some very limited instances, however, the Tax Division will authorize 7207 charges where a false tax return is involved. See Tax Division Directive No. 75 in Section 3.00, *supra* and Section 16.03, Policy Limiting The Use Of § 7207, *supra*.

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

26 U.S.C. § 7210
Failure to Appear in Response to Summons

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

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

The United States Attorney charges:

That on or about the ____ day of _____, 19__, 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 the aforesaid date at the office of _____; that 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

NOTES

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

26 U.S.C. § 7212(a) "Omnibus" Clause
Corrupt Endeavor to Obstruct or Impede
the Due Administration of the Internal Revenue Laws

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

UNITED STATES OF AMERICA)
)
) v.)
)) No.
)) 26 U.S.C., § 7212(a)

)

The grand jury charges:

That beginning on or about [Date], and continuing thereafter up to and including [Date], in the _____ District of _____, [Defendant's Name] did corruptly endeavor to obstruct or impede the due administration of the internal revenue laws by:

[Describe manner and means of defendant's corrupt obstruction of internal revenue laws, e.g., [FRAUDULENT FORM 1099 SCHEME] (1) sending to employees of the Internal Revenue Service and others [hereinafter "these individuals"], a request for their Social Security Numbers, Form W-9; (2) sending to these individuals a "Notice of Bill due and payable" demanding them to make payment of a substantial sum of money to [Defendant's Name] whereas these individuals never owed [Defendant's Name] any sum of money; (3) sending to these individuals a Form 1099-MISC reflecting "Nonemployee compensation" allegedly paid to them from [Defendant's Name] whereas these individuals never received compensation of any kind from [Defendant's Name]; (4) sending to the Internal Revenue Service copies of the Forms 1099-MISC representing [Defendant's Name] paid "Nonemployee compensation" to the named recipients of the Forms 1099-MISC, whereas he never paid these individuals compensation of any kind; (5) sending to these individuals a "Past Due Statement," advising them to report on their tax returns the amount stated in the "Notice of Bill due and payable;" (6) sending to the Internal Revenue Service Applications for Reward for Original Information, Form 211, on 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

July 1994

- 34 -

26 U.S.C. § 7212(a)

United States Attorney

26 U.S.C. § 7215
Failure to Make Trust Fund
Deposit After Notice

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

UNITED STATES OF AMERICA)
v.) No.
_____) 26 U.S.C., § 7215

The United States Attorney charges:

1. That during the period _____, 19__, to _____, 19__, in the _____ District of _____, [Defendant's Name] was an employer of labor 1 required under the provisions of the Internal Revenue Code to collect, account for, and pay over to the United States federal income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes withheld from wages.

2. That [Defendant's Name] did fail at the time and in the manner prescribed by the Internal Revenue Code, and Regulations promulgated pursuant thereto, to collect, truthfully account for, and pay over and to make deposits and payments of the said withheld taxes to the United States, which were due and owing for the quarters ending _____, 19__, _____, 19__, _____, 19__, and _____, 19_. 2

3. That on _____, 19__, [Defendant's Name] was notified of such failure by notice delivered in hand to him [her] as provided by Title 26, United States Code, Section 7512, which said notice advised him [her] that he [she] was required to collect the aforesaid taxes that became collectible after delivery of such notice, and, not later than the end of the second banking day after such collection, to deposit said taxes in a separate bank account established by him [her] in trust for the United States to be kept therein until paid over to the United States.

4. That 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 in a separate bank account in trust for the United States, by the dates and in the amounts hereinafter specified:

Table with 4 columns: COUNT, DATE WAGES PAID, DATE DEPOSIT REQUIRED, AMOUNT OF DEPOSIT REQUIRED. Rows I, II, III, IV.

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

United States Attorney

NOTES

1 If the employer is other than a sole proprietorship (*e.g.*, a corporation, partnership, or joint venture), the relationship of the defendant to the employer-entity, which makes him the responsible person, should be alleged in paragraphs 1, 2, and 3, by substituting "[*Defendant's Name*], who was the [*Position Held in Company*] of [*Name of Company*], a [*Type of Company, e.g., Corporation, Partnership, etc.*], and an employer of labor".

2 Quarters prior to notice for which there was a failure to collect, account for, and pay over federal income and F.I.C.A. taxes withheld from wages.

18 U.S.C. § 287
False Claim for Refund 1

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

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

The grand jury charges:

That on or about the _____ day of _____, 19____, in the _____ District of _____, [*insert Defendant's Name*], a resident of _____, _____, made and presented to the United States Treasury Department a claim against the United States for payment, which he [she] knew to be false, fictitious, or fraudulent, by preparing and causing to be prepared, 2 a U.S. Individual Income Tax Return, Form 1040, 3 which was presented to the United States Treasury Department, through the Internal Revenue Service, wherein he [she] claimed a refund of taxes in the amount of \$ _____, knowing such claim to be false, fictitious, or fraudulent.

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

A True Bill.

Foreperson

United States Attorney

NOTES

- 1** This form is for use with false paper returns.
- 2** If venue is to be placed in the district of filing, modify this form in accordance with language at Forms - 3 and related footnote **2**. If venue is based on mailing, substitute "by mailing and causing to be mailed".
- 3** The appropriate IRS form should be designated here -- *e.g.*, U.S. Corporation Income Tax Return, Form 1120.

**18 U.S.C. § 286/287
Conspiracy to File False Claims for
Refund/False Claims for Refund 1**

NOTE: This indictment provides sample language to charge violations of 18 U.S.C. 286 and 287 in the most commonly encountered type of 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.

Upon request, the Tax Division will provide this sample indictment (and the following sample plea agreement) on diskette in either WordPerfect or ASCII format.

IN THE DISTRICT COURT OF THE UNITED STATES
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 [*insert month*], 19__, and continuing until on or about [*insert month*], 19__, within the _____ District of _____, defendants [*insert name of defendant*], [*insert name of defendant*], [*insert name of defendant*], [*insert name of defendant*], and [*insert name of defendant*], and others, both known and unknown to the grand jury, unlawfully, willfully and knowingly agreed, combined and conspired with others and each other to defraud the United States by obtaining or aiding to obtain the payment or allowance of false, fictitious or fraudulent claims.

Manner and Means

Defendants *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, and *[insert name of defendant]* agreed to participate in, and participated in, a scheme to obtain or help others to obtain payment of false claims for refunds from the Internal Revenue Service ("IRS") by filing in their own names, and by causing others to file, false 19__ federal income tax returns claiming refunds to which they knew they were not entitled. Defendants *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, and *[insert name of defendant]* solicited, instructed and assisted others in falsely claiming federal income tax refunds through the preparation and submission of false federal income tax returns.

To accomplish the objects of this scheme, defendants *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, and *[insert name of defendant]* recruited individuals to file fraudulent federal income tax returns under their own names and social security numbers. Defendant *[insert name of defendant]* created false Forms W-2 in the names and social security numbers of each recruited individual that contained fabricated names of employers and names of employers who did not employ the employees listed on the Forms, and that contained fabricated amounts of tax withholdings. Defendants *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, and *[insert name of defendant]* also fabricated receipts for child-care expenses for the purpose of claiming false deductions and credits for child care on the electronically filed tax returns. Knowing that the false information contained in these Forms W-2 would be used to create tax returns claiming refunds for the individuals involved in this scheme, defendants *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, and *[insert name of defendant]* caused the false Forms W-2 and false receipts to be submitted to commercial tax return preparers authorized by the IRS to file tax returns electronically and to be represented to such preparers to be legitimate. The false Forms W-2 and false receipts defendants created were used by the commercial tax return preparers to prepare false 19__ federal income tax returns, which were electronically filed with the IRS by the tax return preparers, on behalf of the individuals recruited to participate in the scheme by defendants. As a result of the submission to the commercial tax return preparers of the false Forms W-2 and the false receipts, these electronically filed returns claimed tax refunds to which the individuals recruited by the defendants were not entitled.

On some occasions, one or more of defendants *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, and *[insert name of defendant]* accompanied the recruited individual to the office of a legitimate tax return preparer where the individual had a tax return prepared and filed electronically. The recruited individuals, acting on instructions from defendants, applied for refund anticipation loans ("RAL") through the tax return preparer. This allowed the recruited individuals to receive a cash advance on their false tax refunds from financial institutions within three to five days after the returns were electronically filed. One or more of defendants *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, *[insert name of defendant]*, and *[insert name of defendant]* accompanied the recruited individuals to pick up the refund anticipation

loan checks and to a check cashing service to cash those checks. Defendants then took and kept all or part of the loan proceeds from the recruited individuals. Defendants in this manner caused approximately _____ false returns to be filed, falsely claiming approximately \$____ from the United States government.

It was part of the conspiracy that each of the defendants would and did agree to participate in a scheme to falsely claim income tax refunds from the government using electronically filed tax returns.

It was further part of the conspiracy that in _____, 19____, defendant [*insert name of defendant*] instructed defendants [*insert name of defendant*], [*insert name of defendant*], [*insert name of defendant*], and [*insert name of defendant*] on procedures for falsely claiming income tax refunds on their own returns through the use of electronically filed income tax returns. Defendant [*insert name of defendant*] told the other defendants there was no chance of getting caught. Defendants [*insert name of defendant*], [*insert name of defendant*], [*insert name of defendant*], and [*insert name of defendant*] paid defendant [*insert name of defendant*] approximately one half of their proceeds, \$____, from their refund checks when they received them.

It was further part of the conspiracy that defendant [*insert name of defendant*] provided defendant [*insert name of defendant*] with blank W-2 forms, and that defendant [*insert name of defendant*] prepared and typed false Forms W-2 using the names and social security numbers of individuals recruited by other defendants to participate in the scheme, and assisted in preparing documents necessary to claim false child care deductions.

It was further part of the conspiracy that defendant [*insert name of defendant*] created the name of [*insert name of company*] Company and used that name as the employer on the false W-2 forms prepared by defendant [*insert name of defendant*]. In [*insert month*], 19____, defendant [*insert name of defendant*] paid for a commercial telephone answering service using the fabricated name of [*insert name of company*] Company and inserted that telephone number on the false W-2 forms prepared by defendant [*insert name of defendant*], [*or, obtained telephone numbers for individuals who would falsely represent that they were agents of the employers shown on the false Forms W-2*] for the purpose of deceiving any income tax preparer or IRS representative who might call to verify the employment of and wages paid to a recruited individual attempting to file a false tax return.

It was further part of the conspiracy that the defendants offered to pay a cash "referral fee" to anyone who would refer to them other individuals who would be willing to participate in the scheme and file false returns in their own names.

It was further part of the conspiracy that in or about [*insert month*], 19____, defendant [*insert name of defendant*] introduced [*insert name of recruited individual*] to defendant [*insert name of defendant*] for the purpose of facilitating the preparation of a false 19____ federal income tax return in [*insert name of recruited individual's name*]. Defendant [*insert name of defendant*] supplied [*insert name of recruited individual*] with a file containing false Forms W-2 and false receipts, and instructed [*insert name of recruited individual*] on procedures for electronically filing federal income tax returns falsely claiming refunds and applying for a refund anticipation loan.

It was further part of the conspiracy that on or about [*insert month and day*] 19____, [*insert name of recruited*

individual] submitted, as instructed by defendant [*insert name of defendant*], a false Form W-2 and false receipts created by defendants to [*insert name of return preparer*], in [*insert name of city and state*], and requested that a return be prepared and filed electronically. [*Or, On or about [insert month and day] 19__*, defendant [*insert name of defendant*] drove [*insert name of recruited individual*] to the [*insert name of return preparer*]'s office in [*insert name of city and state*], where defendant [*insert name of defendant*] presented a false Form W-2 and false receipts for child-care expenses in [*insert name of recruited individual*]'s name for the preparation of a federal income tax refund to be electronically filed for [*insert name of recruited individual*].] Those false documents were used by [*insert name of return preparer*] to prepare a 19__ federal income tax return falsely claiming a tax refund of \$____. [*Insert name of recruited individual*] signed the declaration on the Form 8453, which stated under penalty of perjury that the information shown on that form and on the electronic return were true and correct, and completed an application to obtain a refund anticipation loan for the amount of the refund, less fees.

It was further part of the conspiracy that on or about [*insert month and day*], 19__, defendant [*insert name of defendant*] drove [*insert name of recruited individual*] to the [*insert name of return preparer*]'s office in [*insert name of city and state*], where [*insert name of recruited individual*] obtained a check drawn on the [*insert name of bank*] bank of [*insert name of city and state*], which represented the proceeds of the refund anticipation loan based on the amount of the false claim for refund. Defendant [*insert name of defendant*] then drove [*insert name of recruited individual*] to a check-cashing establishment and waited while [*insert name of recruited individual*] cashed that check. Defendant [*insert name of recruited individual*] allowed [*insert name of recruited individual*] to retain \$____ of the proceeds of that check and took the remainder, which he then divided with defendant [*insert name of defendant*].

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

COUNTS TWO THROUGH TEN

[18 U.S.C., Secs. 287, 2]

On or about the dates listed below, within the _____ District of _____, defendants [*insert name of defendant*], [*insert name of defendant*], [*insert name of defendant*], [*insert name of defendant*], and [*insert name of defendant*] knowingly made and presented, and caused to be made and presented, to the Internal Revenue Service, an agency of the Department of the Treasury, claims against the United States for payment, which they knew to be false, fictitious or fraudulent, by preparing and causing to be prepared, and filing and causing to be filed, what purported to be federal income tax returns, for the individuals named below, wherein claims for income tax refunds for the amounts listed below were made, knowing such claims to be false, fictitious or fraudulent.

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

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

COUNT ELEVEN

[18 U.S.C., § 287]

On or about *[insert month and day]*, 19__, within the _____ District of _____, defendant *[insert name of defendant]* knowingly made and presented to the Internal Revenue Service, an agency of the Department of the Treasury, a claim against the United States for payment, which he knew to be false, fictitious or fraudulent, by preparing and causing to be prepared, and filing and causing to be filed, what purported to be a 19_ federal income tax return, wherein he claimed an income tax refund in the amount of \$____, knowing such claim to be false, fictitious or fraudulent.

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

A True Bill.

Foreperson

United States Attorney

NOTE

1 For use with electronically filed false claims for refund.

18 U.S.C. § 286/287
False Claim for Refund 1
Plea Agreement

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

UNITED STATES OF AMERICA)
)
) v.)
) No.
)
)
_____)

PLEA AGREEMENT

[Insert name of United States Attorney], United States Attorney for the _____ District of _____, [insert name of Assistant United States Attorney], Assistant United States Attorney, defendant [insert name of defendant], and counsel for the defendant, [insert name of defense counsel], pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

EXISTING INDICTMENT

The defendant agrees to plead guilty to counts _____, _____, and _____ of the existing indictment in the case of [insert case caption]. These counts charge defendant with conspiracy to file false claims with an agency of the United States and with knowingly presenting false claims to an agency of the United States, in violation of 18 U.S.C., Secs. 286 and 287. These counts charge that defendant conspired to file and caused to be filed false claims for refund of income taxes by filing or attempting to file 19__ federal income tax returns falsely claiming refunds from the Internal Revenue Service.

By signing this agreement, defendant admits that he [she] is, in fact, guilty of these offenses and will enter his [her] plea before the court.

If defendant complies with all the terms of this agreement, the government will move to dismiss all remaining counts in the indictment against defendant. It is further understood that the United States will not further criminally prosecute defendant in the _____ District of _____ for offenses arising from conduct charged in the indictment, except crimes of violence presently unknown to the United States. This plea agreement binds only the United States Attorney's office for the _____ District of _____ and the defendant. It does not bind any other prosecutor in any other jurisdiction. It will be binding upon the Tax Division of the Department of Justice when approved in writing by the Assistant Attorney General of the Tax Division.

WAIVER OF RIGHTS

Defendant understands that by pleading guilty, he [she] will be waiving the following constitutional rights: the right to plead not guilty and the right to be tried by a jury or before a judge. Defendant also understands that, if tried, he

[she] would have the right to an attorney and if he [she] could not afford an attorney, the court would appoint one to represent him [her]; he [she] would be presumed innocent and the burden of proof would be on the government to prove him [her] guilty beyond a reasonable doubt; he [she] would have the right to confront and cross-examine witnesses against him [her]; he [she] could testify on his [her] own behalf and present witnesses in his [her] defense; if he [she] did not wish to testify, that fact could not be used against him [her] and a jury would be so instructed; and, if he [she] were found guilty after a trial, he [she] would have the right to appeal that verdict. By pleading guilty, defendant understands that he [she] is giving up all of these rights, including the right to appeal his [her] conviction. In addition, defendant hereby expressly waives any right he [she] might have to appeal any sentence imposed, except the right to appeal an illegal sentence. By pleading guilty, defendant understands that he [she] may have to answer questions posed to him [her] by the court both about the rights that he [she] will be giving up and about the facts of this case. Any statements made by him [her] in this respect would not be admissible during a trial, except in a criminal proceeding for perjury or false statements.

Defendant understands and agrees that each and every disclosure made by him [her] pursuant to this agreement will constitute a waiver of his [her] Fifth Amendment privilege against self-incrimination. In addition, defendant understands and agrees that, in the event of a breach by him [her] of this agreement, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against him [her] notwithstanding the expiration of the statute of limitations between the time of the signing of this agreement and any breach thereof by the defendant. Defendant hereby waives any and all defenses based on the statute of limitations with respect to any prosecution that becomes time-barred during the period of time between the signing of this agreement and any breach thereof by the defendant.

MAXIMUM SENTENCE AND RESTITUTION

The maximum sentence which the court can impose on Count One (the conspiracy count) is ten years' incarceration, a fine of \$250,000, and a special assessment of \$50 when defendant is sentenced. The maximum sentence for each of the remaining counts is five years' incarceration, a fine of \$250,000 and a special assessment of \$50 when defendant is sentenced. By signing this agreement, defendant also agrees that the court can order him [her] to pay restitution for the full loss resulting from activities for which he [she] is responsible relating to the filing of false claims for refund. Defendant also agrees that the restitution order is not restricted to the amounts alleged in the counts to which he [she] is pleading guilty, but may extend to all losses resulting from activities for which he [she] is responsible relating to the filing of false claims for refund of taxes.

SENTENCING GUIDELINES

Defendant understands that a sentencing guideline range will be determined by the court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C., Secs. 3551 through 3742 and 28 U.S.C., Secs. 991 through 998. Defendant further understands that the court will impose a sentence within that guideline range, unless the court finds there is a basis for departure because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not

adequately taken into consideration by the Sentencing Commission in formulating the guidelines.

Defendant and the United States agree and stipulate to the Statement of Facts attached hereto and incorporated herein, and to the following applicable sentencing guideline factors.

The parties agree that as of the date of this agreement, the government is able to establish losses in the amount of \$_____ for which the defendant is responsible. Defendant understands that the government makes no representation as to the amount of the total loss to the government with which he [she] may ultimately be charged at the time of sentencing, that the court will be informed of the total loss computed on the basis of all information in the government's possession at the time of sentencing, and that the total loss will include all returns falsely claiming refunds that are linked to the conspiracy. The defendant also understands that at the time of sentencing the government will inform the court of the extent of his [her] cooperation. Any information regarding federal income tax returns falsely claiming refunds that is provided to the government by the defendant (or is discovered as a result of the defendant's cooperation) which implicates others as well as the defendant that is not already in the government's possession as of the date of this agreement shall not be used against the defendant or charged to the defendant in determining the total amount of the loss for which he [she] is responsible.

The parties also agree that, if defendant pleads guilty and fully cooperates with the government pursuant to all the terms of this agreement, defendant will have fully accepted responsibility for the offenses to which defendant will be pleading guilty and will be entitled to a two point reduction in the applicable offense level pursuant to sentencing guideline 3E1.1.

Defendant understands that neither the court nor the United States Probation Office is bound by any stipulations herein or attached hereto and the court will, with the aid of the presentence report, determine the facts relevant to sentencing. Defendant further understands that both defendant and the United States are free to supplement the stipulated facts by supplying relevant information to the United States Probation Office. Defendant understands that the court cannot rely exclusively upon the stipulations herein or attached hereto in ascertaining the facts relevant to the determination of the sentence. Rather, in determining the factual basis for the sentence, the court will consider the stipulations herein or attached hereto, together with the results of the presentence investigation, and any other relevant information. Defendant understands that if the court ascertains facts different from those stipulated, defendant cannot, for that reason alone, withdraw his [her] guilty plea.

Defendant understands that there is no agreement as to his [her] criminal history or criminal history category, and that his [her] criminal history could alter his [her] offense level if he [she] is a career offender or if the instant offense was part of a pattern of criminal conduct from which defendant derived a substantial portion of his [her] income.

SPECIFIC SENTENCING AGREEMENT

When defendant appears before the court for sentencing, the United States will bring to the court's attention: (a) the nature and extent of his [her] cooperation and (b) all other relevant information with respect to his [her] background, character and conduct, including the conduct that is the subject of the counts of the indictment that the government has

agreed to move to dismiss at sentencing.

COOPERATION

Defendant agrees to cooperate fully with the United States Attorney's office, agents of the Internal Revenue Service's Criminal Investigation Division, and any other federal or state law enforcement agency. As used in this agreement, "cooperation" requires that:

(a) defendant respond truthfully and completely to any and all questions and inquiries that may be put to him, whether in interviews, before a grand jury, or at any trials or other court proceedings -- including debriefing sessions;

(b) defendant attend all meetings, grand jury sessions, trials, and other proceedings at which his [her] presence is requested by this Office or compelled by court order or subpoena;

(c) defendant produce voluntarily any and all documents, records, or other tangible evidence relating to this matter that the government requests; and,

(d) defendant cooperate fully with the probation officer and the IRS in making any restitution ordered by the court.

BREACH OF AGREEMENT

If defendant commits any crimes while cooperating with the government, if any of his [her] statements or testimony proves to be false, misleading or materially incomplete, or if defendant otherwise violates this agreement in any way:

(a) the government may elect no longer to be bound by the terms of this agreement, including its representations to defendant concerning the limits on criminal prosecution or sentencing recommendations as set forth above;

(b) the defendant may be prosecuted for any federal criminal violation of which the government now has or hereafter acquires knowledge, including, but not limited to, perjury, false statements, and obstruction of justice;

(c) all statements made by defendant to the United States Attorney's office or to law enforcement agents, or any testimony given by him [her] before a grand jury or other tribunal, whether before or after the signing of this agreement, may be used against him [her] and shall be admissible in evidence in any and all criminal proceedings brought against him [her];

(d) defendant shall assert no claim under the United States Constitution, any statute, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule or statute, that statements made by defendant before or after this agreement, or any leads derived therefrom, should be suppressed; and,

(e) if, despite a breach by defendant, the government elects not to invalidate this agreement, the government will be entitled to bring to the court's attention, and the court will be entitled to consider, defendant's failure to fulfill any of his [her] obligations under this agreement.

COURT NOT A PARTY TO THIS AGREEMENT

Defendant understands that the court is not a party to this agreement. In the federal system, sentencing is a matter solely within the discretion of the court, the court is under no obligation to accept the government's recommendations and the court may, in its discretion, impose any sentence it deems appropriate, up to and including the statutory maximum explained in this agreement. If the court should impose any sentence up to the maximum established by statute, defendant cannot, for that reason alone, withdraw his [her] plea of guilty, and will remain bound to fulfill all of his [her] obligations under this agreement. Defendant understands that neither the prosecutor, defendant's counsel, nor the court can make a binding prediction or promise regarding his [her] sentence.

Except as expressly set forth herein, there are no additional promises, understandings or agreements between the government and defendant or his [her] counsel concerning his [her] liability for any criminal prosecution on any other federal, state or local charges that may now be pending or hereafter be brought against defendant, or the sentence that might be imposed as a result of his [her] guilty plea pursuant to this agreement. Nor may any additional agreement, understanding or condition be entered into unless in writing and signed by all parties.

AGREEMENT NOT TO AFFECT OTHER PROCEEDINGS

This agreement is not contingent in any way upon the outcome of any investigation, proceeding, or subsequent

trial.

Nothing in this agreement shall limit the Internal Revenue Service in its collection of any taxes, interest, or penalties from the defendant, including tax refunds falsely claimed by defendant from the U.S. Government.

COMPLETE AGREEMENT BETWEEN THE PARTIES

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

United States Attorney

By: _____
Assistant United States Attorney

I have read this agreement, consisting of ___ pages, and carefully reviewed every part of it with my attorney. I understand it and voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the sentencing guidelines which may apply to my case. No other promises or inducements have been made to me, other than those contained in this agreement. In addition, no one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this case.

Defendant

Dated

I am _____'s attorney and have carefully reviewed every part of this agreement with him [her]. Further, I have reviewed with Mr. [Ms.] _____ the provisions of the sentencing guidelines which may apply in this case. To my knowledge, his [her] decision to enter into this agreement is an informed and voluntary one.

_____, Esq.
Attorney for Defendant

Dated

**18 U.S.C. § 371
Conspiracy To Defraud United States
Impede And Impair I.R.S. -- Klein Conspiracy**

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

UNITED STATES OF AMERICA)
)
) v.) No.
)) 18 U.S.C., Sec 371

)

The grand jury charges:

THE CONSPIRACY 1

1. From on or about [*insert beginning date*], the exact date being unknown to the Grand Jury, and continuing thereafter up to and including the date of this indictment **2**, in the _____ District of _____,

[*insert first defendant's name*],

[*insert second defendant's name*],

[*insert third defendant's name*],

defendants herein, did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree together and with each other and with other individuals both known and unknown to the Grand Jury to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful Government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes [*or other relevant taxes, i.e., excise taxes*]. **3**

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.]*
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.]* 4

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

NOTES

1 It is suggested that the paragraphs of the indictment be numbered sequentially from beginning to end even though the indictment will have different sections. This will eliminate confusion when reference is made to a particular portion or paragraph of the indictment.

2 Substitute appropriate date if the conspiracy ended before the date of the indictment.

3 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)."

4 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).

**18 U.S.C. § 1001
False Statement or Representation
Made to Department/Agency of U.S.**

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

UNITED STATES OF AMERICA)
)
) v. No.
) 18 U.S.C., § 1001
_____)

The grand jury charges:

That on or about the ____ day of _____, 19__, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully and knowingly make and cause to be made a false, fictitious, and fraudulent statement(s) and representation(s) in a matter within the jurisdiction of a department or agency of the United States by [*Describe False Statement or Representation and Describe Official to Whom False Statement Was Made*], at [*Place*], [*Location*], in the District of _____, whereas, as [*Defendant's Name*] then and there well knew and believed, [*Describe Correct Fact(s) Regarding the False Statement or Representation*].

In violation of Title 18, United States Code, Section 1001.

A True Bill.

Foreperson

United States Attorney

**18 U.S.C. § 1001
False Document Submitted
to Department/Agency of U.S.**

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

UNITED STATES OF AMERICA)
)
) v.)
) No.
) 18 U.S.C., § 1001

)

The grand jury charges:

That on or about the ___ day of _____, 19__, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully and knowingly make and cause to be made, and use and cause to be used, a false writing or document, knowing the same to contain a false, fictitious, and fraudulent statement, in a matter within the jurisdiction of a department or agency of the United States, by submitting [*Describe False Document and False Statement(s) Within Document and Describe Official to Whom the False Document Was Submitted*], at [*Place*], [*Location*], in the _____ District of _____, whereas, as [*Defendant's Name*] then and there well knew and believed, [*Describe Correct Fact(s) Regarding False Document*].

In violation of Title 18, United States Code, Section 1001.

A True Bill.

Foreperson

United States Attorney

**18 U.S.C. § 1001
Falsify, Conceal, or Cover Up
by Trick, Scheme, or Device a Material Fact**

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

UNITED STATES OF AMERICA)
)
) v.)
)) No.
)) 18 U.S.C., § 1001

)

The grand jury charges:

From on or about the ____ day of _____, 19__, to on or about the ____ day of _____, 19__, in the _____ District of _____, [*Defendant's Name*], a resident of [*City*], [*State*], did willfully and knowingly falsify, conceal, and cover up, by trick, scheme, or device, in a matter within the jurisdiction of a department or agency of the United States, by [*Describe Nature of Scheme or Device to Conceal, Including Name and Title of any IRS Employee to Whom False Statement(s) or Representation(s) Were Made; Nature of False Statement(s) or Representation(s); Place and Location Where False Statement(s) or Representation(s) Were Made; and/or Specific False Document(s) Submitted 1*], whereas, as [*Defendant's Name*] then and there well knew and believed, [*Describe Correct Facts Relating to False Statement(s), Representation(s), and/or Document(s) 2*].

In violation of Title 18, United States Code, Section 1001.

A True Bill.

Foreperson

United States Attorney

NOTES

1 *E.g.*, "by representing to John Smith, Revenue Officer, Internal Revenue Service, at 33 Main Street, Boston, Massachusetts, that the deductions claimed for contributions were in the amount of \$_____, and that eight checks drawn on account number _____, at _____ Bank, were issued to make the contributions in the amounts represented on said checks".

2 *E.g.*, "the said eight checks had been altered and were false as to _____ (amounts, payees, dates, etc.)".

18 U.S.C. § 1956(a)(1)(A)(ii)
Laundering of Monetary Instruments

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

UNITED STATES OF AMERICA)	
)	
v.	)	No.
	)	18 U.S.C., Secs. 1956(a)(1)(A)(ii)
_____	)	and 2
)	

The grand jury charges:

On or about *[Date]*, in the _____ District of _____, *[Defendant(s) Name(s)]* did knowingly and willfully conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, *[Description of Financial Transaction]*, which involved the proceeds of a specified unlawful activity, that is *[Describe Specified Unlawful Activity]*, with the intent to engage in conduct constituting a violation of [26 U.S.C. § 7201] [26 U.S.C. § 7206] **1** to wit, *[Describe Conduct]* and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction, that is *[Funds]* **2** *[Monetary Instruments]* **3** in the amount of \$_____, represented the proceeds of some form of unlawful activity.

All in violation of Title 18, United States Code, Sections 1956(a)(1)(A)(ii) and 2.

A True Bill.

Foreperson

United States Attorney

NOTES

- 1 Choose one or both. If both are used, set forth in the conjunctive.
- 2 Select one. Remember monetary instrument is a defined term in 1956(c)(5) whereas "funds" is undefined.
- 3 If the activity described in this paragraph is intended to cover more than one count this last phrase can be redrafted in tabular form as follows: "That is, [*Funds*], [*Monetary Instruments*] in the amounts set forth below:

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