Exhibit 300-14 Cont. (3)

Form 2039-B

NOTICE TO THIRD-PARTY RECIPIENT OF IRS SUMMONS

As a third-party recipient of a summons, you may be entitled to receive payment for certain costs directly incurred which are reasonably necessary to search for, reproduce or transport records in order to comply with a summons.

This payment is made only at the rates established by the Internal Revenue Service to certain persons served with a summons to produce records or information in which the taxpayer does not have an ownership interest. The taxpayer to whose liability the summons relates and the taxpayer's officer, employee, agent, accountant, or attorney are not entitled to this payment. No payment will be made for any costs which you have charged or billed to other persons.

The rate for search costs is $5 an hour or fraction of an hour and is limited to the total amount of personnel time spent in locating and retrieving documents or information requested by the summons. Specific salaries of such persons may not be included in search costs. In addition, search costs do not include salaries, fees, or similar costs for analysis of material or for managerial or legal advice, expertise, research, or time spent for any of these activities. If itemized separately, search costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies; however, personnel time for computer search may be paid for only at the Internal Revenue Service rate specified above.

The rate for reproduction costs for making copies or duplicates of summoned documents, transcripts, and other similar material is 10 cents for each page. Photographs, films, and other materials are reimbursed at cost.

The rate for transportation costs is the same as the actual cost necessary to transport personnel to locate and retrieve summoned records or information, or costs incurred solely by the need to transport the summoned material to the place of examination.

In addition to payment for search, reproduction, and transportation costs, persons who *appear before* an Internal Revenue Service officer in response to a summons may request payment for authorized witness fees and mileage fees. You may make this request by contacting the Internal Revenue Service officer or by claiming these costs separately on the itemized bill or invoice as explained below.

Instructions For Requesting Payment

After the summons is served, you should keep an accurate record of personnel search time, computer costs, number of reproductions made, and transportation costs. When you are notified that the summons has been satisfactorily complied with, you may submit an itemized bill or invoice to the Internal Revenue Service officer before whom you were summoned to appear, either in person or by mail to the address furnished by the Internal Revenue Service officer. Please write on the itemized bill or invoice the name of the taxpayer to whose liability the summons relates.

If you have any questions about the payment, please contact the Internal Revenue Service officer before whom you were summoned to appear.

Anyone submitting false claims for payment is subject to possible criminal prosecution.

Part B — To be given to person summoned **Form 2039-B (Rev. 11-78)**

Exhibit 300-14 Cont. (5)

Form 2039-D

Sec. 7609. Special procedures for third-party summonses.

(a) Notice.—

(1) In General.—If—

(A) any summons described in subsection (c) is served on any person who is a third-party recordkeeper, and

(B) the summons requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in the description of the records contained in the summons,

then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 14th day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under subsection (b)(2).

(2) Sufficiency of notice.—Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Third-party recordkeeper defined.—For purposes of this subsection, the term "third-party recordkeeper" means—

(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A));

(B) any consumer reporting agency (as defined under section 603(d) of the Fair Credit Reporting Act (15 U. S. C. 1681a(f)));

(C) any person extending credit through the use of credit cards or similar devices;

(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U. S. C. 78c(a)(4)));

(E) any attorney, and

(F) any accountant.

(4) Exceptions.—Paragraph (1) shall not apply to any summons—

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person,

(B) to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or

(C) described in subsection (f).

(5) Nature of summons.—Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(B)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the persons summoned to locate the records required under the summons.

(b) Right to Intervene; Right to Stay Compliance.—

(1) Intervention.—Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

(2) Right to stay compliance.—Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to stay compliance with the summons if, not later than the 14th day after the day such notice is given in the manner provided in subsection (a)(2)—

(A) notice in writing is given to the person summoned not to comply with the summons, and

(B) a copy of such notice to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(c) Summons to Which Section Applies.—

(1) In general.—Except as provided in paragraph (2), a summons is described in this subsection if it is issued under paragraph (2) of section 7602 or under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 6427(f)(2) and requires the production of records.

(2) Exceptions.—A summons shall not be treated as described in this subsection if—

(A) it is solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in subsection (a)(3)(A), or

(B) it is in aid of the collection of—

(i) the liability of any person against whom an assessment has been made or judgment rendered, or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause *(i)*.

(3) Records; certain related testimony.—For purposes of this section—

(A) the term "records" includes books, papers, or other data, and

(B) a summons requiring the giving of testimony relating to records shall be treated as a summons requiring the production of such records.

(d) Restriction on Examination of Records.—No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made—

(1) before the expiration of the 14-day period allowed for the notice not to comply under subsection (b)(2), or

(2) when the requirements of subsection (b)(2) have been met except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

(e) Suspension of Statute of Limitations.—If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

(f) Additional Requirement in the Case of a John Doe Summons.—Any summons described in subsection (c) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

(g) Special Exception for Certain Summonses.—In the case of any summons described in subsection (c), the provisions of subsections (a)(1) and (b) shall not apply if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery or collusion or to flee to avoid prosecution, testifying, or production of records.

(h) Jurisdiction of District Court.—

(1) The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine proceedings brought under subsections (f) or (g). The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition shall be deemed a final order which may be appealed.

(2) Except as to cases the court considers of greater importance, a proceeding brought for the enforcement of any summons, or a proceeding under this section, and appeals, take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date.

Form 2039-D (Rev. 11-78)

Exhibit 300-14 Cont. (6)

Instructions for Completing Form 2039 ◊

(1) Insert the name and address, including street number, city and state of the taxpayer whose tax liability is being investigated. If returns are under investigation and bear different addresses, or if the taxpayer during the periods resided at several addresses, and his present address is still another place, show all of the addresses known. It is also important that only the name of the taxpayer appears in this item. Under certain circumstances in an investigation of related taxpayers, it is appropriate to list the names of all taxpayers assigned for investigation in the caption of the summons where the summons is directed to a witness having information concerning said taxpayers. Whether or not more than one summons should be used in each case will depend upon the facts of the case. If the liability is corporate, the name of an individual should not be shown in this item even though the individuals may be the summoned party, own substantially all the stock of the corporation, and/or be the only corporate officer. If the liability is that of an individual, the name of a corporation or other individual should likewise not appear even though the individual liability may stem from corporate affairs, as in the case of a 100-percent penalty assessment. When the liability relates to a business carried on under a trade name or by a partnership, the item should include both the name of the business and the name(s) of the individual(s) involved.

(2) Insert the city designation of the Internal Revenue district in which the returns were filed or should have been filed or the district where the assessment for collection is outstanding. For example, "Internal Revenue District of Los Angeles." If returns under investigation were filed in various districts, show the name of each district.

(3) Insert the calendar years, fiscal years, quarterly or monthly periods involved in the investigation.

(4) Insert the correct name of the person summoned or the name by which he/she is customarily known. It is immaterial whether that is his/her true and legal name. When the appearance is sought of more than one person, even though they are husband and wife, separate summonses, each directed to one individual, should be served. If it is desired to obtain testimony or records from a person in his/her capacity as trustee, receiver, custodian, corporate or public official, his/her title or official status, including the name of the corporation or other entity with respect to which the witness acts in such capacity, should be added to his/her name. Where a summons is for corporate records, it may be directed to a corporate officer and the corporation, i.e. "Mr. X, as president of XYZ Corporation and the XYZ Corporation." The latter description is preferable where records of a corporation or entity are summoned. However, there may be instances in which the personal testimony of a specific corporate officer is desired. It is also acceptable to issue a summons to a corporation only, for production of corporate records, in which event service must be made on a corporate officer or corporate employee probably authorized by the corporation to accept service on behalf of the corporation. The agent's supervisor should be consulted if there is any problem. The exact corporate name should be used.

(5) Insert the correct address of the person summoned which may be either the street and number of a place of business, the place of residence, or the location of the place where the person is found.

(6) Insert the name of the officer before whom the summoned witness is to appear and give testimony and/or produce records. If the officer authorized to issue a summons desires the person summoned to appear before another employee, the name of that employee will be inserted.

(7) When the summons requires the production of books, records, papers, or other data, it is important that they be properly designated and described with reasonable certainty, that is, that they be specified with sufficient precision for their identification. The description of records should specify the period of time covered by the records. If the witness is not required to produce books, records, papers, or other data, the phrase "and to bring with you and produce for examination the following books, records, papers, and other data" may be stricken.

(8) Insert the business address and telephone number of the IRS officer before whom the summoned party is to appear.

Exhibit 300-14 Cont. (7)

Instructions for Completing Form 2039 ◊

(9) Insert the place for the witness' appearance. Show the complete address including the room number of the building at which the person is required to appear. The place of appearance shall be one reasonable under the circumstances of the case.

(10) Insert the date and time the witness is to appear. IRC 7605 provides that the date and time fixed for the appearance shall be such as are reasonable under the circumstances and shall not be less than 11 calendar days from the date of the summons, which for this purpose means the date on which the summons is legally served. If the summons is one requiring notice under IRC 7609, 17 days generally (but in no event more than 20 days) will be allowed from the date of service of the summons to the date for compliance, to ensure sufficient time for the notices of issuance of the summons and staying of compliance to be given. In computing the period, the day of service should not be counted but the day of appearance should be counted. Strict compliance with this provision is necessary in the preparation and issuance of a summons in order to enable the enforcement of obedience to its requirements if the person refuses to comply. The date set for appearance of the person summoned shall be on a workday and not on Sunday or a legal holiday. If a witness indicates a willingness to comply with the requirements of the summons by the delivery of books or records for immediate examination or on a date earlier than that required by statute, the time for his/her appearance should, nevertheless, be inserted in compliance with the statute. This will not preclude the officer, if aggreeable to the person summoned, from making an earlier or immediate examination of the records or the earlier taking of testimony, except if the summons is one requiring notice under IRC 7609. In that event, see IRM 9368.42 for the conditions under which early examination may be made.

(11) Insert the date the summons is signed by the issuing officer. This date is not to be considered as the "date of summons" in setting the date for appearance pursuant to IRC 7605. (See Item 10 above.)

(12) The authorized issuing officer will manually sign the summons in the space labeled "Signature of Issuing Officer" and insert his/her official title in the space labeled "Title."

(13) If authorization for issuance of the summons is required by Delegation Order No. 4, as revised, the officer designated to authorize the issuance of the summons will manually sign the summons in the space labeled "Signature of Approving Officer" and insert his/her official title in the space labeled "Title." If the authorization was oral, the issuing officer will insert and sign a statement of the face of the original and all copies of the summons that he/she had prior authorization to issue the summons, and indicate the name and title of the approving officer and the date of approval. In addition, the special agent shall prepare a record of the oral authorization as soon as is practicable; submit the record, for approval, to the official who gave the oral authorization; and associate the document with the retained copy of the summons.

(14) Insert the date and the time of day on which the summons was served.

(15) Show the manner in which the summons was served by checking one of the squares provided.

(16) Insert the address of the place or the location where the attested copy of the summons was delivered to the person summoned.

(17) If the summons is served by leaving an attested copy with a person at the last and usual place of abode of the party summoned, the name and address of the person to whom it is handed will be entered. If the summons is merely left at the witness' last and usual place of abode, only the address will be entered, and the phrase "I left the copy with the following person (if any)" shall be stricken.

(18) The officer serving the summons will sign the certificate of service of summons in the space provided for "Signature" and enter his/her official title in the space designated "Title."

(19)-(21) These items will be completed, as described below, only if notice is required under IRC 7609.

(19) Insert the date and time the notice was placed in the mail or delivered personally.

(20) Insert the name of the noticee and, if the notice is mailed, the address of the noticee.

(21) Show the manner in which notice was given by checking one of the squares provided. If notice is given by leaving the notice with a person at the last and usual place of abode of the noticee, the name and address of the person to whom it was handed will be entered. If the notice is merely left at the noticee's last and usual place of abode, only the address will be entered and the phrase "I left the copy with the following person (if any)" shall be stricken.

(22) Check this square if no notice is required.

(23) The officer serving the summons will sign the certificate of notice in the space provided for "Signature" and enter his/her official title in the space designated "Title."

Exhibit 300-15

Pattern Declaration ◊

Handbook Reference: Text 36(10).33

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF _____

UNITED STATES OF AMERICA and (*enter name*), Special Agent of the Internal Revenue Service	)
Petitioners	)
Respondent(s)	)

DECLARATION

(Name of Special Agent), a petitioner herein, declares:

1. I am a duly commissioned Special Agent employed in the Criminal Investigation Division of the Office of the (District Director of Internal Revenue) (Director of International Operations) at *(address of office where assigned)*.

2. In my capacity as a Special Agent, I am conducting an investigation (into the tax liability of) (for the collection of the tax liability of) (name of taxpayer) for the (year(s) _____) (taxable period(s) _____).

3. In furtherance of the above investigation and in accordance with Section 7602 of Title 26, U.S.C., I issued on (*date*) an administrative summons, Internal Revenue Service Form 2039 to *(name of summoned person)*, (to give testimony) (and) (to produce for examination books, papers, records, or other data as described in said summons).

The summons is attached to the Petition as Exhibit *(leave blank)*.

Exhibit 300-15 Cont. (1)

Pattern Declaration ◊

Handbook Reference: Text 36(10).33

(To be used when the Special Agent executing the declaration did not perform the relevant activity)

4. I have been advised by *(specify title and name of person serving summons)* that on *(date)* , in accordance with Section 7603 of Title 26, U.S.C., (s)he served an attested copy of the Internal Revenue Service summons described in Paragraph 3 above on the respondent, *(name of summoned person)* by *(specify manner of service)*. This is further evidenced in the certificate of service on the reverse side of the summons.

5. On *(date)* , the notice required by Section 7609(a) of Title 26, U.S.C., was served by *(specify title and name of person serving notice)*, on *(specify person(s) entitled to notice)*, by *(specify manner of service, i.e., personal; left at last and usual place of abode; sent by registered or certified mail; or left with the person summoned)*. I have been apprised of this by *(specify title and name of person serving notice)* and it is further evidenced in the certificate of service of notice on the reverse side of the summons.

6. I have been informed by *(specify title and name of person designated as the individual before whom the summoned party was to appear)*, that on *(date)* , the respondent, *(name of summoned person), (did not appear in response to the summons) (appeared but refused to comply with the summons by producing the books, records and other documents demanded in the summons or by giving testimony as to the matters requested in said summons) (failed to appear because notice not to appear had been given in accordance with section 7609(b)(2) of Title 26, U.S.C.)*. The respondent's refusal to comply with the summons continues to the date of this declaration.

(To be used when the Special Agent executing the declaration did perform the relevant activity)

4. In accordance with section 7603 of Title 26, U.S.C., on *(date)* , I served an attested copy of the Internal Revenue Service summons described in Paragraph 3 above on the respondent, *(name of summoned person)*, by *(specify manner of service)*, as evidenced in the certificate of service on the reverse side of the summons.

5. On *(date)* , I served the notice required by Section 7609(a) of Title 26, U.S.C., on (specify person(s) entitled to notice), by *(specify manner of service, i.e., personal; left at last and usual place of abode, sent by registered or certified mail; or left with the person summoned)*, as evidenced in the certificate of service of notice on the reverse side of the summons.

6. On *(date)* , the respondent, *(name of summoned person), (did not appear in response to the summons) (appeared but refused to comply with the summons by producing the books, records and other documents demanded in the summons or by giving testimony as to matters requested in said summons) (failed to appear because notice not to appear had been given in accordance with section 7609(b)(2) of Title 26, U.S.C.)*. The respondent's refusal to comply with the summons continues to the date of this declaration.

7. The books, papers, records or other data sought by the summons are not already in the possession of the Internal Revenue Service (except as follows): (specify any summoned materials that have been obtained since the summons was served. Also, where the summons seeks Wage Tax Statements (W-2), Forms 1099, or other items which the Service technically may have in its possession, the paragraph should be modified to include a statement to the effect that these items are not readily accessible or retrievable without undue administrative burden or expense, together with an explanation thereof.)

8. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

9. It is necessary (to obtain the testimony) (and) (to examine the books, papers, records, or other data) sought by the summons in order (to properly investigate) (to collect) the federal tax liability of (name of taxpayer) for the (year(s) _____) (for taxable period(s) _____). The Internal Revenue Service has not made any recommendation for criminal prosecution to the Department of Justice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 19 _____.

_____
(Name of Person Seeking Enforcement)
Special Agent

Exhibit 300-15 Cont. (2)

Pattern Declaration ◊

Handbook Reference: Text 36(10).33

Instructions For Preparing Summons Declaration

The Department of Justice has the option to request separate declarations where more than one special agent is involved in issuance, service, or designation as the party before whom the summoned party is to appear. Paragraph 3, 4, 5, and 6 should be modified as appropriate when separate declarations are required.

Paragraph 5 should only be used when a summons is directed to a third-party recordkeeper as defined in IRC 7609(c).

Paragraph 7 is a general provision. However, in the event the Service does have some of the summoned material at the time of the enforcement proceeding, those materials should be excepted.

Exhibit 300-16

Pattern Letter P-549

WAIVER

To:
Address: Date:

Under Section 7602 of the Internal Revenue Code, the Internal Revenue Service has the authority to examine books and records and take testimony. If a summons is issued to a person who keeps or maintains records related to my business transactions or affairs, I understand that I am entitled to be notified and have the right to stay (prevent) compliance and intervene under Section 7609 of the Code.

Being fully aware of the authority of the Internal Revenue Service and my rights under the law, upon the issuance of a summons, I waive my rights and request that you furnish the Service the following records of my business transactions or affairs:

Name:

Address:

Signature **Date**

Exhibit 300-17

Calendar's—1800 to 2050
Handbook Reference: text 3(11)0

DIRECTIONS FOR USE

Look for the year you want in the index at left. The number opposite each year is the number of the calendar to use for that year.

	I	N	D	E	X		
1800 4	1828 10	1856 10	1884 10	1912 9	1940 9	1968 9	1996 9	2024 9
1801 5	1829 5	1857 5	1885 5	1913 4	1941 4	1969 4	1997 4	2025 4
1802 6	1830 6	1858 6	1886 6	1914 5	1942 5	1970 5	1998 5	2026 5
1803 7	1831 7	1859 7	1887 7	1915 6	1943 6	1971 6	1999 6	2027 6
1804 8	1832 8	1860 8	1888 8	1916 14	1944 14	1972 14	2000 14	2028 14
1805 3	1833 3	1861 3	1889 3	1917 2	1945 2	1973 2	2001 2	2029 2
1806 4	1834 4	1862 4	1890 4	1918 3	1946 3	1974 3	2002 3	2030 3
1807 9	1835 9	1863 9	1891 9	1919 4	1947 4	1975 4	2003 4	2031 4
1808 13	1836 13	1864 13	1892 13	1920 12	1948 12	1976 12	2004 12	2032 12
1809 1	1837 1	1865 1	1893 1	1921 7	1949 7	1977 7	2005 7	2033 7
1810 2	1838 2	1866 2	1894 2	1922 1	1950 1	1978 1	2006 1	2034 1
1811 3	1839 3	1867 3	1895 3	1923 2	1951 2	1979 2	2007 2	2035 2
1812 11	1840 11	1868 11	1896 11	1924 10	1952 10	1980 10	2008 10	2036 10
1813 6	1841 6	1869 6	1897 6	1925 5	1953 5	1981 5	2009 5	2037 5
1814 7	1842 7	1870 7	1898 7	1926 6	1954 6	1982 6	2010 6	2038 6
1815 1	1843 1	1871 1	1899 1	1927 7	1955 7	1983 7	2011 7	2039 7
1816 9	1844 9	1872 9	1900 2	1928 8	1956 8	1984 8	2012 8	2040 8
1817 4	1845 4	1873 4	1901 3	1929 3	1957 3	1985 3	2013 3	2041 3
1818 5	1846 5	1874 5	1902 4	1930 4	1958 4	1986 4	2014 4	2042 4
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1820 14	1848 14	1876 14	1904 13	1932 13	1960 13	1988 13	2016 13	2044 13
1821 2	1849 2	1877 2	1905 1	1933 1	1961 1	1989 1	2017 1	2045 1
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1824 12	1852 12	1880 12	1908 11	1936 11	1964 11	1992 11	2020 11	2048 11
1825 7	1853 7	1881 7	1909 6	1937 6	1965 6	1993 6	2021 6	2049 6
1826 1	1854 1	1882 1	1910 7	1938 7	1966 7	1994 7	2022 7	2050 7
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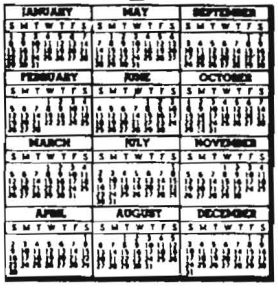

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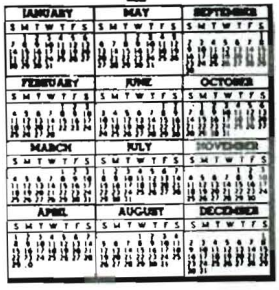

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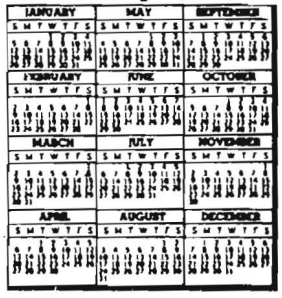

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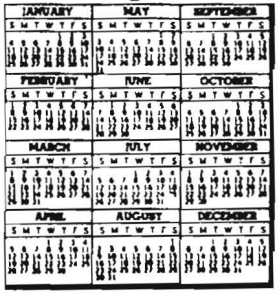

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Exhibit 300-17 Cont.

Calendars 1800 to 2050

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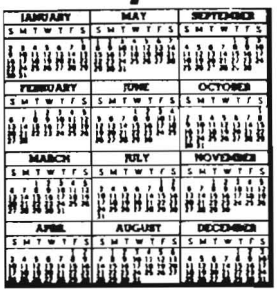

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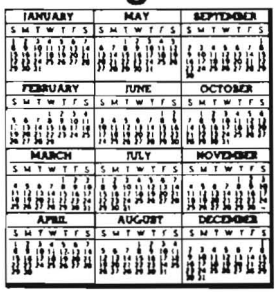
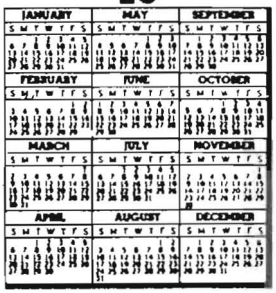
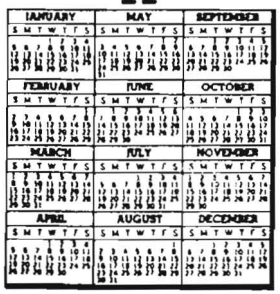


9

10



11



12

13

14

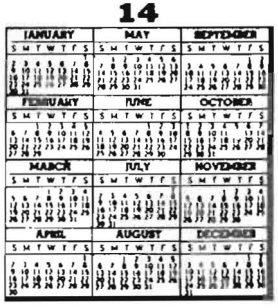


Exhibit 300-18

Waiver of Privilege and Authorization for Release of Medical Information
Handbook Reference: text 344.7:(2) ◊

WAIVER OF PRIVILEGE AND AUTHORIZATION
FOR RELEASE OF DIAGNOSTIC
AND TREATMENT INFORMATION

Date

To: _____

_____

I hereby waive any and all patient-psychotherapist privilege I may have, and authorize you to release to Special Agent of the Internal Revenue Service all information you may possess relating to the diagnosis and treatment of my mental and emotional condition.

(Signed) _____

Address _____

Witness: _____

Address: _____

Exhibit 300-19

Map of IRS and Judicial District Boundaries

Handbook Reference: text 3(12)0

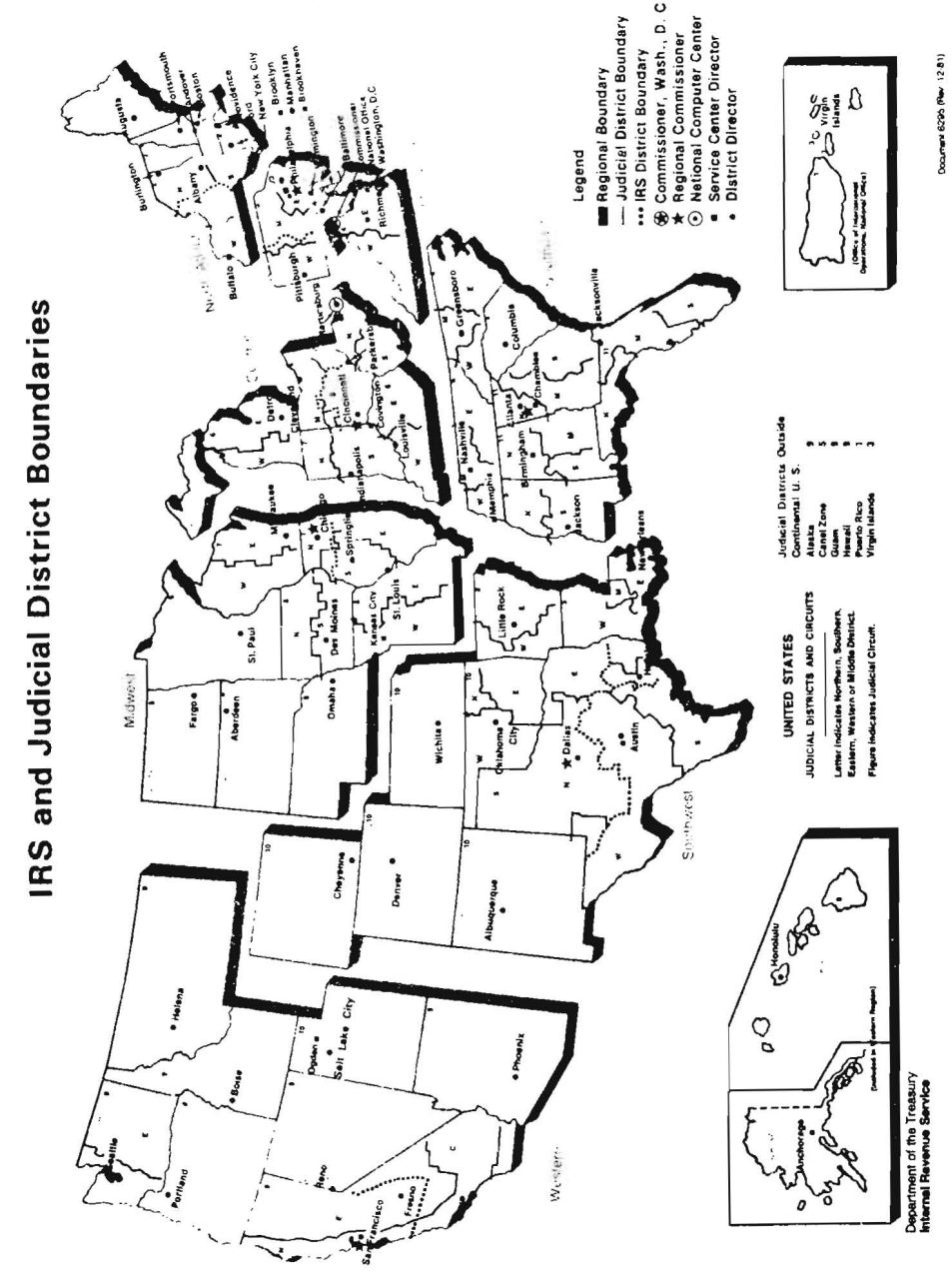


Exhibit 300-20

Memorandum Format for Request of Information From Social Security Administration
Handbook Reference: text 333.2:(2)(d)

To: Social Security Administration
Division of Adjustment Operations
Receipt and Dispatch Unit
4-N-7 South Block
Metro West Building
300 North Greene Street
Baltimore, Maryland 21201

Date:

IRS-CRITICAL CASE

Please furnish an itemization by Employer name and address of the quarterly wages earned for the indicated period(s) for:

_____	_____	_____
(Taxpayer's Name)	*(Social Security Number)*	*(Year(s))*

This information is necessary for administration of employment and income tax laws.

Sincerely Yours,

District Director

Internal Revenue Service District Originating Request:

Address:

Code:

Exhibit 300-21

List of Payment Centers of the Social Security Administration
Handbook Reference: text 333.2:(2)(h) ◊

First Three Digits of Social Security Account Number	Payment Center
001-134	Social Security Administration Payment Center 96-05 Horace Harding Expressway Flushing New York 11368
135-222 232-236 577-584	Social Security Administration Payment Center 401 North Broad Street Philadelphia Pennsylvania 19108
223-231 237-267 400-428 587	Social Security Administration Payment Center 2225 Third Avenue, North Birmingham Alabama 35285
268-302 316-399 700 Series	Social Security Administration Payment Center 165 North Canal Street Chicago Illinois 60606
501-504 516-524 526-576 586	Social Security Administration Payment Center Post Office Box 100 San Francisco California 94101
303-315 429-500 505-515 525 585	Social Security Administration Payment Center Federal Office Building 601 East 12th Street Kansas City Missouri 64106

Exhibit 300-24

Form 2275

1 SOCIAL SECURITY OR E.I. NUMBER	2. FORM NO	3. TAX PERIOD	3A DISTRICT CODE	4 DOCUMENT LOCATOR NUMBER AND PROCESSING YEAR
000-00-0000	1040	1975	00	

5. NAME AND ADDRESS OF TAXPAYER (Please print)

John F. Doe
Any Street
Your Town, State 00000

6. RENUMBERED DOCUMENT LOCATOR NUMBER AND PROCESSING YEAR

7. OTHER NUMBER | 8. ASSESSMENT NUMBER

9. ENCODER NUMBER | 10. FED. TAX DEPOSIT NO. (TDS)

ADJUSTMENT CONTROL NUMBER

11. REQUESTED BY

A. SERVICE CENTER OR OTHER LOCATION ("X" proper box)

☐ ANDOVER ☐ CINCINNATI ☐ OGDEN
☐ ATLANTA ☐ FRESNO ☒ PHILADELPHIA
☐ AUSTIN ☐ KANSAS CITY
☐ BROOKHAVEN ☐ MEMPHIS
OTHER (Specify): National OFFICE

12. APPROVAL SIGNATURE: Ira Martin | 13. DATE: 3-23-77

14. DOCUMENT ☐ CHARGED TO: ☐ RECHARGE TO | DATE

A. OFFICE LOCATION (Specify)

B. DIVISION	C. BRANCH	D. SECTION
Criminal Investigation	Operations	

E. UNIT	F. GROUP	G. STOP NO.

H. NAME OF ORIGINATOR	I. PHONE NO
BJ. Peterson	123-4567

B. DIVISION	C. BRANCH	D. SECTION

E. UNIT	F. GROUP	G. STOP NO

H. NAME	I. PHONE NO

15. INFORMATION REQUESTED ("X" proper box)

A ☒ ORIGINAL DOCUMENT
B ☐ MICROFILM TRANSCRIPT
C ☐ OTHER (Specify in Item 22)
D ☐ PHOTOCOPY
1. ☐ PUBLIC USE (Specify portion in Item 22)
2. ☐ INTERNAL USE
a. ☐ COMPLETE DOCUMENT
b. ☐ PORTION (Specify in Item 22)

16. TYPE OF REQUEST ("X" proper box)

A. ☒ INITIAL
B. ☐ SECOND
1. ☐ NO RECORD OF DOCUMENT
2. ☐ NO RESPONSE TO INITIAL REQUEST

17. SOURCE

A. EXAMINATION PICK-UP
1. ☐ NOL
2. ☐ RELATED
3. ☐ OTHER _____
B. ☐ REFERENCE AND INFORMATION

C. FOR ASSOCIATION WITH RETURN IN AUDIT DIVISION UNDER THE NAME OF:

18. ACTION

SECTION A: MICROFILM
A. ☐ REQUEST FILLED
B. ☐ NO RECORD OF DLN
C. ☐ OTHER (Explain)

CYCLE NUMBER _____
DATE _____

SECTION B: FILES
A. ☐ REQUEST FILLED
B. ☐ NO RECORD OF DLN
C. ☐ DOCUMENT MISSING FROM BLOCK
D. ☐ OTHER (Explain)

19. DOCUMENT RETAINED IN ("X" proper box and indicate location)

A. ☐ SERVICE CENTER _____
B ☐ DISTRICT OFFICE _____
C. ☐ FEDERAL RECORDS CENTER _____
D ☐ OTHER _____

20 FEDERAL RECORDS CENTER REFERENCE	A. ACCESSION NO.	B. FRC CONTAINER NO	C. SHELF LIST NO.

21. ☐ **REFILE** IN LOCATION INDICATED IN ITEM 19.

22. REMARKS

FORM 2275 (REV. 6-73) — **RECORDS REQUEST, CHARGE AND RECHARGE** — DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE

Exhibit 300-24 Cont. (1)

Form 2275 DO-MW

1. SOCIAL SECURITY OR E.I. NUMBER	2. FORM NO.	3. TAX PERIOD	4. DOCUMENT LOCATOR NUMBER AND PROCESSING YEAR
000-00-0000	1040	1975	

5. NAME AND ADDRESS OF TAXPAYER *(Please print)*

John F. Doe
Any Street
Your Town, State 00000

6. RENUMBERED DOCUMENT LOCATOR NUMBER AND PROCESSING YEAR

7. OTHER NUMBER	8. ASSESSMENT NUMBER
9. ENCODER NUMBER	10. FED. TAX DEPOSIT NO. *(TUS)*

ADJUSTMENT CONTROL NUMBER

12. APPROVAL SIGNATURE	13. DATE
Richard Francis.	3-23-77

11. REQUESTED BY

A. DISTRICT OFFICE LOCATION *("X" proper box)*

☒ CHICAGO. 36 ☐ ST LOUIS. 43 ☐ MILWAUKEE. 39
☐ ST. PAUL. 41 ☐ SPRINGFIELD. 37 ☐ DES MOINES. 42
☐ OMAHA. 47 ☐ ABERDEEN. 46 ☐ FARGO. 45

SUBORDINATE OFFICE *(Specify)* Rock Island

14. DOCUMENT ☐ CHARGED TO: ☐ RECHARGE TO: DATE

A. OFFICE LOCATION *(Specify)*

B. DIVISION	C. BRANCH	D. SECTION
Criminal Investigation		
E. UNIT	F. GROUP	G. STOP NO.
H. NAME OF ORIGINATOR	I. PHONE NO	
S. Vicca	1234567	

B. DIVISION	C. BRANCH	D. SECTION
E. UNIT	F. GROUP	G. STOP NO.
H. NAME	I. PHONE NO.	

15. INFORMATION REQUESTED *("X" proper box)*

A. ☐ ORIGINAL DOCUMENT
B. ☐ OTHER *(Specify in Item 22.)*
C. ☐ PHOTOCOPY
1. ☐ PUBLIC USE *(Specify portion in Item 22.)*
2. ☐ INTERNAL USE
a. ☐ COMPLETE DOCUMENT
b ☐ PORTION *(Specify in Item 22.)*

16. TYPE OF REQUEST *("X" proper box)*

A. ☐ INITIAL
B. ☐ SECOND
1. ☐ NO RECORD OF DOCUMENT.
2. ☐ NO RESPONSE TO INITIAL REQUEST.

17. SOURCE

A. EXAMINATION PICK-UP
1. ☐ NOL
2. ☐ RELATED
3. ☐ OTHER
B. ☐ REFERENCE AND INFORMATION

C. FOR ASSOCIATION WITH RETURN IN AUDIT DIVISION UNDER THE NAME OF:

18. ACTION *(To be completed by Research or Files Personnel) ("X" proper box)*

A. ☐ REQUEST FILLED
B. ☐ NO RECORD OF DOCUMENT
1. CYCLE NUMBER
2. DATE
C. ☐ DOCUMENT MISSING FROM BLOCK
D. ☐ OTHER *(Explain)*

19. DOCUMENT RETAINED IN *("X" proper box and indicate location)*

A. ☐ SERVICE CENTER
B. ☐ DISTRICT OFFICE
C. ☐ FEDERAL RECORDS CENTER
D. ☐ OTHER

20. FEDERAL RECORDS CENTER REFERENCE	A. ACCESSION NO.	B. FRC CONTAINER NO.	C. SHELF LIST NO.

21. ☐ REFILE IN LOCATION INDICATED IN ITEM 19.

22. REMARKS

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

RECORDS REQUEST, CHARGE AND RECHARGE

FORM 2275 DO-MW (4-69)

Instructions for Completing Forms 2275 and 2275 DO—Records Request Charge and Recharge

Self-explanatory items and items to be filled in by files personnel are not listed.

Item 2. For example "1040", "941", etc.

Item 3. Show the period of time covered by the return or document being requested.

Item 4. Always show the latest Document Locator Number, if known, including the processing year (14th digit).

Item 5. If S.S. or E.I. Number given in Item 1, show name of taxpayer only. If Item 1 is not filled in, show complete name and address of the taxpayer.

Item 8. Show identification numbers assigned returns prior to ADP and other documents of a non-ADP nature.

Item 9. If available, show the IRS identification number (encoder number) on the back of the taxpayer's remittance, which will assist in locating full-paid returns that have not been processed.

Item 11A. Form 2275 If the originator is located in other than a Service Center, type or print originating office (Western Regional Office, National Office, etc.) after "Other (Specify)." When this form is used by district offices as back-up stock, enter the originating district office in the "Other (Specify)" space.

Item 11A. Form 2275 DO Place an "X" in the box that designates the originating district office. Print or type subordinate office locations (physically located outside of a District Headquarters Office) in the space provided.

Items 11B through G Fill in these items to the extent applicable.

Item 11H and I Give full name and telephone number.

Item 12. Immediate or first line supervisor will enter his signature of approval if organizationally prescribed.

Item 13. Enter the date the requisition is forwarded.

Item 15B. Place an "X" in this box to request miscellaneous data or documents and specify exactly what is desired immediately below if there is room or in Item 22 if more space is needed.

Item 16B. Place an "X" in this box when the initial requisition has not been satisfied. Place an "X" in sub-block 1. or 2. to explain why the second request is being initiated.

Item 19. Either the preparer or unit responsible for routing the requisition will place an "X" in the appropriate box and enter the location of the files storage point.

Item 22. Use this item to specify what is being requested in Item 15, "Information Requested." Conserve space, since this item is also used by files personnel to provide the requester with pertinent data.

GUIDELINES FOR RECHARGE REQUESTS FOR ORIGINAL DOCUMENTS

Item 14. Place an "X" in the "RECHARGE TO:" box. Show the date the document was recharged.

Item 14A. Show the office and location of the new user. (Example: District Office, Seattle)

Items 14B through G Fill in these items to the extent applicable.

Items 14H and I Give full name and telephone number of the person to whom the document is being recharged (the new user).

Exhibit 300-25

Form 4338

Information or Certified Transcript Request
(DO NOT use this form for IMF. See reverse for instructions.)

Transcript DLN:

Taxpayer's EIN or SSN: EIN: 00-0000000

Taxpayer's Full Name and Address (Underline Name Control)
N.E. Twitchell Inc.
1234 Any Street
Northern, VA 22003

Description

X Regular ☐ Supplement ☐ Under Seal
Certified (to be used only to satisfy legal requirements)

Number of copies:

Date required:

Reason for request:

ADP
(Mes. or File - Computer Transcript)

"X"	Type of Transcript Requested	Code	MFT	Period Ending
	Specific Module (A specific return for a specific period)	990		
	Open Module (All return periods which have debit or credit balance)	991	59 or 69	If specific or class of tax transcript requested and M.F.T. not known, complete the following:
X	Complete (All return periods for a taxpayer regardless of balance)	992	59 or 69	Place "X" in Appropriate Box
	Class of Tax (All return periods for a taxpayer within the Specified MFT)	992		☐ BMF ☐ RMF
	Entity (All names lines and transactions posted to the entity section)	993	59 or 69	Form Number:

Non-ADP
(Manually Processed)

"X"	Information Requested	Form Number	Taxable Period(s)	DLN and Account Numbers
	Transcript			
	Photo Copy of Unit Ledger Card			
	All Outstanding Balances			

District or Service Center where Return(s) are Filed:

Return or Document in Possession of Requester
☐ Yes ☐ No
(See Item 3 on reverse.)

Give any business names, aliases, names used previously, other addresses, or other information that may assist in locating the account if a taxpayer's EIN/SSN or complete name are not known.

Requester

Name and Address: Robert L. Harley
P.O. Box 1382
Northern, VA 22003

Title: Special Agent

Date: 11/19/79

Phone Number: 372-2412

Form **4338** (Rev. 7-76) *Use prior issue first*

Department of the Treasury - Internal Revenue Service

Exhibit 300-25 Cont. (1)

Instructions for Form 4338 ◊

GENERAL INFORMATION

1. Prepare separate request forms for ADP and Non-ADP accounts. For ADP Account Transcripts, use separate request forms for BMF and RMF information.

2. Form 4303, Computer Transcript, is generated for accounts from BMF. CP Notice Transcript will come out for RMF accounts. Form 4340 is used to provide requested information on Non-ADP accounts.

3. Do not use Transcript DLN block at top of request form.

4. Use the following format to list taxpayer's EIN: NN-NNNNNNN; Use the following format to list taxpayer's SSN: NNN-NN-NNNN.

5. Complete the blocks for Number of Copies, Date Required, and Reason for Request **only** if a certified transcript is required.

6. Use separate Forms 4338 to request Specific transcripts for multiple tax periods. Request Class of Tax or Complete transcripts if more than three tax periods are required.

7. Complete MFT block or indicate either BMF or RMF and Form Number when a Specific or Class of Tax transcript is requested only. For RMF use 59 for F. 706, 709; use 69 for F. 11, 11B, 11C, 730, 2290, & 4638. Line thru "59 or 69" on all BMF requests.

8. For Non-ADP requests, if the following Returns or Documents are in the Possession of the Requester, attach photocopies as indicated to the request form:

(1) Return—Photocopy of front page

(2) Amended Return—Photocopy of front page

(3) Estimated Tax Documents—Photocopy of document

(4) Tentative return attached to corporation return—Photocopy of front page

(5) Form 899 or 4340—Photocopy of transcript

9. For Non-ADP requests, forward Form 4338 to the Service Center for the District Office where the return was filed.

CERTIFIED TRANSCRIPTS

1. Request certified transcripts only when formal certification is necessary to satisfy legal requirements.

2. For ADP Accounts, if time does not permit obtaining a computer transcript (Form 4303), Form 4340 will be prepared and certified from IDRS data if available. Otherwise use microfilm data.

3. The Special Procedures Section or Appellate Division will always specify what documents are needed, how many copies are required, and what is to be certified.

4. Requests for certified transcripts, especially for Non-ADP returns, require additional research and processing time and should be made at the earliest practical date to insure receiving completed transcripts when needed.

CERTIFIED SUPPLEMENTAL TRANSCRIPTS

1. Request a supplemental transcript, if needed, to cover the period of time after an original request and certification has been acted on.

2. Attach a copy of the prior transcript to the supplemental request.

Exhibit 300-25 Cont. (2)

Preparation of Requests ◊

Preparation of Requests

In addition to the instructions appearing on the reverse side of Form 4338, all requests for transcripts should contain the following information:

(1) Employer Identification or Social Security Number of taxpayer. (EI Number for BMF requests, SSN for IMF requests.)

(2) Name of taxpayer. This should be exact as possible. For ADP requests it should be shown on the directory or any notices, TDA's or other computer output. In the event the above sources are not available, information to complete the request may be obtained from the return or other available sources.

(3) Transcript requested (designate by an "X"). Note: If the request is for Certified, Supplemental or Under Seal, list the number of copies required, the date the transcript must be received by the requester and the reason for the request.

(4) ADP Requests—The type of transcript requested (Specific, Open, Complete, Entity or Tax Class). Indicate by an "X" the type of transcript requested. Complete the MFT block for "SPECIFIC MODULE" and "CLASS OF TAX." MFT is the Master File tax account, a two-digit number which identifies the type of tax as follows:

MFT	*Tax Class*	*Master File Account*	*Form Number and Type of Tax*
01	1	BMF	941 Withholding and FICA
30	2	IMF	1040A, 1040 Individual Income
02	3	BMF	1120 Corporation Income
03	4	BMF	720 Excise
09	7	BMF	CT-1 Railway Retirement
10	8	BMF	940 FUTA
—	9	BMF	All types of BMF tax

(5) For "SPECIFIC MODULE" Transcript the return form number and the period ending date must be shown. A separate transcript request should be submitted for each module record needed.

(6) In order to facilitate service center contact with the Intelligence Division "requester" the telephone number, including area code of the requester (normally the special agent assigned the case), will be included in the location or address block (bottom line) of Form 4338.

Exhibit 300-25 Cont. (3)

Form 4338-A

IMF Information or Certified Transcript Request
(Prepare in duplicate. See instructions below.)

Transcript DLN

Requester

Name and Address
William Gerard
P.O. Box 10049
Yorktown, MD

Title
Special Agent

Date
10-31-77

Phone Number
924-2435

Identification of Transcript

Taxpayer's SSN 157-00-9255

Taxpayer's Full Name and Address *(Underline Name Control)*

John F. Doe
2230 Pine Street
Warren, MD 19212

Description

[X] Regular [ ] Supplemental [ ] Under Seal
[ ] Certified *(to be used only to satisfy legal requirements)*

Number of copies

Date required

Reason for request

Master File - Computer Transcript

"X"	Type of Transcript Requested	Code	Period Ending
X	**Specific Module** *(A specific return for a specific period)*	990	7612 - 1040
	Open Module (All return periods which have debit or credit balance)	991	
	Complete *(All return periods for a taxpayer regardless of balance)*	992	
	Entity *(All name lines and transactions posted to the entity section)*	993	

Give any business names, aliases, names used previously, other addresses, or other information that may assist in locating the account if a taxpayer's SSN or complete name are not known.

XYZ Co.
2230 Pine Street
Warren, MD 19212

Instructions

General	1. Form 4303, Computer Transcript, is generated for accounts from IMF. 2. Do not use Transcript DLN block at top of request form. 3. Use the following format to list taxpayer's SSN: NNN-NN-NNNN.	4. Complete the blocks for Number of Copies, Date Required, and Reason for Request *only* if a certified transcript is required. 5. Use separate Forms 4338-A to request specific transcripts for multiple tax periods. Request complete transcripts if more than three tax periods are required.
Certified Transcripts	1. If time does not permit obtaining a computer transcript *(Form 4303)*, Form 4340, Certificate of Assessments and Payments, will be prepared and certified from IDRS data, if available. Otherwise, use microfilm data. 2. The Special Procedures Section or Appellate Division will always specify what documents are	needed, how many copies are required, and what is to be certified. 3. Requests for certified transcripts, especially for non-ADP returns, require additional research and processing time and should be made at the earliest practical date to ensure receiving completed transcripts when needed.
Certified Supplemental Transcripts	1. Request a supplemental transcript, if needed, to cover the period of time after an original request and certification has been acted on.	2. Attach a copy of the prior transcript to the supplemental request.

Form **4338-A** (7-76) ☆ U.S. GPO: 1976-671-742/6540 Department of the Treasury - Internal Revenue Service

Exhibit 300-26

Form 4303

TRANSCRIPT OF ACCOUNT

DATE 10-10-69 (1)

TRANSCRIPT TYPE SPEC (12)
SORT DLN 17499-261-13673-9 (13)

(2)
STEELE POWER CORP
BOX 599
MADERIA OHIO 43302

EIN-SSN 31-0790175 (3)
PERIOD ENDING 65-06 (4)
TYPE OF TAX EXCISE (5)
FORM FILED 720 (6)
NAME CONTROL STEE (7)

SPOUSE RRB NO (8)
(9)
FREEZE STATUS CODE (10)
PRIOR NAME CONTROL (11)

CONTROL DLN 31420-204-01110-5 (14)
LOCATION CODES
CURRENT 4-31-01 (15)
TDA (IF DIFFERENT) (16)
ADJ CONTROL NO. (17)

EXPLANATION (18)	TRANSACTION DATE (19)	23C DATE (20) ENTRIES OR MEMO	AMOUNT (21)	CYCLE (22)	TRANSACTION DOCUMENT LOCATOR NUMBER (23)	COND. CODE (24)	REMARKS
RET FILED -150	07-31-65	09-27-65	7,182.20	533	31420-204-01110-5		WCERF
PAYT W RET-610	07-31-65		2,642.33	533			F/R-11101 (30)
DR CREDIT-650	07-31-65		4,539.87				E/D-6401 (31)
ABS-35			7,182.20 (33)				F/M-12 (32)
(25) RT NT EVEN-10	08-27-65 (26)						
MODULE BAL			.00 (27)				
ACCRD INT	10-10-69 (29)		.00 (28)				

Form 4303 (3 Part) (Rev. 8-69) Department of the Treasury - Internal Revenue Service

Exhibit 300-26 Cont. (1)

Description of Form 4303

Description of Form 4303—Computer Transcripts

(1) One modular record is printed per transcript page. If a module requires more than one page, additional pages are printed with identifying information from the heading repeated.
(2) Transactions are printed in their order of posting to the Master File.
(3) When a transaction reflects a secondary amount (such as Withholding Tax on an Income Tax Return) the secondary amount is shown as a separate transaction. The DLN for the secondary amount is *not* shown. Therefore, a transaction lacking a DLN can be recognized as being part of the preceding primary transaction.

Explanation of Contents of Transcript of Account, Form 4303

① Date: Corresponding to NCC cycle in which the transcript is produced.

② Name and Address: Taxpayer's name and current address—on IMF modules the name shown is the name as given on the tax module, *NOT* the entity module. For example, if Alice Wills files her return for 1966 and changes her name to Alice Hays in 1969 the entity name is Alice Hays, but, the name shown on the 1966 transcript is Alice Wills.

③ EIN/SSN: (1) An asterisk following an SSN indicates an invalid number.
(2) Invalid SSN release—IMF only—R printed if condition is present.
(3) Scrambled SSN—IMF only—S printed if condition is present.

④ Period Ending: Year and month in which the period covered by each module ended.

⑤ Type of Tax: Income, WT-FICA, Excise, RR-Ret., FUTA or blank.

⑥ Form Filed: 1040A, 1040, 941, 1120, 720, CT-1 or 940. "NONE" if no return filed on IMF.

⑦ Name Control: Of the *Entity* module.

⑧ Spouse or RRB No.: On IMF modules, spouse's SSN if present. On BMF modules, Railroad Board Number of present.

⑨ and ⑩ Freeze Codes: Alphabetic codes indicating up to three freeze or status conditions present in a module. For example: (TC 914), Intelligence control.

⑪ Prior Name Control: Present only if different from current name control.

⑫ Transcript Type: Transcript title. For example, "SPECIFIC," "COMPLETE," ETC.

⑬ Sort DLN: On requested transcripts, is the DLN of transcript request; on generated transcripts, is the DLN specified by extraction criteria.

⑭ Control DLN: Tax module control DLN.

⑮ Location Codes (current): Shown as R (Region), DD (District) and AA (Area office).

⑯ Location Codes (TDA): Present if different from current location codes Printed in the same format as current location code.

⑰ Adjustment Control Number.

⑱ Transaction Explanation: Abbreviations for each transaction followed by the actual transaction code. For example, PAYT W RET - 610. Refer to ADP Handbook 370-725 for complete explanation of each transaction.

⑲ Transaction Date—Received date of returns, credits and credit reversals; transfer date for account transfer in or out; transaction date for transactions without money fields; special interest computation date for TC 294, 298, 304 and 308 and 23C date for machine-generated transactions.

⑳ 23C Date: Assessment date for transactions, usually a Friday.

㉑ Transaction Amount—Amount of each transaction: Credits are indicated by a minus (—) sign.

㉒ Cycle Posted: Cycle of the posted transaction printed in the format YY-WW.

㉓ Transaction DLN:DLN of the transaction. Not printed for "Secondary Amount" Transactions. Replaced by TUS (Treasurer U.S.) number if present on FTD payments. TUS numbers are printed in the format XXX97-XXXXXXXX-XX.

㉔ Condition Codes—BMF only: printed next to return if present-1, 2, 3 and A-Z.

㉕ Status Explanation: Abbreviations for module status followed by status code. For example, 1st Notice-21.

㉖ Status Date: Pertaining to module status explanation (25) above.

㉗ Module Balance: Tax module balance after posting, including tax, penalty and unpaid assessed interest.

㉘ Accrued Interest: Amount of unassessed interest for the module.

㉙ Accrued Interest Date: Date to which accrued interest is computed.

㉚ Filing Requirements—BMF only: The presence of a filing requirement will be indicated by "1." No filing requirement will be shown as "0." The format of these print lines will be as follows:

Example	F/R	W	C	E	R	F
		1	1	1	0	1

W—941 Filing Requirement
C—1120 Filing Requirement
E—720 Filing Requirement
R—CT-1 Filing Requirement
F—940 Filing Requirement

In the example above a filing requirement exists for "W" (Form 941), "C" (Form 1120), "E" (Form 720) and "F" (Form 940).

Exhibit 300-26 Cont. (2)

Description of Form 4303

(31) Establishment Period—BMF only: Year and month entity established on Master File.

(32) Fiscal Month—BMF only: Month in which taxpayer's year ends.

(33) Abstract Amount—BMF only: Printed only for Form 720 tax modules following posted transactions. ABSTRACT-NN is printed explanation in column followed by abstract amount.

Certificate of Assessments and Payments

Name of Taxpayer	Address (Number, street, city, and state)	EIN or SSN
John F. Doe	Any Street, Your Town, State 00000	000-00-0000

Date (a)	Explanation of Transactions (b)	Assessment (Abatement) (c)	Credit (Credit Reversal) (d)	Balance (e)	DLN or Account No. (f)	23 C Date (g)	Period Ending (h)
9/15/65	Estimated Tax		200,000.00		582345678		6512
12/15/65	Estimated Tax		200,000.00				
3/15/66	Tentative Payment		250,000.00				6512
6/15/66	Part-Paid Return	1,000,000.00	250,000.00	100,000.00		6/30/66	6512
6/30/66	First Notice						
7/15/66	Payment		50,000.00	50,000.00			
8/3/66	Lien Filed						
8/15/66	Payment		45,000.00	5,000.00			
9/15/66	Estimated Tax		300,000.00				6612
12/15/66	Estimated Tax		300,000.00				
3/15/67	Full-Paid Return	962,453.22	362,453.22	-0-		3/30/67	6612

I certify that the foregoing transcript of the taxpayer named above in respect to the taxes specified is a true and complete transcript for the period stated, and all assessments, penalties, interests, abatements, credits, refunds, and advance or unidentified payment relating thereto as disclosed by the records of this office as of the date of this certification are shown therein.

Signature of Director	Location	Date

Form **4340** (Rev. 7-74) *Use all prior issues* *U.S. G.P.O. 1976-621-142/6535 Department of the Treasury - Internal Revenue Service

Exhibit 300-28

Form 4135

Criminal Investigation Control Notice

To: Director Philadelphia Service Center
Attn: Chief, Criminal Investigation Branch (1)

From: Chief, Criminal Investigation Division
P. O. Box 1382 (2)
Northern, VA 12345
(City, State, ZIP Code)

On Master Files marked with "X" (4)

		For (5) X Individual ☐ Spouse
X	IMF	
X	BMF	
	RMF	
	IRAF	

Initiate control indicated by item marked "X" *(one only)* (3)

	TC910	CID Account Hold	Retain all periods on Master File.	
	TC911	Reverse TC910		
X	TC914	CID Module Freeze	Active Criminal Investigation	
	TC914	TC914 Update	Enter Changes only to Freeze	
	TC912	Reverse TC914		

Initiate control indicated by item marked "X" *(one only)*

	TC915	Refund Release	Partial Reverse of TC916/918
	TC916	QRP Module Freeze	QRP Criminal Investigation
	TC917	Reverse TC916	
	TC918	QRP Entity Freeze	QRP Criminal Investigation
	TC919	Reverse TC918	

(13)

Taxpayer Identification

Complete if control on one of following *(check one)*: ☒ IMF ☐ IRAF ☐ RMF (SSN) (6)

Individual SSN 456 38 7199
Spouse SSN
Taxpayer's name *(Last, First, Middle)*: Louis, Sarah
Address *(Number, Street, City, State, ZIP Code)*: 3912 Ann St., Northern, VA 12345

Complete if control on one of following *(check one)*: ☒ BMF ☐ RMF (EIN) (7)

Employer's Identification No. 18 90 12 64 3
Business name: Twitchell Farms
Business address *(Number, Street, City, State, ZIP Code)*: 2170 Charlotte St., Northern, VA 12345

Complete for failure-to-file case, if known ☐ Known non-filer (8)

Complete if account currently under control (9)
Old level of control: ☐ TC-910 ☐ TC-914 ☐ TC-916 ☐ TC-918

☒ See below for Special instructions

Special Instructions—Criminal Investigation Division/Branch

Remarks: (10)

On BMF - only interested in 1120's for years 1975 to 1979, inclusive. Post all other BMF transactions to MF.

On IMF - only interested in 1040's for years 1975 to 1979, inclusive. Post any ES returns and payments received.

Assessment of Delinquency Penalty should be suppressed.

Chief, Criminal Investigation Division/Branch *(Signature)* (11): s/Richard Williamson
Date: 3/7/80 (12)

Form **4135** (Rev. 4-79) Department of the Treasury - Internal Revenue Service

Exhibit 300-28 Cont.

Instructions for Form 4135

Form 4135—Criminal Investigation Control Notice

1. Listed below are the instructions for completing Form 4135. For each numbered instruction below, a corresponding circled number appears on Exhibit 300-28 to indicate which item on the Form 4135 the instruction relates to.

To be completed by District Criminal Investigation:

1 Service Center responsible for servicing District Criminal Investigation Office

2 Address of District Criminal Investigation Office initiating control

3 Level of control requested

4 Master File(s) on which account(s) is located

a. Control over IMF and BMF accounts for the same taxpayer can be requested on one form

5 Account control on the IMF:

a. Control over single person's account (or modules within the account) is indicated by marking the Individual block

b. If failure to file case and it is not known whether separate or joint returns may be filed, check both the Individual and the Spouse blocks. This will also control joint returns filed ◊

6 SSN, name and address of accounts to be controlled on the IMF, IRAF, or RMF (SSN) (check the correct block(s)). If there is more than one file checked and there are different TINs, indicate the TIN and its respective Master File in the Special Remarks section on back of form

7 EIN, business name and address of BMF or RMF (EIN) accounts to be controlled. Follow instructions in 6, above, for different TINs

8 Indicates taxpayer has not previously filed a return

9 Current level of control, if any

10 Indicates special control conditions

a. Tax years to be controlled (must be entered if TC 914 control is requested)

b. Different TINs with respective Master Files in cases mentioned in 6, above

11 Signature of Chief, or authorized delegate, Criminal Investigation Division, requesting control

12 Date

13 Special closeout procedures

Exhibit 300-29

Pattern Letter P-543 ◊

Person to Contact:
Contact Telephone Number:

Salutation

You are no longer the subject of a criminal investigation by the Criminal Investigation Division regarding your Federal tax liabilities for (year(s)). However, this does not preclude reentry by the Criminal Investigation Division into the investigation.

The matter is presently in the (Examination) (Collection/Collection and Taxpayer Service) Division for further consideration.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,
Space for signature
District Director

Exhibit 300-30

Treasury Department Order No. 246 (Revision 1) ◊

Responsibilities for Oversight of Foreign Intelligence Activities Under Executive Order 12036

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by Reorganization Plan No. 26 of 1950, and pursuant to Executive Order 12036, it is ordered as follows:

1. The Inspector General established by Treasury Department Order No. 256 shall assume for the Treasury Department the duties and responsibilities established under Executive Order 12036 (hereinafter Executive Order) for Inspectors General within the Intelligence Community.

2. The General Counsel shall assume for the Treasury Department the duties and responsibilities established under the Executive Order for General Counsels within the Intelligence Community.

3. The Inspector General shall inform in writing all employees in the Office of the Assistant Secretary for International Affairs (OASIA) and in the Office of Intelligence Support of the restrictions on intelligence activities contained in Section 2 of the Executive Order and obtain a written acknowledgment from each such employee that he has read the materials provided by the Inspector General. Heads of inspection services of Treasury Department Bureaus shall provide a copy of Section 2 of the Executive Order to each employee within their bureau.

4. Treasury Department employees shall report in confidence to the Inspector General, the General Counsel, or the head of the inspection service of their bureau any matters which they feel raise questions of propriety or legality under the Executive Order.

5. The Inspector General shall review at appropriate intervals any foreign intelligence activities of the Treasury Department to determine whether any such activities raise questions of propriety under the Executive Order. Any questions arising from this review as to the legality of such activities shall be referred by the Inspector General to the General Counsel. In connection with the activities of the OASIA representatives stationed overseas, the Inspector General shall seek to make appropriate arrangements with the State Department to provide for adequate inspection while avoiding duplication of inspection activities by the State and Treasury Departments.

Exhibit 300-30 Cont.

Treasury Department Order No. 246 (Revision 1) ◊

6. The inspection service within a bureau shall review at appropriate intervals the activities of the bureau in its relations with U.S. foreign intelligence agencies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be referred to the Inspector General who shall report to the General Counsel any illegal activities. The procedures established by Treasury Department Order No. 240 (Revision 1), which provides for coordination and review of support arrangements between the Treasury Department and U.S. foreign intelligence agencies, shall remain in full force and effect.

7. Treasury Department employees shall cooperate with the Inspector General, the General Counsel, and the inspection service within their bureau and shall make available all necessary data to allow those official to perform their duties and responsibilities under this Order.

8. Treasury Department Order No. 246 is rescinded, effective this date.

/s/ W. Michael Blumenthal
Secretary of the Treasury

Date: July 18, 1978

Exhibit 300-31

United States Foreign Intelligence Activities ◊

United States Foreign
Intelligence Activities
Executive Order 12036. January 24, 1978
United States Intelligence
Activities

By virtue of the authority vested in me by the Constitution and statutes of the United States of America including the National Security Act of 1947, as amended, and as President of the United States of America, in order to provide for the organization and control of United States foreign intelligence activities, it is hereby ordered as follows:

Table of Contents

Section 2
Restrictions on Intelligence
Activities

2-1. *Adherence to Law.*

2-101. *Purpose.* Information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decision-making in the areas of national defense and foreign relations. The measures employed to acquire such information should be responsive to legitimate governmental needs and must be conducted in a manner that preserves and respects established concepts of privacy and civil liberties.

2-202. *Principles of Interpretation.* Sections 2-201 through 2-309 set forth limitations which, in addition to other applicable laws, are intended to achieve the proper balance between protection of individual rights and acquisition of essential information. Those sections do not authorize any activity not authorized by sections 1-101 through 1-1503 and do not provide any exemption from any other law.

2-2. *Restrictions on Certain Collection Techniques.*

2-201. *General Provisions.*

(a) The activities described in Sections 2-202 through 2-208 shall be undertaken only as permitted by this Order and by procedures established by the head of the agency concerned and approved by the Attorney General. Those procedures shall protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful governmental purposes.

(b) Activities described in sections 2-202 through 2-205 for which a warrant would be required if undertaken for law enforcement rather than intelligence purposes shall not be undertaken against a United States person without a judicial warrant, unless the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to believe that the United States person is an agent of a foreign power.

2-202. *Electronic Surveillance.* The CIA may not engage in any electronic surveillance within the United States. No agency within the Intelligence Community shall engage in any electronic surveillance directed against a United States person abroad or designed to intercept a communication sent from, or intended for receipt within, the United States except as permitted by the procedures established pursuant to section 2-201. Training of personnel by agencies in the Intelligence Community in the use of electronic communications equipment, testing by such agencies of such equipment, and the use of measures to determine the existence and capability of electronic surveillance equipment being used unlawfully shall not be prohibited and shall also be governed by such procedures. Such activities shall be limited in scope and duration to those necessary to carry out the training, testing or countermeasures purpose. No information derived from communications intercepted in the course of such training, testing or use of counter-measures may be retained or used for any other purpose.

Exhibit 300-31 Cont. (1)

United States Foreign Intelligence Activities ◊

2-203. *Television Cameras and Other Monitoring.* No agency within the Intelligence Community shall use any electronic or mechanical device surreptitiously and continuously to monitor any person within the United States, or any United States person abroad, except as permitted by the procedures established pursuant to Section 2-201.

2-204. *Physical Searches.* No agency within the Intelligence Community except the FBI may conduct any unconsented physical searches within the United States. All such searches conducted by the FBI, as well as all such searches conducted by any agency within the Intelligence Community outside the United States and directed against United States persons, shall be undertaken only as permitted by procedures established pursuant to Section 2-201.

2-205. *Mail Surveillance.* No agency within the Intelligence Community shall open mail or examine envelopes in United States postal channels, except in accordance with applicable statutes and regulations. No agency within the Intelligence Community shall open mail of a United States person abroad except as permitted by procedures established pursuant to Section 2-201.

2-206. *Physical Surveillance.* The FBI may conduct physical surveillance directed against United States persons or others only in the course of a lawful investigation. Other agencies within the Intelligence Community may not undertake any physical surveillance directed against a United States person unless:

(a) The surveillance is conducted outside the United States and the person being surveilled is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities, or engaging in narcotics production or trafficking;

(b) The surveillance is conducted solely for the purpose of identifying a person who is in contact with someone who is the subject of a foreign intelligence or counterintelligence investigation; or

(c) That person is being surveilled for the purpose of protecting foreign intelligence and counterintelligence sources and methods from unauthorized disclosure or is the subject of a lawful counterintelligence, personnel, physical or communications security investigation.

(d) No surveillance under paragraph (c) of this section may be conducted within the United States unless the person being surveilled is a present employee, intelligence agency contractor or employee of such a contractor, or is a military person employed by a non-intelligence element of a military service. Outside the United States such surveillance may also be conducted against a former employee, intelligence agency contractor or employee of a contractor or a civilian person employed by a non-intelligence element of an agency within the Intelligence Community. A person who is in contact with such a present or former employee or contractor may also be surveilled, but only to the extent necessary to identify that person.

2-207. *Undisclosed Participation in Domestic Organizations.* No employees may join, or otherwise participate in, any organization within the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to appropriate officials of the organization, except as permitted by procedures established pursuant to Section 2-201. Such procedures shall provide for disclosure of such affiliation in all cases unless the agency head or a designee approved by the Attorney General finds that non-disclosure is essential to achieving lawful purposes, and that finding is subject to review by the Attorney General. Those procedures shall further limit undisclosed participation to cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation;

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power; or

(c) The participation is strictly limited in its nature, scope and duration to that necessary for other lawful purposes relating to foreign intelligence and is a type of participation approved by the Attorney General and set forth in a public document. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members.

Exhibit 300-31 Cont. (2)

United States Foreign Intelligence Activities ◇

2-208. *Collection of Nonpublicly Available Information.* No agency within the Intelligence Community may collect, disseminate or store information concerning the activities of United States persons that is not available publicly, unless it does so with their consent or as permitted by procedures established pursuant to Section 2-201. Those procedures shall limit collection, storage or dissemination to the following types of information:

(a) Information concerning corporations or other commercial organizations or activities that constitutes foreign intelligence or counterintelligence;

(b) Information arising out of a lawful counterintelligence or personnel, physical or communications security investigation;

(c) Information concerning present or former employees, present or former intelligence agency contractors or their present or former employees or applicants for any such employment or contracting, which is needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

(d) Information needed solely to identify individuals in contact with those persons described in paragraph (c) of this section or with someone who is the subject of a lawful foreign intelligence or counterintelligence investigation;

(e) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons;

(f) Information constituting foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in compliance with Section 2-202 or from cooperating sources in the United States;

(g) Information about a person who is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities or narcotics production or trafficking, or endangering the safety of a person protected by the United States Secret Service or the Department of State;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Information concerning United States persons abroad that is obtained in response to requests from the Department of State for support of its consular responsibilities relating to the welfare of those persons;

(j) Information collected, received, disseminated or stored by the FBI and necessary to fulfill its lawful investigative responsibilities; or

(k) Information concerning persons or activities that pose a clear threat to any facility or personnel of an agency within the Intelligence Community. Such information may be retained only by the agency threatened and, if appropriate, by the United States Secret Service and the FBI.

2-3. *Additional Restrictions and Limitations.*

2-301. *Tax Information.* No agency within the Intelligence Community shall examine tax returns or tax information except as permitted by applicable law.

2-302. *Restrictions on Experimentation.* No agency within the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health, Education and Welfare. The subject's informed consent shall be documented as required by those guidelines.

2-303. *Restrictions on Contracting.* No agency within the Intelligence Community shall enter into a contract or arrangement for the provision of goods or services with private companies or institutions in the United States unless the agency sponsorship is known to the appropriate officials of the company or institution. In the case of any company or institution other than an academic institution, intelligence agency sponsorship may be concealed where it is determined, pursuant to procedures approved by the Attorney General, that such concealment is necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes.

2-304. *Restrictions on Personnel Assigned to Other Agencies.* An employee detailed to another agency within the federal government shall be responsible to the host agency and shall not report to the parent agency on the affairs of the host agency unless so directed by the host agency. The head of the host agency, and any successor, shall be informed of the employee's relationship with the parent agency.

Exhibit 300-31 Cont. (3)

United States Foreign Intelligence Activities ◊

2-305. *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2-306. *Restrictions on Special Activities.* No component of the United States Government except an agency within the Intelligence Community may conduct any special activity. No such agency except the CIA (or the military services in wartime) may conduct any special activity unless the President determines, with the SCC's advice, that another agency is more likely to achieve a particular objective.

2-307. *Restrictions on Indirect Participation in Prohibited Activities.* No agency of the Intelligence Community shall request or otherwise encourage, directly or indirectly, any person, organization, or government agency to undertake activities forbidden by this Order or by applicable law.

2-308. *Restrictions on Assistance to Law Enforcement Authorities.* Agencies within the Intelligence Community other than the FBI shall not, except as expressly authorized by law:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration (or its successor agencies) or to state or local police organizations of the United States; or

(b) Participate in or fund any law enforcement activity within the United States.

2-309. *Permissible Assistance to Law Enforcement Authorities.* The restrictions in Section 2-308 shall not preclude:

(a) Cooperation with appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of any agency within the Intelligence Community;

(b) Participation in law enforcement activities, in accordance with law and this Order, to investigate or prevent clandestine intelligence activities by foreign powers, international narcotics production and trafficking, or international terrorist activities; or

(c) Provision of specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be governed by procedures approved by the Attorney General.

2-310. *Permissible Dissemination and Storage of Information.* Nothing in Sections 2-201 through 2-309 of this Order shall prohibit:

(a) Dissemination to appropriate law enforcement agencies of information which indicates involvement in activities that may violate federal, state, local or foreign laws;

(b) Storage of information required by law to be retained;

(c) Dissemination of information covered by Section 2-208(a)-(j) to agencies within the Intelligence Community or entities of cooperating foreign governments; or

(d) Lawful storage or dissemination of information solely for administrative purposes not related to intelligence or security.

/s/ JIMMY CARTER

The White House,
January 24, 1978.

[Filed with the Office of the Federal Register, 11:12 a.m., January 25, 1978]

410 *(1-18-80)* 9781
Law and Elements of Offenses

411 *(1-18-80)* 9781
Civil and Criminal Sanctions Distinguished

(1) The Internal Revenue Code provides civil and criminal sanctions for violations of the internal revenue laws. (See IRM 9221.)

(2) The civil sanctions, generally assessed as additions to the tax and also referred to as ad valorem penalties, are covered in Chapter 68 of the Code. Some of these penalties are: the delinquency penalty (not exceeding 25 percent) for failure to file a return or a timely return [26 IRC 6651]; the 5 percent negligence penalty for negligence or intentional disregard of rules and regulations (without intent to defraud) [26 IRC 6653(a)]; and the 50 percent fraud penalty on an underpayment any part of which is due to fraud [26 IRC 6653(b)]; but the fraud and delinquency penalties cannot be asserted with respect to the same underpayment. [26 IRC 6653(d)] Handbook text 252 to 252.5 contain other information covering ad valorem penalties.

(3) The criminal sanctions, generally involving imprisonment and fines, are covered in Chapter 75 of the Code. In addition, some of the criminal sanctions in Title 18, and Title 31 United States Code, also apply to internal revenue matters. See text 221 to 222.(33) for the criminal penalties under the Internal Revenue Code and Title 18, and Title 31 USC.

(4) Both civil and criminal sanctions may be imposed for the same offense. Although criminal sanctions provide punishment for offenses, the fraud penalty is a remedial civil sanction to safeguard and protect the revenue and to reimburse the Government for the heavy expense of investigation and loss resulting from the taxpayer's fraud. [*Helvering v. Mitchell*]

(5) Acquittal in a criminal case is not decisive of the civil fraud issue. [*Helvering v. Mitchell*] However, a criminal conviction for income tax evasion does decide the fraud issue and the taxpayer is collaterally estopped from raising it in the civil proceedings. [*Tomlinson v. Lefkowitz*, In re Amos, *Jerome H. Moore v. U.S.*] The relationship between civil and crimininal cases is also discussed in text 762:(3).

(6) The burden and measure of proof differs in civil and criminal cases. In the latter, the Government must prove every facet of the offense and show guilt beyond a reasonable doubt. In civil cases, the Commissioner's determination of the deficiency is presumptively correct and the burden is placed on the taxpayer to overcome this presumption. When fraud is alleged the Government has the burden of establishing such fraud by clear and convincing evidence. Text 323.6 contains further information on the burden of proof.

(7) The tax computation in a particular case may differ for civil and criminal purposes since the evidence relating to certain of the income adjustments may not meet the criteria of proof necessary in a criminal case although it may be adequate for the civil case. There also may be adjustments of a controversial or off-setting nature which are allowed in the criminal tax computation to remove controversial issues from the criminal action, as well as additional adjustments or disallowances of a minor, technical, and non-fraudulent nature which are considered solely for civil purposes.

(8) The civil liability and the ad valorem penalties are generally assessed against the taxpayer, whereas *any person* who partakes in the commission of an offense is subject to the criminal sanctions of the law. For example, any person who willfully attempts to evade or defeat any tax or the payment thereof, even though it is not his/her own tax liability, could be charged with this offense. Thus, A can be charged with evading B's tax; a spouse can be charged with evading the other spouse's tax; and corporate officers in addition to the corporation can be charged with evading the corporation's tax. [*U.S. v. Troy, U.S. v. Augustine*] Participation in the commission of an offense includes the failure of a person to perform a required act. A *person* is defined in IRC 7343 as follows:

> "The term 'person' as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs."

(9) Further information on parties to criminal offenses is set forth in 322.3.

412 *(1-18-80)* 9781
Avoidance Distinguished From Evasion

Avoidance of taxes is not a criminal offense. Any attempt to reduce, avoid, minimize, or alleviate taxes by legitimate means is permissible. The distinction between avoidance and evasion is fine yet definite. One who avoids tax does not conceal or misrepresent. He shapes events to reduce or eliminate tax liability and, upon the happening of the events, makes a complete disclosure. Evasion on the other hand involves deceit, subterfuge, camouflage, concealment, some attempt to color or obscure events, or making things seem other than they

are. For example, the creation of a bona fide partnership to reduce the tax liability of a business by dividing the income among several individual partners is tax avoidance. However, the facts of a particular case may show that an alleged partnership was not in fact established and that one or more of the alleged partners secretly returned his/her share of the profits to the real owner of the business, who in turn did not report this income. This would be an instance of attempted evasion.

413 *(1-18-80)* 9781
Attempted Evasion of Tax or Payment Thereof (IRC 7201)

413.1 *(1-18-80)* 9781
Statutory Provisions

The willful attempt in any manner to evade or defeat any tax and the willful attempt in any manner to evade or defeat the payment of any tax constitute criminal offenses. The statutory provisions covering these offenses are set forth in IRC 7201 and are quoted in full in text 221.2 and IRM 9212.

413.2 *(9-8-80)* 9781
Elements of the Offenses

(1) *The elements of the offense of willfully attempting in any manner to evade or defeat any tax are:* Additional tax due and owing; an attempt in any manner to evade or defeat any tax; and willfulness.

(a) *Additional tax due and owing*—The Government must establish that at the time the offense was committed an additional tax was due and owing; that the taxpayer "owed more tax than he reported." [*U.S. v. Schenck; Gleckman v. U.S.; Tinkoff v. U.S.*] However, it is not necessary to prove evasion of the full amount alleged in the indictment. It would be sufficient to show that a substantial amount of the tax was evaded [*U.S. v. Schenck; Tinkoff v. U.S.*], and this need not be measured in terms of gross and net income or by any particular percentage of the tax shown to be due and payable. [*U.S. v. Nunan*] Carryback losses are technically no legal impediment to prosecution for years in which they eliminate the tax liability. [*Willingham v. U.S.*] However, the probability of conviction could be lessened where it is shown that a tax deficiency does not exist by operation of law. Likewise, the acceptance by Government agents of agreement Form 870 (Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) does not bar prosecution. [*Clark v. U.S.*] However, experience has demonstrated that attempts to pursue both the criminal and the civil aspects of a case concurrently may jeopardize the successful completion of the criminal case. As a result, Policy Statement P-4-84 provides, among other things, that the consequences of civil enforcement actions on matters involved in the criminal investigation and prosecution case should be carefully weighed. See IRM 9324.3 for further instructions on balancing the civil and criminal aspects of investigations.

(b) *Attempt to evade or defeat any tax.*

1 The substance of the offense under IRC 7201 is the term "*attempt* in any manner." Attempt does not mean that one whose efforts are successful cannot commit the crime of willful *attempt*. The crime is complete when the attempt is made and nothing is added to its criminality by success or consummation, as would be the case with respect to attempted murder. It has been held that "attempts cover both successful and unsuccessful endeavors or efforts" and that "a willful attempt to evade or defeat an income tax includes successful, as well as futile endeavors." [*O'Brien v. U.S.*] As the courts have stated, "The real character of the offense lies, not in the failure to file a return or in the filing of a false return, but rather in the attempt" to evade any tax. [*Emmich v. U.S.*] The statute does not define attempt, nor does it limit or define the means or methods by which the attempt to evade or defeat any tax may be accomplished. However, it has been judicially determined that *the term "attempt" implies some affirmative action or the commission of some overt act.* [*Spies v. U.S.*] The actual filing of a false or fraudulent return is not requisite for the commission of the offense [*U.S. v. Albanese*] though the filing of such a return is the usual attempt to evade or defeat the tax. [*Myres v. U.S.; Guzik v. U.S.*] A false statement made to Treasury agents for the purpose of concealing unreported income has also been judicially determined to be an attempt to evade or defeat the tax. [*U.S. v. Beacon Brass Co; Canton v. U.S.*]

2 The willful omission of a duty or the wiliful failure to perform a duty imposed by statute does not per se constitute an attempt to evade or defeat. However, a willful omission or failure (such as a willful failure to make and file a return) when coupled with affirmative acts or conduct from which an attempt may be inferred would constitute an attempt. In the case of Spies v. United States [*Spies v. U.S.*], the Supreme Court gave certain illustrations from which acts or conduct the attempt to evade or defeat any tax may be inferred; such as keeping a double set of books [*Noro v. U.S.*]; making false entries, alterations, invoices, or documents [*U.S. v. Lange; Gariepy v. U.S.*]; destruction of books or records [*Yoffe v. U.S.; Gariepy v. U.S.*]; concealment of assets or covering up sources of income [*Gendelman v. U.S.*]; handling of one's affairs to avoid making the records usual in transactions of the kind [*Gleckmman v. U.S.; U.S. v. Hornstein*]; and any conduct, the likely effect of which would be to mislead or to conceal; in other words, *in any manner.* Text 423:(2) contains a list of the more common tax evasion schemes.

3 It is well settled that a separate offense may be committed with respect to each year. Therefore, an attempt for one year is a separate offense from an attempt for a different year. [*U.S. v. Stoehr*]

4 There may also be more than one violation in one year resulting from the same acts such as the willful attempt to evade the payment of tax and the willful attempt to evade tax. [U.S. v. Bardin] *Likewise there may be charged a willful attempt to evade tax and a willful failure to file a return for the same year.* [*U.S. v. Kafes*]

(c) *Willfulness*—The attempt in any manner to evade or defeat any tax must be willful, and willfulness has been defined as an act or conduct done with a bad or evil purpose. [*U.S. v. Murdock*] Mere understatement of income and the filing of an incorrect return does not in itself constitute willful attempted tax evasion. [*Holland v. U.S.*] The offense is made out when conduct such as exemplified in the Spies case (supra) is present. Text 41(11) contains a further discussion of willfulness.

(2) *The elements of the offense of willfully attempting in any manner to evade or defeat the payment of any tax are:* A tax due and owing; an attempt to evade or defeat the *payment* of any tax; and willfulness.

(a) *A tax due and owing*—The Government must establish that a tax is due and owing at the time the offense is committed. This amount need not be any additional tax or deficiency but could *be the amount of tax shown on the original return which had not been paid.*

(b) *Attempt to evade or defeat the payment of any tax*—The mere failure or willful failure to pay any tax does not constitute an attempt to evade or defeat the payment of any tax. The comments set out in (1)(b) above with respect to attempts also apply to this offense. The attempt implies some affirmative action or the commission of some overt act. Examples of such action or conduct relating to the attempted evasion of the payment of the tax are found in the Giglio case. [*U.S. v. Giglio*] These are concealing assets; reporting income through others; misappropriating, converting, and diverting corporate assets; together with filing late returns, failing to withhold taxes as required by law, filing false declarations of estimated taxes, and filing false tentative corporate returns.

(c) *Willfulness*—The comments set forth in (1)(c) above and in 41(11) on willfulness apply equally to this offense. Courts have held that disbursement of available funds to creditors other than the Government [*Wilson v. U.S.*], or to corporate stockholders [*U.S. v. Jannuzzio*] is not of itself an attempt to evade or defeat payment of taxes.

(3) *Venue and Statute of Limitations*—Venue for these offenses lies in the judicial district in which the return is filed or other overt acts are committed. A further discussion of this subject is in 727. The statutory period of limitations for these offenses is six years. A more complete discussion of this subject is in 419.

414 *(1-18-80)* 9781
Failure to Collect, Account For, and Pay Over Tax

414.1 *(1-18-80)* 9781
Willful Failure to Collect, Account For, and Pay Over Tax (IRC 7202)

414.11 *(1-18-80)* 9781
Statutory Provisions

It is a criminal offense if any person required to collect, account for, and pay over any tax willfully fails to collect or truthfully account for and pay over such tax. The statutory provisions covering this violation are set forth in full in 221.3. Information showing the applicable civil penalty is set forth in 252.5.

414.12 *(1-18-80)* 9781
Elements of Offense

(1) The elements of a criminal violation under this Code section are:

(a) One or both of the following:

1 A duty to collect any tax.

2 A duty to account for and pay over any tax.

(b) One or both of the following:

1 Failure to collect any tax.

2 Failure to truthfully account for and pay over any tax.

(c) Willfulness. (The subject of willfulness is covered in 41(11).)

(2) Venue lies in the judicial district where the act should have been performed [*U.S. v. Commerford*] and a three-year period of limitations is applicable to this offense, which is a felony. Further information concerning the statute of limitations is contained in 419.

(3) Section 406.603, Code of Federal Regulations, states, "The return shall be signed and verified by. . . . (2) the President, Vice-President, or other principal officer, if the employer is a corporation." However, considerable difficulty has been encountered in determining the "person" charged with the duty of collecting, accounting for and paying over taxes, especially in cases involving small corporations where the precise duties of the officers are not clearly defined or rigidly carried out. For example, in the case of U.S. v. Fago, it was determined that although the president of the corporation was the dominating force in the management of the firm, the fact that there were other officers who signed some returns and engaged in financial activities on behalf of the coporation made it doubtful whether the president was the officer under a duty to perform the required acts, and the indictment was dismissed. On the other hand, there is a reported decision [*Wilson v. U.S.*] which holds that the term "person" includes a chief executive officer of a corporation who possesses the authority to determine how corporate funds should be expended. Accordingly, it is imperative to ascertain the various activities and responsibilities of all officers of a corporation before recommending prosecution against any one of them as the "person" defined in IRC 7343.

(4) Willfulness under this Code section refers to motive or purpose and includes some element of an evil motive and want of justification in view of all the financial circumstances of the taxpayer. It is not enough merely to prove that the acts were knowingly and intentionally committed. [*Paddock v. Siemoneit*] For example, a successful prosecution under this section was based upon the following facts: The taxpayer filed timely employment tax returns but habitually failed to pay the amount of tax shown to be due thereon. He willingly signed agreements for partial payments, made the first payment, and then ignored further requests for payments. When his bank accounts were levied upon, he closed the accountnts and made arrangements with his customers to receive future payments in cash. All his assets were then transferred to the names of others. His only defense was that he used the money withheld from his employees to meet current operating expenses. An analysis of his bank accounts and records of personal expenditures showed that, contrary to his contentions, a profit was realized from the business in all years and funds were available to pay the taxes shown on the returns.

(5) Violations under this section usually involve failure to truthfully account for and pay over withholding, social security, and excise taxes with the exception of wagering excise taxes. Failure to file returns would involve violations of IRC 7203 (text 415) and filing false and fraudulent returns would constitute violations under IRC 7201 (text 413).

(6) Willful failure to truthfully account for and pay over is considered to be an inseparable dual obligation. [Chief Counsel memo, 5-8-64, CC:E-172.] Failure to pay, even though an accounting is made in the sense of a return filed, leaves the duty as a whole unfulfilled.

414.2 *(1-18-80)* 9781
Failure to Collect and Account For Certain Collected Taxes (Nonwillful Violation) (IRC 7215)

414.21 *(1-18-80)* 9781
Statutory Provisions

It is a criminal offense to fail, after due notice [26 USC 7512], to collect and deposit, in a special trust account for the United States, employment, withholding, and certain excise taxes [Employment Taxes imposed by Subtitle C and Miscellaneous Excise Taxes imposed by Chapter 33 which pertain to Communications and Transportation of persons by air—See text 453.2.] and to keep the funds in the account until payment over to the United States. The statutory provisions covering this violation are set forth in full in text 221.(12).

414.22 *(1-18-80)* 9781
Elements of Offense

(1) The elements of a criminal violation under this Code section are:

(a) One or more of the following:

1 A duty to collect employment taxes or certain miscellaneous excise taxes.

2 A duty to account for and pay over employment taxes or certain miscellanous excise taxes.

(b) One or more of the following:

1 Failure to collect employment taxes or certain miscellaneous excise taxes.

2 Failure to truthfully account for and pay over employment taxes or certain miscellaneous excise taxes.

(c) Notice, delivered in hand, instructing the taxpayer to collect and deposit employment taxes or certain miscellaneous excise taxes in a separate bank account designated as a special fund in trust for the United States and to keep the taxes so collected in the account until payment over to the United States.

(d) One or more of the following with respect to taxes *collectible after the receipt of notice:*

1 Failure to collect employment taxes or certain excise taxes;

2 Failure to deposit employment taxes or certain excise taxes in a special trust account for the United States;

3 Failure to keep the collected taxes in a special trust account until payment over to the United States.

(e) One or more of the following:

1 Absence of information showing that the person had reasonable doubt as to whether the law required the collection of the tax, or that he/she had reasonable doubt that he/she was the one who was required by law to collect the tax;

2 Absence of information showing that the failure to collect, deposit and to keep the tax in a separate account was due to circumstances beyond the control of the taxpayer.

(2) Venue lies in the judicial district where the act should have been performed [*U.S. v. Commerford*] and a three-year period of limitations [26 USC 6531] is applicable to this offense, which is a misdemeanor. Further information concerning statute of limitations is contained in 419.

(3) In the case of a corporation, partnership or trust, notice delivered in hand to an officer, partner, or trustee is deemed to be notice delivered in hand to the corporation, partnership, or trust and to all officers, partners, trustees and employees thereof.

(4) A lack of funds immediately after the payment of wages (whether or not resulting from the payment of wages) is not considered a circumstance beyond a person's control. For example, if an employer received the required notice and had gross payroll requirements of $1,000 with respect to which he/she was required to withhold $100 of income tax and if he/she had on hand only $900 and paid out the entire amount in wages, withholding nothing, the fact that the net wages due equaled that amount would not relieve him/her of the penalty imposed by this Code section. [Senate Committee on Finance Report (No. 1182, 85th Congress) (Jan. 23, 1958) 3 U.S. Cong. News '58, Page 255.]

(5) Circumstances causing a lack of funds after the payment of wages (but not immediately after) which are considered beyond a taxpayer's control include: theft, embezzlement, or destruction of the business by fire, flood, or other casualty, occurring within the period before which the person was required to deposit the funds; or the failure of the bank in which the person deposited the funds prior to transferring them to the Government's trust account. A lack of funds due to the payment of creditors would not be considered such a circumstance. [*U.S. v. Plotkin*]

(6) Procedures to be used in Trust Fund Cases (IRC 7512 and 7215) are contained in IRM 9340.

415 (1-18-80) 9781
Willful Failure to File Returns, Supply Information, or Pay Tax (IRC 7203)

415.1 (1-18-80) 9781
Statutory Provisions

The willful failure to make any return (other than a declaration of estimated tax); or to pay any estimated tax or tax; or to keep records; or to supply information, at the time or times required by law or regulation, constitutes a criminal offense. Any one of the above violations is a separate offense. The statutory provisions covering these offenses are set forth in IRC 7203 and are quoted in full in 221.4.

415.2 (1-18-80) 9781
Elements of the Offenses

415.21 (1-18-80) 9781
Willful Failure to Make a Return

(1) This offense applies to the willful failure to make any type of required return, except declarations of estimated tax. The following elements of the offense must be established to sustain a conviction: the person was under a duty, as required by law or regulations, to make a return for the year or period involved; he/she failed to file a return for such year or period at the time required by law or regulation; and the failure to file such return was willful. [*U.S. v. McCormick*]

(a) *A duty to make a return*—The general requirements for making a return are set forth in IRC 6012 to 6046. Persons liable under IRC 7203 include those described in IRC 7343, quoted in 411:(8). In corporate cases the person responsible for filing corporate returns may be any of several officials and it will be a matter of fact to be developed by competent evidence as to which one has the duty. This evidence may be proof of signing past Federal returns or any state returns, or it may be in the corporate bylaws or minutes of directors' meetings. [*U.S. v. Fago*] A further discussion of this point is contained in 414.12:(3).

(b) *Failure to make a return when due.*

1 The Government must establish that a return was due within the time provided by law or regulations and that there was a failure to file such return within such time. The time within which a return must be filed has been held to be the date set out in the Code or under regulations prescribed by the Secretary plus that last date covered in any extension of time granted by the Secretary or the Secretary's delegate. [*U.S. v. Habig; Haskell v. U.S.*] The date when a return is due under the Code or regulations varies, depending upon the type of tax involved or the type of return required to be filed. Thus, individual income tax returns, self-employment tax returns, and partnership returns made on the basis of the calendar year shall be filed on or before the 16th day of April following the close of the calendar year; or, if made on a fiscal year basis, the return shall be filed on the 15th day of the 4th month following the close of the fiscal year. [26 USC 6072(a)] Corporate returns for calendar years are due on the 15th day of March; or, if on a fiscal year basis, returns are due on the 15th day of the 3d month following the close of the fiscal year. [26 USC 6072(b)] IRC 6075 relates to the time for filing estate and gift tax returns, and IRC 6071 and the regulations promulgated thereunder to the time for filing excise tax returns and other forms of returns required under the particular type of tax involved.

2 In addition to showing that a return was due, the Government must establish that the person did not file a required return on the due date. Usually this is accomplished by proving that the defendant did not file a return in the district of his/her legal residence or principal place of business [*Haskell v. U.S.*] or service center.

(c) *The failure to file a return was willful*—The Government must establish willfulness in the failure to file a return. However, as distinguished from willfulness in a tax evasion case, the Government need not prove a tax evasion motive. Willfulness connotes something "done with a bad purpose, or done without justifiable excuse, or done stubbornly or obstinately or perversely, or with bad motive." [*U.S. v. Cirillo*] As applied to this offense willful means voluntary, purposeful, deliberate, and intentional, as distinguished from accidental, inadvertent, or negligent; and the only bad purpose or bad motive which the Government must prove is the deliberate intention not to file returns, which such person knew ought to have been filed, so that the Government would not know the extent of his/her liability. [*Yarborough v. U.S.; U.S. v. DiSilvestro*] Although an additional tax due is not an essential element of the offense, willfulness is difficult to establish without proof of a substantial tax liability.

415.22 *(1-18-80)* 9781
Willful Failure to Pay Tax

(1) This offense applies to the willful failure to pay any type of tax, including estimated taxes. The elements of this offense are that the person was under a duty to pay a tax which was due and owing; that he/she failed to pay such tax at the time or times required by law or regulations; and that the failure to pay was willful. The mere failure to pay the tax is not a crime; it must be willful. Some evil motive or bad purpose must be shown. The Supreme Court stated:

> "In view of our traditional aversion to imprisonment for debt, we would not without the clearest manifestion of Congressional intent assume that mere knowing and intentional default in payment of a tax, where there had been no willful failure to disclose the liability, is intended to constitute a criminal offense of any degree. We would expect willfulness in such a case to include some element of evil motive and want of justification in view of all the financial circumstances of the taxpayer." [*Spies v. U.S.*]

(2) Repeated failure to pay taxes coupled with large expenditures for luxuries when taxes were owing may be evidence of willfulness within the meaning of the statute. [*U.S. v. Frank Palmero*]

415.23 *(1-18-80)* 9781
Willful Failure to Supply Information

This offense applies to the willful failure to supply information at the time or times required by law or regulations. The elements of this offense are that the person was under a duty to supply the information; that he/she failed to supply such information at the time required by law or regulations; and that the failure to supply such information was willful. The willfulness required to be shown under this offense would be the deliberate and intentional withholding and failing to supply the required information with the evil and bad purpose of concealing income, property, or other required or requested information. [*U.S. v. Murdock*] For example, the intentional and deliberate failure and refusal to furnish a schedule of the partnership assets and liabilities as required on the partnership return, was held to be willful. Disclosure of such information revealed considerable cash on hand. [*Pappas v. U.S.*]

415.24 *(1-18-80)* 9781
Willful Failure to Keep Records

(1) This offense applies to the willful failure to keep records. The elements of this offense are that the person was under a duty to keep records; that he/she failed to keep such records; and that the failure to keep records was willful. The general requirement to keep records is provided for in IRC 6001. However, the types of records kept by various individuals are not alike, and neither the statute nor the regulations defines minimum standards for specific transactions or for types of business. For example, a showing that his returns were prepared from third-party records (banks, brokers, employers) may obviate the necessity for a taxpayer to keep records. IRM 4297 provides for the service of a notice, Letter to Taxpayer Regarding Inadequate Records (Form 7020 or 7021), and the procedure to be followed where taxpayers have failed to maintain proper records. The deliberate, intentional, and utter disregard of this notice with evil intent and a bad purpose may be deemed a circumstance from which willfulness may be inferred. Willfulness will also be inferred if the concealment motive plays any part of the failure to keep records. However, an important factor in the probability of conviction in these cases may be a substantial deficiency attributable to the failure to keep records. See IRM 9552.

(2) Specific record keeping requirements involving wagering taxes are covered in 461.3.

415.3 *(1-18-80)* 9781
Venue and Statute of Limitations

Venue for the above offenses lies in the judicial district in which the required acts should have been performed. Text 727 contains a further discussion of venue. The statutory period of limitations for willful failure to file returns (other than information returns) or to pay tax is six years. A three-year period of limitations applies to willful failure to file information returns such as partnership returns, and to willful failure to keep records or supply information. Text 419 contains further information on the statute of limitations.

416 *(1-18-80)* 9781
Fraudulent Statement or Failure to Make Statement to Employees (IRC 7204)

416.1 *(1-18-80)* 9781
Statutory Provisions

It is a criminal offense to willfully furnish an employee a false or fraudulent wage withholding receipt or to willfully fail to furnish a receipt in

the appropriate manner or at the appropriate time. The statutory provisions covering this violation are set forth in full in 221.5. Information showing the applicable civil penalty is set forth in Exhibit 200-2.

416.2 (1-18-80) 9781
Elements of Offense

(1) The elements of a criminal violation under this Code section are:

(a) A duty to deduct employment tax or to withhold income tax [26 USC 3102(a), 3402(a)];

(b) A duty to timely furnish to the employee a written statement showing specified information concerning the deductions [26 USC 6051];

(c) Furnishing a false or fraudulent statement to an employee, or the failure to furnish a statement to an employee at the required time and in the required manner;

(d) Willfulness. (The subject of willfulness is covered in 41(11).)

(2) Venue lies in the judicial district where the employer was required to perform [*U.S. v. Anderson; U.S. v. Commerford*] and a three-year period of limitations is applicable to this offense [26 USC 6531] which is a misdemeanor. Further information concerning statute of limitations is contained in 419.

(3) A successful prosecution under this Code section was based upon the following facts. In order to attract and hold scarce workers, a taxpayer put into effect a scheme whereby actual weekly wages paid were recorded on regular weekly payroll sheets, the sum total of which was deducted for income tax purposes. Individual payroll sheets were also maintained for most of the employees, but the amounts of gross wages shown on the sheets were understated to accommodate the employees so that they would not have to report their entire wages for income tax purposes. The tax withheld from the wages was based upon the understated figure. In some instances individual payroll sheets were not maintained for employees. At the end of the year the employees whose names were shown on individual payroll sheets were furnished false and fraudulent withholding statements, Forms W-2, based upon the false payroll sheets and the employees whose names did not appear on payroll sheets did not at any time receive withholding statements. The failure to furnish withholding statements to some employees and the furnishing of false and fraudulent statements to other employees constitute separate violations under this Code section.

417 (1-18-80) 9781
Fraudulent Withholding Exemption Certificate or Failure to Supply Information (IRC 7205)

417.1 (9-8-80) 9781
Statutory Provisions

An employee who willfully supplies false or fraudulent information, in connection with his/her withholding exemption status, to his/her employer, or who willfully fails to supply information which would require an increase in the tax to be withheld, commits a criminal offense. The statutory provisions covering this violation are quoted in full in 221.6. IRC 6682 is the civil penalty applicable to this offense.

417.2 (1-18-80) 9781
Elements of Offense

(1) The elements of a criminal violation under this Code section are:

(a) A duty to supply information to employer [26 USC 3402(f)(2)];

(b) Furnishing false or fraudulent information or failure to supply information which would require an increase in tax to be withheld;

(c) Willfulness. (The subject of willfulness is covered in 41(11).)

(2) Venue lies in the judicial district where the offense has been committed. A three-year period of limitations is applicable [26 USC 6531], and the offense is a misdemeanor. In a case which involves furnishing false or fraudulent information, the offense is committed and the period of limitations begins the date the document is filed. No known reported case has stated whether willful failure to supply information to an employer is a continuing offense for purposes of determining the date from which the period of limitations is to run. The safe practice is to assume that it is not continuing, and that the offense is committed and statute begins to run on the date when it becomes a duty for the employee to supply information, which he/she willfully fails to do. However, if all other facts indicate that prosecution should be recommended for this offense, the continuing offense theory may be employed. Further information concerning the statute of limitations is contained in 419.

(3) The employee is required to notify his employer within ten days of a change in his withholding exemption status which would require an increase in tax to be withheld.

(4) There is no penalty for failing to file an original certificate (Form W-4) or for failure to supply information which would require a decrease in tax to be withheld, and a certificate is not considered false or fraudulent if it contains information showing fewer exemptions than the employee is entitled to claim.

418 *(1-18-80)* 9781
False and Fraudulent Statements

418.1 *(1-18-80)* 9781
False or Fraudulent Return, Statement, or Other Document Made Under Penalty of Perjury (IRC 7206(1))

418.11 *(1-18-80)* 9781
Statutory Provisions

A person who willfully makes and subscribes, under penalty of perjury, any return, statement, or other document which he/she does not believe to be true and correct, as to every material matter, commits a criminal offense. The statutory provisions covering this violation are set forth in full in 221.7.

418.12 *(2-15-80)* 9781
Elements of Offense

(1) The elements of a criminal violation under this Code section are:

(a) Making and subscribing a return, statement or other document under penalty of perjury;

(b) Knowledge that it is not true and correct as to every material matter;

(c) Willfulness. (The subject of willfulness is covered in 41(11).)

(2) Venue may lie in the judicial district in which the document is prepared, signed or filed. There has been little litigation of the venue issue. In the majority of cases, prosecution is had in the district in which the return is subscribed. A court has limited venue to that district. [*U.S. v. Wyman*] Other cases have considered the place or date of *filing* the return to be determinative and not the place or date of *signing*, on the theory that the document is not a return until filed. [*U.S. v. Horowitz*] Section 3237 of Title 18, United States Code, which is captioned "Offenses begun in one district and completed in another," provides that any offense involving the use of mails is a continuing offense and may be prosecuted in any district in which the offense was begun, continued, or completed. In specifically providing that IRC 7206(1) prosecutions may be transferred to the district of residency, this statute tends to support a position that the offense may be prosecuted where the return is made, subscribed, or filed.

(3) A six-year period of limitations is applicable to this offense, which is a felony. Further information covering statute of limitations is contained in 419.

(4) This Code section imposes the penalty of perjury upon a person who willfully falsifies a return as to a material matter, whether or not his/her purpose was to evade or defeat the payment of taxes. [*Siravo v. U.S.; Hoover v. U.S.; Schepps v. U.S.; Gaunt v. U.S.*] Prosecution is appropriate when the Government is able to prove falsity of a partnership return, the issue being falsity rather than evasion. [*Goldbaum v. U.S.*] The test of materiality is whether the false statement was material to the contents of the return. It is not necessary that the government actually rely on the statement. It is sufficient that it be made with the intention of inducing such reliance. [*Genstil v. U.S.; U.S. v. Rayor*] Although the offense is complete upon signing the statement or document, prosecutions under this Code section should involve only false returns or statements presented to or filed with the Internal Revenue Service. This sanction is appropriate when it is possible to prove falsity of a return but difficult to establish evasion of an ascertainable amount of tax, or, when the falsification results in a relatively small amount of tax evaded in relationship to the total tax liability.

(5) If an individual files a false and fraudulent return, it is possible for him/her to incur criminal liability for attempting to defeat and evade the payment of tax and for making a false and fraudulent statement under the penalty of perjury even though both offenses relate to the same return and the making of the false statement is an incidental step in the consummation of the completed offense of attempting to defeat and evade taxes. [*Gaunt v. U.S.*]

418.2 (1-18-80) 9781
Aid or Assistance in Preparation or Presentation of False or Fraudulent Return, Affidavit, Claim or Other Document (IRC 7206(2))

418.21 (1-18-80) 9781
Statutory Provisions

Any person who willfully aids or assists or procures, counsels, or advises in the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim or other document, commits a criminal offense under this Code section, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or other document. The statutory provisions covering this violation are set forth in full in 221.7:(2).

418.22 (1-18-80) 9781
Elements of Offense

(1) The elements of a criminal violation under this Code section are:

(a) Aid, assist, counsel, advise or procure the preparation or presentation of a false or fraudulent document;

(b) A matter under, or in connection with any material matter arising under, the internal revenue laws;

(c) Willfulness. (The subject of willfulness is discussed in 41(11).)

(2) Venue lies in the judicial district where the criminal acts were committed, or if the acts were committed in one district and the return was filed in another district, venue lies in either district. The period of limitations applicable to this offense, which is a felony, is six years. Further information concerning the statute of limitations is contained in 419.

(3) The false document must be filed with the Internal Revenue Service in order for the crime to be complete but pecuniary loss to the Government is not necessary. Any impairment of its governmental function is sufficient. [*Butzman v. U.S.; U.S. v. Potsada*]

(4) The crime is complete on the submission of the false document notwithstanding the fact that had he filed a different and truthful document the defendant or his principal might have been entitled to equivalent relief or benefit. [*Butzman v. U.S.; U.S. v. Potsada*]

(5) Generally, income tax returns or partnership information returns are involved but any document required or authorized to be filed can give rise to this offense.

(6) If two partners execute a false partnership return and file it, they may each commit a criminal offense, but if there is evidence that only one of the partners willfully aided, assisted, procured, counseled or advised the preparation or the presentation of such return, then only he/she could be held liable for this offense. [*U.S. v. Wyman*]

(7) The aiding and assisting in the preparation of a false return, and the subscribing of a false return are two separate offenses. [*U.S. v. Wyman*] A defendant can, therefore, be prosecuted under IRC 7206(1) for subscribing a false return and under this Code section for aiding and assisting in the preparation of the same false return.

(8) It is sufficient to establish that the defendant willfully and knowingly prepared false and fraudulent income tax returns for another although the fraud involved was without the knowledge and consent of the person required to make the return. [*U.S. v. Kelley; U.S. v. Borgis*] For example, in the case of U.S. v. Herskovitz, et al., the defendants, who conducted a "refund factory," interviewed taxpayers for ten or fifteen minutes and obtained information which was written on worksheets. Signed blank income tax returns were then obtained from the taxpayers and they were told the amounts of the refunds allegedly due, but they were not furnished any of the details relative to the deductions to be claimed on the returns, which were prepared at later dates. At the trial the clients testified that they did not furnish the defendants the information relating to deductions shown on their completed returns and that the information was placed on the returns without their knowledge or consent. On the other hand, if the taxpayers who testify against the defendant are shown to have had knowledge that their returns were false, resulting in fraud penalties or successful prosecutions, for evasion, the defendant is entitled to have the court caution the jury to weigh accomplice testimony carefully. [*Hull v. U.S.*]

(9) In all race track payoff cases IRC 7206(2) should be used either as the primary statutory provision or, at least, as a supplement to 18 USC 1001, when prosecuting either the "ten percenter" or the true winner. [Chief Counsel's Memorandum 7-31-67, CC:E-MA 1589; see Int. Digest, 11-67, p. 41.]

418.3 *(12-7-81)* 9781
Fraudulent Returns, Statements, or Other Documents (IRC 7207)

(1) It is a criminal offense to willfully deliver or disclose to the Secretary or the Secretary's delegate any list, return, account, statement, or other document known to be fraudulent or to be false as to any material matter. The statutory provisions covering this violation are set forth in 221.8.

(2) As of September 28, 1976, the Department of Justice has modified its long-standing policy of not authorizing prosecution under Section 7207. The current policy allows for use of Section 7207 in cases commonly referred to as altered-document-type cases whenever the computed tax deficiencies are such as to be considered *de minimis* in relation to the circumstances of the particular case under consideration and the means and methods utilized in committing the offense are commensurate with charging a misdemeanor rather than a felony. The policy otherwise remains unchanged in that Section 7207 is neither suitable nor appropriate in tax cases other than the altered-document-type case. This modification is strictly limited to cases arising out of presentation of false or altered documents by taxpayers in response to requests for substantiation of claimed deductions during the course of examination activity.

418.4 *(1-18-80)* 9781
False Statements of Entries Generally (Section 1001, Title 18)

418.41 *(1-18-80)* 9781
Statutory Provisions

In connection with any matter within the jurisdiction of any department or agency of the United States, it is a criminal offense to willfully falsify, conceal or cover up by trick, scheme, or device a material fact or to make any false, fictitious, or fraudulent statements or representations or to make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry. The statutory provisions covering this violation are set forth in 222.(15).

418.42 *(1-18-80)* 9781
Elements of Offense

(1) The elements of a criminal violation under this USC section are:

(a) A matter within the jurisdiction of a department or agency of the United States;

(b) One or more of the following:

1 Falsification or concealment by trick, scheme or device, of a material fact;

2 The making of false, fictitious or fraudulent statements or representations;

3 The making or using of any false writing or document;

(c) Knowledge of the falsity by the party charged;

(d) Willfulness. (The subject of willfulness is covered in 41(11).)

(2) Venue lies in the judicial district where the concealment of fact occurred, the false statement was communicated, or the false writing was made or used. A five-year period of limitations is applicable to this offense, which is a felony. Further information concerning statutes of limitations is in 419.

(3) The term "jurisdiction" means the power to deal with a subject matter and the term "department" includes the United States Treasury Department. [5 USC 1]

(4) It is not necessary that the statement be required to be made by some regulation or law. [*Cohen v. U.S.*] For example, a taxpayer could commit a violation under this USC section by voluntarily furnishing a false and fraudulent net worth statement during an official investigation of his/her income tax liability, provided all other necessary elements of the offense were present.

(5) The weight of authority requires proof of materiality in any prosecution under this USC section. [*Poonian v. U.S.; U.S. v. Zambito; Gonzales v. U.S.*] However, some jurisdictions do not require it in prosecutions for making false statements or submitting false documents, as opposed to falsifying, concealing or covering up material facts by trick, scheme or device. [*U.S. v. Silver*] The argument for this distinction is that the statute has two parts, of which the first, relating to falsification or concealment by trick, scheme or device, includes the word "material," whereas the second, relating to false statements, does not. [*U.S. v. Silver*] However, it must be borne in mind even in the jurisdictions making this distinction, that it is difficult to prove willfulness of false statements unless they are material. [Chief Counsel Memorandum, 11-8-62, CC:E-235 (I.D. Digest, 12-62, p. 23.]

(6) The violation may involve formal or informal records, forms and instruments, and even oral statements. [*Neely v. U.S.*] It is not essential that the statements be under oath, and the

perjury corroboration rule does not apply. [*Neely v. U.S.; U.S. v. McCue*]

(7) It is possible for a defendant to be charged with a violation under this USC section and also to be charged with an attempt to defeat or evade the payment of tax [26 USC 7201] in connection with the same return. [*Gaunt v. U.S.*]

(8) Knowledge cannot be imputed to a corporate officer merely because the officer appears to be active in corporate affairs. [*Freidus v. U.S.*]

(9) The statute is concerned with false statements which might impede the exercise of Federal authority. [*U.S. v. Leviton*] Pecuniary loss to the Government is not necessary. Any impairment of administration of its governmental functions is sufficient and the commission of the crime is not dependent upon the success of the intended fraud. [*Butzman v. U.S.*] However, mere negative, exculpatory "no" answers in a question and answer interview are held not to pervert the investigative function, and are not considered statements within the meaning of this statute. [*Paternostro v. U.S.; U.S. v. Stark*] Prosecution may lie under this statute, as well as under 18 USC 1503 (obstruction of justice), against persons summoned to produce records in their possession, who falsely state that the records have been stolen from them, and conspire together to conceal them. [*U.S. v. Curcio*]

418.5 *(1-18-80)* 9781
False, Fictitious, or Fraudulent Claims (Section 287, Title 18)

418.51 *(1-18-80)* 9781
Statutory Provisions

It is a criminal offense to make or present a claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious or fraudulent. The statutory provisions covering this violation are set forth in 222.(10).

418.52 *(1-18-80)* 9781
Elements of Offense

(1) The elements of a criminal violation under this USC section are:

(a) Making or presenting a claim upon or against the United States;

(b) Knowledge that the claim is false, fictitious or fraudulent.

(2) Venue lies in the judicial district where the false claim is presented or filed to where it is to be acted upon. [*Fuller v. U.S.*] A five-year period of limitations is applicable to this offense, which is a felony. Further information concerning statute of limitations will be found in 419.

(3) The term "false" means unfounded or unjust; "fictitious" means not real; and "fraudulent" means wrong or deceitful. These terms have no special legal significance in their use in this statute but are to be taken in their ordinary and well understood sense. [*U.S. v. Bittinger*]

(4) Fraud within this USC section includes any conduct calculated to obstruct or impair the efficiency of the United States and to destroy the value of its operations. [*U.S. v. Gottfried*] Actual pecuniary loss to the Government is not an essential element of this offense.

(5) Whether the claim is false, fictitious, or fraudulent must be determined in view of all of the facts and circumstances surrounding it and it is not essential that the bill, voucher, or other things used as the basis for the claim should in and of itself contain fraudulent or fictitious statements or entries. [*Dimmick v. U.S.*] For example, an income tax return, correct on its face, would still constitute a false claim if the taxpayer filing the return knew that the refund shown to be due had already been paid as the result of the filing of a prior return.

(6) An income tax return claiming a refund of withheld taxes represents a false claim in spite of the fact that the amount claimed represents an overpayment of withholding taxes resulting from a fraud perpetrated on the employer. For example, if an individual arranges with a paymaster to defraud an employer by having the individual's name entered on a payroll without performing any work or receiving any wages and withholding tax is then paid to the Government based on the amount of the alleged wages, the filing of a final income tax return by the phantom employee, showing the alleged wages and claiming a refund of the withheld tax, constitutes the filing of a false claim under this USC section. [*U.S. v. Mandile*]

(7) This USC section is particularly appropriate in instances where a false claim for refund has been filed. It is only necessary to prove that the defendant made a claim for refund taxes against the Government and that he/she knew that he/she was not entitled to receive it. [*U.S. v. Mandile*]

418.6 *(1-18-80)* 9781
Removal or Concealment with Intent to Defraud (IRC 7206(4))

418.61 *(1-18-80)* 9781
Statutory Provisions

Any person who removes, deposits, or conceals property upon which any tax is or shall be imposed, or upon which levy is authorized by IRC 6331, with intent to evade or defeat the assessment or collection of any tax, commits a criminal offense under this Code section. The statutory provisions covering this violation are set forth in text 221.7.

418.62 *(1-18-80)* 9781
Elements of Offense

(1) The elements of a criminal violation under this Code section are:

(a) Tax imposed on the property, or

(b) Property upon which tax is imposed or levy is authorized;

(c) Removal or concealment

(d) With intent to evade or defeat assessment or collection of any tax.

(2) "Concealment" under this Code section does not mean merely to secrete or hide away, but includes also "to prevent the discovery or to withhold knowledge of." Thus, it is not necessary for the Government to prove a physical removal, concealment or transfer from one place to another. A violation of this Code section may be committed by making false book entries indicating transfer of property rights. [*U.S. v. Bregman*]

(3) It is probable that the period of limitations for this offense is six years. However, since this has not been determined by case law, prosecution should be instituted within three years, to avoid unnecessary controversy.

419 *(1-18-80)* 9781
Statute of Limitations

419.1 *(1-18-80)* 9781
Introduction

Statutes of limitation are founded upon the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the Government to explode only after witnesses and proof necessary to the protection of the accused have by sheer lapse of time passed beyond availability. They amount to legislative restraints on the executive power to punish wrongdoers, which grant malefactors complete immunity from prosecution after stated periods of time. Text 241 through 243 contain information showing the specific statutory provisions [26 USC 6531] relating to the time limit within which prosecutions may be instituted against persons charged with violations of the internal revenue laws and the applicable sections of the United States Criminal Code.

419.2 *(1-18-80)* 9781
Statute of Limitations Statutory Provisions

419.21 *(1-18-80)* 9781
Statute of Limitations on Criminal Violations

(1) The Internal Revenue Code provides a three-year limitation period for criminal violations with the exception of the following described offenses investigated by the Criminal Investigation Division, which fall within a six-year limitation period:

(a) Those Code sections in which defrauding or attempting to defraud the United States is an ingredient of the offense.

(b) 7201—Willfully attempting in any manner to evade or defeat any tax or the payment thereof.

(c) 7206(2)—Willfully aiding, assisting, counseling, procuring or advising the preparation or presentation of a false return or other document.

(d) 7203 (in part)—Willfully failing to timely pay any tax or make any return (other than declaration of estimated tax, partnership returns or other information returns).

(e) 7206 (1)—Willfully making and subscribing a false return under penalty of perjury.

(f) 7207—Willfully delivering or disclosing to the Secretary a fraudulent return, statement or other document.

(g) 7212(a)—Corruptly or forcibly attempting to interfere with the administration of the internal revenue laws.

(h) 371, Title 18—Conspiracy in connection with an attempt to defeat or evade any tax or the payment thereof.

(2) The limitation period under the United States Criminal Code is generally five years for offenses other than capital. [18 USC 3282]

419.22 *(1-18-80)* 9781
Statute of Limitations on Civil Assessments

(1) Generally, taxes must be assessed within three years after they become due. However, IRC 6501 provides that a six-year limitation peri-

od is applicable where an amount in excess of 25 percent of gross income has been omitted from the return, and that there is no limitation on assessment when:

(a) A false or fraudulent return has been filed with intent to evade tax;

(b) No return has been filed; or—

(c) There has been a willful attempt to defeat or evade a tax (other than income, estate and gift taxes).

419.23 *(1-18-80)* 9781
Consents

(1) Extension of the statutory period of limitation upon assessment of the tax will be requested of a taxpayer only in a case involving unusual circumstances and where the taxpayer has been contacted previously, except where compelling reasons exist. However, if it is determined by the special agent and approved by the Chief, Criminal Investigation Division, by reason of the discovery of indications of a tax deficiency, that an extension of the statutory period is warranted pursuant to this policy regarding a tax return in the custody of Criminal Investigation, and further, if the tax involved is one for which the statutory period of limitations may be extended, the special agent who has the actual custody of the return shall, after receiving the concurrence of his/her group manager, request the extension. The Request for Execution of Consent Extending Statutory Period which is Letter 907(DO), formerly Form L-64, will be used for this purpose. (See IRM 9325.2 and policy statement P-4-79.)

(2) In joint investigations wherein the administrative file has not been forwarded in connection with the referral of the criminal case to District Counsel and there is danger of an early expiration of the statutory period for assessment, the cooperating revenue agent will, through the Chief, Examination Division, timely advise Criminal Investigation that he/she proposes to solicit consents extending the statutory period for assessment. Normally, the solicitation of such a consent does not prejudice a criminal case, and unless Criminal Investigation requests otherwise, within ten workdays following the date the cooperating revenue agent submits his/her notification of intention to solicit a consent, the cooperating revenue agent will endeavor to obtain the consent.

(3) Except in unusual circumstances, consents in these cases shall be solicited by letter, rather than by personal contact, using Letter 907(DO). Any subsequent inquiry, whether oral or written, received from the taxpayer or his/her representative concerning consents in such cases will be referred to the Chief, Criminal Investigation Division, for reply. Where personal contact is necessary to obtain the consent, either because of the time element involved or for some other compelling reason, such contact should be made jointly by the special agent and the cooperating officer.

(4) The revenue agent will, through the Chief, Examination Division, inform the Chief, Criminal Investigation Division, of the results of the efforts to obtain the consent(s). If the revenue agent is unable to obtain a consent(s), he/she will prepare a memorandum, with the supporting reasons, to the District Counsel recommending that a statutory notice be issued. The memorandum will be prepared for the signature of the District Director or Director of International Operations and cleared through the Chiefs, Examination and Criminal Investigation Divisions. In clearing this memorandum, the Chief, Criminal Investigation Division should follow the procedures in IRM 9325.2:(5).

(5) In making the determination of whether a statutory notice should be issued, the District Director or Director of International Operations, will be guided by the following procedures.

(a) A statutory notice will be issued in all cases where such action is appropriate to protect the assessment of civil liability and it appears unlikely the criminal prosecution will be recommended.

(b) If it appears likely that criminal prosecution will be recommended, a statutory notice normally will not be issued if either of the following situations exist.

1 The facts and circumstances are deemed such as to warrant the assertion of the fraud penalty, providing there is sufficient probative evidence available to sustain the Commissioner's burden of proof in establishing fraud relating to the particular tax period, thus permitting the assessment of the tax at any time.

2 The issuance of the statutory notice would imperil successful criminal investigation or prosecution. In this respect, peril to the criminal aspects of the case may result from inconsistent theories between the civil and criminal cases, the disclosure of the details of evidence or sources thereof, including the identity of particular witnesses, or other factors which reasonably could be expected to lead to the destruction of evidence, efforts by the taxpayer to tamper with or discredit testimony of documentary evidence to be relied upon in support of the potential criminal case.

(c) Jeopardy assessments will not be made if such action would imperil successful criminal investigation or prosecution. However, if collection of civil liability in the case is in jeopardy, such as in situations described in IRM 9329, and a jeopardy assessment is recommended, care should be taken to avoid unnecessary disclosures in the deficiency letter and in any accompanying statement that would imperil successful criminal investigation of prosecution.

(d) Consideration should also be given to the fact that if a statutory notice is issued and the taxpayer appeals to the United States Tax Court, the Government may lose control over the facts which it will be required to reveal to the taxpayer, either in the answer or at the trial of the civil case ahead of the criminal case.

(6) IRM 9325.2:(3) through 9325.5 contains further information on the issuance of statutory notices.

419.3 *(1-18-80)* 9781
Construction of Statute of Limitations Provisions

(1) *Interpretation generally*—"The statute (of limitations) is not a statute of process to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense." [Wharton, Criminal Procedure, 415 (10th Ed. 1918] In other words, the statute is liberally interpreted in favor of the accused.

(2) *Toll*—To toll the statute of limitations means to show facts which remove its bar of the action. [Black's Law Dictionary] Thus, to toll the statute is to suspend the running of the statute for a period of time. The tolling of the statute of limitations should not be confused with the expiration date of the period of limitations.

(3) *Running of the statute*—The limitation period begins to run from the day on which the offense is committed. The day following is the first of the period. [Rule 45, Federal Rules of Criminal Procedure; 18 USC; *Pendergast v. U.S.*] For example, if a false and fraudulent income tax return is filed on April 20, 1971, the period of limitations begins to run on April 21, 1971, and, provided there are no circumstances to toll the statute, it will operate to bar prosecution on April 21, 1977.

(4) *Willful failure to perform*—Offenses relating to the willful failure to perform certain acts are not complete until the failure becomes willful. [*Arnold v. U.S.*] Usually it is possible to prove that willfulness was present on the date the return was due. An exception would be a situation where an individual failed to pay his/her tax on the due date and continued in this failure until three months later, at which time he/she stated that he/she was not going to pay the tax because he/she did not want the Government to spend his/her money. Under such circumstances, the statute may be interpreted as running from the date the individual made the latter statement. [*Capone v. U.S.*]

(5) *Continuing offense*—In the case of instantaneous crimes, the statute of limitations begins to run with the consummation of the crime whereas in the case of a continuing offense, such as conspiracy, the statute of limitations does not begin to run until the criminal conduct ceases.

(6) *Attempt to defeat and evade*—Violations involving willful attempts to defeat and evade taxes are complete on the date of the occurrence alleged as a means of attempted evasion. Usually, the filing of the return marks the climax of the willful attempt and the period of limitations begins to run from the filing date or the due date. However, an attempt to evade tax, or attempt to evade payment, may occur at a later date. A false statement by a taxpayer during a conference several months after a return was filed was determined to be a willful attempt to evade tax for which the period of limitations began on the date of the false statement. [*U.S. v. The Beacon Brass Co., Inc.*] False statements made in 1955, 1956, and 1957 in offers to compromise tax liabilities for 1941 through 1946 constituted willful attempt to evade payment, on which the periods of limitation began when the statements were made. [*U.S. v. Mousley*]

(7) *Conspiracy*—The crucial question in determining whether the period of limitations has run in a conspiracy charge "is the scope of the

conspiratorial agreement, for it is that which determines both the duration of the conspiracy, and whether the act relied on as an overt act may properly be regarded as in furtherance of the conspiracy." [*Grunewald v. U.S.; Forman v. U.S.*] For example, if the central objective of a conspiracy was to protect taxpayers from tax evasion prosecutions on which the statute of limitations did not bar prosecution until 1980 and if nonprosecution rulings were obtained in 1977 as an installment of what the conspirators aimed to accomplish, then the period of limitations on the conspiracy would not begin to run until 1980 when the objective of the conspiracy was entirely accomplished. If the conspiracy is limited to an attempt to defeat and evade taxes by filing a false and fraudulent return, the conspiracy ends at the time the return is filed and the statute of limitations begins to run from that date. [*U.S. v. Rosenblum, et al.*]

(8) *Statutory filing date*—IRC 6531 states, among other things, "For the purpose of determining the periods of limitation on criminal prosecutions, the rules of Section 6513 shall be applicable." The pertinent portion of IRC 6513 provides that ". . . any return filed thereof shall be considered as filed on such last day." This language from IRC 6513 has been judicially approved, on the theory that Congress has the right to legislate concerning periods of limitations. [*U.S. v. Black*] In order to avoid controversial issues, a conservative approach would be to measure the limitation period from the date on which the return was actually filed or the last overt act was committed. The statutory filing date should be used when the conservative approach would bar prosecution.

(9) *Extension of time*—Under the Internal Revenue Code of 1954, where an extension is granted and the return is thereafter filed, the statute of limitations begins to run from the date of filing. [*U.S. v. Habig*]

419.4 *(1-18-80)* 9781
Tolling of the Statute of Limitations

(1) IRC 6531 provides:

(a) That the statute of limitations will be inoperative during the time an offender is outside the United States or is a fugitive from justice; and

(b) That where a complaint is instituted before a Commissioner of the United States within the limitation period, the time is extended until nine months after date of the making of the complaint.

(2) *Absence from the United States*—Taxpayer absence from the United States tolls the statute of limitations for that period regardless of the reason for the absence.

(3) *Fugitive from justice*—"The essential characteristic of fleeing from justice is leaving one's residence or usual place of abode or resort, or concealing one's self, with the intent to avoid punishment." [*Brouse v. U.S.*] A flight to escape an anticipated prosecution is sufficient and it does not have to be made after an indictment has been brought. [*Streep v. U.S.*] The intent is indispensable and thus the withdrawal or concealment must be voluntary. [*U.S. v. Hewecker*] Moreover, if one voluntarily flees with the requisite intent, he/she cannot later successfully contend that his/her absence was prolonged against his/her will and that the statute should have commenced running again when he/she would have returned had he/she been free to do so. [*McGowen v. U.S.*] The character of the original flight colors the absence so as to render the defendant a fugitive from justice throughout the period of absence.

(4) *Complaint*—The extension applies if the complaint filed with the Magistrate contains probable cause that an offense has been committed and that the defendant committed it. The defendant must be given notice by service of a court summons or an arrest warrant. A preliminary hearing is held within reasonable time unless waived by the defendant or superseded by indictment. If the complaint does not support a finding of probable cause, the tolling of the statute of limitations is invalidated. This provision relates to situations in which the Government cannot obtain an indictment within the normal limitation period because of the grand jury schedule and is not intended to provide the Government additional time to conduct its investigation. [*Jaben v. U.S.*]

(5) Further discussion of complaints is in 721.

41(10) *(1-18-80)* 9781
Conspiracy (Section 371, Title 18)

41(10).1 *(1-18-80)* 9781
Statutory Provisions

It is a criminal offense for two or more persons to conspire either to commit any offense against the United States or to defraud the United States, or any agency thereof in any manner for any purpose, if one or more of such persons do any act to effect the object of the conspiracy. The statutory provisions covering this violation are set forth in full in 222.(11). There is no civil penalty specifically applicable to this offense.

41(10).2 *(1-18-80)* 9781
Elements of Offense of Conspiracy

(1) The elements of a criminal violation under this USC section are:

(a) A combination of two or more persons.

(b) An agreement to accomplish the purpose of the conspiracy.

(c) An overt act to effect the objective of the agreement.

(2) Venue lies in any judicial district where an overt act was committed [*Diehl v. U.S.*] and a six-year period of limitations is applicable if the conspiracy is to defraud or attempt to defraud the United States, or any agency thereof, or to attempt in any manner to evade or defeat any tax or the payment thereof. [26 USC 6531] All other conspiracies fall within a five-year period of limitations. [18 USC 3282]

41(10).3 *(1-18-80)* 9781
Application of Conspiracy Statute

(1) A practice of self-restraint has been applied with respect to the use of the conspiracy statute. As a rule conspiracy charges have not been instituted when evidence was available to make out charges of violations of substantive statutes. If proof exists to support substantive charges, the addition of conspiracy counts would involve needless duplications. Judge Learned Hand stated: ". . . so many prosecutors seek to sweep within the dragnet of conspiracy all those have been associated in any degree whatever with the main offenders. That there are opportunities of great oppression in such a doctrine is very plain, and it is only by circumscribing the scope of such all comprehensive indictments that they can be avoided." [*U.S. v. Falcone*]

(2) The Supreme Court has also warned that it will "view with disfavor attempts to broaden the already pervasive and wide-spreading nets of conspiracy prosecutions." [*Grunewald v. U.S.*]

(3) An acquittal on a criminal charge does not preclude a prosecution of a conspiracy to commit the same criminal violation. [*U.S. v. Waldin*] It has also been held that the same overt acts charged in a conspiracy count may also be charged and proved as separate criminal violations since the agreement to do the act is distinct from the act itself. [*U.S. v. Bayer*]

41(10).4 *(1-18-80)* 9781
Construction of Conspiracy Provisions

41(10).41 *(1-18-80)* 9781
Definition

Conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful by criminal or unlawful means. [*Marino v. U.S.*] The crime is not complete until an overt act is done by least one of the conspirators to effect the object of the conspiracy. [*Marino v. U.S.*] The purpose of requiring an overt act is to confirm the seriousness of the participants in the agreement. It affords an opportunity for one or all of the parties to abandon their design before the act is done, and thus avoid the penalty prescribed by the statute. [*U.S. v. Britton; U.S. v. Halbrook*]

41(10).42 *(1-18-80)* 9781
Parties in Conspiracy

It is necessary that the conspirator intend to be a party to the conspiracy and one who pretends to join a conspiracy in order to trap the criminals is not a conspirator. There must be *intentional participation* in the transaction with the view of furthering the common purpose, but the mere knowledge, acquiescence, or approval of an act without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy. [*U.S. v. Thomas*] Thus, if an officer knew that several other officers of a company were meeting at a particular place to fraudulently rewrite a set of business records in an attempt to mislead an internal revenue agent who was planning to audit the return filed by the company and the officer did not participate in any way to further the plan, he/she would not become a conspirator. When a conspiracy exists, the joining of new members thereafter

does not create a new conspiracy. [*U.S. v. Marino; Hagen v. U.S.*] Conversely, if one or more of the conspirators withdraw, such withdrawal neither creates a new conspiracy nor changes the status of the remaining members. [*Graham Johnson v. U.S.; Craig v. U.S.*] A person may become a conspirator by joining in an existing agreement or by knowing of its existence and committing an overt act in furtherance thereof. [*Craig v. U.S.; U.S. v. Olmstead*] After joining, a co-conspirator becomes responsible for all acts and all statements of all participants which are committed in connection with the plan and common object of the conspiracy [*Connelly v. U.S.*] whether done before or after he/she joins the conspiracy. [*Baker v. U.S.; Coates v. U.S.*] A conspirator may withdraw by an affirmative and effective act that disavows or defeats the purposes of the conspiracy. [*Blue v. U.S.; U.S. v. Christian W. Beck*] He/she is not liable for the subsequent acts of his/her former associates and the statute of limitations commences to run, as to him/her, upon his/her withdrawal. [*Hyde v. U.S.; Eldredge v. U.S.*] A conspirator may avoid guilt completely by withdrawing prior to the commission of the first overt act that furthers the conspiracy. [*Marino v. U.S.*] When only two persons are charged with conspiracy and there is no evidence implicating anyone else, acquittal or reversal as to one is acquittal or reversal as to the other. [*U.S. v. Fox*] However, if the indictment charges two named conspirators and persons unknown as co-conspirators, and there is evidence to support the charge that one of the two defendants conspired with the unknown persons, that defendant's convictions may stand in spite of the fact that the other named defendant is acquitted. [*Pomerantz v. U.S.; U.S. v. Gordon*] The rule that acquittal of all alleged conspirators except one results in acquittal of all applies only to acquittals on the merits. [*U.S. v. Fox*] Thus, if the charge against one of two conspirators is dismissed as the result of a nolle prosequi, it would not affect the case against the other since a nolle prosequi does not amount to a dismissal on the merits. All acts and statements in furtherance of the conspiracy may be introduced in evidence against the conspirators on trial regardless of whether the person who committed such act or made such statement is on trial. [*Lewis v. U.S.*] A person's involvement in a conspiracy cannot be established through his/her alleged co-conspirator's acts or declarations done or made in his/her absence without proof from another source of his/her connection with the conspiracy. [*Glasser v. U.S.; U.S. v. Wortman*] A corporation can be a conspirator with other corporations, or with natural persons including its own officers, employees or stockholders. It is responsible for the acts of its agents which are performed within the scope of their authority. [*Old Monastery Company v. U.S.*] Partners may be prosecuted for conspiracy to defraud the Government of income taxes by making false and fraudulent partnership and individual returns. [*Lisansky v. U.S.*] A husband and wife may be found guilty of conspiracy, being considered separate persons under the conspiracy statute. [*U.S. v. Dege*] All conspirators need not be defendants. Should the prosecution require the testimony of one of the conspirators to prove the conspiracy, he/she could be named in the indictment as a co-conspirator even though he/she is not named as a defendant. [*U.S. v. Gordon*]

41(10).43 *(1-18-80)* 9781
Nature of Conspiracy Agreement

Conspirators usually do not put their agreements into writing nor do they make public their plans. Hence, a conspiracy is rarely susceptible of proof by direct evidence and must usually be deducted from the conduct of the parties and the attending circumstances. [*Cruz v. U.S.; Telman v. U.S.*] It is sufficient to show that the minds of the parties met in an understanding way so as to bring about an intelligent and deliberate agreement to do the act or acts charged, although such an agreement is not manifested by any formal words. [*Telman v. U.S.*] It is not necessary that each conspirator know or see the others [*Blumenthal v. U.S.; Martin v. U.S.*], but it is necessary to prove that each person charged in the conspiracy knew of the agreement and had a corrupt motive or evil intent. [*Cruz v. U.S.*] The conspiracy is distinct from the crime contemplated and one may be convicted of both the completed crime and the conspiracy, even though the completed crime was alleged as the overt act necessary to convict for conspiracy. [*Pinkerton v. U.S.*] After the central purpose of a conspiracy has been attained, a subsidiary agreement to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept secret and that the conspirators took care to cover up their crime in order to escape detection and punishment. [*Grunewald v. U.S.; Forman v. U.S.; Krulewitch v. U.S.; Lutwak v. U.S.*]

41(10).44 *(1-18-80)* 9781
Overt Act in Conspiracy

An overt act is any act or statement designed to advance, aid, or assist in accomplishing the object of the conspiracy agreement. It need not be a violation of the law within itself and may be as innocent as calling at the office of the District Director of Internal Revenue in order to obtain a blank claim form. It is not necessary that each conspirator commit an overt act [*Braverman v. U.S.*; *U.S. v. Donald Johnson*] and, therefore, a party to a conspiracy agreement may become guilty of conspiracy without any knowledge that a co-conspirator actually committed an overt act. [*Brock v. Hudspeth*] Preparing, signing, and filing a false return are appropriate overt acts in a conspiracy to attempt to defeat and evade the payment of tax by filing a false and fraudulent return.

41(10).45 *(1-18-80)* 9781
Defraud in Conspiracy

The word "defraud" as used in this USC section is broad enough to include anything which interferes with or hampers the United States in the successful prosecution of any policy, as well as the ordinary common law meaning of the word. [*U.S. v. Slater*] For example, a conspiracy to cause Government officers to neglect their duties would be a conspiracy to defraud the United States of their honest and effective services.

41(10).46 *(1-18-80)* 9781
Duration of Conspiracy

(1) Conspiracy is a continuing crime [*Ryan v. U.S.*] first complete upon the performance of the first overt act in furtherance of the conspiracy agreement, and it continues until the completion of the last overt act, including the division of the fruits of the crime, if any. The terminal date of the conspiratorial relationship is particularly important in settling problems relating to the admissibility of evidence, prosecution of later joining conspirators, and the running of the period of limitations. In determining the termination date, it is necessary to consider carefully the terms of the agreement. The Supreme Court has stated that:

> ". . . the crucial question in determining whether the statute of limitations has run is the scope of the conspiratorial agreement, for it is that which determines both the duration of the conspiracy and whether the act relied on as an overt act may properly be regarded as in furtherance of the conspiracy." [*Grunewald v. U.S.*]

(2) If the conspiracy involves an attempt to defeat and evade the payment of income tax by filing a false and fraudulent income tax return, the conspiracy ordinarily terminates at the time the return is filed. [*U.S. v. Rosenblum*] However, a conspiracy to evade taxes by making false statements to conceal unreported income was held to continue through the making of such statements. [*Forman v. U.S.*]

41(11) *(1-18-80)* 9781
Willfulness

41(11).1 *(1-18-80)* 9781
Definition of Willfulness

(1) Willfulness is an essential element of proof with respect to most criminal violations investigated by special agents. The term "willful" however, is not defined by statute; thus for its definition we must rely on precedent established by court decisions. In commenting on this statutory omission the Supreme Court in Spies v. U.S. stated that:

> "Congress did not define or limit the methods by which a willful attempt to defeat and evade might be accomplished and perhaps did not define lest its efforts to do so result in some unexpected limitation. Nor would we by definition constrict the scope of the Congressional provision that it may be accomplished 'in any manner'."

(2) Willfulness has been interpreted in many ways with respect to the various statutes. It may mean one thing in civil cases and quite another thing in criminal prosecutions.

(a) Usually, where civil penalties are involved, willfulness means actions "knowingly," "consciously," or "intentionally" taken. A voluntary course of action as distinguished from accidental would seem to satisfy the civil requirements. [*Paddock v. Siemoneit; Wilson v. U.S.*]

(b) When used in criminal revenue statutes, the word "willful" generally means an act done with a bad purpose; without justifiable excuse; stubbornly, obstinately, perversely. As stated by the Supreme Court in U.S. v. Murdock:

> "The word is also employed to characterize a thing done without ground for believing it is lawful . . or conduct marked by careless disregard whether or not one has the right so to act. . . . "This court has held that where directions as to the method of conducting a business are embodied in a revenue act to prevent loss of taxes, and the act declares a willful failure to observe the directions a penal offense, an evil motive is a constituent element of the crime.
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> * * * * *
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> "Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the rec-

ords he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct."

(3) Knowledge, specific intent, and bad purpose are necessary elements of criminal willfulness. They are to be distinguished from motive, which is the reason or inducement for committing an act. For example, an individual may deliberately understate his income in order to have sufficient funds to support invalid parents. While his motive may be admirable, he had a specific intent to evade payment of his income taxes. It has been stated that:

"Motive is not an essential element of a crime. The most laudable motive is no defense where the act committed is a crime in contemplation of law. . . . Proof as to motive may be of assistance in throwing light on the intent with which the act was committed. . ." [*Koboy v. U.S.*]

(4) The Supreme Court in the Spies case enunciated the same principle in a different fashion. The court stated:

"If the tax-evasion motive plays any part in such conduct the offense may be made out even though the conduct may also serve other purposes such as concealment of other crime."

41(11).2 *(1-18-80)* 9781
Proof of Willfulness

(1) Willfulness is a state of mind which is rarely susceptible of direct proof. It involves a mental process which is usually proved through circumstantial evidence. [*Paschen v. U.S.*] Direct evidence of willfulness can only be accomplished through an admission or a confession.

(2) In the Spies case, supra, the court enumerated certain conduct which may create inferences of willful attempted evasion of income taxes:

"by way of illustration, and not by way of limitation, we would think affirmative willful attempt may be inferred from conduct such as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and *any conduct, the likely effect of which would be to mislead or to conceal.*" (Italics supplied.)

(3) Frequently, circumstantial evidence of willfulness will consist of acts *subsequent* to the filing of a false income tax return. For example, attempted bribery of a revenue agent during an investigation [*Barcott v. U.S.*]; visits to undisclosed safe deposit boxes after having been questioned about assets [*Barcott v. U.S.*]; making false statements [*U.S. v. Beacon Brass Co.*]; withholding records during the investigation [*U.S. v. Glascott*] and influencing the testimony of prospective witnesses. [*Myers v. Comm.*]

(4) Furthermore, in proving willfulness, evidence of other similar offenses and like conduct at time proximate to the offense charged may be admitted. [*Weiss v. U.S.*] This type of evidence does not prove the particular crime charged but tends to show a continuity of unlawful intent and is an exception to the general rule that evidence of another crime unconnected with the one on trial is inadmissible. Cases contain numerous instances of this principle. For example, admitted into evidence was testimony concerning the failure to file returns in prior years [*Ayash v. U.S.; U.S. v. Gannon; U.S. v. Merle Long*]; also the filing of a fraudulent return for a prior year [*Hoyer v. U.S.; Morrison v. U.S.*]; and the failure to supply information for many prior years. [*Pappas v. U.S.*]

(5) The determination of willfulness of a criminal act is the function of the jury under proper instructions from the court. [*Morissette v. U.S.*] Usually, the jury will be told that direct proof of willful or wrongful intent or knowledge is not necessary; that it is not possible to look into a man's mind to see what went on; that intent can only be determined from all the facts and circumstances; that intent and knowledge may be inferred from various acts. [*U.S. v. Swidler*] The instruction may include the comment that the jury may consider the taxpayer's refusal to produce books and records for inspection by the Internal Revenue Service. [*Louis C. Smith v. U.S.; Beard v. U.S.; Olson v. U.S.*] However, it has been held improper for a judge to instruct the jury that it may consider attempts to impede in determining intent, where a corporate officer-taxpayer has resisted, on purely technical rather than self-incrimination grounds, the legality of a summons served on his/her corporation. Unsuccessful resistance does not create any different connotation than successful resistance. [*U.S. v. Grant Foster*]

(6) It is error to instruct the jury that every citizen is presumed to know the law, and that ignorance of the law is no excuse or justification for its violation. Guilty knowledge of the consequences of the act done is the essence of the offense, and evidence which may support or detract from such guilty knowledge is admissible. [*Haigler v. U.S.*]

41(11).3 *(1-18-80)* 9781
Defenses Bearing upon Willfulness

41(11).31 *(1-18-80)* 9781
Defenses of Willfulness

(1) *Advice of counsel* [*U.S. v. Phillips*], *accountant* [*Samish v. U.S.*], or *Government agent* [*Benetti v. U.S.*], if relied upon by the defendant, may be a valid defense to a willful violation. However, if it can be shown that the defendant did not act in good faith upon such advice by not following it [*Barrow v. U.S.*], or that he/she did not fully inform the advisor of all the facts [*U.S. v. McCormick; Clark v. U.S.*], or that he/she sought advice from one not qualified to give it [*Pottash Bros. v. Comm.*], or from one who he/she had reason to believe was not qualified, the defense is vitiated. An attempt by the defendant to shift responsibility for a fraudulent return to the person who made out the return or kept the books can be met with proof, direct or circumstantial, that the defendant knew or should have known the return was false. [*Lurding v. U.S.*] Such proof may take the form of testimony by bookkeepers or other office help about the defendant's knowledge of the book entries or lack of entries.

(2) *Disclosures, amended returns, and payments of tax* after the filing of fraudulent returns may have probative value in establishing the state of mind at the time of the alleged criminal acts. [*Heindel v. U.S.*] Most courts have regarded the prompt filing of amended returns and payment of delinquent tax as admissible evidence to show lack of willfulness. [*Heindel v. U.S.; Berkovitz v. U.S.; U.S. v. Stoehr*] However, evidence that such disclosure and delinquent payment was prompted by a fraud investigation could serve as an incriminating admission of the defendant's culpability. [*Emmich v. U.S.*] Accordingly, intensive investigation of the circumstances attending the preparation and filing of amended returns in such instances is imperative.

(3) *Cooperation* of the taxpayer at the start of the investigation is sometimes claimed to be indicative of innocence. The contention is that he/she willfully defrauded the revenue he/she would continue to conceal the truth from the investigators. This defense is rarely persuasive if the facts and circumstances attending the commission of the alleged offense create an inference of willfulness. [*U.S. v. Swidler*] Subsequent cooperation during the investigation may only serve to mitigate the penalty.

(4) *Lack of education and business experience* are used as defenses to criminal intent. Ignorance of internal revenue requirements and unfamiliarity with business practices may be urged as the reasons for alleged violations. Taxpayers faced with conclusive evidence of substantial amounts of unreported income will frequently claim that it resulted from mistake caused by their *lowly* educational background or inexperience in financial affairs. For example, a successful shoe manufacturer may claim that he/she is an expert shoe fabricator but that he/she can hardly read or write, while a prominent physician may contend that he/she was never good at figures and was too busy caring for the ill to keep accurate records of his/her earnings. These defenses may be argued to the jury, but their effect would depend, as in the case of cooperation, upon all the facts and circumstances surrounding the commission of the offense. [*Fischer v. U.S.; U.S. v. Glascott*]

(5) *Poor health, good character, and integrity* are also resorted to as exculpatory factors. Whether the mental and physical condition of the defendant at the time of the alleged offense was such as to deprive him/her of his/her sense of reason is one more fact to be determined by the jury. The defense is made that willfulness cannot be present when the defendant did not know what he/she was doing or was so incapacitated as to be unable to attend to his/her financial affairs properly. [*Collins v. Comm.; U.S. v. Glascott*] Closely connected with this defense is the claim that the defendant was a person of good character and integrity and could not reasonably have intended to defraud the United States. The courts have held that the jury may consider good reputation in itself sufficient to raise a reasonable doubt of the defendant's guilt. [*U.S. v. Wicoff*]

(6) The defendant may utilize any other defense which might have a bearing on willfulness. The validity of the contention is determined by the jury. All defenses are usually rebutted with evidence of specific acts which create an inference of intentional violation.

41(11).32 *(1-18-80)* 9781
Entrapment

(1) Entrapment may be used as a defense against the allegation of willfulness, if a Government agent induces a person to commit a crime he/she would not otherwise have committed. To constitute entrapment it must be shown that the agent originated and implanted the intent in the mind of the violator. If the agent merely offers the opportunity for a person to commit a crime the person already intended, or if a per-

son already engaged in the violation is simply awaiting an opportunity to continue with it, which the agent furnishes, there is no entrapment. [*Sorrels v. U.S.; Sherman v. U.S.; Gorin v. U.S.*]

(2) Government undercover agents or informants may present themselves to violators in disguise, as long as the disguise does not motivate an otherwise innocent person to commit a crime. It is not entrapment to use an informant or decoy to obtain evidence of the commission of a crime, even though the informant participates in the violation, so long as the crime is not instigated by the Government agent. [*U.S. v. Roett; Papadakis v. U.S.*] However, a contingent fee arrangement for an informant to produce evidence against a particular person, of a crime not yet committed, is improper unless the agent has prior certain knowledge that the person is already engaged in illegal activity, and specifically instructs the informant not to induce commission of the offense, but merely to offer opportunity to continue with it. [*Williamson v. U.S.*]

(3) If a person offers a Government agent a bribe, which the agent has not solicited, it is not improper to set a trap to apprehend the bribe offeror. [*Lopez v. U.S.; U.S. v. Kabot; Todisco v. U.S.*]

(4) When a principal unjustifiably claims entrapment, evidence should be obtained of his/her past record, including his/her reputation for committing similar acts, to combat his/her claim.

(5) A defense of entrapment is rarely raised where the alleged violation consists of filing a fraudulent return, since the violation would usually occur before an investigation has been initiated.

41(11).33 *(1-18-80)* 9781
Embezzled Funds and Other Illegally Obtained Income

(1) In the past some taxpayers have successfully met allegations of understated income with the defense that it was not income because it constituted embezzled funds. The theory for nontaxability of such funds was: absence of a claim of right to the alleged gain; and a definite unconditional obligation to repay. [*Wilcox v. Commissioner*] This theory was under constant attack almost from the time that the landmark Wilcox case was decided. Courts weakened the theory by including as taxable income, money acquired by swindling or through fraudulent representations [*Rollinger v. U.S.*], extortion [*Rutkin v. U.S.*], kickbacks [*U.S. v. Wyss; Berra v. U.S.*] or larceny. [*U.S. v. Iozia*] In holding the proceeds of extortion taxable, the Supreme Court said, "An unlawful gain, as well as a lawful one, constitutes taxable income when its recipient has such control over it that, as a practical matter, he derives readily realizable economic value from it." [*Rutkin v. U.S.*] Lower courts confronted with embezzlement-like situations went to great lengths to distinguish their facts from Wilcox, using the reasoning plainly stated in Rutkin: "We limit that case (Wilcox) to its facts."

(2) Finally, confronted squarely in an income tax evasion case with taxability of embezzled funds, the Supreme Court on May 15, 1961, on the authority of Rutkin, reversed Wilcox, using this language: "We believe that Wilcox was wrongly decided. . . . Thus, we believe that we should now correct the error and the confusion resulting from it, certainly if we do so in a manner that will not prejudice those who might have relied on it." [*James v. U.S.*]

(3) Although reversing Wilcox and making embezzled funds taxable, the James opinion reversed the defendant's conviction, on the theory that willfulness could not be proved because he might have relied on Wilcox in failing to include embezzled funds in gross income. The same theory has since been followed in a Court of Appeals case. [*Beck v. U.S.*]

420 *(1-18-80)* 9781
Methods of Proving Income

421 *(1-18-80)* 9781
Introduction

(1) In order to establish a criminal offense under IRC 7201, the special agent must develop evidence to prove a substantial amount of additional tax due and willful attempt to evade it. To prove the first element of the offense, it is necessary to establish that the correct taxable income is in excess of that reported.

(2) Taxable income may be established by the direct or indirect approach. The former consists of the specific item method which involves proof of transactions (sales, expenses, etc.) affecting taxable income. The latter approach relies upon circumstantial proof of income by use of such methods as net worth, expenditures, and bank deposits. Usually, taxable income can be established with less difficulty by the direct approach and for this reason it should be used whenever possible.

(3) Taxpayers, almost without exception, report their income by the specific item or specific transaction method; that is, the computations which are reflected in their income tax returns are based upon the sum total of the transactions they engaged in during the taxable period. Most taxpayers maintain books and records in which these various transactions are recorded as they occur. In a specific transactions case, the Government endeavors to prove that the transactions in which the taxpayer engaged during the year were not completely or accurately reflected in his/her income tax return, with the result that his/her income tax liability was understated, and that such result was willful.

(4) In numerous cases the courts have approved the use of the following indirect methods of determining income: net worth [*Holland v. U.S.*]; expenditures [*U.S. v. William R. Johnson*]; and bank deposits. [*Gleckman v. U.S.*] Although these methods are considered circumstantial proof of taxable income, the courts have approved them for use in determining taxable income for criminal prosecution on the theory that proof of unexpended funds or property in the hands of a taxpayer may establish a prima facie understatement of income requiring a taxpayer to overcome the logical inference drawn from the provable facts. In one income tax case [*Jelaza v. U.S.*], the Government employed all three methods—net worth, expenditures, and bank deposits—to show corrected income. With respect to the establishment of a prima facie case by such evidence, the Court stated:

> "In these (and other similar) cases, the Courts have been careful to point out that findings of fraud have been sustained if, but only if, the taxpayer has offered no explanation, or no adequate explanation, of the discrepancies between (on the one hand) expenditures and/or bank deposits and/or increases in net worth and (on the other hand) the amount of income reported by the taxpayer."

(5) Another indirect method of proof is percentage mark-up. (Intell. Digest, Oct.–Nov.–Dec. 1975, p. 9) This method is sometimes used to corroborate other methods used in criminal cases and has been used as the method of proof in civil cases.

422 *(1-18-80)* 9781

Distinguishing Between Accounting Systems, Accounting Methods, and Methods of Proving Income

(1) For many years there has been much confusion regarding the synonymous use of the terms "accounting system," "accounting methods," and "methods of proving or determining income." It is not unusual to hear reference made to the net worth and expenditures method as a method of accounting when in fact it is a method of proving income by circumstantial or indirect evidence. [*Holland v. U.S.*]

(2) There are two *basic* accounting *systems*, the *single* entry and the *double* entry system, but there are *various methods of accounting*, such as cash, accrual, hybrid, installment, and long-term or completed contract methods. The usual *methods of determining or proving income* are specific item, net worth, expenditures, bank deposits, and percentage methods.

(3) Taxable income must be computed, for purposes of criminal prosecution, under the accounting method by which the taxpayer regularly computes his income. The reason for this is given in Morrison v. U.S.:

> "In this criminal proceeding it was necessary to establish not only that the tax liabilities here were understated, but that the understatement was attributable, at least in part, to the fact that the taxpayer's returns were not honestly prepared. Proof of the latter fact could only be accomplished by adopting and consistently applying the taxpayer's own method of accounting."

(4) If no method of accounting has been regularly employed or if the method employed does not clearly reflect income, the computation shall be made in accordance with such method as, in the opinion of the Commissioner, does clearly reflect income. [26 USC 446]

423 *(12-7-81)* 9781

Specific Item Method of Proving Income

423.1 *(12-7-81)* 9781

General

(1) In a specific item case, the Government tries to prove that the specific transactions in which the taxpayer engaged during the year were not completely or accurately reflected in his/her income tax return, with the result that his/her income tax liability was understated, and that such understatement was willfully made. This method offers the most direct method of proving unreported income. It is easier

than other methods to present in court and is readily understood by jurors.

(2) Omitted income, fictitious deductions, false exemptions, or false tax credits in their broadest concept are the means whereby taxes may be evaded.

(3) Omitted income results from failure to report any of the numerous items of taxable income expressed and implied in the Internal Revenue Code. In the examination of merchant taxpayers the item of omitted income most frequently encountered is sales revenue and, in the case of individuals, omitted income is usually in the form of salaries, dividends, commissions, gains from the sale of property, and/or fees.

(4) Often a deduction which is considered fraudulent takes the guise of a fictitious purchase of merchandise or a fictitious expense. However, it could be any fictitious deduction or exemption fraudulently claimed as allowable under the authority of the Internal Revenue Code.

423.2 *(12-7-81)* 9781
Unreported Income from Certificates of Deposit

(1) There are two types of certificates of deposit. First, a standard certificate of deposit that pays interest at intervals throughout the term of the note, often quarterly. The interest may be withdrawn without penalty although the underlying principal may not be withdrawn without incurring a substantial penalty. Financial institutions will issue Forms 1099 INT to the depositor reflecting the interest earned. The second type is known as an original issue discount certificate in which the interest is payable only at the note's maturity. Pursuant to I.R.C. Section 1232(a)(3), the Service requires holders of this type of certificate of deposit to report the interest earned on the note pro rata throughout its term.

(2) The position of the Criminal Tax Division is that the Criminal Investigation Division should not recommend prosecution of criminal cases based upon failure to report interest from original issue discount certificates before the certificates of deposit mature, unless unusual circumstances warrant prosecution. In these cases, a willfulness problem usually arises from the taxpayer's lack of actual possession, use, and enjoyment of the interest during the holding period. No similar problems should be present in cases involving the standard certificates of deposit when the interest is made available to the taxpayer.

(3) In order to properly identify the type of certificates of deposit, the final report must exhibit copies of the 1099's and copies of the underlying contracts of the certificates. In addition, the report should discuss exhaustively the issue of willfulness. For example, the investigation should determine whether the principal and interest on a matured certificate was rolled-over into a new certificate of deposit, whether premature withdrawal of the principal is subject to penalties, and whether or not there was a premature redemption.

424 *(1-18-80)* 9781
Net Worth Method of Proving Income

424.1 *(1-18-80)* 9781
Introduction

Next to the specific item method, the net worth method is probably the most frequently used way of proving taxable income in civil and criminal income tax cases. There is nothing complex in the theory of the method. It involves a determination of the taxpayer's net worth (assets less liabilities) at the beginning and end of a taxable year, computing the increase or decrease in net worth, and then adjusting this amount for nondeductible and nontaxable items. The amount resulting from application of this theory is taxable income. By comparing it with income reported, the special agent may determine whether taxable income has been correctly reported.

424.2 *(1-18-80)* 9781
Authority for Net Worth Method

There is no statutory provision defining the net worth method and specifically authorizing its use by the Commissioner. However, in numerous cases courts have approved the use of this method. Perhaps the leading case in this respect is Holland v. United States handed down in 1954 by the Supreme Court along with three companion cases, [*Smith v. U.S.; Friedberg v. U.S.; U.S. v. Calderon*] wherein is outlined the broad principles governing the trial and review of cases based on the net worth method of proving income. With reference to the use of the net worth technique, the court stated that:

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"To protect the revenue from those who do not 'render true accounts,' the Government must be free to use all legal evidence available to it in determining whether the story told by the taxpayer's books accurately reflect his financial history."

424.3 *(1-18-80)* 9781

When and How Net Worth Method Used

(1) The net worth method is most often used when one or more of the following conditions prevail:

(a) Taxpayer maintains no books and records.

(b) Taxpayer's books and records are not available.

(c) Taxpayer's books and records are inadequate.

(d) Taxpayer withholds books and records.

(2) The fact that the taxpayer's books and records accurately reflect the figures on his return does not prevent the use of the net worth theory of proof. The Government can look beyond the "self serving declarations" in the taxpayer's books and records and use any evidence available to contravene their accuracy. [*Holland v. U.S.*]

(3) In addition to being used as a primary method of proving taxable income in civil and criminal income tax cases, the net worth method can be used:

(a) To corroborate other methods of proving income.

(b) To test-check accuracy of reported taxable income.

424.4 *(1-18-80)* 9781

Establishing the Starting Point

(1) In the Holland case the Supreme Court said that an essential condition in a net worth determination of income is the establishment, "with reasonable certainty," of an opening net worth, to serve as a starting point from which to calculate future increases in the taxpayer's net worth. The wisdom of this statement is apparent since an inaccurate beginning net worth will affect the accuracy of the determination of income subsequent to the base point. For instance, if a taxpayer's beginning net worth is understated, taxable income for the period under consideration will be overstated.

(2) Proof of visible assets and liabilities comprising beginning net worth is usually easily established by such means as bank records; county real estate records; brokerage records; Bureau of Public Debt records; Federal and state income, inheritance, and gift tax returns and records; and books and records of the taxpayer. To establish a firm starting point, it is necessary to show that the defendant had no large sum of cash for which credit was not given. This is usually done by offering evidence which negates the existence of a cash hoard, for example:

(a) Written or oral admissions of the taxpayer to the investigating officers concerning net worth. [*U.S. v. Calderon*] Examples are: signed net worth statement, oral statement as to cash on hand.

(b) Failure by defendant to file returns for years prior to indictment period. [*Smith v. U.S.*]

(c) Returns filed by the taxpayer for years prior to prosecution years reflecting income reported that is inconsistent with existence of a cash hoard. [*Smith v. U.S.*] This would also apply to copies retained by the taxpayer. The taxpayer's filing record and copies of available income tax returns should be furnished for at least five (5) preceding and all years subsequent to the starting point to furnish additional support to the starting point. (See IRM 9327.1(4)) and text 424.4:(2)(h)

(d) Low earnings for years prior to prosecution years as shown by records of the Social Security Administration and former employers.

(e) Net worth as established by books and records of the taxpayer. [*U.S. v. Chapman*]

(f) Certificate of Assessments and Payments showing tax assessed for years prior to the prosecution period. [*Vloutis v. U.S.*] With this information and tables showing tax rates and the amount allowed for exemptions and dependents, it *may* be possible to calculate income reported by a taxpayer for the years in question. The certificate will not show amount of withholding, capital gains or nontaxable income.

(g) Financial statement presented for credit or other purposes at a time prior to or during prosecution period. [*Friedberg v. U.S.*] Banks, loan companies, bonding companies, and the Internal Revenue Service (offers in compromise) are some of the better sources from which to obtain this type of document.

(h) Bankruptcy prior to prosecution periods. [*U.S. v. Vassallo*] Special Agents may use the public record of a bankruptcy as a starting point for net worth purposes. However, Section 7(a)(10) of the Bankruptcy Act 11, USCA 525(a)(10) as amended by title 11 of the Organized Crime Control Act of 1970, P.L. 91-452, provides that no testimony or evidence which is directly or indirectly derived from testimony given by a bankrupt during bankruptcy proceedings may be offered in evidence against him in any criminal proceedings.

(i) Prior indebtedness, compromise of overdue debts, avoidance of bankruptcy. [*Holland v. U.S.*]

(j) Installment buying. [*Barcott v. U.S.*]

(k) History of prior low earnings and expenditures, and checks returned for insufficient funds. [*McFee v. U.S.*]

(l) Loss of furniture and business because of financial reasons. [*Holland v. U.S.*]

424.5 (1-18-80) 9781
Taxable Source of Income

(1) In order for income to be taxable, it must come from a taxable source. [*Commissioner v. Glenshaw Glass Co.*] In the Holland case, the Supreme Court said: "Increase in net worth, standing alone, can not be assumed to be attributable to currently taxable income. But proof of a likely source, from which the jury could reasonably find that the net worth increases sprang, is sufficient. . . ."

(2) On the basis of the Holland decision, it appeared to many that proof of a likely source was necessary in every net worth case. This was clarified by U.S. v. Massei in which the Supreme Court said: "In Holland we held that proof of a likely source was 'sufficient' to convict in a net worth case where the Government did not negative all the possible non-taxable sources of the alleged net worth increases. This was not intended to imply that proof of a likely source was necessary in every case. On the contrary, should all possible sources of nontaxable income be negatived, there would be no necessity for proof of a likely source."

(3) In view of the two decisions cited above, it appears that the Government must either prove a likely source of taxable income, or negate all nontaxable sources of income. In cases where the Government resorts to the latter type of proof, it is even more important than otherwise to establish a firm starting point, particularly with reference to cash on hand.

(4) Proof of a likely taxable source of income has been found sufficient in a number of criminal income tax cases by:

(a) Showing that defendant did not report certain income on his tax returns. [*U.S.* v. *Chapman*]

(b) Showing that defendant did not report certain income for years prior to indictment period. [*U.S.* v. *Skidmore*]

(c) Comparison of business operations and profits of defendant for indictment years with profits or prior operations for a comparable period. In the Holland case the Supreme Court pointed out that the business of the defendant, a hotel, apparently increased during the years in question, whereas the reported profits fell to approximately one quarter of the amount declared by the previous management in a comparable period.

(d) Effectively contradicting defendant's assertions as to nontaxable sources. In *United States* v. *Adonis*, the salaried defendant had asserted in a prior unrelated judicial proceeding that the $44,000 he used to purchase a house had come from loans and gifts. The Government proved that the alleged donor was supported by her family that the supposed creditors were dummies or of such financial condition as to imply that they had no available assets to loan. The court considered the conduct of the defendant "an effort to conceal . . . the real sources of taxable gain."

(e) Opportunities of defendant to receive graft. In *United States* v. *Bryan Ford,* the taxpayer was a policeman and a member of the vice squad. The Court held that evidence admitted to show opportunity to receive graft, not the actual receipt of graft, was sufficient to show a possible source of income. (The Supreme Court remanded the case to the District Court to vacate judgment and dismiss the indictment on account of the death of the taxpayer.) However, in *Fred M. Ford* v. *United States,* the court said: "The evidence sufficiently disclosed that in the defendant's office of Chief of Police, he had opportunities of receiving income from graft, payoffs or other illegal sources. There can, of course, be no presumption that the defendant was guilty of such gross misconduct as to be the recipient of such ill gotten gains. The presumption is to the contrary . . . the testimony of this woman as to payoffs with which the defendant was not shown to be connected was both erroneous and highly prejudicial." Upon retrial, a conviction was sustained after the same witness testified that the defendant had acknowledged the receipt of graft payments.

(f) The character of the business has the capacity to produce income in amounts determined by the net worth method. [*Costello v. U.S.*]

(5) A likely source is established in net worth cases by showing that the source reported by the taxpayer had the potential to produce income substantially in excess of that reported.

(6) Negating nontaxable sources of income may be accomplished by proving nonreceipt of loans, gifts, and inheritances by taxpayer's admissions, Federal gift tax returns filed by alleged donor, or probate records of deceased relatives' estates. If the taxpayer advances a specific explanation of the sources of funds expended, the Government does not have to pursue possible nontaxable sources when the one given is proven false. [*Feichtmeir* v. *U.S.*]

424.6 *(1-18-80)* 9781
Corroboration of Extra-Judicial Admissions

(1) During the course of many income tax investigations involving the net worth method of proof, the taxpayer will make admissions which the Government will use in evidence against him/her during trial of the case. Admissions may relate to all facets of a case, although in many instances they pertain to the starting point, items of living expenses, source of income, and willfulness.

(2) Admissions after the commission of the crime must be corroborated, if they embrace an element vital to the Government case. [*Daniel Smith v. U.S.*]

(3) The degree and types of corroboration, along with other aspects of the subject of admissions, are discussed in 345.

424.7 *(1-18-80)* 9781
Investigation of Leads

When a taxpayer offers leads or information during a net worth investigation which, if true, would establish his/her innocence, the special agent must investigate the leads if they are reasonably susceptible of being checked. [*Holland v. U.S.*] This also applies if a taxpayer offers leads or information after completion of an investigation, but within a sufficient time before trial. [*U.S. v. Vardine*] If the Government fails during the trial of the case to show an investigation into the validity of the data furnished, the trial judge may consider the information as true and the Government's case insufficient to go to the jury. Most leads refer to cash hoards, gifts, inheritances, and loans. These are well known to the special agent and should be checked during normal routine of the investigation. The courts have held that the Government does not have to investigate leads which are not within the category of reasonable verification. [*Mighell v. U.S.; Louis Smith v. U.S.; U.S. v. Bryan Ford*] This is a question of judgment and in the final analysis, is always a matter for the court to determine.

424.8 *(1-18-80)* 9781
Summaries Prepared by Government Agents

(1) During a trial of an income tax case involving use of the net worth method of proving taxable income there may be admitted in evidence certain exhibits variously referred to as schedules or summaries. Strictly speaking these exhibits are not evidence, but are admitted as summaries of other evidence in the case only for the assistance and convenience of the jury in considering the evidence which they purport to summarize. The admissibility and use of summaries are discussed in 353.

(2) The summary which the special agent should become most familiar with is the one showing the computation of taxable income, an example of which is set forth in Exhibit 400-1.

(3) During trials the net worth computation also has been shown by other means, such as blackboards and charts.

(4) Perhaps the most difficult phase of preparing a net worth statement or summary for use in a criminal case is in making adjustments to the net worth increases and decreases for the nondeductible and nontaxable items. The most frequently encountered adjustments involving individual taxpayers and the way of handling them are as follows:

(a) Add to net worth increases or decreases:

1 Personal living expenses. (See 424.8:(6)(b).)

2 Federal income tax payments.

3 Nondeductible portion of capital loss.

4 Losses on sale of personal assets.

5 Gifts made.

6 Life insurance premiums.

(b) Deduct from net worth increases or decreases:

1 50% of the excess of net long-term capital gain over net short-term capital loss. [If a capital loss carryover is involved, the amount allowed in determining capital gain or loss must be deducted in the net worth computation.]

2 Gifts received.

3 Inheritances.

4 Nontaxable pensions.

5 Veteran's benefits.

6 Dividend exclusions.

7 Tax exempt interest.

8 Proceeds from life insurance.

9 Errors in taxpayer's records (in his favor). [This adjustment relates to honest mathematical and bookkeeping errors found in books and records of the taxpayer which tend to account for part of understated income.]

10 Gains on sale of personal residence (assuming funds are to be invested within the statutory period).

11 Net operating loss carryback and carry-forward. In criminal income tax cases there is judicial authority to ignore net operating loss carrybacks. (See 413.2:(1) and (2).)

12 *Allowed* capital loss carry-over (Item 1).

13 50 percent of net long-term capital gain when there is both a net long-term capital gain and a net short-term capital gain (Item 1).

14 Income tax refunds.

(c) No adjustment is necessary to net worth increase or decrease for:

1 Net short-term capital gain (Item 1).

2 Deductible portion of net short-term capital loss (Item 1).

3 Deductible portion of net short-term capital loss.

4 Excess of net short-term capital gain over net long-term capital loss (Item 1).

(5) The net worth statement may reflect taxable income by whichever method of account-

ing (cash, accrual, etc.) is appropriate. Reflecting a certain accounting method in the net worth computation is accomplished by including certain accounts in the net worth statement and omitting others. For instance, where it is desired to compute income of a physician on the cash basis, patient accounts receivable and business accounts payable at the beginning and end of each year would be omitted. If the accrual method were used, these accounts would be included in the net worth computation.

(6) In preparing a net worth statement or summary for use in a criminal case, the special agent should see that:

(a) It follows the taxpayer's method of accounting. In Scanlon v. United States, the defendant, who reported his income on the cash basis, contended that the Government's proof of net worth did not include the liabilities of his enterprise. The appeals court held that it was proper to exclude accounts payable (and accounts receivable) since to include them would not accurately reflect defendant's income.

(b) The cost of assets and actual amounts of liabilities are used. The value (such as market, reproduction, and the like) of these two items is not considered. Normally, unless the taxpayer agrees to the estimated amount, estimated nondeductible expenditures are eliminated from the net worth computation, although in some cases it has appeared proper to include some minimum estimated living expense figures.

(c) Good accounting principles are followed. For example, bank balances should be adjusted (reconciled) for outstanding checks and cash (deposits) in transit.

(d) Technical adjustments that increase income have been eliminated (for example, unintentional errors or omissions relating to capitalized expenses, depreciation, revaluation of the basis of property, and changing inventory basis; or doubtful items such as unidentifiable commingled funds).

424.9 (1-18-80) 9781
Common Defenses in Net Worth Cases

(1) *Lack of Willfulness*—Defense counsel usually contends that there is no evidence of willfulness. This contention may be overcome by evidence outlined in 41(11).

(2) *Cash on hand.*

(a) To support this allegation, the taxpayer usually alleges that he/she had a large amount of cash on hand which the Government has not considered in the beginning net worth. The taxpayer also may allege that cash balances are wrong for years subsequent to the base year. In all cases where the net worth method is the primary method of proving income, the special agent should anticipate this defense and attempt to get evidence to negate it. *Admissions of the taxpayer are most effective to pin down the cash amount, and should be obtained at the initial interview or early in the investigation.* The line of questioning should be directed toward developing:

1 The amount of cash on hand (undeposited currency and coin) at the starting point and at the end of each prosecution year.

2 The amount of cash on hand at the date of the interview. (This data is sometimes useful in computing cash on hand for earlier years.)

3 The source of cash referred to in 1 and 2 above.

4 Where the cash was kept.

5 Who knew about the cash.

6 Whether anyone ever counted it.

7 When and on what was any cash spent.

8 Whether any record is available with respect to the alleged cash on hand.

9 The denominations of the cash on hand.

(b) In most cases the spouse should also be questioned about cash on hand as well as other matters. In order to avoid any misunderstanding by the taxpayer, it is suggested that the meaning of cash on hand be explained prior to discussing the matter. The taxpayer (and spouse) also should be questioned regarding financial history from the time he/she was first gainfully employed—employers, salary, etc. This information will serve in many cases to check the accuracy of the taxpayer's statements about cash on hand.

(c) In addition to admissions, evidence used to establish the starting point will most often be sufficient to refute the defense of cash on hand.

(3) *Failure to Adjust for Nontaxable Income*—The usual sources of nontaxable income claimed by the taxpayer are gifts, loans, and inheritances. Negating evidence of the type described in 424.5 will most often be sufficient to overcome these claims.

(4) *Inventories Overstated*—In some net worth cases the Government has relied upon inventory figures shown by the taxpayer's returns as prima facie evidence to establish the values of this asset in the net worth computation. In some of those cases it was alleged that the taxpayer, either through ignorance or for other reasons reported inventory at retail value instead of at cost or some other value. (In a net worth computation where the inventory used exceeds cost and is larger at the end of the prosecution period than the beginning, income will be overstated.) To resolve this, the investigating officers should try to corroborate the inventory figures shown on the taxpayer's returns by admissions of the taxpayer, statements of employees who took the inventory, copies of inventory records, etc.

(5) *Holding Funds or Other Assets as Nominee*—In certain cases the taxpayer has falsely claimed that he/she was holding, as nominee of some individual, funds or other assets which the Government had included in the net worth computation of income. Interviewing the taxpayer about this matter in the early stages of the investigation is one suggested solution.

(6) *Net Operating Loss Carry-forward*—This defense is usually predicated on a net worth computation of taxable income made by the taxpayer's accountant for years prior to the starting point which will show an operating loss. Defense strategy is to carry the loss forward to the prosecution years and reduce the alleged tax deficiency as much as possible. The key to resolving this is to make a net worth determination of income for several years prior to the prosecution period and then on the basis of this computation either:

(a) Allow the carry-forward loss or

(b) Show the incorrectness of the accountants' determination.

(7) *False Loans*—The objective of this defense is to reduce taxable income by claiming nonexistent loans, usually from friends or relatives of the taxpayer. Often this defense may be overcome by showing that the alleged lender was financially unable to lend the amount claimed. *The matter of loans should always be covered during the initial interview with the taxpayer.*

(8) *Jointly Held Assets of the Taxpayer and Spouse*—In some cases the taxpayer and spouse may report income on separate returns, but assets they acquired are held in joint title. If the jointly held assets are included in the net worth computation, the claim may be made that they were acquired with income of the spouse. Usually this defense can be overcome by tracing the invested funds to the taxpayer and by showing the disposition of the spouse's income. Cases may be encountered where funds of the taxpayer and spouse are so intermingled that it is not possible to trace the invested or applied funds to either party. In such cases the net worth computation may be made by including assets, liabilities, and other pertinent items of both and deducting the taxable income of the spouse to arrive at the taxable income of the one to be charged.

425 (1-18-80) 9781
Expenditures Method of Proving Income

425.1 (1-18-80) 9781
Introduction

(1) The expenditures method is, in theory, closely related to, if not identical with, the net worth method of proving income. The method is based on the theory that if the taxpayer's expenditures during a given year exceed reported income, and the source of such expenditures is unexplained, it may be inferred that such expenditures represent unreported income. One court noted the similarity of the net worth and the expenditures methods by the following statement:

> "... The two computations are merely accounting variations of the same basic method, the expenditure theory being an outgrowth of the net worth method. ..." [*McFee v. U.S.*]

(2) The similarity is further indicated by the fact that the same items or accounts used in determining taxable income by the net worth method are also considered when the expenditures method is employed.

425.2 (1-18-80) 9781
Authority for Using Expenditures Method

Like the net worth method, there is no statutory provision expressly authorizing use of the expenditures method by the Commissioner. There are, however, many cases in which the courts have approved the use of this method. [*U.S. v. Wm. R. Johnson* is the leading expenditures method case.]

425.3 *(1-18-80)* 9781
When and How Expenditures Method Used

(1) The statements made in discussing the net worth method with regard to when and how that method is used are equally applicable to the expenditures method. In cases where the taxpayer has several assets (and liabilities) whose cost bases remain the same throughout the prosecution period, the expenditures method may be preferred over the net worth method because a more brief presentation can be made of the computation of taxable income. This is true because assets and liabilities which do not change during the prosecution period may be omitted from the expenditures statement. The expenditures method probably is used most often in cases where the taxpayer spends income on lavish living and has little, if any, net worth.

(2) In an expenditures case it is always desirable and usually necessary to prepare a complete net worth statement which may be required to rebut a defense that the funds used came from the conversion of some asset not considered in the expenditures computation. With rare exceptions, the Department of Justice prefers the net worth method. Therefore in submitting an expenditures case the special agent should consider the desirability of also including in the report proof of taxable income by the net worth method. If both methods are shown, the trial attorney can make the final decision as to which will be the best method to present the case.

425.4 *(1-18-80)* 9781
Establishing the Starting Point

In employing either the expenditures method or the net worth method, the Government must determine with reasonable certainty the taxpayer's beginning net worth. [*McFee v. U.S.*] The approach to this matter is the same irrespective of which method is used. For additional information see 424.4, which relates to establishing the starting point in net worth cases.

425.5 *(1-18-80)* 9781
Taxable Source of Income—Corroboration of Extra-Judicial Admissions—Investigation of Leads

Text 424.5, 424.6, and 424.7 relating to net worth are applicable to these three topics.

425.6 *(1-18-80)* 9781
Expenditures Summaries Prepared by Government Agents

(1) Exhibit 400-2 is an expenditures statement which may be used to summarize the evidence relating to the computation of taxable income.

(2) An approach which has been found helpful in the preparation of an expenditures statement is as follows:

(a) First, prepare a net worth statement.

(b) Next, determine the amount of increase or decrease in each asset and liability appearing on the net worth statement in each taxable year. For instance, if the beginning and ending bank balances for a taxable year were $4,500 and $150, respectively, it would be determined that this asset has decreased by $4,350. The amounts so determined and the amounts appearing as adjustments to net worth increases or decreases are then posted to the expenditures statement.

(3) For guidance in posting to the appropriate section of the aforementioned statement, the following information is offered:

(a) Money spent or applied on nondeductible items:

1 Increase in assets.

2 Decrease in liabilities.

3 Nondeductible items (living expenses, income tax payments, and the like).

(b) Nontaxable sources:

1 Decrease in assets.

2 Increase in liabilities.

3 Nontaxable items (gifts, inheritances, and the like received by taxpayer).

425.7 *(1-18-80)* 9781
Defenses in Expenditures Method Cases

Defenses discussed in 424.9 regarding the net worth method of determining income are equally applicable to the expenditures method.

426 (1-18-80) 9781
Bank Deposits Method of Proving Income

426.1 (1-18-80) 9781
Formula For Bank Deposits Method

426.11 (1-18-80) 9781
Introduction

The bank deposits method is another means of proving income by indirect or circumstantial evidence. By this method, taxable income is proved through analysis of deposits in all bank accounts; canceled checks; and currency transactions of the taxpayer. Very often it will be found that the taxpayer has made cash payments from currency receipts not deposited. Such cash receipts or cash expenditures must be taken into account in computing additional gross income. If the taxpayer reported income on the accrual basis, adjustments should be made in the bank deposits method to reflect accrued income and expenses. The usual formula for determining taxable income by the bank deposits method of a taxpayer, whose only source of income is from a business operation, is as follows:

Line No.	
1. Total deposits	$ _____
2. Add: Payments made in cash	$ _____
3. Subtotal	$ _____
4. Less: Nonincome deposits and items	$ _____
5. Total receipts	$ _____
6. Less: Business expenses and costs	$ _____
7. Net income from business	$ _____
8. Less: Deductions and exemptions	$ _____
9. Taxable Income	$ _____

426.12 (1-18-80) 9781
Total Deposits

(1) Total deposits of a taxpayer (line 1, formula, text 426.11) consist of not only amounts deposited to all bank accounts maintained or controlled by him/her, but also deposits made to accounts in savings and loan companies, investment trusts, brokerage houses, etc. Since some taxpayers have bank accounts in fictitious names or under special titles such as "Special Account No. 1," "Trustee Account," "Trading Account," etc., the special agent should inquire about this during the investigation. If a taxpayer lists checks on a deposit and deducts therefrom an amount to be paid to him/her in cash, only the net amount of the deposit should be used in computing total deposits.

(2) The deposits involved in the Gleckman case, one of the leading bank deposits cases, were for the most part derived from wholly unidentified sources. The usual case is one in which a number of specific omitted sales are traced to the bank accounts, but other deposits remain unidentified. The fact that some suppressed sales are traced to the bank accounts obviously strengthens the Government's case immeasurably and lends credence to the allegation that the unidentified deposits also represent omitted income.

426.13 (1-18-80) 9781
Payments Made in Cash

All provable payments made in cash (line 2, formula, text 426.11), including business expenses, personal expenses, investments, etc., should be added to total bank deposits. Since adjustments will be made in the section below for nonincome deposits and items, it is immaterial whether the cash used was derived from a taxable or nontaxable source.

426.14 (1-18-80) 9781
Nonincome Deposits and Items

Generally all nontaxable income received by a taxpayer will be deducted as a nonincome deposit or item in the bank deposit computation. Examples of nonincome deposits and items are proceeds of loans, redeposits, gifts, and inheritances. (For other examples see Exhibits 400-3 and 400-5.) Failure to eliminate any nonincome deposit or item would result in an overstatement of income and might be damaging to a criminal case.

426.15 (1-18-80) 9781
Business Expenses and Costs

(1) All business expenses and costs which are found to be deductible must be allowed, whether paid by check or in cash (line 6, formula, text 426.11). Where an analysis of the checks or other evidence of the disbursements leaves some doubt about the deductibility of some of the disbursements, it is preferable for the prosecution case to allow all except those items definitely provable as being nondeductible, such as personal expenses, investments, and gifts. Whether or not canceled checks are available for analysis and classification, every effort should be made to arrive at all items constituting allowable expense that might have been

paid from the bank accounts, or from undeposited cash. The allowable depreciation on all known depreciable assets must be deducted as in any other type of case.

(2) Frequently it will be realized that the taxpayer must have paid out funds for expenses obviously incurred, but for which no checks or evidences of specific cash disbursements have been found. In such instances the amount claimed therefore by the taxpayer (or if not claimed, a reasonable amount) should be allowed in line 6 (formula, text 426.11), and a corresponding amount of additional income should be added in line 2.

426.16 (1-18-80) 9781
Deductions and Exemptions

All allowable personal deductions, itemized or standard, and exemptions (line 8, formula, text 426.11) must be deducted from net business income in order to arrive at taxable income.

426.2 (1-18-80) 9781
Use of Bank Deposits Method

Bank deposits have been a factor in the determination of the additional taxable income involved in many criminal tax cases and may be used if no books or records of the taxpayer are available; if the taxpayer invokes constitutional privilege and will not allow an examination of books and records; if the taxpayer's records are not complete and do not adequately reflect his/her correct taxable income; or if the taxpayer uses the bank deposits method in preparing his/her tax return. However, the courts have held that there is no necessity to disprove the accuracy of the taxpayer's books and records as a prerequisite to the use of the bank deposits method. [*Bostwick v. U.S.; Canton v. U.S.*].

426.3 (1-18-80) 9781
Authority For Bank Deposits Method

There is no statutory provision defining the bank deposits method of proving income and specifically authorizing its use by the Commissioner. There are numerous reported criminal cases [*Gleckman v. U.S.; Stinnett v. U.S.; U.S. v. Venuto; Kirsch v. U.S.; Buttermore v. U.S. Oliver v. U.S.; Capone v. U.S.*] in which bank deposits have been a factor in the determination of the additional taxable income involved.

426.4 (1-18-80) 9781
Proof of Taxable Income in Bank Deposits Case

(1) The bank deposits theory assumes that under certain circumstances proof of deposits is substantial evidence of taxable receipts. The circumstances are the existence of a business or calling of a lucrative nature and proof that during the prosecution years the taxpayer made periodic deposits to accounts in his/her own name or accounts over which he/she exercised dominion and control. The Government must establish that the deposits reflect *income* which is *current*. This may be accomplished by showing that the taxpayer was engaged in an income-producing business, that he/she made periodic deposits to his/her bank account, that the deposits have been analyzed to eliminate nonincome items such as loans or gifts, and income items which may be duplications of amounts actually accounted for and reported or, amounts which have been earned in prior years. The analysis may indicate that certain withdrawals from the bank account represent business expenditures. If these were not claimed by the taxpayer as deductions, they will nevertheless be allowed for prosecution purposes.

(2) In *Gleckman v. U.S.*, the Government proved that in each of the indictment years, 1929 and 1930, the taxpayer had gross deposits (minus certain nontaxable items) exceeding $90,000. There was evidence that he was engaged in illegal liquor transactions. There was also testimony that in each of the indictment years the taxpayer had expended substantial amounts of money. The taxpayer claimed that his bank deposit slips were erroneously admitted in evidence because the Government did not prove that they reflected specific amounts of taxable income. Hence, it was argued, it was improper for the Government's expert witnesses to testify that there was additional tax owing, based on consideration of the deposits as income. The Court of Appeals overruled this contention, employing the now classic language:

> ". . . 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. . . .
>
> "The bank deposits and large items of receipts by Mr. Gleckman do not, therefore, stand entirely alone as the sole proof of the existence of a tax due from him, but they are identified with business carried on by him and so, are sufficiently shown to be of a taxable nature."

(3) By way of contrast, occasional or irregular deposits are not necessarily ruled out; they may, if properly analyzed, be considered as income. Also, bank deposits proof alone will suffice to support a conviction, and it is not a mere form of corroboration for other kinds of evidence.

(4) In *Stinnett v. U.S.,* the defendant argued that under the *Gleckman* case the bank deposits theory required not only a showing of periodic bank deposits but some further corroboration (in Gleckman there was a corroborative net worth analysis). The Government, however, contended that the net worth proof in Gleckman did not add to or detract from the bank deposits rule and that proof of periodic bank deposits and of an income producing business alone warranted a finding that the deposits reflected current business receipts. The Stinnett opinion refers to the existence of corroborative evidence in the record (Stinnett's purchase of bonds and cashier's checks in amounts exceeding reported net income for certain years). Although there was corroboration, the court stated that "a gross discrepancy between bank deposits and gross receipts without any adequate explanation by the taxpayer is . . . sufficient in itself to take the case to the jury. . . ." This would appear to indicate that corroboration of bank deposits proof is not a legal requirement in a tax evasion prosecution.

(5) In *U.S. v. Venuto,* there was evidence that the defendant had regularly and currently deposited in four Philadelphia banks the receipts of his slaughterhouse, meat store, and rentals, and that expenses were paid by checks drawn on the accounts. Government agents testified that they had reconstructed the defendant's income by analyzing his bank accounts and disbursements. They determined that the bank deposits constituted business receipts, except for some $18,000 of nonincome items for the period from 1942 through 1945. For each year the nonincome items were deducted from the respective annual deposits. The balance was considered gross business receipts from which the actual purchases (stipulated by defendant) were deducted. The defendant was given full credit for the expense deductions claimed on his returns. The defendant testified that his sole source of income was from the meat businesses and rental of properties and that all receipts from those enterprises went into the bank accounts. A new trial was ordered because the defendant had been deprived at trial of his constitutional right to consult with counsel. The Third Circuit, however, made it clear that it considered the bank deposits evidence legally sufficient:

> "Suffice it to say that this record contains evidence from which a jury could conclude beyond a reasonable doubt that during the prosecution years defendant had businesses of a lucrative nature, that he made periodic deposits in, and withdrawals from, bank accounts, that the difference between such deposits and withdrawals reflected current income, and that there was a substantial understatement in reporting income. Such proof meets the requirement of the so-called bank deposit method of reconstructing a taxpayer's income picture, and would be legally sufficient to support a verdict finding that there was a substantial tax deficiency for each of the prosecution years, which defendant knowingly and willfully attempted to defeat and evade."

426.5 (1-18-80) 9781
Defenses in Bank Deposits Case

(1) The chief defense contentions in bank deposits cases (other than lack of criminal intent) are: that the spasmodic nature or unconventional amounts of the deposits indicate that prior accumulated funds, not current receipts, are involved; that the deposits reflect, in whole or in substantial part, nonincome items, income items attributable to other years, or duplication of current income items already accounted for by the taxpayer.

(2) In *Kirsch v. U.S.,* a conviction based chiefly on bank deposits evidence was reversed because the Government's own testimony showed that the deposits could not be identified as income. The court quoted the *Gleckman* case, "that 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." The assumption of the Government's expert witness that the deposits in this case represented income was:

> ". . . not only without evidentiary support even from permissible inference from proven facts, but was definitely disproved by the Government's own evidence. It is one thing for . . . (the Government's witness) to say in effect, as was done in the Gleckman case, that he had exercised all of the means he reasonably could to determine how much of a bank account was income, had eliminated all that he could determine was not income, and was therefore assuming for the purpose of calculating taxes due that the remainder was income, and quite another and different thing to say in effect, as was done in this case—My evidence shows that all of these deposits were not income, but I do not know how much was not, I have made no effort to find out. So I am assuming that all are income and am casting the burden on the defendant to show, if he can, how much is not, or suffer the consequences. The latter procedure cannot be approved."

(3) In *Buttermore v. U.S.,* the defendant asserted that the Government agents had failed to make reasonable determination concerning the sources of certain unidentified deposits and that a reasonable investigation of the facts would have disclosed that many of the deposits did not constitute taxable income. The defendant relied upon the *Kirsch* decision but the court held that what constitutes a reasonable effort to establish the facts, and what facts and circumstances will constitute a proper foundation for an assumption that deposits represent income, must be left to a considerable extent to the discretion of the trial court.

(4) The proof concerning what cash a taxpayer had on hand at the beginning of the taxable year in question is relevant to the bank deposits method of proof of income. If the deposits or expenditures came from funds accumulated in prior years, obviously they do not represent current income. However, if all the requirements set forth in text 426.4:(1) are met, the lack of proof of the amount of cash on hand would not be fatal to the case.

426.6 *(1-18-80)* 9781
Schedules and Summaries in Bank Deposits Case

(1) The schedules and summaries in Exhibits 400-3 through 400-6 are illustrative of those which may be submitted during trials where the bank deposits method of proving income is used. Exhibit 400-3 shows the computation of taxable income of John and Mary Roe. The computation of this same income by the net worth method was previously shown in Exhibit 400-1. Comparison and study of these two schedules will be beneficial since many times in criminal tax cases taxable income will be evidenced before the court by two methods of proof, one tending to corroborate the other.

(2) Exhibit 400-4 shows a computation which may be used to determine the amount of currency disbursements to be added to total deposits. (See line 2, payments made in cash, 426.11.)

(3) Exhibit 400-5 is a summary analysis of disbursements made by check and by currency. This schedule should be studied together with the net worth statement and the bank deposits schedule.

(4) The analysis of deposits is the vital part of a bank deposits case and too much importance cannot be placed upon its accuracy. Exhibit 400-6 is illustrative of a schedule which may be used to show the results of this analysis.

427 *(1-18-80)* 9781
Other Methods

427.1 *(1-18-80)* 9781
Percentage Method

427.11 *(1-18-80)* 9781
Use of Percentage Method

The percentage method is not a prime method of proof and by itself would be of very little value in criminal cases. However, there have been cases in which taxes and penalties based on this kind of circumstantial evidence have been sustained by the tax court. The percentage method is very useful for test checking; for corroborating the results obtained by some other means of proof such as specific item, net worth, expenditures, and bank deposits; and for evaluating allegations from informants regarding unreported profits or income of others.

427.12 *(1-18-80)* 9781
Application of Percentage Method

(1) This method is a computation whereby determinations are made by the use of percentages or ratios considered typical of the business under investigation. By reference to similar businesses or situations, percentage computations are secured to determine sales, cost of sales, gross profit, or even net profit. Likewise, by the use of some known base and the typical percentage applicable, individual items of income or expense may be determined.

(2) These percentages may be externally derived or they may in some instances be internally derived from the taxpayer's accounts for other periods or from an analysis of subsidiary records; however, many percentages may be secured from the examination of the taxpayer's records even though only part of the records are available. Gross profit percentages may be determined by comparing purchase invoices with sales invoices, price lists, and other similar data. Also other years not covered by the investigation or portions of years under investigation may indicate typical percentages applicable to the entire year or years under current investigation.

427.13 *(1-18-80)* 9781
Limitations on Percentage Method

(1) Although the percentage method may be a useful method of determining or verifying income, especially when the books and records are inadequate, the special agent should make sure that the comparisons are made with situations that are similar to those under investigation. Some of the factors to be considered are as follows:

(a) *Type of merchandise handled*—In order that a proper comparison may be made, the businesses must be dealing in the same type of merchandise or service. Comparison of the gross profit of a restaurant with that of a grocery store would be of little value and should not be used.

(b) *Size of operation*—In many instances gross profit, cost of doing business, and net profit percentage on sales will vary according to the size of a business. This is especially true with respect to expense items and the net profit as compared with sales. The percentage of net profit to sales of a large department store might vary considerably from the small independently owned general store.

(c) *Locality*—Mark-ups and costs of operations will normally vary with the size of the city or the location of the businesses in the locality. As an example, a small business in a community of 5,000 may use newspapers as a means of advertising, whereas a business doing the same volume in a city of 500,000 will normally find the cost prohibitive and confine advertising to some other medium.

(d) *Period covered*—Since gross profit ratios and expense ratios will tend to vary year by year with economic conditions, the comparison should normally be made with similar periods covered by the investigation.

(e) *General merchandising policy*—Comparison should not be made between businesses having different merchandising policies. Some businesses may work on large volume with small mark-up, offering the customer little service; others may operate on the reverse policy. In situations of this kind, comparisons should be made only with those businesses having similar merchandising policies.

427.14 *(1-18-80)* 9781
Examples of Percentage Method

(1) The following examples are illustrative of the percentage method of computation. The percentages used are arbitrary and are not necessarily applicable to the businesses mentioned.

(a) Gross Profit on Sales:

Retail sporting goods store.	
Net sales (determined from books or by other means)	$50,000
Gross profit percentage	28.6%
Gross profit as computed	$14,300

(b) Sales on Cost of Sales:

Bar and tavern:	
Cost of liquor	$20,000
Cost of beer	15,000
Cost of food (determined from books or by other means)	5,000
	40,000
Cost of sales—liquor	331/3%
Cost of sales—beer	662/3%
Cost of sales—food	50%
Sale of liquor	$60,000
Sale of beer	22,500
Sale of food	10,000
Total sales as computed	92,500

(c) Net Profit on Sales:

Filling Station:	
Net sales (determined from books or by other means)	$30,000
Net profit percentage	8%
Net profit as computed	$2,400

(d) Miscellaneous Ratios:

Waitress.	
Sales by restaurant	$30,000
Number of waitresses employed	3
Percentage of tips received	10%
Average sales handled by waitress	$10,000
Income from tips as computed	$1,000

427.2 *(1-18-80)* 9781
Unit and Volume Methods

(1) In many instances the determination or verification of gross receipts may be computed by applying price and profit figures to the known or ascertainable quantity of business done by the taxpayer. This method is feasible when the special agent can ascertain the number of units handled by the taxpayer and also when the price or profit charged per unit is known. The number of units sold or quantity of business done by the taxpayer may be determined in certain instances from the taxpayer's books, since the records may be adequate with respect to cost of goods sold or expenses, but inadequate as to sales.

(2) There may be a regulatory body to which the taxpayer reports units of production or service. A funeral director is required to report each burial to the city or town where such burial takes place. A garment manufacturer with union employees buys union labels to be sewed into the garments manufactured. A taxpayer may also be required to report his production and payroll to a trade association allied with the labor union. There are also instances where the royalty paid for leased machinery is based upon the units of production. A piecework system of wages for production workers might also give an accurate measure of units produced.

(3) The use of this method lends itself to those businesses in which only a few types of items are handled or there is little variation in the type of service performed, with the charges made by the taxpayer for the merchandise or

services being relatively the same throughout the taxable period.

(4) The following example is illustrative of the unit and volume method of computation:

Volume of Merchandise (manufacturer):	
Number of machines manufactured	92
Average sales price	$1,100
Computed total sales	$101,200
Sales reported	$93,500
Omitted sales	$7,700

430 *(1-18-80)* 9781
Refund Cases

431 *(1-18-80)* 9781
Introduction

(1) Fraudulent refund cases fall within two distinct major groups, namely—

(a) *Multiple claims for refund,* involving that group of claims made on Federal income tax returns supported by withholding statements (Forms W-2) which are completely fabricated and false. They are filed either by one person individually or by two or more persons in collusion with one another with intent to defraud the Government. There is generally no authenticity whatsoever to the returns and the supporting documents.

(b) *Return preparers (unscrupulous)*—This group of claims involves Federal income tax returns prepared by unscrupulous return preparers who claim excessive deductions and/or exemptions on returns prepared for clients. Their benefit derives either from developing a large clientele through having established a reputation for saving client's money, from exorbitant fees charged on the basis of the large refunds obtained, or both. The clients may or may not have had knowledge of the excessive deductions claimed. On occasion the return preparer has caused the refund check to be mailed to his/her office, and, through having possession of the check, has exacted an exorbitant fee, or has forged the endorsement and negotiated the check without the client's knowledge.

(2) The investigative techniques employed in these two groups of cases are distinctly different. In the multiple claims for refund cases, the investigation is directed toward—

(a) Determining whether the returns and supporting documents are fabricated and fictitious; and

(b) Ascertaining who is responsible for their preparation and filing.

(3) The special agent may be called upon to make a forthwith arrest of the person or persons involved in the violation upon the establishment of "probable cause." Therefore the special agent usually, with authority of the Chief, Criminal Investigation Division, consults closely with the United States attorney's office.

(a) Cases involving arrests by special agents will ordinarily be forwarded direct to the United States Attorney by the Chief.

(b) *Violations of Section 287, Title 18, USC, involving multiple fictitious tax returns claiming fraudulent refunds*—Authorization for direct referral of this type of case relates only to multiple fictitious tax returns. It does not apply to the situation where the taxpayer files multiple income tax returns reporting in each return a part of the income which the taxpayer did in fact receive, claiming fraudulent refund of tax thereon. For example, an individual may receive withholding statements, Forms W-2, from more than one employer during the year, and file an income tax return for each such withholding statement, claiming refunds thereon. Such a case is included in the category of a multiple return case involving offenses other than violations of Section 287, Title 18, USC, and would not be referred directly to the United States Attorney but would be processed through normal channels. Cases in which there is a question as to the proper method of referral should be forwarded to District Counsel for advice.

(4) In the cases involving unscrupulous return preparers, the returns are of authentic origin but are fraudulent because of the excessive deductions and/or exemptions claimed. The investigation of these cases is directed toward determining the responsibility for the overstatement of the deductions and/or exemptions claimed; and toward establishing whether such overstatements were made with corrupt intent.

432 *(1-18-80)* 9781
Investigation of Multiple Claims For Refund

(1) Cases in this group originate in a variety of ways such as:

(a) The service center may forward information indicating that multiple returns have been filed by the same taxpayer.

(b) Returns indicating false claims for refunds may be discovered upon receipt by Collection Division and forwarded to the Chief, Criminal Investigation Division.

(c) A postman may notice numerous Government checks being delivered to certain addresses or observe some individual showing unusual interest in the mail delivered to such addresses.

(d) Someone either in the U.S. Postal Service or in the Internal Revenue may notice an excessive number of mail-forwarding requests.

(e) An audit may disclose no address or taxpayer as listed, a nonexistent employer, or apparent excessive deductions claimed.

(f) A violator may, in the presence of an informant, boast about how much he/she received in refunds.

(g) Through an inspection of the undeliverable Forms 1040A and 1040 mailed for current use or an analysis of the returns currently being filed, a special agent or some other Internal Revenue Service employee may detect a pattern of sameness pervading a group of returns which will lead to the discovery of a fraudulent operation.

(2) The special agent should understand the provisions of Section 287, Title 18, U.S. Code (text 222.(10) and 418.5), and be prepared to coordinate his/her activities in an investigation of an alleged violation thereof with any investigations being conducted by the Secret Service, the U.S. Postal Service, and any other services, departments, or agencies of the Government. It is not unusual for a violator of this section of the law to be involved in violations of other Federal statutes, within the investigative jurisdiction of such other services, departments and agencies. The Secret Service is particularly interested in knowing of a violation of the counterfeiting and forgery statutes (text 334.7). The Postal Service is interested in knowing of any use of the mails to defraud the Federal Government. The assistance of the United States attorney's office may be sought in obtaining an arrest warrant and/or search warrant. Therefore, several services, departments, and agencies may participate in a coordinated surveillance and in locating and apprehending a violator. Local authorities also have been of considerable assistance in this respect.

(3) A violation of Section 287, Title 18, occurs upon the filing of a fabricated Federal income tax return whereon a false representation is made that the tax has been overpaid and there is a claim made for a refund of the overpayment (See 418.5).

(4) Multiple filing may be confined to a single Internal Revenue district or it may extend to many districts. The name used on a fraudulent return may be either an alias, a fictitious name, or a variation of the violator's name. The address usually used is that of a hotel, a motel, a rooming-house, a post office box number, or general delivery. Street numbers have been used on occasion. There is usually attached to the returns a fabricated and false Form W-2 (sometimes handwritten) showing the name of a fictitious employer, a fictitious amount of salary received, and a fictitious amount of tax withheld. The name of the employer shown may or may not be an existent firm or person. If the name is that of an existent firm or person, an out-of-state address is frequently shown. Usually the only income reported on the fictitious return is salary under $5,000 from one employer; Form 1040A is used more often than Form 1040; and, if the violator is acquainted with the Service's prerefund audit procedures, the amount claimed for dependents and/or other deductions will be such as to keep the claimed refund within a certain amount. This is done to eliminate the possibility of detection by a prerefund audit. Early detection of this type of violation enables the Government to intercept promptly the fictitious returns and forestall the issuance and delivery of refund checks to fraudulent claimants. Some of the characteristic features of multiple fraudulent returns which will lead to their detection as fictitious are listed below:

(a) A substantial refund is claimed solely on the basis of the number of exemptions listed. These are questionable as to why the taxpayer did not claim more exemptions on Form W-4 for withholding tax purposes.

(b) An unrealistic amount shown as tax withheld.

(c) Absence of, or unrealistic social security information shown. Unless an exempt occupation, such as Government employment, is involved, a social security number should be shown and the correct amount of social security deduction listed. Social Security numbers should appear 000-00-0000. They always begin with a number 0 to 5 or 7—never begin with a 6, 8, or a 9. Prior to January 1966, the middle two digits had to be odd if the number was under ten (01, 03, 05, 07 or 09) and even for higher numbers (10, 12, 14, etc.). Presently, as each area exhausts their sequence of numbers in the odd and even categories, they will start using the even numbers under ten then the odd numbers above ten. The first three digits of the social security number identify the area of issuance. A list of numbers and their assigned areas of issuance are shown in Exhibit 400-7. The percent and maximum amount withheld should agree with the law for the year involved.

(d) Absence of, or an unrealistic Employer's Identification Number shown on Form W-2. These should always appear 00-0000000 with the first two digits being the code number of the Internal Revenue district. For example, a Tennessee employer's number should ordinarily begin 62- and the following 7 digits should be within the limits of the numbers assigned thus far.

(e) Unusual delivery instructions such as different addresses being shown on Form W-2 and the tax return, a boulevard address for small towns unlikely to use such terms, or taxpayer's use of Post Office Box, General Delivery, and mail forwarding services as a mailing address.

(f) Similarity of information, format, or writing on several returns. Frequently, cases involving numerous returns being filed by one person can be detected by his/her continued use of similar names as to taxpayers, employers, exemptions, and types of deductions claimed; or similarity in the arrangement of the information and the printing, handwriting or typewriting appearing on the returns.

(g) Undeliverable refund checks resulting from violator's miscalculations of intentional design. In instances where the violator plans to receive the refund check at an address other than the one listed on the return, the scheme is usually to file a change of address with the Postal Service prior to delivery of the check, or recover the check after it has been returned to the Internal Revenue Service by providing forwarding instructions. Undeliverable refund checks frequently include those the violator failed to intercept because of improper timing of change of address instructions to the postal authorities or the failure of postal employees to observe such instructions. Those refund checks retrieved by the violator after they have been returned to the Internal Revenue Service leave a trail of forwarding instructions and a record of the wrong address initially listed.

(5) The investigation is not ended upon the detection of the fraudulent filing. It will be the responsibility of a special agent to identify and locate the violators without causing their flight and sacrificing the case. The agent should know the techniques of surveillance (see 381), since he/she probably will have to conduct a surveillance in an effort to identify and locate the violators. Since it may also become his/her duty to make an arrest, or a search, or file a complaint, the agent should understand the meaning of "Probable Cause" and be acquainted with Handbook text 390, 383.2, and 721 relating to arrests, searches, and complaints, respectively.

(6) The utilization of the Department of the Treasury and other crime laboratories may be necessary in handwriting and typewriting comparisons. The National Fraudulent Check and Anonymous Letter files maintained by the FBI are particularly useful in this connection. The special agent should be acquainted with the procedure prescribed in 356.7. The disposition and attitude of the United States attorney's office toward the prosecution of the case in the event the special agent makes the arrest should also be ascertained.

(7) For the purpose of identifying the violators, their handwriting, and their typewriting sufficiently to tie them in with returns filed, the special agent should:

(a) Obtain copies of any refund check which may have been cashed; have any necessary handwriting analyses made of the endorsements; and follow through with appropriate inquiries. Such inquiries will probably lead to the identification of the negotiator of the checks by disclosing the name of the person or firm who either cashed or deposited them.

(b) Examine all records that may be in the files of the various post offices where the boxes are rented and obtain copies of any papers or documents on which a specimen of the renter's handwriting appears. Inquire into the references given by the renter upon applying for a box and determine in the case of fake references how the renter arranged to intercept and reply to the postal authorities' inquiry. The special agent should also obtain any available printed and typewritten specimens, together with the handwriting specimens, and have an expert compare them with any handwriting, printing, and typewriting on the tax returns filed, endorsements on refund checks and forwarding instructions, to determine whether they are the same.

(c) Prior and subsequent years' returns should be requisitioned.

(8) The special agent will ascertain if there are any existent employers whose names correspond with those shown on Forms W-2 and tax returns filed. If there are, determine whether they have, or have had, on their payrolls persons of the names shown on the returns, and continue with any pertinent inquiries suggested by the facts disclosed. The records of the State Unemployment Compensation office, which records FUTA tax information on employers and their insured employees, are particularly useful in quickly determining if there is in existence in the particular state, such an employer, employee, or social security number as listed. This state office can usually supply by telephone all information shown on the application for the social security number involved.

(9) The special agent may ask the postmaster or postal inspector for a description of the renter of each box involved and, with the postmaster's knowledge and cooperation, arrange a surveillance of the box.

(10) The special agent should also decide in advance whether he/she should make a forthwith arrest of the person opening the box and picking up the check, or should delay the arrest and shadow this person in an effort to determine what disposition will be made of the check. This decision will hinge largely on what evidence the agent has that the person opening the box is actually the violator, and what evidence the agent has at that time to establish probable cause. These are details which the agent should work out in advance in collaboration with the Chief, Criminal Investigation Division or immediate supervisor with the advice of the United States attorney's office. The agent should be sure of his/her ground before attempting to effect an arrest. Upon making the arrest, this agent will make such searches of the person, automobile, and residence as are lawful (383) with the object of seizing any equipment and records used in the commission of the violation. The prisoners should be escorted without unnecessary delay before the nearest United States Magistrate or other nearby officer empowered to commit Federal prisoners (383.(10)). The special agent will also interview the person or persons arrested. A stenographic transcript of their statements is desirable but not always practicable to obtain. If stenographic services cannot be used, the special agent should make a contemporaneous memorandum of any admissions or statements made by the suspect, or if this is not practicable, a memorandum should be made as soon after the interview as possible.

(11) See IRM 9625 for information regarding direct referral of multiple filer cases.

433 (1-18-80) 9781
Investigation of Multiple Fraudulent Returns Prepared by Unscrupulous Return Preparers

(1) Cases in this group originate from a variety of sources, such as:

(a) Letters of complaint from the public and information from informants concerning returns preparers.

(b) Complaints from ethical practitioners and professional societies.

(c) Screening of returns by service center personnel.

(d) Identification of suspect preparers by Criminal Investigation Division and other IRS personnel.

(2) The returns in this group of cases are usually of authentic origin but are fraudulent because of overstated deductions and/or exemptions claimed. Some of the most flagrant violations have been committed by unscrupulous return preparers who have an illiterate, trusting clientele. Occasionally it has been established that a preparer has conspired with the taxpayer to file a false and fraudulent return. IRC 7206(2) (see 221.7:(2) and 418.2) is usually used in the prosecution of the preparer in the former cases; and either this section or Section 371, Title 18, is used in the latter type of case, although these are not necessarily the only statutes that may be invoked in the prosecution of these cases. Section 371, Title 18, is the conspiracy state and the techniques of investigation of conspiracy cases are set forth in text 41(10).

(3) Multiple refund cases involving unscrupulous preparers are developed by patient and painstaking interviews of a representative number of the clientele to ascertain who is responsible for the fraudulent returns. The facts can often be obtained more expeditiously and with less alarm by a preliminary informal interview of each client whose return is under investigation, than by an immediate formal interview. If the preliminary interview discloses information or records which are material to the establishment of the facts of the case, the client's testimony can be obtained later, under oath. It is some-

times advisable to have a cooperating officer accompany the special agent during interviews to complete the tax examination of the witnesses' affairs, including the execution of agreement forms and collection of additional tax due. In an effort to quickly evaluate allegations, consideration should be given to deployment of a special agent in an undercover status. The investigator, possessing the necessary employment papers, such as a fictitious Form W-2, can frequently have a return prepared and learn the practitioner's modus operandi as well as obtain admissible evidence. A special agent was successfully used in an undercover role during which the preparer listed fictitious exemptions and deductions on a return prepared for the agent. [*U.S. v. Blount.*] On the other hand, records seized during a search incident to an arrest, based on a complaint that an accountant overstated deductions on a return prepared for an undercover agent, were ordered returned and suppressed as evidence. The court held that a valid search was limited to the means by which the accountant prepared the return for the agent and any wide ranging search for unconnected material or seizure of such material was unreasonable. [*U.S. v. Cohen.*]

(4) The investigation should be directed toward establishing whether the fraud on the return is attributable to the preparer, the client, or both. An interview should therefore be designed to ascertain:

(a) The name of the person who recommended the preparer and the identity of others known to have used his/her services, thus expanding the area of investigation. It is advisable to obtain prior years' returns filed by the client to ensure that all those prepared by the particular preparer are found, and more importantly, for comparison purposes where the prior year return was prepared by someone else;

(b) What information and records the client furnished the preparer for use in the preparation of the return;

(c) Any memorandum the preparer may have made of information furnished, together with a description of the memorandum;

(d) Any discussion between the preparer and client regarding the amount of deductions and exemptions to be claimed;

(e) Any suggestions the preparer made that more deductions should be claimed, with a full explanation;

(f) Whether each deduction claimed is in the same amount that was furnished the preparer by the client. Obtain any relevant documents concerning amount claimed, and also a statement from the client regarding the amounts he/she was entitled to deduct. If the amount claimed is greater than that which the client is able to support or than that which was furnished the preparer, obtain the client's explanation;

(g) Whether client knew that an excessive amount had been claimed and if so, why he/she permitted it; and if he/she did not know, how it escaped him/her.

(h) The circumstances of the client's signing the return, and whether it was affixed to the return before or after the return was completed. If the client signed the return in blank, why? If the return was completed before the client affixed a signature to it, what sort of review did the client make of the contents and how could the excessive deductions have escaped his/her notice?

(i) Whether the client knew that a refund was claimed;

(j) How the client justified in his/her own mind that he/she had a refund coming in the light of his/her income and allowable deductions;

(k) The client's literacy;

(l) The amount of the preparer's fee and whether the amount charged was based on the amount of refund obtained;

(m) Where the refund check was to be mailed. If to the preparer's address, why;

(n) Whether the client cashed the refund check;

(o) Obtain an explanation of the circumstances of the cashing. Find out whether it was cashed by the preparer, whether he/she extracted his/her fee from the proceeds, and whether the possession of the check was used as a means of coercing the payment of an exorbitant fee;

(p) Whether the preparer endorsed the client's name to the check. If so, what authorization had the client given the preparer to do so.

(5) The questions listed above are given merely as a suggested outline for use in an interview of this nature. Other pertinent questions may arise as the interview proceeds. The preparer should be similarly interviewed if he/she will submit voluntarily to such an interview. If possible, obtain from the preparer copies of:

(a) Any memorandums that he/she or his/her employees may have made at the time of interviews with the clients;

(b) Any memorandums, documents, and data furnished the preparer by the client for use in preparing his/her return;

(c) Any lists of fees charged, list of clients, retained copies of returns filed, or other pertinent material that the preparer may have in his/her files.

(6) The preparer's employees should be interviewed to establish the procedure followed in the preparation of a return for a client from the time the client entered the preparer's office until the completion, signing, and filing of the return. They should be interviewed further as indicated by the outline or questions set forth above for use in interviewing clients to ascertain what other pertinent information they may have.

(7) In investigating multiple fraudulent returns prepared by unscrupulous returns preparers, those pattern return cases most susceptible to development for successful criminal prosecution of a practitioner are the cases involving returns on which the entire deductions or excesses claimed are completely without basis; a representative number of the clientele testify that the deductions were taken entirely without their knowledge; and the surrounding conditions, circumstances and conduct of the practitioner tend to corroborate their testimony. The special agent should be careful not to make an issue for criminal prosecution of those deductions the legitimacy of which might be considered arguable or debatable. Furthermore, he/she should keep in mind that the clients may be as culpable as the practitioner since they also stood to benefit. Therefore, the special agent in his/her investigation should be concerned with recognizing and resolving these issues as much as possible.

(8) There is another group of cases in which the unscrupulous preparer accepts the tax payment from the client when preparing his/her tax return, but does not file the return or pay the tax. In these cases, the preparer cannot be charged with violation of IRC 7203; however, IRC 7201 has been tried in several instances. In one case tried under IRC 7201, [*U.S. v. Mesheski.*] the court held that such acts involve only the crime of embezzlement under state law, and do not come within the definition of attempt to evade or defeat tax. Other courts have disagreed with that conclusion, and found that the defendant intended to cheat not only his/her clients by embezzling their money but also the Government by evading the clients' taxes. [*U.S. v. Charles L. O. Edwards.*]

440 (1-18-80) 9781
Employee Plans/Exempt Organizations (EP/EO) Cases

441 (1-18-80) 9781
Introduction

(1) The Tax Reform Act of 1969, and the Employee Retirement Income Security Act (ERISA) of 1974, reflect national concern that abuses or fraudulent practices and self dealings in the employee plans and exempt organizations areas are jeopardizing both employee pensions and the collection of tax revenues. The large amounts of money involved in employee plan trust funds and tax exempt organizations provide both a temptation and an opportunity for fraud.

(2) The traditional criminal and civil provisions of the Internal Revenue Code will apply to the violations in the Employee Plan and Exempt Organization area. The only significant difference may be that instead of a tax deficiency, the element of damage to the Government may be established by showing a tax benefit, such as making income non-taxable or contributions tax-deductible.

442 (1-18-80) 9781
Scope of The Law

(1) The Employee Retirement Income Security Act of 1974 (ERISA) has made sweeping changes in the way private employee plans are administered. While the Department of Labor (DOL) is primarily responsible for ERISA enforcement, the Internal Revenue Service has significant involvement since qualified employee plans receive favored tax treatment via the deduction of the contribution by the employer, tax exemption for the related trust, and the deferral of income by the employee. These tax advantages can be used in criminal cases to meet the requirements that a tax be due and owing as described in IRC Section 7201 (Attempt to evade or defeat tax) and that damage inures to the government as described in IRC Section 7206 (Fraudulent or False Statement).

(2) The Tax Reform Act of 1969 established new and more stringent requirements for recognition as an exempt organization, expanded information reporting and annual reports, im-

posed a new series of excise taxes, and placed substantial restrictions on the permissible activities of an exempt organization. It also provided penalties for repeated and willful violations of the various prohibitions and enumerated in the Act.

(3) IRC 6033 requires that every exempt organization, with some exceptions, file an annual return stating specifically the items of gross income receipts and disbursements and such other information as may be prescribed by the Secretary or appropriate delegate. In addition, IRC 6011 requires the filing of certain taxable returns by exempt organizations. These information reports and returns are used to determine whether the submitting organization continues to qualify for favored tax treatment and to report any taxes for which it may be liable. Like the application forms, these reports and returns are subscribed under the penalty of perjury. If an organization ceases to qualify under the provisions of IRC 501 or 521 for which exemption was granted, its exempt status will be revoked.

443 *(1-18-80)* 9781
Criminal Provisions

(1) IRC 7206(1) (Declaration under penalties of perjury), is the criminal provision which will probably be the most useful in the employee plans and exempt organizations area. This section makes it a felony for anyone to willfully subscribe to a return or other document made subject to penalties of perjury which is not believed to be true and correct as to every material matter. This provision also applies to documents other than tax returns and a *prima facie* violation of IRC 7206(1) can be proven even in the absence of a probable tax deficiency. All of the forms filed with the IRS in connection with employee plans and exempt organizations contain a declaration that they are made subject to the penalties of perjury. Additionally, the declaration includes a statement that supporting documents are certified as being true and correct and this certification is subject to the same penalty. Thus, filing an application for a determination letter containing false statements or submitting falsified documents in support of such an application or submitting a falsified annual return for an employee plan and exempt organizations would give rise to a potential IRC 7206(1) prosecution if the falsifications are shown to be willful and material.

(2) Filing of a false application for a determination letter, annual return or registration statement can also be an act leading to tax evasion proscribed by IRC 7201 (Attempt to Evade or Defeat Tax). To prove tax evasion, the Government must show a tax deficiency, affirmative acts to evade assessment or payment of tax, and willfulness.

(3) Willful failure to file annual returns, registration statements, or actuarial statements can be a criminal violation of IRC 7203 (Willful Failure to File Return, supply information, or pay tax).

444 *(1-18-80)* 9781
Fraudulent Schemes and Devices

(1) Some of the more common fraudulent schemes and devices used in employee plans and exempt organizations cases are set forth as follows:

(a) Backdating of applications and related documents.

(b) Diversion of funds by officials of exempt organizations or by trustees of employee plans.

(c) Payment of improper expenses of exempt organization and trust officials.

(d) Loans of trust funds disguised as purchases or allowable deductions.

(e) Intentional failure to keep financial records.

(f) Double set of books.

(g) Disguising taxable receipts (interest and dividends) as non-taxable receipts.

(h) Making false statements on applications.

(i) Providing false receipts to donors by exempt organizations.

(j) Willful and intentional failure to exercise plan amendments agreed to during review of the determination letter application.

445 *(1-18-80)* 9781
Tax Protest-Type Cases

445.1 *(1-18-80)* 9781
Introduction

(1) A tax protester is a person who employs one or more illegal schemes that affect the payment of taxes.

(2) The following are schemes used by illegal tax protesters:

(a) *Constitutional Basis*—Refusal to include tax return information on Form 1040/1040A because of violation of Constitutional rights. In lieu of information required on Form 1040/1040A, the illegal tax protester either show "-0-," "none," "Object," or a Fifth Amendment annotation in all of the blanks or will include a broad general statement regarding his/her constitutional rights (including 4th Amendment and 16th Amendment). This is commonly referred to as a Porth/Daly type return.

(b) *Fair Market Value*—Reducing gross income because of declining value of dollar. The gross income is listed on the face of the return and there is a large adjustment to income which makes adjusted gross income small enough for standard deduction to eliminate taxable income. The adjustment to gross income is on Schedule D, Schedule of Capital Gains and Losses, or Form 2106, Statement of Employee Business Expenses, for Form 1040.

(c) *Gold/Silver Standard*—Any return with a statement that only gold or silver currency can be taxed.

(d) *Blank Form 1040/1040A*—These generally fall into two categories. In one category the individual files a return with only a name and address, and possibly signature, and Form(s) W-2 is attached. This scheme is usually verified upon correspondence with the taxpayer. In the second category the individual files a return similar to the Porth-type return, i.e., the lines contain "object," "Fifth Amendment," etc., with the exception that Form(s) W-2 is attached. In both instances the return could or could not list marital status and/or exemptions.

(e) *Non-Payment Protest*—Non-Payment or underpayment of tax based upon some type of protest statement written or attached to the return.

(f) *Protest Adjust*—This is similar to Non-Payment Protest, in that the return contains specific unallowable items (e.g., deductions, exclusions, etc.) identified to some type of protest.

(g) *Mail Order Ministries*—Individual receives income from non-religious sources and declares that it is non-taxable because of "vow of poverty." This scheme also involves returns where the individual includes all or substantially all of gross income as a contribution deduction on Schedule A of Form 1040. Some individuals will complete Form 1040 and then take an unusually large contribution deduction on Schedule A of Form 1040, normally 50 percent or more of adjusted gross income.

(h) *Protester Letters and Cards*—The receipt of letters and cards (without tax return) protesting the use of taxes for war, defense and/or other government spending policies, and *indicating that this will effect their reporting and payment of taxes.*

(i) *Family Estate Trust*—The trusts are filed on Forms 1041. Terms such as "family," "equity pure," "prime," or "constitutional" are used in the title of the trust. Income is from "wages" or "Contract" sources and deductions are for personal living expenses, such as housing, medical, auto, child care, interest or taxes. Generally, an individual will establish a trust, give his/her wages or other income to the trust and the trust pays for the expenses of the individual. The expenses claimed as administrative expenses of the trust, resulting in the individual paying no tax and the trust paying little or no taxes.

(j) *W4—Excessive Overstatement of Allowances*—This scheme is usually employed in conjunction with one of the other schemes mentioned above. The claiming of excessive allowances is usually directed towards eliminating of withholding of Federal taxes from wages.

(k) *Forms 843 and Amended Returns*—Some individuals are filing Form 843 Claims and/or Amended Form 1040 (1040X) returns to obtain a total refund on all taxes paid in prior years, even though returns have not been filed for the prior years.

445.2 *(1-18-80)* 9781
Background

(1) Some so-called tax protesters are making speeches and offering seminars around the country at which serious misrepresentations about the tax laws are being presented to the public as fact.

(2) Generally these protesters are counseling taxpayers not to comply with the Federal

income tax return filing statutes on the ground that they violate a person's constitutional rights under the Fifth Amendment. As early as 1927, the Supreme Court of the United States held in *United States v. Sullivan,* that a taxpayer could not refuse to file a Federal income tax return because of the Fifth Amendment privilege against self-incrimination.

(3) Further, the requirement that a taxpayer include information on the tax return concerning income does not, by itself, violate the self-incrimination clause of the Fifth Amendment as the court noted in *United States v. Daly.* This case, as well as others, represents an extension of the holding in *Sullivan* that a taxpayer must do more than file a blank tax return or tax return with little or no information.

(4) Illegal protesters also assert that various provisions of the Internal Revenue laws violate the due process clause of the Fifth Amendment. Generally they claim that the graduated income tax scale and the fact that certain deductions or benefits allowed by the Internal Revenue Code are available to some and not to others deny those latter persons their Constitutional rights. The protesters also assert that some of the statutory collection procedures violate the due process clause. However, in *Swallow v. United States,* the court held, "It is now well settled that the income tax laws are not unconstitutional under the due process clause of the Fifth Amendment. . . ."

(5) Federal Courts have held in numerous cases that there is no Constitutional right to refuse to pay income taxes in whole or part on religious or moral grounds or because the funds are used for government programs that the taxpayer opposes. For example, in *Autenrieth v. Cullen,* the court said, "The fact that some persons may object, on religious grounds, to some of the things that the government does is not a basis upon which they can claim a constitutional right not to pay a part of the tax."

(6) Some illegal protesters have offered an argument that income in the form of currency or [illegible] on the grounds that the court, referring to the gold and silver argument, stated, "This contention is clearly frivolous." The court arrived at a similar conclusion in *United States v. Wangrud.* The Tax Court in *Hatfield v. Commissioner,* which involved a Fifth Amendment return, dismissed an argument that Federal Reserve notes should not be taxed since they constitute accounts receivable.

(7) Some illegal protesters have promoted noncompliance through tax schemes involving family estate trusts, while others have offered assignments of all income to newly created organizations purporting to be churches, religious orders, or other religious organizations in which the organization acts only as a nominee receiving the assigned income which is then used to pay the donor's living expenses.

(8) Under the family estate plan the individual is advised to assign assets and income from current employment to the trust. The promoters then advise that, in exchange, the creator of the trust may receive "compensation" as an officer, trustee or director, as well as certain "fringe benefits," such as "pension rights," "tax-free use of a residence," and "educational endowments" for children.

(a) According to the promoters, once the creator's income is shifted to the trust, the trust is supposedly taxed only on undistributed new income. The promoters misrepresent that substantially all living expenses of the grantor and his or her family may be deducted on the trust's fiduciary income tax return as business expenses and that the balance might then be distributed to the creator's family or to a separate "nonprofit" educational trust leaving little or no taxable income to be reported.

(b) Several IRS rulings have been published adverse to these schemes, and IRS challenges to these trusts have been upheld in various court cases.

(c) One of the most basic principles of tax- [illegible] to the taxpayer

(9) While the "church" or "religious order" plans vary in certain aspects, a common scheme calls for an individual taxpayer to obtain minister's credentials and a church or religious order charter by mail for a fee. No profession of adherence to a creed, dogma, or moral code may or may not be required and duties of fiduciary responsibilities may or may not be undertaken in order to receive and administer these charters or credentials. The individual sets up an organization that purports to be a church, religious order, or other religious organization. The plan then calls for the individual to take a "vow of poverty" and to assign the individual's assets—house, car, savings account, etc.—and the income earned from current employment to the new organization. The income assigned is expended for housing, food, clothing, personal transportation and other living expenses incurred by the individual, and for his or her occasional "spiritual retreats" to traditional vacation areas. Typically, the solicitations con-

evaluation. This evaluation will be completed within 15 working days from the date of receipt. To assist in evaluation of the criminal potential of protest cases, the Chief, CID may assign the item to a special agent for limited inquiries, as defined in IRM 9311.2:(3). Also, if necessary for proper evaluation, the Chief may authorize individual information gathering. When unusual legal questions exist, the Chief is encouraged to contact District Counsel for advice.

(2) If the case is selected for investigation, the district will submit a Form 4135 (Criminal Investigation Control Notice) to the service center to establish a TC 914 Control.

(3) Cases selected for investigation will be designated as priority cases and investigated as expeditiously as possible. To ensure that illegal tax protester cases are investigated as quickly as possible, the Chief, Criminal Investigation Division should consider devoting additional resources to these cases and/or estab-

income tax return filing statutes on the ground that they violate a person's constitutional rights under the Fifth Amendment. As early as 1927, the Supreme Court of the United States held in *United States v. Sullivan,* that a taxpayer could not refuse to file a Federal income tax return because of the Fifth Amendment privilege against self-incrimination.

(3) Further, the requirement that a taxpayer include information on the tax return concerning income does not, by itself, violate the self-incrimination clause of the Fifth Amendment as the court noted in *United States v. Daly.* This case, as well as others, represents an extension of the holding in *Sullivan* that a taxpayer must do more than file a blank tax return or tax return with little or no information.

(4) Illegal protesters also assert that various provisions of the Internal Revenue laws violate the due process clause of the Fifth Amendment. Generally they claim that the graduated income tax scale and the fact that certain deductions or benefits allowed by the Internal Revenue Code are available to some and not to others deny those latter persons their Constitutional rights. The protesters also assert that some of the statutory collection procedures violate the due process clause. However, in *Swallow v. United States,* the court held, "It is now well settled that the income tax laws are not unconstitutional under the due process clause of the Fifth Amendment. . . ."

(5) Federal Courts have held in numerous cases that there is no Constitutional right to refuse to pay income taxes in whole or part on religious or moral grounds or because the funds are used for government programs that the taxpayer opposes. For example, in *Autenrieth v. Cullen,* the court said, "The fact that some persons may object, on religious grounds, to some of the things that the government does is not a basis upon which they can claim a constitutional right not to pay a part of the tax."

(6) Some illegal protesters have offered an argument that income in the form of currency or checks is not subject to tax on the grounds that currency is now worthless since the United States is no longer on a gold or silver standard. They also argue that Federal Reserve notes are only accounts receivable and thus are not subject to tax. However, the law taxes "income from whatever source derived," and income may be in many forms, including currency, goods and services. In *United States v. Daly,* the court, referring to the gold and silver argument, stated, "This contention is clearly frivolous." The court arrived at a similar conclusion in *United States v. Wangrud.* The Tax Court in *Hatfield v. Commissioner,* which involved a Fifth Amendment return, dismissed an argument that Federal Reserve notes should not be taxed since they constitute accounts receivable.

(7) Some illegal protesters have promoted noncompliance through tax schemes involving family estate trusts, while others have offered assignments of all income to newly created organizations purporting to be churches, religious orders, or other religious organizations in which the organization acts only as a nominee receiving the assigned income which is then used to pay the donor's living expenses.

(8) Under the family estate plan the individual is advised to assign assets and income from current employment to the trust. The promoters then advise that, in exchange, the creator of the trust may receive "compensation" as an officer, trustee or director, as well as certain "fringe benefits," such as "pension rights," "tax-free use of a residence," and "educational endowments" for children.

(a) According to the promoters, once the creator's income is shifted to the trust, the trust is supposedly taxed only on undistributed new income. The promoters misrepresent that substantially all living expenses of the grantor and his or her family may be deducted on the trust's fiduciary income tax return as business expenses and that the balance might then be distributed to the creator's family or to a separate "nonprofit" educational trust leaving little or no taxable income to be reported.

(b) Several IRS rulings have been published adverse to these schemes, and IRS challenges to these trusts have been upheld in various court cases.

(c) One of the most basic principles of taxation is that income is taxed to the taxpayer earning it. In other words, a person cannot escape the liability to report and pay tax on income of such person that is assigned to another person or entity. Thus, the United States Tax Court has rejected taxpayers' arguments that assigning to family trusts all compensation for services of the creator relieved the creator of reporting and paying tax on such compensation.

(9) While the "church" or "religious order" plans vary in certain aspects, a common scheme calls for an individual taxpayer to obtain minister's credentials and a church or religious order charter by mail for a fee. No profession of adherence to a creed, dogma, or moral code may or may not be required and duties of fiduciary responsibilities may or may not be undertaken in order to receive and administer these charters or credentials. The individual sets up an organization that purports to be a church, religious order, or other religious organization. The plan then calls for the individual to take a "vow of poverty" and to assign the individual's assets—house, car, savings account, etc.—and the income earned from current employment to the new organization. The income assigned is expended for housing, food, clothing, personal transportation and other living expenses incurred by the individual, and for his or her occasional "spiritual retreats" to traditional vacation areas. Typically, the solicitations conclude that a vow of poverty can make a person rich.

(a) Such representations are misleading and plans of the type described will not produce the tax benefits claimed by their promoters. The tax law affords significant benefits to churches and other religious organizations and to individuals who make gifts or contributions to qualified organizations. The law requires, however, that religious organizations qualifying for certain tax benefits actually be operated for religious purposes and that they not be operated for private purposes.

(b) Under a recently published IRS ruling and established principles of tax law, such an assignment of income whether by an individual claiming to be under a vow of poverty, or otherwise, will not prevent the individual from being taxed on such income. Moreover, when the organization to which income is assigned is not actually organized and operated for religious purposes, the assigned income will not be deductible by the taxpayer. In any event, contributions to an organization are not deductible when made in the expectation of receiving some commensurate benefit in return.

445.3 *(1-18-80)* 9781
Criminal Investigation Division Procedures In Tax Protester-Type Cases

(1) Each protest return received from the Chief, CID will be immediately assigned for evaluation. This evaluation will be completed within 15 working days from the date of receipt. To assist in evaluation of the criminal potential of protest cases, the Chief, CID may assign the item to a special agent for limited inquiries, as defined in IRM 9311.2:(3). Also, if necessary for proper evaluation, the Chief may authorize individual information gathering. When unusual legal questions exist, the Chief is encouraged to contact District Counsel for advice.

(2) If the case is selected for investigation, the district will submit a Form 4135 (Criminal Investigation Control Notice) to the service center to establish a TC 914 Control.

(3) Cases selected for investigation will be designated as priority cases and investigated as expeditiously as possible. To ensure that illegal tax protester cases are investigated as quickly as possible, the Chief, Criminal Investigation Division should consider devoting additional resources to these cases and/or establishing teams of special agents to work these cases.

(4) In selecting cases for investigation, consideration should be given to the potential impact and/or deterrent effect a successful prosecution case will generate. Experience in this area has indicated that cases involving leaders and/or flagrant non-compliance situations achieve the best results. (See Policy Statement P-9-3.)

(5) Any surveillance activities conducted in conjunction with illegal tax protester cases and/or information gathering projects will conform to the guidelines contained in IRM 9383.6.

(a) Surveillance activities at tax protest meetings will be limited to attendance at those meetings for the purpose of obtaining information concerning new techniques being advocated in the so-called tax protest movement. Special agents who attend these meetings will not identify individuals who attend the meetings unless the individuals openly admit that they:

1 have committed or intend to commit a tax violation; or

2 advocate that others commit violations of the tax laws; or

3 advocate the use of threat and/or assault tactics in dealing with Service personnel.

(b) The attendance at tax protest meetings is to be distinguished from peaceful demonstrations directed towards some sort of tax protest. In this regard, Service personnel will be guided by Treasury Department policy which

directs that no information should be collected on peaceful demonstrations which involve the exercise of First Amendment rights without contacting the office of the Assistant Secretary (Enforcement and Operations). In such situations, the Chief, Criminal Investigation Division, with the concurrence of the District Director, and ARC, Criminal Investigation will notify the Director, Criminal Investigation Division, who will contact the Assistant Secretary (Enforcement and Operations).

(6) Any district information gathering projects must be authorized in accordance with Manual instructions. (See IRM 9391.9.)

(7) Guidelines and procedures regarding the use of informants are found at IRM 9373.

(8) Guidelines concerning the use of confidential expenditures are found at IRM 9372.

(9) Since some so-called tax protesters advocate the use of force in dealing with Service personnel, the special agent assigned the investigation should consider having all contacts with the taxpayer made at the district office or the post of duty nearest the taxpayer. If it is determined that this could jeopardize successful completion of the investigation, the special agent's group manager will be consulted prior to contact with the taxpayer. Also, special agents should recognize that many third-parties may also be illegal tax protest advocates. Extreme care and discretion should be exercised prior to making contacts that could fall into this category.

(10) Cases involving illegal tax protesters have been associated with the following violations:

(a) Title 26 U.S.C.

1 Section 7201—Attempt to Evade or Defeat Tax;

2 Section 7203—Willful Failure to File Return, Supply Information or Pay Tax;

3 Section 7202—Willful Failure to Collect or Pay over Tax;

4 Section 7205—Fraudulent Withholding Exemption Certificate or Failure to Supply Information;

5 Section 7206—Fraud and False Statements; and

6 Section 7212—Attempts to Interfere with Administration of Internal Revenue Laws.

(b) Title 18 U.S.C.

1 Section 2—Principals;

2 Section 287—False, Fictitious or Fraudulent Claims;

3 Section 371—Conspiracy to Commit Offense or to Defraud United States;

4 Section 1001—Statement or Entries Generally; and

5 Section 1503—Influencing or Injuring Officer, Juror or Witness Generally.

450 *(1-18-80)* 9781
Excise Taxes

451 *(1-18-80)* 9781
Definition and Purposes

(1) *Definition.*—An excise tax is a duty or impost levied upon the manufacture, sale, or consumption of commodities within the country, and upon certain occupations.

(2) *Purposes.*—A few excise taxes are merely regulatory and some are imposed for both regulatory and revenue purposes. Most excise taxes, however, are levied exclusively for the purpose of revenue.

452 *(1-18-80)* 9781
Excise and Income Taxes Distinguished

452.1 *(1-18-80)* 9781
Base

Income taxes are based on net income or net profits, and are graduated. Excise taxes are not graduated, and they can be based upon any of the following factors: selling price of merchandise or facilities; services sold or used; number, weight, or volume of units sold; and nature of occupation.

452.2 *(1-18-80)* 9781
Tax Period

Certain excise tax returns are required to be filed on either a fiscal-year or calendar-year basis. In general, excise tax returns are filed on a calendar quarter-year basis. Income tax returns are required to be filed on either a fiscal-year or calendar-year basis.

452.3 *(1-18-80)* 9781
Additional Taxes and Penalties

Assessments of additional or delinquent excise taxes are referred to as "additional taxes." In income tax cases, such assessments are known as "deficiencies." There are many types of civil penalties specifically applicable to excise tax cases. Civil penalties in income tax cases are limited to three types: delinquency, negligence, and fraud.

452.4 *(1-18-80)* 9781
Court Appeals

Income tax cases may be appealed to the Tax Court of the United States without prepayment of the taxes, but excise tax cases cannot be appealed to the Tax Court. All court appeals by excise tax litigants must be made to either the U.S. Court of Claims or to the U.S. District Court, and then only upon prepayment of the taxes.

453 *(1-18-80)* 9781
Excise Tax Reduction Bill of 1965

453.1 *(1-18-80)* 9781
Statutory Provisions

The Excise Tax Reduction Bill of 1965 (P.L. 89-44) and the Comprehensive Drug Abuse Prevention and Control Act of 1970 (P.L. 91-513) lowered or removed most of the Federal excise taxes.

453.2 *(1-18-80)* 9781
Excise Taxes Remaining in Effect

(1) The following remaining excise taxes are of interest to the Criminal Investigation Division.

(a) Retailers' excise taxes: diesel fuel and special motor fuels.

(b) Manufacturers' excise taxes: truck parts and accessories, trucks, trailers, tires and inner tubes, gasoline and lubricating oil (used in motor vehicles).

(c) Miscellaneous excise taxes: air transportation of persons, foreign insurance policies, wagering-occupational and gross wagers, coin-operated gaming devices, (expires June 30, 1980), highway vehicle usage, and local and long-distance telephone service.

(2) Excise tax regulations under IRC 4481 expired October 1, 1972 and new regulations were not effective until March 2, 1976. Consult District Counsel prior to conducting investigations of possible violations relating to interim periods.

453.3 *(1-18-80)* 9781
Occupations Subject to Tax

Various occupations are subject to special (occupational) taxes. Many of these taxes are regulatory in nature. Those of chief interest to the Criminal Investigation Division relate to persons engaged in wagering (see 460) and those who maintain coin-operated gaming devices on their premises. The tax on coin-operated gaming devices will no longer be in effect after June 30, 1980.

454 *(9-8-80)* 9781
(Reserved)

455 *(1-18-80)* 9781
Civil Penalties and Jeopardy Assessments

455.1 *(1-18-80)* 9781
Civil Penalties

455.11 *(1-18-80)* 9781
Delinquency Penalty (IRC 6651(a))

An ad valorem delinquency penalty of 5 percent a month may be asserted when an excise tax return is filed delinquently without reasonable cause, or when a taxpayer fails to file a return without fraudulent intent. The penalty, limited to 25 percent, is imposed on the net amount due. It is not imposed, however, if the 50 percent civil fraud penalty is assessed under IRC 6653(b). (See 250.)

455.12 *(1-18-80)* 9781
Fraud Penalty Applicable to Returns (IRC 6653(b))

A 50 percent civil fraud penalty may be imposed under IRC 6653(b) on the underpaid excise tax on "non-collected taxes," such as, manufacturers' or retailers' taxes. The test for the application of the fraud penalty in an excise tax case is the same as it is for any other type of fraud penalty case: the Government must prove that a willful fraudulent act was committed. With respect to excise taxes, the 50 percent civil fraud penalty applies to "noncollected taxes" only. "Collected taxes" levied on the purchaser or user, such as transportation and withholding taxes are subject to the 100 percent penalty, under IRC 6672.

455.13 *(1-18-80)* 9781
Fraud Penalty Applicable to Documentary Stamps (IRC 6653(e))

A 50 percent civil fraud penalty may be asserted under IRC 6653(e) against anyone who willfully fails to pay or attempts to evade or defeat any tax imposed by means of a stamp, coupon, ticket, book, or other device.

455.14 *(1-18-80)* 9781
One Hundred Percent Penalty (IRC 6672)

A 100 percent penalty may be imposed on any person required to collect, truthfully, account for and pay over any tax who willfully evades, or fails to collect or account for and pay over such tax. This relates to *"collected" and "withheld"* taxes only and serves merely as a device whereby the collecting agent is made liable for the unpaid portion of the tax. The penalty under this IRC section is limited to this amount and is not in addition to it. [*Chief Counsel Memorandum, 6/11/64, CC:CL-2284.*]

455.15 *(1-18-80)* 9781
Other Civil Penalties

In addition to the general civil penalties previously mentioned, the 1954 Code provides for various penalties applicable to specific types of excise taxes. Such penalties are included in those enumerated in 252.

455.2 *(1-18-80)* 9781
Jeopardy Assessment in Excise Tax Cases

IRC 6862 provides that when the collection of the excise tax is deemed in jeopardy, it may be immediately assessed.

456 *(1-18-80)* 9781
Criminal Penalties for Excise Tax Violations

Criminal Penalties for most violations of excise taxes are imposed by the same 1954 Code sections as related to income taxes, which, in general, cover offenses such as willful failure to file a return, pay tax, supply information, or keep records; willful failure to account for, collect and pay over a particular tax; and willful attempts to defeat the tax in any manner. The 1954 Code also provides specific penalties which have a limited application to the various excise taxes. (The various criminal penalties are enumerated in 221.) For example, IRC 7215 and 7512, which relate to Offenses With Respect to Collected Taxes, cover noncompliance with an official notice to collect and deposit "trust fund" taxes.

457 *(1-18-80)* 9781
Excise Tax Investigations

457.1 *(1-18-80)* 9781
Origin of Excise Tax Cases

(1) Excise tax returns, unlike those for income taxes, do not admit to ready analysis to determine the possible existence of tax violations. The information contained in quarterly excise tax returns on Form 720 is limited to the kind of tax, the gross tax, the credit for overpaid tax in prior returns, and the net tax due. Hence, excise tax investigations which relate to false or fraudulent returns usually result from referrals following field audit of taxpayers' books and records. As violations applicable to excise taxes often occur simultaneously with income tax offenses, field audits conducted by the Examination Division in income tax matters often disclose violations with respect to excise taxes. Therefore, referrals in such cases often relate to both excise and income tax violations. Investigations of offenses involving willful failure to file excise tax returns, or willful failure to collect and pay over excise tax, are usually based upon referrals from the Collection or Examination Division.

(2) Some excise tax investigations result from information furnished by informants.

(3) Excise tax violations also are disclosed through surveys conducted by the Criminal Investigation Division, and by information obtained by special agents during their investigation of income tax offenses. As most excise tax offenses are committed in conjunction with income tax violations, investigation of both types of cases usually arise from the same sources.

457.2 *(1-18-80)* 9781
Techniques of Excise and Income Tax Investigations Compared

Although the criminal penalties for most violations of the excise taxes are imposed by the same 1954 Code sections as relate to income taxes, the nature of the evidence to sustain prosecution of excise tax cases differs in many respects from that required in income tax cases. Excise tax is based on specifically enumerated articles or services, whereas income tax is based strictly on income. For this reason, the established methods of determination of income in income tax cases may be inadequate to sustain criminal prosecution for evasion of the excise tax on specifically enumerated articles or services. Under certain circumstances the specific item method of proving income may be effectively used in excise tax cases, especially if an adequate breakdown of records in maintained by the taxpayer. Furthermore, any other method of proving income may be used if the circumstances are such that the evidence thus developed will serve to establish or buttress proof of violation of the excise tax on the specifically enumerated articles or services involved. In general, the investigative techniques applicable to income tax cases may be used in excise tax investigations.

460 *(1-18-80)* 9781
Wagering Tax

461 *(1-18-80)* 9781
Law Relating to Wagering Tax

461.1 *(1-18-80)* 9781
Excise Tax on Wagering

461.11 *(1-18-80)* 9781
Statutory Provisions

IRC 4401 imposes a 2 percent excise tax on wagers. This tax is distinct from the $500 annual occupational tax imposed by IRC 4411 although every person who is liable for the excise tax is also liable for the occupational tax.

461.12 *(1-18-80)* 9781
Definitions of Wagering Terms

461.121 *(1-18-80)* 9781
Wager

The term wager means any wager with respect to a sports event or a contest placed with a person engaged in the business of accepting such wagers; any wager placed in a wagering pool with respect to a sports event or a contest, if such pool is conducted for profit; and any wager placed in a lottery conducted for profit.

461.122 *(1-18-80)* 9781
Lottery

(1) The term lottery includes the numbers game, policy, and similar types of wagering. The term does not include:

(a) any game of a type in which usually
1 the wagers are placed,
2 the winners are determined, and
3 the distribution of prizes or other property is made in the presence of all persons placing wagers in such game, and

(b) any drawing conducted by an organization exempt from tax under IRC 501 and 521, if

no part of the net proceeds derived from such drawing inures to the benefit of any private shareholder or individual.

461.13 *(1-18-80)* 9781
Amount of Wager

In determining the amount of any wager, all charges incident to the placing of such wager shall be included; except that if the taxpayer establishes, in accordance with regulations prescribed by the Secretary or his delegate, that an amount equal to the tax has been collected as a separate charge from the person placing such wager, the amount so collected shall be excluded.

461.14 *(1-18-80)* 9781
Persons Liable for Wagering Excise Tax

(1) Each person who is engaged in the business of accepting wagers shall be liable for and shall pay the tax on all wagers placed with him. Each person who conducts any wagers, pool or lottery shall be liable for and shall pay the tax on all wagers placed in such pool or lottery.

(2) A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted. It is not intended that to be engaged in the business of accepting wagers a person must be either so engaged to the exclusion of all other activities or even primarily so engaged. Thus, for example, an individual may be primarily engaged in business as a salesman, and also for the purpose of the tax be engaged in the business of accepting wagers. The courts have ruled that a single transaction without additional evidence so indicating does not constitute engaging in the business. However, a single wagering transaction made under circumstances that indicate that it is made in the usual course of business may make the person liable for the special tax. The chance for successful prosecution is better where there is evidence that the person accepted several wagers and competent witnesses are available to testify as to the passage of money and its acceptance as wagers.

(3) The 2 percent excise tax is applicable to the acceptor of wagers (principal), while the $500 special tax applies to both the acceptor and the receiver of wages (agent). In addition, under IRC 4401(c), any person who as agent for a principal is liable under IRC 4411 for the special $500 tax and who fails to disclose his principal, becomes liable himself for the excise tax imposed by IRC 4401.

461.15 *(1-18-80)* 9781
Exclusions From Wagering Excise Tax

(1) No 2 percent excise tax shall be imposed on:

(a) any wager placed with, or any wager placed in a wagering pool conducted by, a parimutuel wagering enterprise licensed under State law, and

(b) any wager placed in a coin-operated device with respect to which an occupational tax is imposed by IRC 4461.

461.16 *(1-18-80)* 9781
Territorial Extent of Wagering Excise Tax

(1) The tax imposed by IRC 4401 shall apply only to wagers which are:

(a) accepted in the United States, or

(b) placed by a person who is in the United States

1 with a person who is a citizen or resident of the United States, or

2 in a wagering pool or lottery conducted by a person who is a citizen or resident of the United States.

461.2 *(1-18-80)* 9781
Wagering Occupational Tax

461.21 *(1-18-80)* 9781
Statutory Provisions

(1) IRC 4411 imposes a special tax of $500 per year to be paid by each person who is liable for tax under IRC 4401, or who is engaged in receiving wagers for or on behalf of any person so liable. The application of IRC 4411 may be illustrated by the following examples:

(a) A, who is engaged in the business of accepting horse race bets, employs ten persons to receive on his behalf wagers which are transmitted by telephone. A also employs a secretary and a bookkeeper. A and each of the ten persons who receive wagers by telephone on behalf of A are liable for special tax. The secretary and bookkeeper are not liable for the special tax unless they also receive wagers for A.

(b) B operates a numbers game and has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his behalf. B also employs C to collect from the ten persons referred to the wagers received by them on B's behalf and to deliver such wagers to B. C performs no other services for B. B and the ten persons who receive wagers on his behalf are liable for the special tax. C is not liable for the special tax since he is not engaged in receiving wagers for B.

461.22 *(1-18-80)* 9781
Registration

IRC 4412 provides that each person required to pay a special tax under IRC 4411 shall register with the District Director in charge of the Internal Revenue District where the wagering business is conducted. Form 11C is used for the registration and requires: The name and place of residence of taxpayer; if he is liable for the 2 percent excise tax, each place of business where the activity which makes him so liable is carried on, and the name and place of residence of each person who is engaged in receiving wagers for him or on his behalf; if he is engaged in receiving wagers for or on behalf of any person subject to the 2 percent excise tax, the name and place of residence of each such person. In the event a firm or company conducts the wagering business, the names and places of residence of the several persons constituting the firm or company shall be registered.

461.3 *(1-18-80)* 9781
Record Requirements

Every person required to pay the excise tax imposed by IRC 4401, shall keep a daily record showing the gross amount of all wagers on which he is liable in addition to all other records required pursuant to IRC 6001. An agent or employee who received wagers for or on behalf of another person shall keep a daily record of bets received, commissions retained, and amount turned over to his principal. The records required to be maintained by principal and agent shall at all times be open for inspection by revenue officers, and they shall be maintained for a period of at least three years from the date the wager was received.

461.4 *(1-18-80)* 9781
Payment of Special Tax Before Engaging in Wagering Business

IRC 4901 requires that the special tax imposed by IRC 4411 be paid before an individual or firm engages in accepting wagers. The special tax is computed as of the first day of July in each year, or the first day that wagers are accepted. In the former case the special tax shall be computed for one year, i.e., $500 and in the latter case it shall be prorated from the first day of the month in which wagers were accepted, to and including the 30th day of June following.

461.5 *(1-18-80)* 9781
Wagering Excise Tax Returns

Monthly returns of the 2 percent excise tax on wagers must be filed on Form 730. The taxes are due and payable to the District Director, without notice from the director, on or before the last day of the month following that for which it is made.

461.6 *(1-18-80)* 9781
Criminal Violations for Wagering Taxes

(1) Willful attempt to evade or defeat the payment of wagering tax, willful failure to file return or supply information, and failure to pay special wagering tax incur the penalties prescribed in IRC 7201, 7203, and 7262 respectively. Collateral violations, such as filing false claims, conspiracy, and false statements, may also incur penalties prescribed by sections 287, 371, and 1001 of Title 18, U.S. Criminal Code.

(2) Congress repealed IRC 6107 which allowed for public inspection of certain tax records and has enacted IRC 4424. IRC 4424 was intended to remove any constitutional problems regarding enforcement of the wagering taxes resulting from improper disclosure of wagering tax information.

462 (1-18-80) 9781
Elements of Wagering Tax Violations

462.1 (1-18-80) 9781
General

The elements of a wagering tax violation subject to the criminal sanctions of IRC 7203 are: The wagering activity must be subject to the wagering tax laws (IRC 4421); failure of the person to register and pay the special tax before accepting the wager and/or failure of the person to file wagering excise tax returns and pay tax; and evidence to prove that the person willfully failed to comply with the law. In addition to proving the above elements the Government must prove affirmative acts which indicate a willful intent to evade or defeat the tax in order to sustain a violation of IRC 7201. No proof of willfulness is required for a violation under IRC 7262, which provides a $1,000 to $5,000 fine for doing an act which makes a person liable for the special tax without having paid such tax.

462.2 (1-18-80) 9781
Wagering Tax Enforcement

(1) Primary enforcement efforts in the wagering tax area shall be aimed at the independent initiation and development of criminal cases against major operators and financiers and in other situations involving wide-spread noncompliance. Service efforts will strive to promote balanced enforcement with respect to investigations of wagering occupational, wagering excise and income tax violations on identified subjects. (See Policy Statement P-9-472 and IRM 9420.

(2) Generally, a major wagering operation is one comprised of five or more individuals who conduct, finance, manage, supervise, direct or own all or a part of a gambling business and:

(a) has a daily gross of over $2000, or

(b) conducts business at more than one location, or

(c) actively handles lay-off bets; or

(d) a principal of the operation is notorious or powerful with respect to local criminal activity.

(3) Cases not meeting the criteria may be investigated and recommended for prosecution only if they are associated with and submitted for prosecution simultaneously as a package with the case(s) meeting the criteria.

463 (1-18-80) 9781
Investigative Techniques

(1) Violations of criminal statutes by IRS personnel are prohibited. However, under certain circumstances, investigative techniques used by special agents in the performance of their official duties, which would appear to violate a state or local criminal statute, do not actually constitute a violation. One such technique may be the placing of a bet by a special agent, using a temporary identity, to obtain evidence relating to a wagering tax investigation. Whether a particular investigative technique constitutes a violation of a statute depends upon the justifiability of the use of the investigative technique under the circumstances. Among the factors to be considered in determining justifiability are: the realistic availability of alternative investigative techniques, including timing, cost and staffing considerations; the degree of actual harm that such conduct is likely to cause; the efforts of the agent to minimize such harm; and the potential benefits for society from such conduct. Of course, no technique to secure evidence can be deemed justifiable and is, therefore, impermissible if it involved a violation of the person or property of any individual. Under no circumstances can agents employ such techniques as illegal threats or assaults against any persons, breaking and entry into another's premises without a search warrant, the unauthorized taking of papers or other property, or the unauthorized overhearing of conversations. In order to protect IRS personnel and to assure that IRS personnel act within the law, District Counsel should be consulted if doubt exists as to how the law applies to a particular situation.

(2) Investigations of wagering tax violations usually require surveillance of violators and localities to obtain probable cause for issuance of search warrants. (See IRM 9383.6.)

(3) Special agents shall only be used in a penetration type undercover capacity after having received training in the technique. This will provide for consistency in approach and avoid possible violations of law which could occur by using untrained agents in undercover activities. The Assistant Regional Commissioner (Criminal Investigation) will make arrangements through the Director, Criminal Investigation Division, Attn:CP:CI:O for interregional use of trained undercover agents. (See IRM 9389.(11)).

(4) Special agents may place wagers and participate as customers to obtain evidence of wagering activities. Such assumption of a temporary identity for this nonpenetrating type activity will be carried out in accordance with current guidelines on surveillance. Paid informants may be used when appropriate. Expenditures for the placing of wagers and payments of informants will be designated "Confidential Expenditures". (See IRM 9372.)

(5) Special agents will at all times conform to the Department of Justice guidelines on monitoring of private conversations. Mechanical, electronic, or other devices will be used only in accordance with policy statement P-9-35 and the procedures set forth in IRM 9388 and 9389.

464 *(1-18-80)* 9781

Venue in Wagering Investigations

Text 727 covers the question of venue as it pertains to IRC 7201 and 7203, and the comments made in 727 are applicable to wagering tax cases. Violation of IRC 7262, which provides a maximum penalty of $5,000 for not paying the special tax imposed by IRC 4411, is committed in the judicial district where the wager was accepted. Therefore, venue lies in the judicial district where the wager was accepted without regard to the location of the District Directors' office.

465 *(1-18-80)* 9781

Statute of Limitations on Wagering Taxes

The statute of limitations with regard to both excise and occupational wagering taxes (IRC 7201 or 7203) begins to run on the day following the last overt act and ends six years from that date.

466 *(1-18-80)* 9781

Civil Penalties on Wagering Taxes

The 50 percent civil fraud penalty provided by IRC 6653(b), is applicable to both the excise and the occupational wagering taxes. Application of the 50 percent penalty precludes imposing the 25 percent delinquency penalty. Since this is not a "collected tax," IRC 6653(e) is not applicable.

Exhibit 400-1

Net Worth Statement
Handbook Reference: Text 424.8

◊

NET WORTH STATEMENT
John and Mary Roe
Dayton, Ohio

	ASSETS	12/31/—	12/31/—	12/31/—
1.	Cash—First National Bank	$ 4,500.00	$ 150.00	$ 2,500.00
2.	Cash on hand	25.00	25.00	25.00
3.	Inventory, Liquor Store	4,800.00	13,000.00	29,000.00
4.	U.S. Savings Bonds	-0-	3,750.00	-0-
5.	Note Receivable, Frank Roe	-0-	-0-	300.00
6.	Note Receivable, Roger Jones	-0-	-0-	16,000.00
7.	Accounts Receivable, Doc's Market	-0-	1,600.00	-0-
8.	Lot on Dayton Road	1,000.00	1,000.00	1,000.00
9.	Ohio Tourist Camp	12,000.00	12,000.00	12,000.00
10.	Residence, 1100 Vine Street	2,800.00	2,800.00	-0-
11.	30 Acre Farm, East Dayton	-0-	7,400.00	7,400.00
12.	150 Acre Farm, North Dayton	-0-	-0-	7,000.00
13.	Equipment—Liquor Store	800.00	800.00	800.00
14.	Ace Automobile	2,800.00	2,800.00	2,800.00
15.	Farm Truck	-0-	-0-	800.00
16.	Farm Equipment	-0-	1,250.00	2,250.00
17.	Livestock on Farm	-0-	900.00	1,300.00
	Total Assets	$28,725.00	$47,475.00	$83,175.00
	LIABILITIES			
18.	First Federal Savings & Loan Assn.	$ 2,400.00	$ 1,800.00	$ -0-
19.	First National Bank	2,900.00	2,700.00	-0-
20.	Depreciation Reserve	2,500.00	3,200.00	4,300.00
	Total Liabilities	$ 7,800.00	$ 7,700.00	$ 4,300.00
	NET WORTH	$20,925.00	$39,775.00	$78,875.00
	Less: Net Worth of Prior Year		20,925.00	39,775.00
	Increase in Net Worth		$18,850.00	$39,100.00
	ADJUSTMENTS			
	Add:			
21.	Living Expenses		$ 2,500.00	$ 2,500.00
22.	Life Insurance Premium		300.00	500.00
23.	Federal Income Taxes Paid		750.00	900.00
	Less:			
24.	Long-Term Capital Gain on Sale of Residence (50%)		-0-	(500.00)
25.	Inheritance		-0-	(10,000.00)
	Adjusted Gross Income		$22,400.00	$32,500.00
	Less: Standard Deduction		1,000.00	1,000.00
	Balance		$21,400.00	$31,500.00
	Less: Exemptions (4)		2,400.00	2,400.00
	Taxable Income		$19,000.00	$29,100.00
	Less: Taxable Income Reported		6,100.00	6,400.00
	Taxable Income Not Reported		$12,900.00	$22,700.00

Exhibit 400-2

Expenditures Statement
Handbook Reference: Text 425.6

EXPENDITURES STATEMENT
John and Mary Roe
Dayton, Ohio

Item No.	Money Spent or Applied on Nondeductible Items	19—	19—
1.	Cash—First National Bank (increase)	-0-	$ 2,350.00
3.	Inventories	$ 8,200 00	16,000.00
4.	U. S. Savings Bonds	3,750 00	-0-
5.	Note Receivable, Frank Roe	-0-	300.00
6.	Note Receivable, Roger Jones	-0-	16,000 00
7.	Accounts Receivable, Doc's Market	1,600.00	-0-
11.	30 Acre Farm, East Dayton	7,400.00	-0-
12.	150 Acre Farm, North Dayton	-0-	7,000.00
15.	Farm Truck	-0-	800.00
16.	Farm Equipment	1,250.00	1,000.00
17.	Livestock on Farm	900.00	400.00
	Payments on Loan.		
18.	First Federal Savings & Loan Assn.	600.00	1,800.00
19.	First National Bank	200.00	2,700.00
21.	Living Expense	2,500 00	2,500.00
22.	Life Insurance Premium	300.00	500 00
23.	Federal Income Taxes Paid	750.00	900.00
	TOTAL	$27,450.00	$52,250,000
	Nontaxable Sources of Funds		
1.	Cash—First National Bank (decrease)	$4,350.00	-0-
4.	U. S. Saving Bonds	-0-	$3,750 00
7.	Accounts Receivable, Doc's Market	-0-	1,600.00
10.	Sale of Residence, 1100 Vine Street (cost)	-0-	2,800.00
20.	Depreciation reserve	700.00	1,100.00
24.	Capital Gain on Sale of Residence, 1100 Vine Street (50%)	-0-	500.00
25.	Inheritance	-0-	10,000.00
	TOTAL:	$5,050.00	$19,750.00
	Adjusted Gross Income	$22,400.00	$32,500.00
	Less: Standard Deduction	1,000.00	1,000.00
	Balance	$21,400.00	$31,500.00
	Less. Exemptions (4)	2,400 00	2,400 00
	Taxable Income	$19,000.00	$29,100 00
	Less: Taxable Income Reported	6,100.00	6,400.00
	Taxable Income Not Reported	$12,900.00	$22,700.00

Exhibit 400-3

Schedule A ◊
Handbook Reference: Text 426.6

SCHEDULE—A

COMPUTATION OF TAXABLE INCOME BY BANK DEPOSITS METHOD

John and Mary Roe

Dayton, Ohio

For the Year Ended December 31, 19—

Total Deposits—First National Bank		$163,015.00
Currency Disbursements (see schedule B)		2,900.00
Subtotal		$165,915.00
Less: Nonincome Deposits and Items:		
(1) U.S. Savings Bonds Redeemed	$ 3,750.00	
(2) Notes Receivable, Doc's Market Collected	1,600.00	
(3) Sale of Residence at 1100 Vine St.	3,800.00	
(4) Inheritance	10,000.00	19,150.00
Gross Receipts from Business		$146,765.00
Less: Cost of Goods Sold:		
Inventory 1-1—	$ 13,000.00	
Purchases -19—	124,000.00	
Goods Available for Sale	$137,000.00	
Less—Inventory 12-31—	29,000.00	
Cost of Goods Sold		108,000.00
Gross Profit from Business		$ 38,765.00
Less: Business Expenses		
Interest	$ 150.00	
Salaries	4,200.00	
Rent	1,200.00	
Material and Supplies	115.00	
Depreciation	1,100.00	
Total Business Expense		6,765.00
Net Profit from Business		$ 32,000.00
Add: Long-Term Capital Gain on Sale of Residence (50%)		500.00
Adjusted Gross Income		$ 32,500.00
Less: Standard Deduction		1,000.00
Balance		$ 31,500.00
Less: Exemptions (4)		2,400.00
Taxable Income		$ 29,100.00
Less: Taxable Income Reported		6,400.00
Taxable Income not Reported		$ 22,700.00

Exhibit 400-4

Schedule B
Handbook Reference: Text 426.6

◇

SCHEDULE—B

COMPUTATION OF CURRENCY DISBURSEMENTS

John and Mary Roe

Dayton, Ohio

For the Year Ended December 31, 19—

Purchases		$124,000.00
Interest		150.00
Salaries		4,200.00
Rent		1,200.00
Materials & Supplies		115 00
Loan to Frank Roe		300.00
Loan to Roger Jones		16,000.00
Purchase 134 Acre Farm, North Dayton		7,000.00
Purchase Farm Truck		800.00
Purchase Farm Equipment		1,000.00
Purchase of Livestock		400.00
Payments on Loan—First Federal Savings & Loan		1,800.00
Payments on Loan—First National Bank		2,700.00
Living Expense		2,500.00
Life Insurance Premiums		500.00
Federal Income Taxes Paid		900.00
Total Disbursements		$163,565.00
Bank Balance 1-1—	$ 150 00	
Total Deposits	163,015.00	
Funds Available to Spend	$163,165 00	
Bank Balance 12-31—	2,500.00	
Bank Disbursements		160,665 00
Currency Disbursements		$ 2,900.00

Note: This computation may be made when canceled checks are incomplete or not available from which to make an analysis as shown in Exhibit 300-5. Data necessary to make such a computation is usually obtainable from income tax returns of the taxpayer and third-party sources.

Exhibit 400-5

Summary—Analysis of Checks and Currency Disbursements
Handbook Reference: Text 426.6

SUMMARY—ANALYSIS OF CHECKS AND CURRENCY DISBURSEMENTS

John and Mary Roe, Dayton, Ohio
For The Year Ended December 31, 19—

Disbursements for Business Expenses:

Accounts	Check	Currency	Total
Purchases	$123,465	$535	$124,000
Interest	100	50	150
Salaries	4,000	200	4,200
Rent	1,200		1,200
Materials		115	115
Total	$128,765	$900	*$129,665

Disbursements for Net Worth Items:

Loan to Frank Roe	$ 300		$ 300
Loan to Roger Jones	16,000		16,000
Purchase of 134 Acre Farm, North Dayton	6,000	$1,000	7,000
Purchase of Farm Truck	800		800
Purchase of Farm Equipment	1,000		1,000
Purchase of Livestock	400		400
Payments on Loan, First Federal Savings	1,800		1,800
Payments on Loan, First National Bank	2,700		2,700
Living Expense	1,500	1,000	2,500
Life Insurance Premiums	500		500
Federal Income Taxes Paid	900		900
Total	$ 31,900	$2,000	$ 33,900
Total Disbursements, Business Expenses and Net Worth Items	$160,665	$2,900	$163,565

* The business expenses of $129,665 are the same as amounts claimed on Form 1040.

Exhibit 400-6

Analysis of Deposits to Checking Account
Handbook Reference: Text 426.6 ◊

John and Mary Roe
First National Bank of Dayton, Ohio

Date	Total Deposit	Gross Receipts Deposited			Loans, Transfers, etc.	Report Exhibit No.	Source
		Currency	Checks: Identified	Checks: Unidentified			
19—							
1-3	$2,400	$100					Unidentified
					$1,600	6	Loan—Doc's Market
			$500			7	Sale to Social Club
			$100			8	Sale to John Smith
				$100			Unidentified
1-4	$1,200	$400					Unidentified
			$800			9	Sale to Frank Lee
1-5	$10,500	$200					Unidentified
					$10,000	10	Inheritance
			$300			11	Sale to John Smith
1-6	$3,750				$3,750	12	U. S. Savings Bonds Redeemed
Bal. of Year	$145,165	$40,300	$72,300	$28,765	$3,800		
Total	$163,015	$41,000	$74,000	$28,865	$19,150		

Exhibit 400-7

List of First Three Digits of Social Security Numbers (SSN) and their Assigned Areas of Issuance ◊

LIST OF FIRST THREE DIGITS OF SOCIAL SECURITY NUMBERS (SSN)
AND THEIR ASSIGNED AREAS OF ISSUANCE

Number(s)	Area	Number(s)	Area
001–003	New Hampshire	449–467	Texas
004–007	Maine	468–477	Minnesota
008–009	Vermont	478–485	Iowa
010–034	Massachusetts	486–500	Missouri
035–039	Rhode Island	501–502	North Dakota
040–049	Connecticut	503–504	South Dakota
050–134	New York	505–508	Nebraska
135–158	New Jersey	509–515	Kansas
159–211	Pennsylvania	516–517	Montana
212–220	Maryland	518–519	Idaho
221–222	Delaware	520	Wyoming
223–231	Virginia	521–524	Colorado
232–236	West Virginia	525,585	New Mexico
(1) 232,237–246	North Carolina	526–527	Arizona
247–251	South Carolina	528–529	Utah
252–260	Georgia	530	Nevada
261–267	Florida	531–539	Washington
268–302	Ohio	540–544	Oregon
303–317	Indiana	545–573	California
318–361	Illinois	574	Alaska
362–386	Michigan	575–576	Hawaii
387–399	Wisconsin	577–579	District of Columbia
400–407	Kentucky	580	Virgin Islands
408–415	Tennessee	(2) 580–584	Puerto Rico
416–424	Alabama	586	Guam
425–428,587	Mississippi	(3) 586	American Samoa
429–432	Arkansas	(3) 586	Philippine Islands
433–439	Louisiana	700–729	Railroad Retirement Board
440–448	Oklahoma		

(1) Area 232: Number 30 (middle 2 digits of SSN) allocated to N. Carolina by transfer from W. Virginia.

(2) Area 580: Numbers 01–18 (middle 2 digits of SSN) allocated to the Virgin Islands; number 20 and above allocated to Puerto Rico.

(3) Area 586: Numbers 01–18 (middle 2 digits of SSN) allocated to Guam; numbers 20–28 allocated to American Samoa; numbers 30–58 reserved for possible future allocation to other Pacific possessions or trust territories; numbers 60–78 allocated during initial registration of armed service personnel for assignment to those who were natives of the Phillippine Islands; number 80 and above not allocated.

Procedures and Techniques in Other Investigations

510 *(1-18-80)* 9781
Interference, Forcible Rescue of Seized Property

511 *(1-18-80)* 9781
Interference Cases

511.1 *(1-18-80)* 9781
Corrupt or Forcible Interference (IRC 7212(a))

(1) The text of the law under this section is set forth in text 221.(10).

(2) The elements essential to constitute an offense under this section are:

(a) Corruptly, or by force or by threats of force (including any threatening letter or communication)

1 Endeavors to intimidate or impede an offical acting in an official capacity under this title, OR

2 Endeavors to impede or obstruct the due administration of this title:

(3) This section provides for the punishment of threats or threatening acts against agents of the Internal Revenue Service or any other officer or employee of the United States or members of the families of such persons on account of the performance by such agents or officers or employees of their official duties.

(4) Although in the Conference Committee's Report (House and Senate) it is stated that "this section will also punish the corrupt solicitation of an Internal Revenue Employee," the section of the law itself does not literally embody the word "solicitation." However, it appears that the broad phrase "in any other way CORRUPTLY . . . obstructs or impedes" would include not only solicitation, but other acts of a similar nature. The Committee's Report also states that:

> "Subsection (a) of Section 7212 is broader than Section 111, Title 18 of the United States Code relating to persons assaulting, resisting or impeding certain officers or employees of the United States while engaged in the performance of their official duties, in that 7212(a) covers force or threats of force (including any threatening letter or communication) or corrupt solicitation. Threats of force have been defined as meaning threats of bodily harm to the officer or employee of the United States or members of the families of such persons, on account of the performance by such agents or officers or employees of their official duties."

(5) CORRUPTLY characterizes an attemtempt to influence any official in his/her official capacity under this title by any improper inducement. For example, an offer of a bribe or a passing of a bribe to an Internal Revenue employee for the purpose of influencing him/her in the performance of his/her official duties is corrupt interference with the administration of Federal laws.

511.2 *(1-18-80)* 9781
Assault, Resisting or Impeding Certain Officers or Employees (18 USC 111)

The text of this statute is in text 222.5. Although there is some overlapping between it and IRC 7212(a), the latter is broader because it includes use of force or threats of bodily harm to the officer or employee of the United States acting in an official capacity under the Internal Revenue laws, or any member of his/her family. A mere threat of force under IRC 7212(a) may be chargeable only as a misdemeanor, even if the threat consists of pointing a rifle at the agent. On the other hand, 18 USC 111, which makes it an offense to assault, resist, oppose, impede, intimidate, or interfere with officers or employees designated under 18 USC 1114 (including Internal Revenue Service employees), provides a much more severe punishment when the act is committed with a deadly or dangerous weapon. Furthermore, cases under 18 USC 111 have not required proof of knowledge of the official capacity of the person assaulted. [*U.S. v. Lombardozzi.*]

511.3 *(1-18-80)* 9781
Investigative Responsibility

(1) The Inspection Service has primary jurisdiction for investigation of all threats, assaults, and forcible interference against IRS personnel. All reports of assaults, threats or forcible interference against Service employees must go either directly or through appropriate supervisory channels to the Inspection Service. The Criminal Investigation Division will assist Inspection in urgent or emergency situations. The Regional Inspector will evaluate the situation and when, in the view of the Regional Inspector, the deployment of Inspection personnel does not meet the urgency required, the Regional Inspector may request assistance from Criminal Investigation to conduct the investigation of the alleged threat, assault or other forcible in-

terference. Inspection will be provided with a copy of the investigative report.

(2) In emergency forcible interference situations, where an employee is in imminent danger of physical harm and Internal Security Inspectors are not readily available, Criminal Investigation will respond immediately. As soon as possible the Regional Inspector will be notified so that the appropriate investigation can be conducted or completed by Criminal Investigation or Inspection.

(3) If forcible interference takes place during an armed escort assignment, or during an arrest or raid in connection with a matter pending before the Criminal Investigation Division, Criminal Investigation will conduct the necessary investigation. The Regional Inspector shall be notified by the Chief at the earliest opportunity and provided with a copy of the investigative report.

511.4 *(1-18-80)* 9781

Investigation of Interference Cases

(1) Interference cases may arise quite suddenly in Federal tax proceedings, such as during a seizure or some other enforcement, levy, or collection activity. Ordinarily the information causing this type of investigation comes direct to the Chief, who, thereafter, because of the hazard involved to the investigating officer as well as the peril in which the enforcement system of the Service is placed in a violation of this nature, keeps abreast of the developments of the investigation. This is necessary because every action taken has to be planned with utmost circumspection. However, prompt action is of the essence.

(2) It must be established that the assaulted or threatened officer was engaged in the performance of official duties when the assault or threats occurred and, at least, if prosecution is intended under IRC 7212(a), that the assault or threats were intended to impede or obstruct the performance of those duties. If the assault or threat is in connection with official duties, it is immaterial whether the act occurred during the agent's official working hours. The investigating special agent should promptly:

(a) Examine the file relating to the assignment of the case, and obtain from it copies of all records and data pertaining to the date and circumstances of the assignment;

(b) Obtain from the assaulted or threatened officer a sworn statement concerning whether he/she was engaged in the performance of official duties in pursuance of such assignment when the assault or threats occurred;

(c) Ascertain if there had been any prior ill will or altercation between the assailant and the Government officer, and if so find out the nature of it;

(d) Obtain from the assaulted or threatened officer, as well as from any other persons who witnessed either the assault or the menacing gestures or heard any threats of force, sworn testimony of knowledge of the incidents and circumstances leading up to and accompanying the assault or threats of force. This sworn testimony should include:

1 A recital of any conversation that took place and any threatening language that was used.

2 A description of the assault, any menacing gestures, and any weapons or instruments used. The investigating special agent should also, if possible, obtain possession of such instruments or weapons and get the names and addresses of witnesses who can identify them.

(e) Consider the advisability of interviewing the person who allegedly made the threat or assault.

(3) A diagram of the premises where an assault, menacing gestures, and threatening language occurred has been used advantageously to orient the witnesses while taking their testimony.

(4) For reasons stated above, it is intended that the investigating special agent will daily keep his/her Chief and/or immediate supervisor apprised of the developments, and that together they will determine what further investigation is required or what further action should be taken.

(5) Exhibit 600-11 of this Handbook illustrates the type of investigation that may be required when a member of an IRS employee's family receives a threat through the mails.

511.5 *(1-18-80)* 9781
Assault or Resistance to Search or Service of Process (18 USC 1501; 18 USC 2231)

Both of these statutes concern assaults upon, resistance to, and interference with persons serving or executing legal process, or making searches and seizures. The text of Section 1501 appears in 222.(19), and the text of Section 2231 is found in 222.(31). Section 1501, which carries a lighter penalty, includes nonforcible acts of obstruction, but requires knowledge that the person impeded was an officer engaged in serving or executing process. Section 2231 is restricted to forcible interference with searches and seizures, or service and execution of search warrants. It would normally appear that if the activity involved is a search, with or without warrant, and force is alleged, prosecution might better be recommended under Section 2231 because of the more severe punishment provided, particularly if a deadly or dangerous weapon is used. On the other hand, if the alleged willful interference involves some legal process other than a search warrant or if there has been no showing of force, prosecution would lie only under Section 1501. No case has yet determined if interference with service of a Commissioner's summons is a violation of Section 1501.

511.6 *(1-18-80)* 9781
Obstruction of Criminal Investigations (18 USC 1510)

This statute provides criminal sanctions against anyone who attempts to prevent the transmission of information regarding a violation to a criminal investigator or who injures any person or his/her property because of giving of such information. The text is set forth in 222.(21).

512 *(1-18-80)* 9781
Forcible Rescue of Seized Property

512.1 *(1-18-80)* 9781
Elements of Forcible Rescue Cases

512.11 *(1-18-80)* 9781
Forcible Rescue (IRC 7212(b))

(1) The essential elements of this offense are:

(a) That there is a forcible rescue or attempt to forcibly rescue.

(b) That the property is under valid seizure under Title 26.

(2) The text of this statute is set forth in 221.(10).

512.12 *(1-18-80)* 9781
Rescue of Seized Property (18 USC 2233)

(1) The essential elements of the offense under the Criminal Code (18 USC 2233) are:

(a) That there is a forcible rescue or dispossession or an attempt to forcibly rescue or dispossess;

(b) That the property has been taken, detained, or seized under the authority of a revenue law of the United States, or by any person authorized to make searches and seizures.

(2) The text of this statute is set forth in 222.(33).

(3) Prosecution recommendation may be made under this section if:

(a) There has been a seizure, levy, or other taking which is sufficient to put the retaker on notice that the prooperty is under process of seizure for taxes;

(b) There is a retaking by physical force, stealth, or in any other manner which indicates a willful defiance of the legal process.

512.2 *(1-18-80)* 9781
Investigation of Forcible Rescue Cases

(1) Cases interpreting forcible rescue under both IRC 7212(b) and 18 USC 2233 permit prosecution for rescuing or dispossessing, or attempting to rescue or dispossess property of which the Government has taken legal possession, against a stranger as well as a former owner. [Chief Counsel memo, 3/9/60, CC:En:SAK-A-63868.]

(2) By present practice, determination of whether an alleged forcible rescue is to be investigated by the Criminal Investigation Division or the Federal Bureau of Investigation depends on whether the property was taken before or after it was adjudicated Government property. Before undertaking an investigation, the special agent should first determine if it is one to be handled by the Criminal Investigation Division, as prescribed in IRM 9123:(3), as follows:

"The Criminal Investigation Division has the responsibility for investigating cases involving forcible rescue or dispossession of property seized under the Internal Revenue laws, except property seized by the Bureau of Alcohol, Tobacco and Firearms. However, cases involving theft of Government property are within the responsibilities of the Federal Bureau of Investigation, including seized property which has been adjudicated as Government property and seized property which has been turned over to the United States Marshal in a libel proceeding."

(3) Upon determining that it is a case within the Criminal Investigation jurisdiction the special agent should promptly establish whether the property was under valid seizure under the Internal Revenue Code when rescued, and whether it was forcibly rescued or there was an attempt to forcibly rescue it.

(4) To be a basis for a forcible rescue case under 18 USC 2233 or IRC 7212, the taking by the Government must have been made with at least some semblance of authority, i.e., the seizure must be valid on its face. [*Cooper v. U.S.*] It should be shown that the person retaking the property had knowledge of the seizure or of the fact that the property is in the possession of the Government. [Chief Counsel memo, 3/9/60, CC:En:SAK-A-63868.] A seizure valid on its face will generally support a rescue conviction even if the seizure could be invalidated by court proceedings. It is no defense that the person retaking claims to be the real owner and that the property was seized by mistake. A person's remedy is judicial, not self-help. [*U.S. v. Scolnick*]

(5) "Forcible" does not necessarily mean actual violence to the person of an officer. It includes "threatening language, or conduct calculated and intended to intimidate prudent, cautious, and ordinarily brave men and make them desist from the performance of official duty from well-grounded apprehension of serious bodily harm." [*U.S. v. Wm. Ford*] It has been held that a forcible rescue, under IRC 7212(b), includes the use of force against property, such as the breaking of a bank window, the removal of the Service's seal on a safe deposit box, and the removal of the box and its contents from the bank. [*U.S. v. Scolnick*]

(6) The procedure in investigating to determine whether the property has been validly seized, and whether there has been a forcible rescue or attempt to forcibly rescue, should be as follows:

(a) *Validity of Seizure.*

1 Examine the file relating to the seizure and obtain therefrom certified copies of all the documents giving legal basis to the seizure;

2 Interview under oath all officers, employees, and other persons having any knowledge of the circumstances leading up to and including the seizure, concerning all facts pertinent to the accomplishment of the seizure; and

3 Establish that a notice of seizure was attached to the property.

(b) *Forcible Rescue of the Seized Property.*—Interview under oath those officers, employees, and other persons who may have witnessed the forcible rescue regarding the circumstances leading up to and including the forcible rescue, with a recital of any threatening language as well as a description of any menacing gestures, instruments, or weapons used. The special agent should try to obtain any instruments or weapons used by the assailant and get the names and addresses of witnesses who can identify them. An effort should also be made to establish what knowledge the defendant had that the property was under seizure when the forcible rescue was committed or attempted.

520 *(1-18-80)* 9781
Offer of Bribe (18 USC 201)

521 *(1-18-80)* 9781
Reference

The text of the law under this section is set forth in 222.6.

522 *(1-18-80)* 9781
Elements of Offer of Bribe

The principal elements of the offense described in this section are: Promising, offering, or giving of a thing of value to an officer or an employee or a person acting for or on behalf of the United States for the purpose of influencing his/her official conduct [*Kemler v. U.S.*]; corrupt intent of the promisor, offeror, or giver to influence such officer, employee, or person in the discharge of his/her duties [*Kemler v. U.S.*]; and knowledge by the person making the promise, offer, or gift of the official function of the person to whom the promises, offer, or gift is made. [*Bradshaw v. U.S.*] To "offer" and to "give" bribes are distinct crimes even when part of a single transaction. The test of whether a single transaction includes distinct offenses of offering and of giving a bribe is whether separate acts have been committed with requisite criminal intent. [*U.S. v. Michelson*] The statute is violated when a bribe is given or an offer to bribe is made regardless of the occasion therefor, provided the acceptor or offeree of the bribe is a person of the sort described in the statute. [*Kemler v. U.S.*]

523 *(1-18-80)* 9781
Jurisdiction in Offer of Bribe

(1) The jurisdiction of the Criminal Investigation Division in offer of bribe cases is prescribed in IRM 9123:(1) as follows:

> "Except in raid or arrest cases, charges of attempted bribery of Internal Revenue employees will be investigated by Inspection. The Criminal Investigation Division has the responsibility for investigating attempted bribery which occurs during a raid or an arrest in connection with any matter pending before the Criminal Investigation Division. In such instances a written report of the attempted bribery will be furnished to Inspection for information purposes. Cases involving alleged solicitation of gratuities by Service employees, and extortion or bribes received by employees are within the jurisdiction of Inspection and the Federal Bureau of Investigation. However, when there has been an allegation of an acceptance of a bribe, the Criminal Investigation Division may cooperate in a joint investigation with Inspection by inquiring into possible attempted evasion of income tax on the amount of bribe received and possible tax violations which the alleged bribe was made to conceal."

(2) In any case, except raid and arrest cases, when a special agent is offered a bribe, or has reasonable grounds for believing that such an offer will be made, he/she should follow the procedures as set forth in IRM 9142.2.

524 *(1-18-80)* 9781
Investigation of Offer of Bribe

(1) If a bribe offer occurs during a raid or an arrest, the statements of the officers with respect to what is said should be reduced to sworn testimony. It is essential to establish beyond any question, from the words and conduct of the offeror, that his/her intent was that of offering a bribe to a Government officer. The officers should, therefore, be able to testify fully and with absolute certainty about the conduct of the parties, their conversations, and any transactions that take place.

(2) If during a raid the bribe offer is made by someone other than the person under arrest, the individual making the offer should also be placed under arrest and charged with offer of a bribe. If the offer is made by someone already under arrest additional charges for offering the bribe should be placed against him/her. If money has been handed to the Government officer, he/she should be careful to make a list of the serial numbers and denominations in the presence of at least one other Government officer and note any other distinguishing features. The officer should then put the money in an envelope or in some other suitable container and seal it in such manner that he/she can later identify the seal and that it will have to be broken to get at the contents. Thereupon the container shall be delivered by the officer for safekeeping to the district office cashier or cashier's representative. The container shall be held by the cashier or cashier's representative in safe custody in its exact state of condition on delivery. The special agent should exercise due care in issuing instructions relative to the conditions of custody so that the chain of evidence will be preserved.

(3) This technique of investigation requires the greatest expertness and discretion to obviate a defense of entrapment. The Government officer should be extremely circumspect about what he says and does after the offer of bribe has been made.

530 *(1-18-80)* 9781
Perjury

531 *(1-18-80)* 9781
Reference

The text of 18 USC 1621, relating to perjury, is set forth in 222.(22).

532 *(1-18-80)* 9781
Elements of Perjury

(1) *Oath.*

(a) The oath must be solemnly administered by a duly authorized officer. It is immaterial in what form the oath is given if the party at the time professes such form to be binding on his/her conscience. However, a special agent, when administering an oath, should follow the language in Section 1621 as a guide and call upon the witness to testify truly. The special agent's demeanor should be such as to impress upon the witness the solemnity of the oath and the need for telling the truth.

(b) In order to constitute perjury under the laws of the United States, the officer administering the oath must be authorized so to do by the laws of the United States. The source of a special agent's authority to administer an oath is stated in 346.2 and Exhibit 300-13. Notaries public can administer oaths and take affidavits on which perjury can be predicated in Federal courts only in cases and to the extent authorized by Federal statutes.

(2) *False statement.*—In order to constitute perjury, the matter sworn to must be a material matter that the deponent knows or believes to be false. [*State v. Doto*] The essence of perjury is the false assertion of knowledge or belief, rather than the truth or falsity of the statement itself. Thus, perjury may be committed as to a statement which is true in fact, if the deponent falsely asserts it to be true to his/her knowledge or belief, when he/she really believes it to be false or lacks any knowledge of its truth or falsity. It is equally as perjurious for a person to knowingly and corruptly to swear that he/she is ignorant of a fact of which he/she is actually aware [*People v. Moretti*] as it is to swear that he/she knows something to be a fact when he/she is actually ignorant of it.

(3) *Materiality.*

(a) Any statement which is relevant to the matter under investigation is sufficiently material to form the basis of a perjury charge. The question of materiality is one of law for the court. [*Breckanstin v. U.S.; U.S. v. Moran*] The test of materiality is whether the false statement can influence, impede, or dissuade the tribunal or the Government officer. [*Boehm v. U.S.*] Materiality is not a matter of degree. It is sufficient if the false statement is collaterally, remotely, corroboratively, or circumstantially material or has a legitimate tendency to prove or disprove a fact in the chain of evidence. [*U.S. v. Weiler*]

(b) A special agent's principal consideration in determining whether a false statement given in the course of an official investigation is material and perjurious is: can the statement affect the investigation?

(4) *Willfulness, Knowledge, and Intent.*—In order to constitute perjury, the false statement must be made with criminal intent, that is, it must be made with intent to deceive, and must be willfully, deliberately, knowingly and corruptly false. [*Breckanstin v. U.S.*] The subject of willfulness is discussed in 41(11). The crime of perjury in an affidavit is complete when the oath is taken with the necessary intent, but it is immaterial and irrelevant that the false affidavit is never used. [*Steinberg v. U.S.*]

(5) To convict of perjury the prosecution must produce testimony of more direct and positive type than is required to justify a verdict of guilty in other offenses. [*Hart v. U.S.; Allen v. U.S.*]

533 *(1-18-80)* 9781

Establishing Elements of Perjury

(1) *Establishing Authority to Administer Oath.*—Since the burden of proof is on the prosecution to establish the false swearing before an officer or tribunal having authority to administer the oath, the prosecution must adduce sufficient evidence to establish such authority. The Government shall therefore be prepared to present as evidence the required copies of those instruments or the official record establishing the authority of the officer administering the oath. The fact that the oath was administered must be proved beyond a reasonable doubt.

(2) *Establishing That a Statement Was Made.*—The prosecution must show beyond a reasonable doubt that the accused made the statement assigned as perjury. The special agent shall therefore obtain authenticated copies of the record of proceedings wherein the alleged statement was made, or be prepared to produce:

(a) the document embodying the perjurious statement;

(b) the officer who administered the oath in connection therewith; and

(c) any witnesses who were present when the document was signed.

(3) *Establishing Falsity of Statement.*

(a) The burden of proof is upon the prosecution to establish that the deponent knew or believed that the statement to which he/she testified was false. This must be established by testimony of two witnesses, or by one witness and written documents of strong corroborating circumstances proved by independent testimony of witnesses. [*Phair v. U.S.; Allen v. U.S.*]

(b) The mere fact that a prior statement was inconsistent with a later statement does not satisfy the elements of perjury. [*U.S. v. Letchos*] The prosecution must adduce sufficient evidence of the circumstances under which each statement was made for the jury to determine if one of them was false. Mere showing that the accused later denied the truth of an earlier statement is insufficient, even if the denial is established by testimony of more than one witness. There must still be strong, clear evidence to establish the falsity of the earlier statement. [*Phair v. U.S.; Allen v. U.S.*]

(c) There can be no conviction for perjury if the defense can show that the statements or answers are literally accurate, technically responsive, and legally truthful. [*J. Robt. Smith v. U.S.*] Mere showing of rash or reckless statements under oath will not support a charge of perjury, since the willful intent to mislead or deceive is lacking. [*U.S. v. Edwards*] However, proof that a person gave testimony under oath in reckless disregard of its truth or falsity would be equivalent proof that he/she have testimony with knowledge of its falsity.

(d) The special agent in the interview of the witness must be sure that the questions put to the witness are specific and couched in terms which are understandable to such witness, and that the answers thereto are specific, since the proof must be of a specific false statement or statements. [*Galanos v. U.S.*] Questions put to the witness must search for the truth. [*U.S. v. Slutsky*] If it appears that the witness is tending to deviate from the truth, the special agent may remind him/her that he/she is testifying under oath. This should not be done in a threatening manner, but rather in the spirit of emphasizing the gravity of the situation and the importance of the witness' telling the truth. The entire proceedings should be recorded.

(4) *Establishment of Materiality.*—The special agent should be prepared to adduce testimony and/or other competent evidence concerning the purpose of information sought from the witness and the place it takes in the chain of evidence sufficient to convince the court of its materiality. The materiality of the false testimony may be shown by the record of the proceedings in which it was given or by other competent evidence. [*U.S. v. Weber; U.S. v. Moran*]

534 *(1-18-80)* 9781

False Declarations Before Grand Jury or Court

The text of 18 U.S.C. 1623, relating to false declarations under oath before a grand jury or court, is set forth in 222.(24). Passed as part of the Omnibus Crime Bill of 1970, the offense requires proof that the defendant knowingly made two or more declarations which are inconsistent to the degree that one of them is necessarily false. The Government need not specify which declaration is false if each declaration was material to the point in issue and each statement was made within the statute of limitations period for this offense. It is not necessary that proof be made by any particular number of witnesses or by documentary or other type of evidence.

540 *(1-18-80)* 9781

Criminal Enforcement of International Boycott Provisions of the Internal Revenue Code (IRC 999).

(1) The text of the law specifying criminal penalties is IRC 999(f). This section provides that any person who willfully fails to make an international boycott report shall, in addition to other penalties provided by law, be guilty of a misdemeanor, the penalty for which is imprisonment up to one year and/or a fine up to $25,000.

(2) The term "person" is defined to include "an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs." (IRC 999(f), 6671(b).) Prosecutions, especially of individuals, may be complicated by difficulties in ascertaining which officer, employee or member is under the duty to make the international boycott report.

(3) Insofar as IRC 999(f) is concerned, there are two elements: the requirement that an international boycott report be filed and the requirement that the failure to file such a report be wilful.

(4) Whether or not a report is required is a technical matter, discussion of which should be reserved for pre-referral conferences in respect of specific cases. Suffice it to say that there is an abundance of complexities in IRC 999 which taxpayers will undoubtedly raise as a defense to any proposed prosecution.

(5) The term "wilful" is believed to mean the voluntary, intentional violation of a known legal duty. (U.S. v Bishop and U.S. v Pomponio). There is nothing to indicate that Congress intended a more restrictive standard to apply in the context of IRC 999(f), i.e., there is no requirement that a specific intent (or evil motive) be established.

(6) A failure to make (file) a report will not be a willful failure if the taxpayer had no knowledge of a boycott operation *unless the taxpayer's failure to have knowledge is so negligent as to constitute a reckless disregard of the requirements of the law.*

(7) A prima facie case under IRC 999(f), without reference to any deficiency, can be estab-

lished. In fact, the question of deficiency is technically irrelevant and should theoretically be inadmissible at trial. Nevertheless, the reasonable probability of conviction would be significantly increased if the willful failure to file was coupled with a revenue effect.

(8) It is conceivable that the failure to file an international boycott report under IRC 999(a)(1) could also result in a violation of IRC 7201, IRC 7203, or IRC 7206(1). It would generally be preferable to recommend under IRC 999(f) rather than under IRC 7203.

550 *(1-18-80)* 9781
Special Investigation

551 *(1-18-80)* 9781
Offers in Compromise

551.1 *(1-18-80)* 9781
Reference

The text of the laws relating to compromise is set forth in IRC 7121, 7122, 7123, and 7206(5). Compromise procedures are discussed in IRM 9262 and 9541 and IRM 5700, Offers in Compromise.

551.2 *(1-18-80)* 9781
Criminal Investigation Division Responsibility

(1) The Criminal Investigation Division is concerned with the following types of offers in compromise:

(a) alleged fraudulent offers;

(b) offers involving cases that were jointly investigated by the Criminal Investigation Division with the Examination or Collection Division and in which the criminal aspects have been disposed of; and

(c) offers made while criminal proceedings are pending.

551.3 *(1-18-80)* 9781
Alleged Fraudulent Offers

(1) This type of case is referred either by the Examination Division or by the Collection Division upon discovery of indications of the falsity of material statements made in, or in connection with any offer in compromise.

(2) The text of the law under IRC 7206 relating to criminal penalties for concealment of property, false statements, or falsifying and destroying records in connection with any compromise, or offer of compromise is stated in Paragraph (5)(A) and (B) (See 221.7).

(3) The principal offenses are the willful:

(a) concealment from any officer or employee of the United States of any property belonging to the estate of a taxpayer or any other person liable in respect to the tax;

(b) receiving, withholding, destruction, mutilation or falsification of any book, document, or record of the taxpayer or any other person liable in respect of the tax; and

(c) making a false statement relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

551.4 *(1-18-80)* 9781
Offers in Closed Cases

(1) Offers involving cases that were jointly investigated with the Examination or Collection Division and in which the criminal aspects have been disposed of will be examined by the Examination Division. After completion of such examination, the Chief, Examination Division (or District Director in streamlined districts) will refer the entire file to the Chief, Criminal Investigation Division, for concurrence or comment when *all* the following conditions exist:

(a) The merits of the ad valorem fraud or negligence penalty are involved.

(b) The case is one in which the special agent has recommended the assertion of such a penalty in the final report in the case.

(c) The Examination Division contemplates recommending acceptance of the offer.

(2) This does not include cases in which the sole issue presented by the offer in compromise is the ability to pay. (See IRM 5700, Offers in Compromise.)

551.5 *(1-18-80)* 9781
Offers in Pending Criminal Proceedings Cases

Investigations of offers in pending criminal proceedings cases result from requests made by the Chief Counsel or District Counsel for examination or investigation of a taxpayer's financial status in connection with an offer in compromise submitted in a case in which criminal proceedings are pending either in Counsel's office, in the Department of Justice, or with the United States Attorney. Any such investigation shall be conducted jointly by the Criminal Investigation and Examination Divisions. (See IRM 9262.4.)

551.6 *(1-18-80)* 9781
Investigation of Offers in Compromise

Tne special agent should acquaint himself/herself with the contents of the sections of the 1954 Code especially those cited at text 551.1 and the pertinent sections of IRM 5700, Offers in Compromise.

551.7 *(1-18-80)* 9781
Alleged Fraudulent Offers

(1) The Criminal Investigation Division shall investigate, report, and process such cases in the same manner as other tax fraud cases. (See IRM 9262.2).

(2) Cases of concealment entail the unearthing of all assets belonging to the taxpayer or to any other person liable in respect of the tax. The matter of establishing willfulness and intent is accomplished in the same manner as in other tax fraud cases using techniques set forth in 41(11).

(3) Cases involving the receiving, withholding, destruction, mutilation, or falsification of any book, document, or record are investigated similarly to any other tax fraud case. The special agent will assemble documentary or oral evidence to establish the commission of the act and that the act was committed willfully, with intent to defraud the Government.

(4) The techniques to be applied in the investigation of false statements are similar to those used in the investigation of violations of 18 USC 1001 and 1621 "False Statements" and "Perjury," respectively.

551.8 *(1-18-80)* 9781
Investigating Offers in Closed Cases

Investigation of cases in which the three conditions listed in 551.4 are present are usually limited to the discovery of additional facts relating to the propriety of asserting the fraud or negligence penalty. However, district officials will not remove civil penalties for any periods for which the taxpayer has been indicted or for which a Criminal Information has been filed. Civil penalties for years on which conviction was not obtained will be considered in the light of all available evidence in the same manner as the civil penalties in nonprosecution cases. (See IRM 9358.) The special agent should be extremely careful not to reverse recommendations for the addition of the fraud or negligence penalty unless he discovers additional facts or information that would warrant and logically support a change in his recommendation.

551.9 *(1-18-80)* 9781
Offers in Criminal Proceedings Cases

Investigations of this type will be centered primarily on the determination of the accuracy of the accompanying financial statements and any other sworn statements submitted therewith. The reasons for any inaccuracies that are found will have to be ascertained and the techniques mentioned in 551.7 may be used to determine willfullness and intent in connection therewith. Cases of this type often challenge the ingenuity and resourcefulness of the agent in efforts to uncover concealed property. The agent should closely examine statements of financial conditions and be watchful for possible sources for the collection of taxes. Every clue which could possibly lead to the disclosure of concealed assets or to property transferred without consideration should be investigated diligently and the results should be included in the investigator's report on the case. (See IRM 5700, Offers in Compromise.)

552 *(1-18-80)* 9781
Jeopardy Assessments

552.1 *(1-18-80)* 9781
References

The text of the law relating to jeopardy assessments is set forth in IRC 6861, 6862, and 6863 and IRM 9263, 9329, and 9634.3.

552.2 *(1-18-80)* 9781
Criminal Investigation Division Responsibility

The Criminal Investigation Division is responsible for recommending jeopardy or termination assessments in cases under active consideration by Criminal Investigation and in cases under joint active consideration with Examination or Collection. In other instances, special agents should be alert for information indicating the possible existence of jeopardy situations and should report such information by memorandum to the affected division. Recommendations should be prepared on Forms 2644 (Recommendation for Jeopardy/Termination Assessment) and 2645 (List of Property Belonging to Taxpayer). See IRM 9634.3. Recommenda-

tions will be referred for concurrence or comment to the Chief, Collection Division; to the Chief, Examination Division; to the Chief, Special Procedures Staff; and, if time permits, to District Counsel prior to referral to the District Director for personal approval.

552.3 *(1-18-80)* 9781
Jeopardy Situations

(1) A jeopardy assessment is recommended when it appears that collection of tax will be endangered if regular assessment and collection procedures are followed.

(2) In determining whether a jeopardy assessment may be made at least one of the following three conditions must exist:

(a) The taxpayer is, or appears to be, designing quickly to depart from the United States or to conceal himself/herself.

(b) The taxpayer is, or appears to be, designing quickly to place property beyond the reach of the Government by removing it from the United States, concealing it, dissipating it, or transferring it to other persons.

(c) The taxpayer's financial solvency is or appears to be imperiled. However, the taxpayer should not be considered to be insolvent by virtue of the accrual of the proposed deficiencies of tax, penalty, and interest.

(3) The jeopardy assessment procedure is a drastic exception to the normally accepted method of assessment and collection of taxes and should not be used as an additional penalty or for any other improper purpose. It should be used sparingly and care should be taken to avoid excessive and unreasonable assessments. It should be limited to amounts which reasonably can be expected to protect the Government and must be personally approved by the District Director.

(4) Notwithstanding the existence of one or more of the above-cited conditions, in any case which might cause serious inconvenience to the general public, a jeopardy or termination assessment should not be made without prior notification to the appropriate Regional Commissioner. If necessary, the Regional Commissioner will notify the Deputy Commissioner. Examples of such cases include banks, newspapers, insurance companies, hospitals and public utility companies.

(5) Jeopardy assessment will be withheld in potential criminal tax cases to the extent necessary to avoid imperiling successful investigation or prosecution of such cases. On the other hand, when such action is warranted in those cases, it must be taken whenever it is feasible to do so. The District Director is responsible for this practice when jeopardy assessment recommendations are submitted to him/her for approval. See Policy Statement P-4-84.

552.4 *(1-18-80)* 9781
Investigation of Jeopardy Assessment Cases

(1) Upon the receipt or discovery of information indicating the presence of any one of the three jeopardy situations enumerated in 552.3:(2), the special agent should obtain all available facts and evidence which will either establish or refute the existence of a jeopardy situation. Promptness and discretion is of the essence in this type of investigation, since it could work to the serious disadvantage of the Government if the taxpayer should discover that such an investigation or inquiry is being made. Surveillance may be necessary in some cases.

(2) The special agent should make every effort to locate all assets belonging to the taxpayer and list them in the report recommending a jeopardy assessment. However, to avoid unnecessary expenses and embarrassment to the Government through levying upon property in which, although title stands in taxpayer's name, his/her actual equity has no marketable value, the special agent should endeavor to ascertain if practicable, the nature and conditions of any existent liens and encumbrances on the assets. The agent should include this information in the report, together with any other information that should be considered in determining the advisability of making a jeopardy assessment.

(3) The mere levy of a jeopardy assessment, in the absence of a showing by a defendant that the defense of the criminal case was thereby hampered, was insufficient to preclude trial of an indictment for tax evasion. [*Summers v. U.S.; O'Connor, Kenneth A. v. U.S.*] On the other hand, a motion to postpone a criminal trial until conclusion of civil proceedings in Tax Court was granted on the theory that freezing the defendant's assets might prevent the retaining of counsel and accountants to help defend a net worth tax case and thus depriving the defendant of a fair trial. [*U.S. v. Brodson*]

553 *(1-18-80)* 9781
Termination Assessments

553.1 *(1-18-80)* 9781
References

The text of the law relating to termination assessments is set forth in IRC 6851. Manual references are in IRM 9263, 9329, and 9634.3.

553.2 *(1-18-80)* 9781
Introduction

(1) Another type of immediate assessment action is the termination assessment of income tax under IRC 6851. It may be made only on income tax liabilities. It specifically applies when the taxable year of a taxpayer has not ended, or when the taxable year has ended but the due date for filing the return, or the due date as extended, has not arrived.

(2) Criminal Investigation Division responsibility for termination assessments is stated in Text 552.2. Termination assessments may be made only if at least one of the three conditions found in Text 552.3 exists.

553.3 *(1-18-80)* 9781
Requirements

(1) Termination assessments must be used sparingly and care taken to avoid excessive and unreasonable assessments. They should be limited to amounts which reasonably can be expected to equal the ultimate tax liability.

(2) The District Director or, for cases in International Operations, the Director, OIO, must approve termination and jeopardy assessments.

(3) An assessment made as a result of termination of taxable period must be based on a reasonable computation of tax liability. An assessment equal to the amount of money or other valuable property held by a person at the time of arrest is not considered a reasonable computation unless supported by other facts.

(4) The basis used in arriving at adjusted gross income in terminations of taxable periods will be stated. The computation will be determined using an acceptable legal basis such as a source and application of funds statement or a net worth computation. The following information illustrates the types of items that may have to be considered in order to arrive at an adjusted gross income computation:

(a) Cost of living expenses should include professional estimates by a narcotics agent (or other expert) as to the "Cost of Habit" for a narcotics addict.

(b) Estimates of income from the sale of narcotics should be supported, if possible, by testimony from a narcotics agent (or other expert) who may have knowledge of the subject's activities.

(c) Estimates of income from illegal gambling, including "gross take" and "payoffs" may be supported by testimony of law enforcement officers who are familiar with the gambler's operations. Efforts should be made to obtain similar testimony in cases involving other illegal activities.

(d) The taxpayer should be interviewed, if feasible, preferably before assessment is made, in order to afford him/her an opportunity to explain questioned assets, liabilities, income or expenses, filing history, etc. Such an interview may also be of value in revealing previously unknown assets, liabilities, income or expenses.

(e) Efforts should be made to locate and examine books and records, if any, of the taxpayer to the extent possible in the available time.

560 *(8-1-80)* 9781
Crimes Under Title 31, United States Code

(1) The provisions of Title 31, United States Code, that are cited and summarized below provide for the punishment of crimes committed in contravention of Financial Recordkeeping and Reporting requirements of Treasury Regulations, 31 CFR Part 103.

(2) General Provisions of Treasury Regulations, 31 CFR Part 103 *Regulations Section(s).*

(a) 103.22, 103.25(a) and 103.26. When any person engages in a currency transaction of more than $10,000 with a financial institution, the financial institution must report the identity of the person or persons involved and file a report on a Currency Transaction Report, Form 4789, containing certain details of the transaction within 15 days.

(b) 103.23(a), 103.23(b) and 103.25(c). Any person transporting or causing transportation of more than $5,000 of currency or certain monetary instruments at any one time, into or out of the United States, must file a report with the U.S. Customs Service on a Report of International Transportation of Currency or Mone-

tary Instruments, Form 4790, at the time of departure, mailing or shipping.

(c) 103.24 and 103.32. A person must indicate on his/her income tax return whether or not he/she has any interest in or authority over a foreign financial account.

(d) The Criminal Investigation Division has investigative jurisdiction for enforcement of (a) and (c) above. The U.S. Customs Service enforces (b).

(3) *Criminal Penalties under Title 31, United States Code*

(a) For each willful violation of these regulations, a fine of up to $1,000 and/or imprisonment for not more than one year (except for recordkeeping violations by insured banks and savings and loan associations).

(b) For each violation of the recordkeeping requirements, a fine of up to $10,000 and/or imprisonment of not more than five years if the violation is committed in connection with the violation of a Federal law punishable by imprisonment for more than one year.

(c) For each false statement or representation in any report required by these regulations, a fine of not more than $10,000 and/or imprisonment of not more than five years.

(d) For each violation of the reporting requirements, a fine of up to $500,000 and/or imprisonment of not more than five years if the violation is committed in furtherance of the commission of any other violation of Federal law or committed as part of a pattern of illegal activity and which involves more than $100,000 in a twelve-month period.

(4) See also IRM 9214.

610 *(1-18-80)* 9781
Purpose and Importance of Reports

The result of all the work done by a special agent, together with conclusions and recommendations, is finally expressed in a written report. The purpose of a report is to present in suitable form all the pertinent facts relating to a matter in order that appropriate action may be taken. To have value, a report must be so written that the reader comprehends the full significance of its contents, is convinced of its thoroughness, and is willing to take action based on the facts set forth. A report constitutes a measure of a special agent's ability and worth. It is an official document and may not be furnished to any person outside the Service without proper authorization. In a criminal case, a report ultimately serves as the basis for the preparation and presentation of the case for trial.

620 *(1-18-80)* 9781
Planning and Writing Reports

621 *(1-18-80)* 9781
Essentials of a Good Report

621.1 *(1-18-80)* 9781
Introduction

It is not an easy matter to write a report which will convey to the mind of the reader with accuracy and clearness the essential facts disclosed as the result of an investigation. Report writing is an art which requires study, practice, and persistent effort. Since the art of report writing admits of no hard and fast rules applicable to all cases at all times, it must be based primarily on the broad ground of experience and common sense. The essentials of a good report are fairness, accuracy, completeness, uniformity, conciseness, and logical presentation.

621.2 *(1-18-80)* 9781
Fairness

Reporting the facts with fairness is as important as procuring them with impartiality. A special agent should always be an unbiased fact-finder, not a partisan to a particular cause of action. An agent should report all material facts and evidence in such manner that they speak for themselves and require little or no explanation of their significance. Any distortion of the significance of evidence reacts against the report writer and materially diminishes the value of the report. The taxpayer's explanation should be presented fairly. When a special agent quotes, he/she should quote exactly, if possible, or, if it is not possible, he/she should say so. Hearsay, and rumors, properly identified as such, may be included in the report, but only if relevant and material to the matter being discussed. Reports should reflect an impersonal attitude and should contain no offensive remarks regarding the taxpayer.

621.3 *(1-18-80)* 9781
Accuracy

(1) Reports are the basis for administrative and legal actions of the utmost importance, including the assessment of substantial amounts of tax and penalties and criminal action which may result in imprisonment. Accuracy in every particular, therefore, is essential. Facts must be reported with exactness. The report writer should aim to present the facts in such manner that he/she will not have to state opinions and conclusions except in the portion of the report provided for that purpose. The distinction between fact and opinion should be clearly shown when it is necessary to explain the theory of cases based largely on circumstantial evidence. Avoid using statements such as: "The taxpayer could give no plausible explanation." That is a conclusion, and others may find that the explanation is plausible. State what the taxpayer said and let the evidence show whether the statement is worthy of belief. Avoid the phrase "conclusively proved." Do not allow conclusions to surpass the evidence. A conservative statement that is consistent with the facts is stronger than an exaggeration. Exaggerations tend to raise doubt against all the evidence presented in the report. Inaccuracies, carelessness in detail, errors in computation, and incorrect dates materially affect the value of a report. Discrimination in the choice of words, punctuation which clarifies the meaning, and a correct application of the rules of grammar are essential to accurate reports. Errors in those essentials have an unfavorable effect on the mind of the reader.

(2) Avoid using slang and technical terms including those used in accounting. However, in some instances slang terms may be necessary

for clarity in reporting the results of investigations, particularly those involving taxpayers in illegal pursuits. In such instances the meaning of the term should be explained when it is first used in the report. For example, it may be advantageous in a report concerning a numbers lottery to describe the nature of operation, including the slang terms used therein, before presenting evidence of the violation. If numerous slang or technical terms are necessary, it may be advisable to prepare a glossary.

621.4 *(1-18-80)* 9781
Completeness

(1) A special agent should present the material in a report from the viewpoint of a reader having no knowledge of the case. The agent must exercise good judgment in selecting the facts that are material to the matter and take care that nothing essential to a complete understanding of the case will be omitted. Every statement of material fact bearing on the proof of the allegation of violation should be documented to the extent necessary and possible to establish its truth and accuracy, and the source of the evidence should be reported.

(2) Likewise, explanations of taxpayers and important facts developed by the investigation that point to weaknesses in the case should not be omitted. Subsequent disclosure of facts indicating weaknesses that were known to the report writer reflects unfavorably on him/her. Moreover, any weaknesses in a case should be made known before action is taken relative to criminal prosecution or settlement of the civil liability in order to prevent surprise in the course of conferences or legal actions and to give reviewers an opportunity to suggest means of overcoming the weak points. However, speculation and conjecture of agents concerning possible defense theories have no place in a factual report. The reader primarily is interested in knowing what happened and how the events can be proved. The difficulties met by the special agent in securing the information, or in the ingenuity used in making the investigation, are of no interest. The writer should always remember that the report is about a violation or other obscured situation and not about the investigation. However, where certain pertinent evidence was not obtained, the special agent should state the avenues of inquiry pursued in attempting to procure the evidence in order that no doubts may arise in the reader's mind regarding whether the investigation was thorough. Important matters in exhibits generally should be narrated briefly in the report unless the exhibit is adequately described in an appendix and does not require any further explanation. The use of an appendix is discussed in 625. Finally, in order to ensure completeness, the report should be read and revised as often as necessary before it is submitted for review. A special agent should strive to submit a report in final form for initial review. The agent should not rely upon reviewers to complete the report by resolving the difficulties encountered in the investigation.

621.5 *(1-18-80)* 9781
Uniformity

Reports should be as uniform as possible for each type of case investigated by the Criminal Investigation Division. A special agent in one division should report the results of an investigation in the same sequence as a special agent in another division who has conducted an investigation of the same type. In order to promote uniformity, outlines for the various types of cases are furnished in IRM 9500; and 630 contains suggestions and sample reports for guides in report writing.

621.6 *(1-18-80)* 9781
Conciseness

(1) Conciseness suggests the removal of all that is elaborate or not essential. If a report contains a mass of irrelevant data, the important matters will not be clear to the reader. There is force in brevity. When you have something to say, say it in as few words as you can. The rule of conciseness applies to individual sentence construction as well as to the whole report. Repetition and unnecessarily lengthy descriptions of documents should be avoided. It is not necessary to copy into the report entire statements, letters, and exhibits when concise reference to the principal points and brief explanation will suffice. Tabulations and schedules in the form of appendices to the report frequently may be used to reduce narrative and emphasize important facts relative to matters such as summaries of net worth or omitted sales and analyses of bank accounts.

(2) A special agent should not indulge in attempts to wit or sarcasm; neither should he/she refer to himself/herself as the "undersigned," the "writer," or "your agent". Do not hesitate to state "the taxpayer informed *me*," or "The taxpayer gave *me* (documents or books)," if that information is material. However, in view of the necessity for maintaining an impersonal attitude, the personal pronouns "I" and "we" should be used sparingly. Avoid superfluous statements such as: "the following report is submitted," or "as the result of investigation, I have to report as follows." The phrase "This case relates to an investigation of an alleged evasion of income tax by _____" may be better stated as, "This report relates to the alleged evasion of income tax by _____." The statement "Attached hereto as Exhibit 6 is a sworn affidavit of John Jones wherein he testified . . ." contains unnecessary words. Merely say, "John Jones stated (Exhibit 6, affidavit) that . . ." Avoid trite phrases and superlatives, and the word "very" only on rare occasions. Use of the active voice promotes conciseness and accuracy in writing. It is also more forceful. For example, the statement, "Information obtained from Mr. Witness disclosed that the proceeds of the sale were given by him to the taxpayer on May 14, 19——" may be reduced in length and made more forceful by revision to, "Mr. Witness said that he gave the proceeds of the sale to the taxpayer on May 14, 19——." Use of the active voice also will eliminate the possibility that the report writer will omit stating who gave the proceeds to the taxpayer.

621.7 *(1-18-80)* 9781
Logical Presentation

(1) A report otherwise well written may lose its effectiveness for want of logical arrangement. A mass of data thrown promiscuously into the report is an imposition on the reader and an adverse reflection upon the writer. Effective presentation is largely dependent upon adherence to the principles of style, namely: unity, coherence, and emphasis.

(2) *The principal of unity* requires adherence to the single main idea or proposition and exclusion of all matter that does not tend to prove that idea or proposition. Each sentence, paragraph, and division should help to establish the main point of the report.

(3) *Coherence* is defined as sticking together. This principle counsels logical sequence of thought. No one is likely to achieve coherence by chance or inspiration. It demands careful planning, critical review, and frequent revision by the report writer. Words, phrases, and clauses should be so placed in a sentence that their relationship is clear and the meaning of the sentence is obvious. Sentences should be so arranged that the progress of thought is clear and continuous from beginning to end. Each paragraph must bear an unmistakable relation to the whole composition, especially to the paragraph immediately preceding it. The most common fault in the presentation of evidence is the failure to show precisely what part it plays in the whole argument. This failure is sometimes due to the fact that secondary matters are not properly subordinate to the principal facts. Much evidence has only a casual connection with the main proposition, but the connection must be made evident. If the bearing of the evidence is not felt at the point where it is presented, it usually is not felt at all. Each violation, event, or circumstance, and all facts in support thereof, should be narrated in full before passing on to the next feature of the report. Phrases and sentences which merely introduce an exhibit may interrupt the rea reader's train of thought. In many instances that difficulty may be avoided by parenthetical insertion of exhibit numbers during discussion of the contents of the exhibit. Insofar as possible, references to other sections of the report should be avoided because the arrangement of the report will show,the relationship between the various facts and events.

(4) *Emphasis* requires careful placement of words, phrases, and sentences for the purpose of calling attention to the important facts. If the writer does not emphasize the more significant information the reader will not retain the essential facts. Important words or phrases should be placed in important positions—usually at the beginning of a clause or sentence, or at the end. The same rule applies to the arrangement of sentences within a paragraph. A new topic or idea should be the subject of a new paragraph. A sentence or short passage requiring special emphasis may be paragraphed separately. Important matters can be emphasized by using concrete terms and terse sentences, by numbering and indenting a series of important and related facts, and by using schedules and tabulations. The last mentioned technique is particularly valuable in showing comparisons.

622 *(1-18-80)* 9781
Planning the Report

(1) Before starting to write a report, the special agent should have in mind a definite outline of the arrangement in which the facts and evidence may be presented in the most effective manner. The best arrangement rarely is the order in which the facts were developed during the investigation. A good general plan is to state the problem, present the results of the investigation, and set forth the conclusions and recommendations. The outlines in the IRM 9512.2 and Handbook Exhibit 600-3 are guides for uniform arrangement of data in the report. Details under the various headings should be arranged in paragraphs each confined to a particular topic. Special agents may use the method of assembling the facts and evidence into a coherent and logical presentation which he/she finds most effective. Keep in mind the witness who will produce, identify, and/or testify about each item of evidence. The use of either an outline or an arrangement based on appendices and exhibits is suggested to assist in assembling material for the report.

(a) In using the former method, prepare an outline of the topics or events considered essential to proof of the violation, or, with respect to reports not relating to violations, to accomplishment of the purpose of the report. List under each topic the pertinent facts and evidence. New agents may find it helpful to list the evidence in detail. The amount of detail can be reduced with the acquisition of experience and facility in writing reports. When the outline is finished, study it and make any revisions necessary to ensure compliance with the principles of completeness, conciseness, unity, coherence, and emphasis. Since each topic ordinarily will be the subject of a paragraph, the special agent can direct his/her attention to the writing of each paragraph on the basis of the topical outline.

(b) In lieu of an outline, effective presentation can be accomplished by arranging appendices, exhibits, and workpapers in logical order based on the above-mentioned principles of good writing, and discussing each fact and event in that order. Consideration also should be given to the order desirable for presentation of the evidence in court.

(2) One of the first steps in making ready to write a report regarding a fraud case is to prepare the summaries of income, tax, penalties, and adjustments. In cases based on specific items, the criminal items should be segregated from the civil items. The civil items are technical adjustments based upon: mere clerical errors; mistaken ideas relative to some regulation or requirement of the Internal Revenue Service; adverse decisions on controversial questions; erroneous legal or accounting advice on which the taxpayer honestly relied; and items which the taxpayer is unable to substantiate. The civil items could also include unreported income and other adjustments which pertain to a year or years for which prosecution is not being recommended. When appropriate, technical adjustments should be grouped into summary topics. With respect to criminal cases, the special agent should determine before beginning the report which criminal items are to be proposed for use in the criminal proceedings, and whether there are any technical adjustments favoring the taxpayer that should be offset against the additional income.

623 *(1-18-80)* 9781
Reports on Related Cases

(1) As a general rule, a separate report shall be written for each case. However, if the facts and events concerning two or more related taxpayers or case classifications are the same or are intermingled, the results of the related investigations shall be set forth in the report regarding the principal violator or classification. For example, when an investigation discloses evidence of tax evasion by a corporation and its principal officers, the report on the president of the corporation may serve as the focal point for assembling and presenting the facts and evidence regarding all taxpayers involved including the corporation. Similarly, violations of the excise and occupational taxes on wagering involving one taxpayer or several closely related taxpayers should be discussed in one report. Regional guidelines will be followed in all cases in which there is any uncertainty as to the need for separate reports.

(2) Notations shall be made on the index cards pertaining to the related cases to show the number of the case file containing the report, and a cross-reference sheet shall be placed in each of the related case files.

(3) When consolidating two or more defendants in one report, consideration should be given to ensuring that a sound basis for a joint trial exists. The absence of evidence of a conspiracy to violate tax laws, lack of a common violation to be charged, problems of venue, or other factors may indicate that the defendants are entitled to separate trials. If so, separate reports should be written with duplication of exhibits where appropriate.

624 (1-18-80) 9781
Format of Reports

624.1 (1-18-80) 9781
Address

(1) Reports shall be addressed as follows:

District Director, Internal Revenue Service

Attention: Chief, Criminal Investigation Division

Name of District (city and state)

(2) The address of the originating office will be shown on the first page of each report.

(3) See IRM 9267.5:(1) regarding the addressing of grand jury reports.

624.2 (1-18-80) 9781
Subject

The subject of the report consists of the name, the current address, and the taxpayer identification number of the principal person or legal entity in whose name the case was concerned. The address will consist of the street address, city and state where an individual resides or a corporation has its principal office. If the facts and evidence concerning related cases are included in one report, the subjects of the related cases, properly identified as such, shall be shown below the subject of the principal case. Related cases not discussed in the report will be mentioned in the introduction but will not be included in the subject heading. It is not necessary that the subject include the type of violation or the years involved, since that information is set forth in the opening paragraph of the report and the general classification of the violation is indicated by the case number. Text 624.4 and the sample reports contain suggested forms for presenting the subject of a report. The name and current address (including street address, city, state and zip code) of the taxpayer's representative should be listed below the subject.

624.3 (1-18-80) 9781
Case Number and Designation

In order to provide uniformity, the case number should be typed a single space below the subject on the first page of all reports and intra-Service communications relative to numbered cases. The case number also should be typed in the upper left corner of each succeeding page of a report. When a report covers more than one person or classification, only the number relating to the principal violator will appear on the succeeding pages. A designation indicating the nature of the report should be placed on the initial page immediately under the case number. Reports should bear a designation of "Final" for those closing a case, and "Supplemental" for those submitted after the case is closed. The designations "Parole," "Jeopardy Assessment," "Inadequate Records," "Arrest," "Legal Action," "Claim for Reward," and "Special Investigation" should be used where appropriate. The types of reports included in the terms "Special Investigation" and "Legal Action" are set forth in IRM 9500. Correspondence relating to collateral inquiries should bear the designation "Collateral Request" or "Collateral Reply" below the case number.

624.4 (1-18-80) 9781
Sample Subjects and Designations

(1) Assume that an investigation disclosed evidence of tax evasion by a corporation and two of its officers, and that the evidence is to be presented in the report relative to the president, who is the principal violator. The subject should be shown as follows:

In re: I M. BIG SSN: 000-00-0000
1010 Blank Street
Chicago, Illinois 60647
36730321B
Final
Related Cases:
JOHN R. MINUTE SSN: 000-00-0000
4321 South Quincy Street
Chicago, Illinois 60635
36730296E
BIG CORPORATION, INC. EIN: 00-0000000
4354 North State Street
Chicago, Illinois 60632
36730325B

(2) Assume that an investigation disclosed evidence of tax evasion by three individuals who reside and conduct business as a partnership in Boston, Massachusetts, and that John Doe, the partner who is responsible for maintenance of the records, is the principal violator.

The subject of the report should be shown as follows:

In re: JOHN DOE SSN: 000-00-0000
4533 High Street
Boston, Massachusetts 02135
04730322C
Final

Related Cases:
JAMES ROE SSN: 000-00-0000
8346 Main Street
Boston, Massachusetts 02164
04730324D

JOSEPH MOE SSN: 000-00-0000
2538 Elm Street
Boston, Massachusetts 02134
04730326F

(3) The name and address of the taxpayer's representative should be shown as follows:

Representative:
C. W. LAW, Attorney
100 Ewe Street
Chicago, Illinois 60651

624.5 *(1-18-80)* 9781
Approval Stamps

Approval stamps should be placed on the signature page of a report, thus providing a uniform location for information regarding approvals and improving the appearance of the first page of the report.

624.6 *(1-18-80)* 9781
Assembly of a Report

(1) A report should be assembled in the following manner, although it is recognized that all reports will not include each of the listed parts:

(a) Table of Contents.
(b) Body of Report.
(c) List of Exhibits.
(d) List of Witnesses.
(e) Appendices.
(f) Exhibits.

(2) The page number shall be in the center at the bottom of each page, preceded and followed by a hyphen, i.e., -6-.

624.7 *(1-18-80)* 9781
Identification of Principals, Witnesses, Etc.

The names of individuals, corporations, partnerships, and other business and taxable entities will be typed in capital letters when and wherever used in reports of investigations as well as in correspondence between Criminal Investigation Division offices relating to investigations. (See IRM 9512.)

625 *(1-18-80)* 9781
Appendices and Exhibits

625.1 *(11-10-81)* 9781
General

(1) In cases involving a detailed computation of net worth, bank deposits, or expenditures, or numerous fraudulent items, clarity in reporting may best be accomplished by presenting the details in appendices and including in the body of the report only brief summaries thereof, together with a general discussion of the related evidence. Narrative in the report may be reduced by including on the appendix, in addition to the pertinent figures, a brief description of each item, a reference to exhibits containing the documents supporting each item, and the name of any witness who will produce documents and testify regarding each item. It is not necessary to discuss in the body of the report each item on the appendix. However, the report shall contain a description of the appendix; a brief summary or restatement of totals, if such is applicable; and an explanation of any significant particulars or details that are not made evident by inspection of the appendix. Since appendices are essential to a complete understanding of any case wherein they are used, they shall be typed or reproduced in sufficient quantities for inclusion with each copy of the report. With respect to cases involving the tabulation of numerous items which can be assembled into groups, a clear and concise presentation may require placing on the basic appendix only the total amount for each group and tabulating the items comprising the group on supporting appendices or schedules. For example, in a net worth case embracing numerous bank accounts and holdings of stocks and real estate, the computation of net worth on the basic appendix should show the aggregate cost or other value of the bank accounts, the stocks, and the real estate, and the various items included in each total should be set forth on separate appendices or schedules. Samples of appendices are provided in Exhibits 600-2 through 600-6.

(2) Exhibits are an essential part of a report. They may consist of originals or copies of statements and documents, such as affidavits, transcripts of interviews, contemporaneous memorandums, canceled checks, invoices, bank records, books of account, and transcripts or analyses of accounts and records and related workpapers. It generally is not feasible to provide extra copies of exhibits consisting of checks, invoices, bank records, account books, long detailed transcripts, and similar documents. However, the copy of the report which is retained at the office having responsibility for the conduct of the investigation should include a copy of each exhibit if such is available. The latter suggestion particularly applies to affidavits, memorandums or transcripts of interviews, and workpapers.

(3) The body of the report should contain reference to the exhibits and appendices, and the appendices should contain reference to exhibits which consist of supporting documents. Such reference may be to individual exhibits or groups of related exhibits. For example, the report may state: "Appendix A is a summary of the unreported receipts from sales, and Exhibits 8 through 25 are copies of documents in support thereof, including canceled checks, invoices and affidavits." Important matters in exhibits generally should be explained in the report. However, in many instances documents, such as invoices, checks, and bills of lading require only a brief description. If a document of that nature is adequately described on an appendix, no further explanation may be necessary. When mentioning or referring to a document that is submitted as an exhibit, including the written statement of a witness, insert the exhibit number in parentheses immediately following the reference. In most instances it is unnecessary to state that the document is submitted as Exhibit 1. An exhibit is underlined the first time (only) it is mentioned in the report so the reader will know when he/she sees an exhibit number whether it is being discussed for the first time or has previously been referred to.

(4) It is suggested in 622 that the special agent, before beginning a report, arrange the proposed appendices and exhibits in the order of planned presentation of facts and evidence, and that he/she prepare the report by discussing the appendices and exhibits in that order. In many instances the agent will find it necessary to rearrange those documents for more effective presentation. When the report is completed, the exhibits should be assembled in the order in which they are originally mentioned in the report, and they should be numbered for easy reference. If a number of documents such as canceled checks are included in one exhibit, give each document a sub-exhibit number. For example, if Exhibit 11 consists of 16 canceled checks, the checks should be numbered from 11-1 to 11-16. Each exhibit should be examined to determine whether it is properly identified. The source of the exhibit should be shown, especially if it consists of a transcript or summary. If the exhibits are numerous they should be bound separately from the report. Index tabs may be used to facilitate reference.

(5) The report should include a list of exhibits containing the number and a description of each exhibit. The content and arrangement of a list of exhibits is illustrated in the sample report on a specific item case (Exhibit 600-2). It is suggested that a copy of the list of exhibits be mounted immediately under the cover sheet for the exhibit file itself. This will eliminate having to use the special agent's report as the index.

(6) The appendices should be attached as part of the report and should be listed in the table of contents. Pre-lettered tab dividers (Documents 6654-A through F) should be used, if available, to identify appendices. If there are more than six appendices, the additional letters (G, H, etc.) should be typed on the reverse (blank) side of the dividers.

(7) Where the statement of a witness or subject is lengthy it may be helpful to prepare a synopsis of the important answers and attach this as a cover sheet to the exhibit. The summary should be quite brief, desirably not more than one line for each point, and should be referenced to appropriate question or page and line numbers.

625.2 *(1-18-80)* 9781
Exhibits—Supplemental Reports

Exhibits submitted with original and supplemental reports should be numbered in continuous sequence. This procedure is desirable in order to clearly identify which exhibits were submitted with each report. Thus, if the last exhibit to the special agent's final report is numbered

51, the first exhibit with the supplemental report will be numbered 52.

625.3 (1-18-80) 9781
Documents Submitted with Collateral Reports

Documents submitted with a collateral report should not be marked as exhibits, because they may later be submitted with the special agent's final report at which time they will be assigned a number. If only a few documents are transmitted as enclosures with a collateral report, it usually is unnecessary to assign any numbers to them. However, if, for reasons such as the volume of documents to be transmitted, it is desirable to identify the enclosures by number. such identification should be made either by attaching a paper tag to the document or by enclosing the document in a marked envelope.

626 (8-11-80) 9781
List of Witnesses

(1) The list of witnesses is an essential part of a report on a criminal case. It is especially important to the United States Attorney and to any agent who assists in the preparation of the case for trial, particularly in instances where the special agent who had conducted the investigation and had written the report is not available. The list of witnesses frequently is used by the United States Attorney as the basis for issuing subpoenas.

(2) The witnesses may be listed in alphabetical order, in the order in which they are mentioned in the report, or in the probable order of their appearance in the trial. If the latter procedure is used, consideration should be given to an arrangement which will provide for the introduction of documents required in the testimony of subsequent witnesses. The name, address, telephone number, and title or other identification of each witness should be set forth, together with a reference to any exhibit or appendix that is pertinent to his/her testimony and to the records and other evidence he/she may be expected to produce or identify. The use of such references will eliminate the need for a summary of each witness's probable testimony as part of the list of witnesses.

(3) However, the list of witnesses should include a summary of the testimony of the special agent, cooperating officer, and other key witnesses. This description should be a brief outline or statement concerning all matters about which the witness can be expected to testify. If those matters are set forth in exhibits consisting of workpapers or records of interviews, such as memorandums, transcripts, and affidavits, a brief identification together with reference to the appropriate exhibit numbers, is sufficient. If reference is made to a detailed transcript of an interview, the numbers of the specific pages or answers that contain important statements of the taxpayer or the witness should be referenced. Reference also should be made to appendices that contain descriptions of evidence that will be presented by a special agent. For example, assuming that Appendix A is a net worth statement and that the special agent's testimony is required to establish the cost of certain assets, the description of the special agent's testimony in the list of witnesses should include a statement that he/she can testify regarding the cost of the properties at Columbus, Ohio, and the automobile (Appendix A, items 4, 6, and 10). The sample report on a specific item case (Exhibit 600-2) contains a sample list of witnesses, which provides an illustration of the procedure for describing the testimony of key witnesses.

(4) In some instances it may be necessary to list one witness who will produce and identify certain records and another who will testify relative thereto. Listing the name of a person who can be expected to appear as a witness is preferable to showing only the name of a corporation, bank, or other organization, especially where an individual has custody of records or has an intimate knowledge of the records and transactions involved. In cases where evidence is available to rebut a probable defense, it may be advisable to list the witnesses who will testify in the event that the principal presents the anticipated defense. Witnesses of that nature should be identified as rebuttal witnesses.

(5) The special agent may prepare the list of witnesses as the report is written. The use of appendices containing names of witnesses and the procedure of capitalizing names of witnesses, as explained in 624.7, will assist in the preparation of a complete list of witnesses. When the report has been written, the special agent should review the facts and evidence to determine whether a witness has been listed for each item of evidence.

627 *(1-18-80)* 9781
Table of Contents

A table of contents showing subject matter and page numbers should be submitted with any report exceeding ten pages. It should be designed to provide quick reference to important features of the case, and the amount of detail will be determined by the length of the report and the circumstances of the case. Any appendices to the report should be listed in the table of contents.

630 *(1-18-80)* 9781
Types of Final Reports

631 *(1-18-80)* 9781
Introduction

(1) This text of the Handbook is concerned with reports on investigations relating to fraud and miscellaneous criminal law violations. The following suggestions and samples are provided, not as inflexible rules which must be followed in all reports, but as guides to assist special agents in writing reports within the general framework of the outlines in IRM 9500.

(2) Whenever a prosecution recommendation is contemplated, the special agent should discuss findings and proposed recommendations with the immediate supervisor prior to preparing the final report. The agent should obtain the supervisor's opinion as to the sufficiency of the investigation conducted. In writing the report, the special agent is responsible for using clear and correct language, for its mathematical accuracy, for proper descriptions of each exhibit and for presenting all material facts in an impartial manner. An experienced special agent is expected to attain report writing proficiency which will permit him/her to submit prosecution reports in final typed form to the supervisor for review and processing. In non-prosecution cases the special agent is expected to submit the report in final typed form.

(3) Final prosecution reports in the Criminal Investigation Division are presented in either the narrative format or the optional format styles of report writing.

(4) Text 633 through 633.7 discuss the recommended outline, format, and content of the narrative report. Exhibit 600-2 presents a sample specific item case written in the narrative format.

(5) Exhibit 600-3 shows a comparison between the narrative and optional format reports.

(6) Text 634 through 634.(10) discuss the recommended outline, format and content of the optional report. Exhibit 600-4 presents a sample specific item case written in the optional format.

(7) Exhibit 600-5 presents a sample net worth case written in the narrative format; and Exhibit 600-6 presents a sample Bank Deposits case written in the narrative format.

632 *(1-18-80)* 9781
Outline for Final Reports on Prosecution Cases

(1) Introduction.
(2) Summary of Cooperating Officer's Findings.
(3) History of Taxpayer.
(4) Evidence.
(5) Explanation and Defense.
(6) Facts Relating to Intent.
(7) Conclusions and Recommendations.

633 *(1-18-80)* 9781
Tax Fraud Cases (Prosecution)

633.1 *(1-18-80)* 9781
Introduction

(1) The introduction to the report should contain a brief mention or discussion of any of the following matters that are pertinent to the case:

(a) Type of violation.

(b) Tax periods involved in the investigation.

(c) Name and address (city and state) of taxpayer.

(d) Business or vocation of the taxpayer.

(e) *Origin of the case.*—The origin may be: regular examination, confidential source, claim for refund, or special program. Do not use the term "routine audit." If significant, state how the Criminal Investigation Division acquired jurisdiction. The special agent should not in any part of the report identify an informant by name, occupation, or relationship. If an investigation resulted from an informant's communication, merely state that the information was obtained from a confidential source. (See IRM 9373.3:(8) and P-1-190.)

(f) *Names and titles of cooperating officers.*—The term "cooperating officer" does not include special agents. The report should be signed by all special agents who significantly participated in the investigation exclusive of collateral inquiries. If it is anticipated that a special agent, including one who conducted a collateral inquiry, will be called as a witness, that matter should be covered in the evidence section and in the list of witnesses.

(g) *Date the taxpayer was first notified that his/her returns were under examination by the Internal Revenue Service.*—Brief description as to when, by whom, and how the taxpayer was notified. This information is particularly important if the taxpayer raises a defense of voluntary disclosure. The date the taxpayer was first contacted by a special agent should also appear in the introduction of the report. The report should contain a statement concerning whether the special agent explained his/her function to the taxpayer and advised the taxpayer of his/her Constitutional rights under existing guidelines.

(h) *Notice of reexamination.*—If the investigation includes tax periods previously examined, mention that a notice of reexamination was issued to the taxpayer. (See IRM 9324.4)

(i) *Representative of taxpayer.*—State the names and addresses of current representatives of the taxpayer, and whether they are enrolled. Indicate whether powers of attorney have been filed. Include as exhibits copies of the latest powers. (See IRM 9359.2)

(j) *Related cases.*—Mention any related cases not discussed in this report, such as cases involving attempted bribery or impeding an officer. Include a brief statement concerning the status of any related case currently under investigation by the Criminal Investigation Division.

(k) Statement that prosecution is recommended for designated years.

(l) Brief description of the method used in the evasion or other violation. Mention the method of determining the income for use in criminal proceedings if other than specific item. If the income for civil purposes is computed on a different basis, mention that fact.

(m) *Periods of Limitations.*—Present in tabular form information relative to the dates on which prosecution will be barred for the tax periods included in the recommendation for criminal proceedings and the dates on which the period of limitations on assessment of tax will expire. Include in the tabulation, when appropriate, information concerning any extentions of the period for assessment of tax. Discuss briefly any unusual circumstances that extend the period of limitation on prosecution, such as the taxpayer's being a fugitive from justice or absence from the United States.

(n) *Venue.*—Mention the judicial district in which the returns were filed. If venue might lie in more than one judicial district, mention the districts involved and briefly state the basis on which each might have jurisdiction. The facts and evidence relative to the matter of venue should be discussed in the section of the report relating to evidence. See IRM 932(10).

633.2 *(1-18-80)* 9781
Summary of Cooperating Officer's Findings

(1) This section of the report concerns the civil liability except for cases wherein the income proposed for use in criminal proceedings is the same as that involved in the civil case. If the income for both purposes is the same, mention that fact. Consideration should be given to any of the following matters which are pertinent to the case:

(a) Reference to the cooperating officer's report, a copy of which should be submitted as an exhibit. Do not repeat details included in that report.

(b) Tabulation of the income and tax reported, if any, and the income, tax and penalties proposed as a result of the investigation. This includes all additional taxes and penalties of other taxpayers which directly result from the case, such as victims of "tax experts," involved corporations, partners and spouses, if not assigned for investigation of their separate tax liabilities. If the report relates to more than one taxpayer, there should be a separate tabulation for each. Lengthy tabulations may be set forth on an appendix to the report. Exhibit 600-1 contains sample forms of tabulation.

(c) The computation of income for criminal proceedings should be reconciled with the determination of income shown by the internal revenue agent's report. In some cases, it is sufficient to point out the differences by means of a brief narrative statement; in others, the summary may be presented as an appendix (Exhibit 600-1). Unless the technical adjustments have an unusual significance, the special agent should merely mention in the report that such adjustments are explained in the internal revenue agent's report. Details of the criminal computation should be reserved for the section relating to evidence. In some cases on net worth, expenditures, or bank deposits, adjustments should be made to account for technical and nonfraudulent increases in reported income.

(d) The block adjustment method sets forth in tabular form the items of income and expenses as shown by the tax return, the criminal and civil adjustments, the corrected income for criminal purposes and the corrected income shown in the revenue agent's report. This method may be used (if appropriate) in cases involving numerous adjustments affecting both the criminal and civil computations if this would provide a clearer presentation than a summary of only the adjustments. The block adjustment method ordinarily lends itself more to specific item type of cases and usually only for years recommended for prosecution. Items of income and expenses that are not changed by any adjustment should be grouped together by categories and explained in a footnote. The use of this method, which requires a separate schedule for each tax year involved, will in most instances supplement appendices rather than replace them. However, in cases involving several tax periods, a simultaneous presentation of the evidence for all periods shall be used if a separate discussion of the evidence for each year will result in duplication. An example of a block adjustment method of summarizing income and adjustments is illustrated in Exhibit 600-1 as an alternative method of presenting Appendix A.

(e) Gross income means all income from whatever source derived, including (but not limited to) the following items [*26 USC 61*]:

1 Compensations for services, including fees, commissions, and similar items.

2 Gross income derived from business (use gross profit).

3 Gains derived from dealings in property (use gain before the 50 percent deduction).

4 Interest.

5 Rents (use gross rents).

6 Royalties.

7 Dividends (after exclusion).

8 Alimony and separate maintenance payments.

9 Annuities.

10 Income from life insurance and endowment contracts.

11 Pensions.

12 Income from discharge of indebtedness.

13 Distributive share of partnership gross income (separately calculate the distributive share of partnership business profit and distributive share of partnership gross rents, etc.).

14 Income in respect to a decedent.

15 Income from an interest in an estate or trust.

(f) Gross income figures are used by U.S. Attorneys in complaints, informations, and indictments filed against taxpayers in willful failure to file income tax cases. Therefore, if the special agent's report involves the alleged willful failure to file income tax returns, and if the case is based on specific items or bank deposits, the gross income in each prosecution year should be shown in the Summary of Cooperating Officer's Findings. The amount of gross income is generally determinable in such cases and should be included in this section (Exhibit 600-6). If the special agent uses the net worth method of proof in a failure to file case, adjusted gross income or taxable income would be used rather than gross income.

(g) Discuss briefly any significant action taken by either the Government or the taxpayer with respect to the civil liability, including the filing of delinquent or amended returns. Set forth the facts concerning any assessments and resulting payments or collections, or any voluntary payments for the years involved in the investigation. Tabulate the taxes and penalties assessed if they are different from those proposed in the cooperating officer's report. Discuss any unusual circumstances and mention any anticipated action of significance, such as the imminence of proceedings before the Tax Court. If no action has been taken concerning the civil liability, mention that fact.

633.3 *(1-18-80)* 9781
History of Taxpayer

(1) In narrating the history of the taxpayer, the special agent should identify the sources of information and should include information relative to any of the following matters that are pertinent to the case, with particular emphasis on the criminal period:

(a) Individual.

1 Personal information.

a Name and alias.

b Age, citizenship, physical and mental health.

c Location of residence (city and state) during years involved.

d Marital status and number of dependents.

e Education.

f Military service.

g Reputation and criminal record.

h A copy of the taxpayer's criminal record should be submitted with the report as an exhibit to support the narrative.

2 Financial information.

a Business addresses during the years involved.

b Sources of income.

c Taxpayer's connection with business emphasizing responsibility and participation in the income producing and accounting phases.

d General familiarity with books of account.

e Knowledge of tax matters.

(b) Partnership or corporation.

1 Name and address.

2 Nature of business.

3 Date formed or date and place of incorporation.

4 Partnership—names of partners and terms of partnership agreement. Corporation—names and titles of all officers during the taxable periods, and shares of stock owned by each if essential to case.

5 Corporation—names of officers in active control and particular duties or responsibilities of each.

6 Statement concerning whether the business is still in operation.

(2) If facts and circumstances relative to the history of the taxpayer constitute part of the evidence of the violation, they should be included in the section of the report concerning the evidence for use in criminal proceedings. This procedure is particularly applicable to cases in which evidence of the taxpayer's financial history in prior years establishes or corroborates the starting point for a net worth or similar computation, and to cases in which willful intent may be inferred from actions of the taxpayer during prior years. Care should be exercised to avoid unnecessary repetition. If facts concerning the history of the taxpayer are included in the evidence section of the report, a brief mention thereof in the history section, together with reference to the part of the report containing the information, is sufficient.

633.4 *(1-18-80)* 9781
Evidence

633.41 *(1-18-80)* 9781
Evidence in Support of Civil Penalties

(1) This part of the report should set out the facts and evidence to support any civil penalties recommended by the special agent. Separation of the evidence proposed for use in the criminal proceeding from that relating specifically to the civil penalties will be helpful not only to United States Attorneys and others who are primarily concerned with the criminal phase of the case, but also to attorneys who are concerned with the civil aspects of the case. This part of the report should contain a discussion of the nature and extent of the evidence available to support recommended civil penalties. Evidence which pertains to both the criminal phase and recommended civil penalties should be covered in the part of the report concerning evidence for use in the criminal proceeding, with a reference thereto being included in this part of the report. This part of the report would also cover evidence available in support of civil penalties recommended with respect to tax periods or taxpayers not included in the recommendation for prosecution. Documentary evidence should be mentioned in the report and retained for subsequent use in connection with the civil settlement.

(2) Evidence to support the civil fraud penalty in a willful failure to file case or with respect to tax periods not included in the prosecution recommendation should be clearly set forth, including a summary of the facts relating to the requisite fraudulent intent. Such evidence should be of the type which will establish that some part of the underpayment of tax is due to fraud. Although it is sufficient to refer to other parts of the report which cover such material, the portions of the report concerning intent and the evidence for use in the criminal case usually do not contain such information concerning taxpayers or tax periods not included in the prosecution recommendation. Furthermore, the facts and evidence to support a criminal charge of a willful failure to file a return are not necessarily sufficient to establish the specific fraudulent intent required to sustain the civil fraud penalty since a criminal charge of willful failure to file may be established without proof of such fraudulent intent. Some, but not all, of the indications of fraud which should be supported by evidence mentioned in this section of the report, where applicable, are such affirmative acts as keeping a double set of books, making false entries or alterations, or false invoices or documents, destruction of books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind and any conduct, the likely effect of which would be to mislead or to conceal.

633.42 *(1-14-82)* 9781
Evidence for Use in Criminal Proceedings

(1) This section is concerned with the evidence which is anticipated to be used as the Government's criminal case. Every substantial fact should be documented. The evidence should include not only proof of additional income but also any available proof pertaining to the disposition of funds and any related evidence of intent. It also should include any admissions of the taxpayer.

(2) Since venue might lie in more than one district, the special agent should determine the following facts during the investigation and document them in the evidence section:

(a) Residence and principal business address at the time the alleged offense was committed.

(b) Place where records were maintained, where the returns were prepared, and where the returns were signed.

(c) Location of the post office, if the return was mailed, or the Internal Revenue Service office if delivered.

(d) Other pertinent evidence which might aid in establishing venue outside the judicial district in which the District Director's office is located or which might assist in resolving questions arising from defendant's motion for a change in venue. See IRM 932(10).

(3) Any evidence of intent that is closely related to evidence regarding the filing and preparation of returns, the maintenance of books and records, and the receipt or disposition of income should be presented with the discussion of those topics. The facts relating to intent will then be repeated in concise outline form in the section of the report provided for that purpose.

(4) In order to make the evidence section adaptable to use in a criminal trial, the special agent may introduce such evidence in the order proposed for presentation in court insofar as that procedure is consistent with coherence and continuity in the report. This suggestion applies not only to the order of introducing witnesses but also to the form of presenting the testimony of each witness. For example, in narrating the information furnished by a witness, state the name, address (city and state), and title or other identification of the witness, and the name of any organization which he/she may represent. Mention the evidence which he/she may be expected to produce and the pertinent information which he/she has furnished. In most instances it is preferable to discuss the complete testimony of a witness at one point in the report rather than to present part under one topic and part under another. For example, if a witness furnishes information relating to both evidence of the receipt of income and evidence of intent, his/her complete testimony generally should be discussed in connection with the receipt of income. This suggestion, however, should not prevent the special agent from discussing part of the information furnished by a witness under one topic and part under another when that presentation promotes clarity, coherence, and emphasis in the report. In some instances it will be necessary to set forth, either before or after introducing a witness' proposed testimony, sufficient background information to show its relevancy.

(5) This part of the report should include any *facts* indicating weaknesses in the evidence and the reliability of witnesses. It will not, however, contain any conclusions. Avoid using the words "proves," "seems," "appears."

(6) The following matters, if pertinent to the case, should be considered in this part of the report, but the order of presentation should be varied with the facts of the particular case. Topic headings should be used when appropriate, but in many instances the evidence may not be adaptable to segregation into topics.

(a) *Information regarding the filing of returns.*

1 This topic concerns the returns for the tax periods involved in the recommendation for prosecution and any other returns which constitute a part of the evidence. In failure to file cases it is essential to establish that the taxpayer knew the requirement to file income tax returns. Copies of available income tax returns preceding the first recommended prosecution year should be furnished unless it has been established that the taxpayer has never filed a return. Copies of returns filed after the periods for which prosecution was recommended should also be furnished.

2 The record of filing original and amended returns may be set forth in a schedule with the following headings:

Tax Period
Serial No.
Date Filed
Exhibit No.

3 One photostat of each return should be submitted as an exhibit.

4 Introduce the exhibit containing a certificate of assessments and payments (Form 4340, for non-ADP returns) or a computer transcript (Form 4303, for ADP returns) for whatever current and prior tax periods are pertinent to the criminal phase of the case.

5 Present facts regarding the identification of the returns including the signature, sources and amounts of income reported, deductions claimed, and any other significant matters. This may involve merely a statement that the taxpayer in the presence of the named officers identified this data.

6 Set forth any pertinent evidence concerning who filed the returns of the tax periods for which prosecution is proposed; when those returns were filed; and how, i.e., mailed, or filed at an office of the Internal Revenue Service.

7 If no returns were filed, mention that fact and introduce the exhibit containing the certification of the District Director or other appropriate Internal Revenue Service representative. Include any admissions of the taxpayer that returns were not filed.

8 Include as exhibits all requests for Extensions (of time to file). Set forth the pertinent evidence concerning the Request for Extensions including date filed, place filed, reason for requesting extension, date to which extension granted, and reasons, if any, when extension was denied.

(b) *Evidence regarding preparation of returns.*

1 Introduce the statement of the person who prepared the alleged fraudulent returns. Whenever possible submit as an exhibit a copy of that person's affidavit or a transcript of his/her testimony under oath. The information which should be obtained from this witness is set forth in Exhibit 300-5.

2 Include any pertinent statements by the taxpayer.

(c) *Description of books and records of taxpayer.*

1 Describe the taxpayer's books and records and their relationship to the tax returns. Insert all evidence which bears on the taxpayer's knowledge of and responsibility for the recordkeeping process. Statements under oath or affidavits should be included from bookkeepers, accountants or other persons involved in keeping the taxpayer's records.

2 Discuss the circumstances under which access to the records was obtained with particular emphasis on any unusual circumstances, such as discovery of records subsequent to the taxpayer's denial of their existence or the refusal to produce all or part of the records. Mention what records of the taxpayer were examined, and state who reconciled the books and records with the returns. Submit as an exhibit a memorandum of the cooperating officer or the special agent relative to this.

3 In net worth, bank deposits, and expenditures cases, it is particularly important that available evidence showing lack of records, or their incompleteness or inadequacy be submitted. Present pertinent details concerning any oral or written notice given the taxpayer regarding his inadequate records.

(d) *Theory of proof to be followed,* or the type of case to be presented, i.e., specific item, net worth, bank deposits, expenditures, or a combination thereof. Any *facts* showing a pattern or scheme of evasion may be narrated at this point. Such facts also relate to intent and in some cases it may be preferable to cover them in connection with that matter. In net worth and similar cases the evidence of sources of income may be introduced at this point, or in some cases it may be more effectively presented in connection with other evidence. Mention other methods of determining income which may be used as corroboration of the method recommended for use in criminal proceedings. Complete presentation of the alternative method(s), which may consist of one or more of those listed above or a percentage mark-up computation, may be set forth in a subsequent part of the evidence section if the special agent believes that detailed presentation will make the report more conclusive.

(e) *In net worth, expenditure, and bank deposit cases, the evidence corroborating the starting point* may be presented here, preparatory to the introduction of evidence relating to the prosecution period. In some instances it may be preferable to reverse that order of presentation. The net income should be established for such number of prior to subsequent years as may be required to support the starting point. The taxpayer's filing record and copies of available income tax returns should be furnished for *at least* five years immediately preceding the starting point and for all years between that point and the first prosecution year. If any of the required returns are not available, a certification of the District Director relative to the amounts of tax paid should be submitted, together with photostats or transcripts of any available taxpayer's retained copies of pertinent returns. If the taxpayer's income in years for which the returns are unavailable cannot be determined from other sources, the maximum net income which might have been reported on the missing returns may be computed on the basis of the tax paid. Since statements of assessments and payments do not include amount withheld from salaries or wages, such method of computing estimated income may not be feasible unless records such as those of employers or the Social Security Administration can be utilized to reconstruct the amounts of salaries or wages received.

(f) *Tabulation of corrected income.*—This topic comprehends a summary of the items which are proposed for use in criminal proceedings and a comparison of corrected income with reported income. It may relate to specific items of omitted income and overstated expense, or to a summary of a computation based on net worth, bank deposits, or expenditures. Suggested forms of presentation are furnished in the sample reports.

1 In computing corrected income involving a self-employed individual who earns self-employment income as defined in IRC 1402(a), (b), and (c) include in the computations for criminal purposes the corrected self-employment tax figures whenever the original fraudulent return reflects an amount of self-employment tax. Further, in a criminal case involving multiple fraudulent returns, the corrected self-employment tax figures should be computed for each return where self-employment tax would be applicable if self-employment taxes are reported on any of the fraudulent returns. Criminal computations will continue to exclude self-employment tax figures in failure to file cases or in cases where none of the fraudulent returns reflect a self-employment tax figure.

2 The Criminal Section of the Tax Division, Department of Justice, has requested that income averaging computations be prepared and forwarded to the Department of Justice in all cases where applicable and base year data is ascertainable, regardless of whether an income averaging election was made by the taxpayer. Pertinent returns should be requisitioned for base periods at the outset of all income tax investigations. As appropriate, requests should be made for information of base period data to the taxpayer or the taxpayer's return preparer at the initial interviews. Where applicable, the determination of income averaging may be most effectively accomplished through the use of an appendix to the Special Agent's Report.

3 Base period data should be computed as follows:

a In those instances involving a return filed for a pre-prosecution base period, base period data will be obtained from such filed return. Base period data as reported on a filed return will be adjusted only when such adjustments are in the taxpayer's favor or, if in favor of the government, are subject to proof beyond a reasonable doubt as constituting income additional to that reported.

b Base period data is not to be computed by reconstructing the amount of taxable income reported on the basis of tax liability reflected per Service records (other than tax returns), such resulting figure being unacceptably susceptible to inaccuracy due to the variables involved.

(g) *Evidence of income.*—With reference to cases involving several tax periods, a simultaneous presentation of the evidence for all periods shall be used if a separate discussion of the evidence for each year (specific adjustments, net worth items, bank deposits) will result in duplication. The first item should be discussed for all years involved before the evidence relative to the next item is presented. Pertinent facts relating to occurrences in the investigation prior to its status as a joint investigation should be furnished. Those facts include statements made by the taxpayer to, or in the presence of, the cooperating officer, and the latter's memorandums concerning those matters should be submitted as exhibits. The evidence in specific item cases should establish the receipt, omission, and intent relating to each understatement of income and the overstatement and intent relating to each false deduction or expense. Consideration also should be given to any relevant evidence regarding the disposition of funds, which may consist of evidence showing increases in net worth or proof of the disposition of specific amounts. In net worth and similar cases, furnish any available evidence of specific items of omitted income, and if possible, show how they are reflected in the increased net worth.

(h) *Evidence of any collateral violation,* i.e., false statements or documents and other violations included in the same case classification as the principal violation. The special agent should not recommend alternative or multiple criminal charges without a sound basis. In most instances collateral violations such as conspiracy and false statements require additional evidence which should be separately presented to support each specific charge.

(i) Unreported interest from certificates of deposit—If the specific item omitted is interest from a certificate of deposit, see Text 423.2 for information that is required in the final report.

633.5 *(1-18-80)* 9781
Explanation and Defense

(1) In this part of the report the special agent shall set forth explanations of the taxpayer, *facts* regarding his/her attitude toward the investigation, facts indicating his/her defense, and rebuttal evidence. If any of those matters have been discussed in detail in a previous part of the report, this section should contain only a brief summary of, or reference to, the preceding discussion.

(2) Admissions of the taxpayer relative to the receipt of income or to intent in the matter should be presented with the other facts concerning those topics, even though such admissions were made in connection with his/her explanation.

(3) The taxpayer's explanation and *facts* developed during the investigation may indicate a probable defense. Since this section of the report shall include only facts and evidence, any conclusions regarding the taxpayer's explanation and defense will be reserved for the section provided for that purpose. The special agent should not engage in speculation or conjecture about possible defenses in the report.

(4) If a District Criminal Investigation Conference (see Text 342.4) was held at the completion of the investigation to discuss with the taxpayer the criminal features of the case, set forth the results thereof and submit as an exhibit a transcript or memorandum of the proceedings. Admissions made by the taxpayer during the conference should be included with the evidence of the receipt of income or the facts relating to intent, as appropriate. In that event, it may be advisable to introduce the exhibits pertaining to the conference at the point where that occurrence is first mentioned.

(5) Introduce any available evidence to controvert the probable defenses, including a discussion of the efforts made to verify the assertions of the taxpayer.

(6) Present the *facts* relating to the extent that the taxpayer and his/her representatives were cooperative or uncooperative during the investigation.

633.6 *(1-18-80)* 9781
Facts Relating to Intent

This section of the report will contain an outline or succinct summary of the evidence of intent presented in preceding sections of the report, together with a discussion of any additional evidence of intent.

633.7 *(1-18-80)* 9781
Conclusions and Recommendations

(1) The special agent shall identify the features of the case on which a recommendation for criminal prosecution is based and shall present an appraisal of the related facts and evidence. In making this appraisal, the agent should consider the facts set out in the evidence section, including those indicative of defenses and the reliability of witnesses. He/she also may comment, if pertinent, on the factual significance of any item of evidence, and on any unusual circumstances in the case. The special agent shall state his/her conclusions regarding whether the available evidence of any violation disclosed through the investigation is sufficient to establish a successful prosecution. Attention should be given in this section of the report to the flagrancy of the violation and any evidence of a non-cooperative or hostile attitude on the part of the taxpayer.

(2) The special agent shall make specific recommendations concerning the institution of criminal proceedings, including the particular penal sections of law and tax periods involved in each recommendation.

(3) Specific recommendations also shall be made respecting the assertion of any appropriate civil penalties within the jurisdiction of the Criminal Investigation Division. If the case involves tax periods for which prosecution is not recommended, the special agent shall identify the evidence relied upon for the penalty recommendations relating to such periods, and shall set forth the reasons for recommending against prosecution.

633.8 *(1-18-80)* 9781
Sample Reports, Tax Fraud Cases

(1) The sample reports illustrate the format of reports and methods of presenting and arranging facts, evidence, and conclusions. Although in practice the organization of material in each report will depend upon the particular facts and circumstances of the case, the samples can be used as guidelines for effective presentation. The sample reports concern hypothetical situations and are not designed to provide either qualitative or quantitative standards for evaluating the sufficiency of evidence. Since lists of exhibits and witnesses usually are similar in format, samples thereof are included with only the first sample report. Likewise, samples of only one appendix are provided in cases involving two or more appendices that would be similar in content and arrangement. To illustrate a technique that may be used to facilitate reference to the probable testimony of witnesses and to assist in the preparation of the list of witnesses, the surname of the taxpayer and of each prospective witness is typed in capital letters in the sections of the sample reports relating to evidence, explanation of the taxpayer, and intent. Likewise, pertinent business names appear in capital letters. One sample report also follows the practice of underscoring exhibits when initially introduced.

(2) *Specific Item Case.*—Exhibit 600-2 is a sample report on a specific item case in which prosecution is recommended. The body of the report contains a summary of the total unreported receipts from each customer with references to several appendices, each showing a tabulation of the unreported payments from one customer, descriptions of the supporting evidence, references to pertinent exhibits, and the name of the witness who will produce the documents and testify relative thereto. A sample of one such appendix is provided. In the body of the report, discussion of items appearing on the appendices is confined to evidence that is not adequately described on an appendix and matters that require elaboration. The sample report contains a summary showing the disposition of proceeds from unreported sales, followed by a discussion of the exhibits relative thereto. Such detailed discussion of the exhibits relating to the disposition of funds is not necessary in all cases. For example, in instances where such exhibits are adequately described by their title, further discussion may be unnecessary.

(3) *Sample Appendices (Specific Item Case).*—Exhibit 600-2 contains sample appendices showing methods of presenting the evidence of unreported sales in a prosecution case based on specific items.

(a) Appendix A provides a concise summary of the facts and evidence relating to the receipt of income which, if used as a basis for preparation of the narrative report, will assist the special agent in making a concise and coherent presentation. If the evidence is adequately described on the appendix, it is unnecessary to repeat that information in the body of the report. However, if the brief description in the appendix does not clearly explain the facts and evidence, the matter should be discussed

in the body of the report. Exhibit 600-2—Cont. (12) is an alternate method of presenting Appendix A in block adjustments. The alternate method shows the amounts reported on the tax return, the adjustments, corrected for criminal purposes, other adjustments for civil purposes, and corrected for civil proceedings per the Revenue Agent's Report. The facts and evidence pertaining to disposition of the funds from the unreported sales may be set forth in a form similar to Appendix B. A copy of each appendix will be submitted with each copy of the report.

(b) The information to be included on an appendix and the arrangement thereof will vary according to the facts of the particular case. In many cases it is not necessary or desirable to include information relating to the reported income, and in instances where few columns are required, it may be feasible to combine the schedules regarding the receipt of income and the disposition of funds.

(4) *Net Worth Case.*—Exhibit 600-5 is a sample report on a net worth case involving a recommendation of prosecution with respect to three of the five years included in the investigation. It is assumed in the sample that the case resulted from the receipt of an informant's communication and that the investigation disclosed fraudulent returns filed for the years involved. The body of the report contains a summary of the computation of net worth and expenditures and the details are set forth on appendices. The summary which appears in the body of the report should contain a tabulation of the major classifications of assets and liabilities that show changes sufficient to have a material effect on income. The remaining amounts should be grouped under the classifications of "other assets" or "other liabilities." In the summary of the income computation in Exhibit 600-5, the corrected net income is determined by adding nondeductible expenditures to the increases in net worth. A separate item should be inserted in the summary whenever it is necessary to make adjustments for nontaxable income or unallowable deductions, such as gifts, the nontaxable portion of capital gains, or unallowable losses. Because of the number of columns involved, the detailed computations of net worth are presented on two separate appendices: one (Appendix A) relating to the period from the starting point to the first year included in the criminal case, and the other (Appendix B) concerning the years involved in the recommendation for prosecution. Appendix B contains a description of the evidence for each item, references to pertinent exhibits, and the names of witnesses for each item. Appendix A contains similar information for each item not continued on Appendix B, but in instances where an item appears on both appendices, the former shows, in lieu of a description of the evidence, a reference to the number of the item on Appendix B. In instances where one document constitutes evidence relative to a number of net worth items, repetition may be avoided by placing a notation "see Note 1" in the column headed "Description of Evidence" and describing the document in a footnote. If any classification of assets or liabilities is comprised of numerous items, the basic appendix usually should show only the total amount for the particular classification with reference to a subsidiary appendix containing the detailed tabulation of such items. For example, in a case involving numerous bank accounts, the basic appendix will show the aggregate amount on deposit in all the accounts at the end of each period, and the balances in the individual accounts will be tabulated on supporting appendices.

(5) *Bank Deposits Case.*—Exhibit 600-6 is a sample report on a bank deposit case, in which it is assumed that the taxpayer operated a retail drug store and that the bulk of receipts from sales are in the form of cash. It also is assumed that business expenses were paid by checks and that the canceled checks were available during the investigation. The computation of income on the basis of bank deposits and cash expenditures is presented on Appendix A, with a brief summary thereof in the body of the report. In order to simplify the basic computation of income, only the total amounts of payments in cash, nonincome items and deposits, purchases, and operating expenses are shown on that appendix and the detailed information concerning those items is set forth on subsidiary appendices. In more complicated cases, it might be advisable to use separate appendices or schedules for the particulars of other items. It is assumed in the report that the evidence concerning deposits of customers' checks will be shown on Appendix A-1. Since the format of that appendix is adequately described in the body of the report, a sample is not provided. Although the sample report may be used as a guideline in preparing reports on bank deposit cases, the form and content of the report and appendices will vary according to the facts and circumstances of the case.

634 (1-18-80) 9781
Final Reports on Prosecution Cases (Optional Format)

634.1 (1-18-80) 9781
Introduction

(1) The optional format report was implemented on June 2, 1972, amended on July 19, 1973, and developed in its present form on March 14, 1975 as a result of constructive suggestions from District, Regional and National Office personnel. The ARC (Criminal Investigation) may authorize the use of the optional format report on either a regional or district basis.

(2) The optional format report is a witness oriented rather than an exhibit oriented report, for example: Witnesses are numbered chronologically as they are introduced—W1, W2, W3, and so forth. Each exhibit pertaining to a given witness is likewise numbered chronologically. For example, the exhibits relating to witness number 3 would be designated as W3-1, W3-2, and W3-3. This form of a witness-exhibit referencing system eliminates the need for separate witness and exhibit lists as both lists are combined in one. No disassembly or reassembly of witness-exhibits is required for pretrial or trial use. The optional report requires less introductory narrative concerning the individual witness and exhibits. However, the pertinent facts and circumstances of the case should be thoroughly discussed in the narrative and fully documented with appropriate witness-exhibit references. Exhibit references should be underlined and explained the first time they are mentioned in the report in order to facilitate review and pretrial use of the report. Subsequent references to the exhibit should not be underlined or explained. For example: "The results of the civil examination (*W4-2, Revenue Agent's Report*) are as follows. . . . The civil adjustments (W4-2) are reconciled to the criminal adjustments in Appendix A."

(3) The optional report has a standard format, but additional sub-headings may be used to add clarity to the report and facilitate review. (See 634.2, Outline for Final Reports on Prosecution Cases-Optional Format and Exhibit 600-4). Additional sub-headings should be used liberally to highlight any significant issues.

(4) The optional report makes maximum use of appendices and eliminates the need for a detailed explanation of each of the supporting exhibits and minor details of the case. Each of the appendices should contain complete references to all relevant testimony and documentary evidence. Furthermore, each appendix should be referenced to all corroborative evidence.

(5) The optional format report contains details of the revenue agent's recommendations and a reconciliation of the civil and criminal adjustments. A copy of the Revenue Agent's Report should be included as an exhibit to the Special Agent's Report. The Special Agent's Report should state where the evidence in support of the fraud penalty is maintained.

634.2 (1-18-80) 9781
Format For Final Reports in Prosecution Cases (Optional Format)

(1) Introduction
(2) History of taxpayer
(3) Evidence of income
  (a) Theory of the case
  (b) Books and records
  (c) Preparation and filing of returns
  (d) Reconciliation of books and records to tax return (if applicable)
    1 Reported Income
    2 Reported Expenses
  (e) Explanation of appendix items (if applicable) or
  (f) Evidence for use in criminal proceedings
  (g) Additional deductions (if applicable)
  (h) Corrected taxable income and tax (if applicable)
(4) Corroborative proof (if applicable)
(5) Evidence of intent
(6) Explanation and defense of taxpayer
(7) Conclusions and recommendations

634.3 (1-18-80) 9781
Introduction

(1) The introduction to the report should contain the principal's social security number or employer's identification number. Both numbers should be added where applicable. In addition, this section should make maximum use of the following subheadings and brief statements of fact as opposed to extensive narrative.

  (a) Name and address of the Taxpayer
  (b) Name and address of Representative
  (c) Type of Report
  (d) Type of Case and Prosecution Years
  (e) Recommended Charges

(f) Investigating Agents
(g) Related cases
(h) Method of proof
(i) Method of Evasion
(j) Returns Filed and Statutes of Limitation
(k) Venue
(l) Source of Case
(m) Initial Contact with Taxpayer and Date of Referral
(n) Constitutional Advice
(o) Power of Attorney
(p) Revenue Agent's Recommendations
(q) Reconciliation of Civil and Criminal Adjustments
(r) Civil Actions

(2) The narrative relating to "Returns Filed and Statutes of Limitation" should include filing information (with pertinent exhibits) of periods subsequent to those for which prosecution was recommended.

(3) The narrative relating to "Venue" should include not only where venue may lie but also what evidence supports the conclusions. Evidence of venue should be fully documented as set forth in IRM 932(10).

(4) The narrative relating to "Initial Contact With Taxpayer and Data of Referral" should state not only who contacted the principal but also, when, where, how, and why. If the case was referred to the Criminal Investigation Division from either Examination, Collection, or the Service Center, the referral date should be included. If the case was not referred from within the IRS, this section should be entitled "Initial Contact with Taxpayer."

(5) The narrative relating to "Constitutional Advice" should state when, where, and by whom the advice was given; who was present; and statements made by the principal as to his/her understanding of his/her rights. (See IRM 9384.2.)

(6) The narrative relating to the revenue agent's recommendations should schedule the corrected taxable income and tax for use in civil proceedings. A copy of the Revenue Agent's Report should be included as a witness-exhibit reference. Samples of the scheduling of corrected taxable income and tax are set forth in Exhibits 600-1, 600-2, and 600-4.

(a) If applicable, any differences between the criminal and civil adjustments should be reconciled and explained either in this section, an exhibit or an appendix. A suggested format for reconciling the return to the civil and criminal adjustments is set forth in Appendix A-2, Exhibit 600-4—Cont. (20).

(b) The report should state where the evidence in support of the fraud penalty is being maintained. When recommending the Civil Fraud Penalty in willful failure to file cases and/or with respect to tax periods not included in the prosecution recommendation, consideration should be given to including in the report the facts and evidence used to support the Civil Fraud Penalty (see Text 252.3). This may be accomplished by creating a separate heading or sub-section in the optional report. (See subsection 634.1:(3).)

(7) All significant civil actions instituted either by or against the taxpayer should be fully explained. This applies whether the actions are for prior years, prosecution years, subsequent years, or relative to a different type of tax.

634.4 *(1-18-80)* 9781
History of Taxpayer

(1) This section remains the same as in the narrative format report, except that maximum use is made of subheadings and brief statements of fact. In addition, this section should make maximum use of the following subheadings and brief statements of fact as opposed to extensive narrative:

(a) Full Name
(b) Aliases, Business Names
(c) Date and Place of Birth
(d) Physical and Mental Health
(e) Marital Status and Spouse's Name
(f) Dependents
(g) Place of Residence During Years Involved
(h) Education
(i) Military Service
(j) Reputation in the Community
(k) Criminal Actions (a copy of the criminal record should be submitted as an exhibit with the report)
(l) Business Address During Years Involved
(m) Business History
(n) Sources of Income
(o) Other Pertinent Data

634.5 *(1-18-80)* 9781
Evidence of Income

(1) The "*Theory of the Case*" section is designed primarily to present an overview or brief synopsis of the case. This section should avoid conclusions and adhere to a capsule presentation of the facts and evidence developed during the investigation. The synopsis need not be documented but must be based upon facts proven elsewhere in the report. The report should mention whether the principal is a cash or accrual basis taxpayer and the basis used to determine the unreported income for use in criminal proceedings. This section should also set forth the method(s) of proof used. If an indirect method of proving income is used, an explanation should be given as to why the method was selected.

(2) The "*Books and Records*" section should contain a brief description of the principal's records as opposed to a mere listing of the records. This section is not intended to be an exhaustive analysis of the recordkeeping system but should relate enough information to familiarize the reader with the records and how they are used to record the principal's income and expenses. The recordkeeping responsibilities and detailed office procedures should be explained under the "Explanation of Appendix Items" section. The "Books and Records" section should include information as to when, how, and from whom the records were obtained and their disposition, that is, whether or not the records were copied, compared, certified, and returned to the principal.

(3) The "*Preparation and Filing of Returns*" section should contain all details surrounding the preparation and filing of the principal's returns. Particular emphasis should be placed upon who was responsible for each facet of the preparation, signing, and filing the return. The scope of the evidence presented in this section is basically the same as in the narrative format report; however, it has been given a separate section to emphasize the basic importance of this aspect of the investigation.

(4) The "*Reconciliation of the Books and Records to Tax Returns*" section should summarize the major income and expense categories as well as deductions and show the agreement with amounts reported on the tax return. If applicable, those items which are not in agreement should be explained. This section should make reference to either the summary schedule exhibit or appendix which shows the detailed reconciliation. If a reconciliation is not possible or necessary, a statement to that effect should be included in this section.

(5) The "*Explanation of Appendix Items*" section is one of the more significant sections of the report. The evidence in support of the violation should be set forth in full detail in this section. Although extensive narration of each appendix item and exhibit is not necessary with a well planned appendix, sufficient detail must be presented to fully explain the facts and circumstances of the case. Subheadings may be used liberally to clarify this section. The first part of this section should set out a schedule of the specific categories and items of unreported income or a summary of the net worth, bank deposit, or expenditure schedules, whichever is applicable. This section should explain each appendix: what it is; how the data on the appendix is derived; what analyses were made; what evidence is used; and what the appendix shows. Only those individual appendix items which are not self-explanatory need be explained. If appendices are not used in presenting the case, the heading "*Explanation of Appendix Items*" may be replaced with the heading "*Evidence for Use in Criminal Proceedings.*"

(6) The "*Additional Deductions*" section should not only summarize but also explain any additional deductions or adjustments determined during the investigation. This heading should be deleted if there are no additional deductions or adjustments.

(7) The final subsection under the major section "*Evidence of Income*" is "*Corrected Taxable Income and Tax.*" This section sets forth the computation of corrected taxable income and tax for use in criminal proceedings. If the

case in chief is presented by an indirect method of proof, this section need only show the corrected tax computation if taxable income is shown on the appendices. Include as tax for criminal purposes corrected self-employment tax figures whenever the original fraudulent return reflects an amount of self-employment tax. Exclude self-employment tax figures in failure to file cases or in cases where none of the fraudulent returns involved reflect a self-employment tax figure. Income averaging computations should be prepared in all cases where appropriate. (See Text 633.42:(6)(f).)

634.6 *(1-18-80)* 9781
Corroborative Proof

If no corroborative proof is used, this section should be deleted from the report. If the primary method of proof is corroborated by another method of proof, the heading "*Corroborative Proof*" should be centered on the page as a major subheading after the "*Corrected Taxable Income and Tax*" section and before the "*Evidence of Intent*" section. The "*Corroborative Proof*" section should set forth the details of the corroborative proof used in the case. In a combined net worth/specific item case, the evidence for the method supporting the government's case in chief would be set forth under the "*Explanation of Appendix Items*" section and evidence of the corroborative method would be set forth under the "*Corroborative Proof*" section.

634.7 *(1-18-80)* 9781
Evidence of Intent

The "*Evidence of Intent*" section remains basically the same in content as in the narrative format report. This important section of the report should contain brief, concise statements of the evidence of intent presented in the preceding sections of the report, together with a discussion of any additional evidence of intent. Generally, if an item is presented in the "*Evidence of Intent*" section, it should be fully developed in prior sections of the report.

634.8 *(1-18-80)* 9781
Explanation and Defense of Taxpayer

The "*Explanation and Defense of Taxpayer*" section of the report remains basically the same as in the narrative format report except this section now follows the "*Evidence of Intent*" section so that evidence not previously covered in the report can be introduced.

634.9 *(1-18-80)* 9781
Conclusions and Recommendations

(1) The special agent should identify the features of the case on which the recommendation for criminal prosecution is based and shall present an appraisal of the related facts and circumstances of the case. The special agent shall comment on the flagrancy of the violation and any evidence of a hostile attitude on the part of the taxpayer.

(2) The special agent shall make specific recommendations concerning the institution of criminal proceedings, including the particular penal sections of law and tax period involved in each recommendation.

(3) Special recommendations should be made relative to the assertion of any appropriate civil sanctions within the jurisdiction of the Criminal Investigation Division, including the particular sections of law and the tax period involved in the recommendation.

(4) If the case involves tax periods for which prosecution is not recommended, the special agent should identify the evidence relied upon to support the penalty recommendations relating to such periods and set forth the reasons for recommending against prosecution. In addition, the report should indicate where the evidence in support of the civil sanctions is being maintained.

634.(10) *(8-11-80)* 9781
Witness-Exhibit Files

(1) A separate witness file should be established for each witness developed during the investigation. The witness file should include the applicable testimony. Documents relating to each witness file can then be reviewed for relevancy and each item therein arranged in a logical sequence.

(2) In assembling the witness files, each witness file and each evidentiary item contained in each witness file will be numbered.

(3) The documents in the files should be secured within each file and all files then attached together in a manageable package with fasteners or by other methods.

(4) A separate cover sheet should be prepared for each witness file. The witness cover sheet should contain the following information: case number; name and title of witness; name and title of employers, if applicable; home or business address and telephone number where witness can be located in the event of trial; pertinent facts bearing on the credibility of the witness, including any known criminal record; a concise summary of the witness' testimony, including any known criminal record; a concise summary of the witness' testimony when a lengthy or complicated statement is involved. General statements need not be documented, but specific statements should have references (Witness-Exhibit) to the relevant document. The witness number and total number of exhibits should be listed on the cover sheet.

635 (1-18-80) 9781
Reports on Wagering Tax and Coin-operated Gaming Device (COGD) and Seizure Cases

635.1 (1-18-80) 9781
Introduction

(1) In preparing reports on wagering tax and coin operated gaming device cases the special agent should follow the outline for reports on tax fraud cases shown in 633, with the elimination of any section that is not necessary to a complete presentation of the facts. The flagrancy of the violation, the importance of the violator, and whether the case was adopted from local police authorities or developed through independent investigation by Criminal Investigation should be covered in the report. An optional short form report has been developed for use in wagering tax and coin-operated gaming device cases. To the extent possible the short form report should be utilized in these cases.

(2) The excise tax on coin-operated gaming devices is repealed, effective for years beginning after June 30, 1980.

(3) Exhibit 600-8 is an affidavit for search warrant; Exhibit 600-8 Cont. (1) is a search warrant; and 600-8 Cont. (2) is the return of the search warrant. The sample affidavit, search warrant, and return concern a hypothetical situation and are not designed to provide qualitative or quantitative standards to be used in every case. As far as possible, the samples contain information that the courts have recognized as valid and necessary for the issuance of a legal search warrant.

635.2 (1-18-80) 9781
Reports in Wagering Cases

(1) A final report will be submitted by special agents at the conclusion of each investigation in accordance with IRM 9512.1.

(2) When a special agent makes an arrest in a wagering occupational tax case, he/she will prepare an Arrest Report, Form 1327A, which will be furnished by the Chief, Criminal Investigation Division to the United States Attorney by the close of business on the next business day following the arrest. Arrest reports will be processed in accordance with IRM 9447.8.

(3) Final reports containing recommendations for prosecutions will be forwarded by the Chief, Criminal Investigation Division to District Counsel for review. The Chief, Criminal Investigation Division will comment in the transmittal memorandum that the criteria in IRM 9421 were met. In those instances where a package of cases is being recommended for prosecution and not all the cases met the criteria, the Chief will identify in the transmittal memorandum those cases which met the criteria. However, wagering occupational cases involving arrests which do not include recommendations for prosecution of other tax violations will be referred directly to the United States Attorney. In cases where an arrest was made for a wagering occupational violation and the investigation also gathered sufficient evidence of a wagering excise tax violation to warrant a recommendation for prosecution, District Counsel will be provided with a report concerning the excise tax portion of the case only. District Counsel will refer wagering cases (except COGD cases) directly to the United States Attorney.

(4) If the United States Attorney later decides to prosecute a wagering tax defendant for a substantive gambling violation, he may need to prove that none of the information used at trial is tainted by the tax disclosure. Where this is not possible, the prosecution of non-tax violations may be precluded. To avoid this potential interference with non-tax gambling investigations and prosecutions, all information controlled by IRC 4424 (See Chapter (26)00 of the "New" IRM 1272, Disclosure of Official Information Handbook) which is forwarded to the United States Attorney will have the following statement on the cover sheet of each report:

"THIS DOCUMENT CONTAINS WAGERING INFORMATION WHICH UNDER IRC SEC-

TIONS 4424 AND 6103 MAY BE DISCLOSED ONLY FOR THE ADMINISTRATION AND CRIMINAL ENFORCEMENT OF THE INTERNAL REVENUE CODE. IT MAY NOT BE USED FOR INTELLIGENCE OR PROSECUTORIAL PURPOSES FOR GAMBLING OFFENSES SET FORTH IN TITLE 18, U.S.C., OR ANY OTHER PURPOSE."

(5) When state or local court actions of any type have been initiated or concluded against the subject of a wagering investigation at the time a final report containing a recommendation for prosecution is written, the facts relating to such court action should be incorporated in the final report. If the court action takes place after the report has been submitted, a supplemental report containing significant details concerning the matter will be submitted.

635.3 *(1-18-80)* 9781
Seizure Report, Form 4008

(1) Form 4008 will be used to report seizures of all personal property, regardless of whether the property is subject to judicial forfeiture or administrative forfeiture. Adoption of a form report as a substitute for the narrative report is not meant to encourage brevity of reported information. Because the information contained in the seizure report constitutes the basis for forfeiture action, it must be accurate and complete. Furthermore, the information and evidence is needed to process and answer such legal actions as Petitions for Remission and Mitigation of Forfeiture, Claim and Cost Bonds, and Offers in Compromise. A seizure report should not be abbreviated simply because the seized property is valued at $2,500 or less and may be subject to administrative forfeiture since the property, regardless of the value, may later become subject to judicial forfeiture by the filing of a claim and cost bond. (See IRM 9455.7)

(2) Form 4008 is a seven part snap-out assembly. Item instructions are included with the sample seizure report (Exhibit 600-9).

(3) The following documents, if prepared, should be attached to the original copy of the seizure report:

(a) Form 181, Inventory Record of Seized Vessel, Vehicle or Aircraft.

(b) Form 226-A, Appraisement List.

(c) Copy of Affidavit for Search Warrant.

(d) Copy of Search Warrant and Return of Search Warrant.

(e) Form SF-1034, Public Voucher for Purchases and Services Other Than Personal.

(f) Form 141-A, Special Moneys Report.

(4) The case identification number shall be noted on all copies of inventory records, appraisal forms, tags, receipts, and other documents relating to a particular seizure. A separate report shall be prepared covering all property seized at the time from each premises on which a seizure is made, regardless of ownership, although details of ownership shall be covered in the report.

635.4 *(1-18-80)* 9781
Report of Investigation Relating to Petition for Remission or Mitigation of Forfeiture

Exhibit 600-10 contains the format and instructions for a special agent's report of an investigation relating to petition for remission or mitigation of forfeiture. The format and instructions shall be followed insofar as applicable. (See IRM 9458.5)

636 *(1-18-80)* 9781
Miscellaneous Criminal Law Violations

The general outline provided in 632 should be used in preparing reports on miscellaneous criminal violations in which fraud is not the prime factor. The section relating to summary of the cooperating officer's findings is not applicable to these cases, and other parts of the outline may be eliminated or modified according to the circumstances of the case. Exhibit 600-11 is a sample report relative to a miscellaneous criminal violation.

637 *(1-18-80)* 9781
Reports on Nonprosecution Cases

(1) Reports on investigations in which prosecution is not recommended shall be similar to, but less detailed than, those pertaining to criminal cases. Since in completed investigations the special agent is responsible for any recommendations concerning civil penalties other than those relating to tax estimations, he/she shall identify and summarize the facts and evidence upon which the recommendation is based. The investigative procedures followed shall be described or outlined in enough detail to enable supervisory and reviewing officials to determine whether the investigation was sufficiently exhaustive to have uncovered any existing evidence of fraud. Particular attention shall be given to setting forth the specific reasons for recommending against criminal proceedings. (See IRM 9521 and 9327.2)

(2) *Fraud penalty.*—Since in cases involving the ad valorem addition to the tax for civil fraud the burden of proving fraud is on the Government, care must be exercised to ensure that there is sufficient evidence to sustain that burden. Cases should be documented to the extent necessary to establish clear and convincing proof of the violation.

(a) With respect to nonprosecution cases wherein an agreement was not obtained from the taxpayer, available documents material to the matter of fraud should be submitted as exhibits. In the body of the report maximum use should be made of the technique of summarization. In many instances narrative may be reduced by the use of appendices containing brief descriptions of the evidence.

(b) In reports on cases in which the taxpayer has agreed to the assertion of the fraud penalty, emphasis should be placed on an explanation of the specific reasons for the conclusion that prosecution is not warranted. The facts and circumstances on which the assertion of the penalty is based should be set forth, but discussion of specific items of evidence and submission of exhibits usually is unnecessary. However, because of the possibility that a taxpayer who had executed an agreement might subsequently file a suit for refund, the files of the Criminal Investigation Division should contain all available documents relating to evidence on which the penalties are based. To illustrate the suggested procedure regarding agreed cases, assume that a part of the facts disclosed by an investigation concerned a taxpayer's failure to report 18 checks received in payment for sales to a corporation, and that the special agent obtained an affidavit from an officer of the corporation, together with photostats of the pertinent canceled checks and invoices. The taxpayer's receipt of that income may be covered in the report by a statement that "During the year 19—, _____ received 18 checks aggregating $5,283 from the A.B.C. Corporation, Baltimore, Maryland, in payment for sales of machinery." Although the affidavit and the photostats will not be submitted as exhibits, they will be retained in the files of the Criminal Investigation Division.

638 *(1-18-80)* 9781
Reports on Discontinued Investigation

(1) Reports of withdrawal from investigations will specify the basis for the investigation, the extent of the investigation, the results obtained, the reason for recommending discontinuance of the investigation and a recommendation as to disposition to be made of the case (close to files or refer to Examination or Collection Divison). The special agent will not make a recommendation concerning civil penalties in discontinued investigations. Exhibit 600-12 is a sample report on a discontinued investigation.

(2) Any documentary evidence to support the assertion of civil fraud penalty will be included with the final report.

(3) Special agents should not use language which may discourage subsequent developments of the fraud issue. For example, if a case is closed due to a lack of prosecution potential, that is, age, health, education, de minimis etc., no conclusion should be drawn concerning the lack of intent by the taxpayer to commit fraud unless there are other facts and circumstances present which make the statement proper.

(4) In those instances where an investigation has been terminated or a referral declined by a memorandum, a statement should be made in the report to the effect that nothing was discussed or occurred in the case which precludes the assertion of the civil fraud penalty.

(5) In joint investigations the withdrawal report should contain a statement that the cooperating officer's Group Manager has been advised of the proposed withdrawal action and concurs with it. See 3(10)9.

639 (5-9-80) 9781
Collateral Reports

(1) A sample report of a collateral request and one of a reply are illustrated in Exhibits 600-13 and 600-14. Collateral requests should contain only sufficient information to advise the receiving office of the essential facts of the case. Collateral replies should not restate information that was requested or action that was required but should begin by answering the request in the first paragraph. Ending paragraphs such as, "It is recommended that this report be forwarded to," should be omitted as this information can be included in the heading of the report as shown in Exhibit 600-14. Collateral replies shall include the number of hours charged to the collateral investigation by each agent assigned.

(2) Exhibits 600-13—Cont. and 600-14—Cont. contain optional formats for placement of the approval legend on collateral requests and replies.

(3) IRM 9264 sets forth procedures to be followed in collateral requests and in obtaining information from the National Office and other sources. Reference to a Directory of Post Offices (formerly Postal Guide) to identify the county in which a particular municipality is located, and then to IRM 1119 (Listing of Internal Revenue Regions, Districts, and Service Centers, with Background History) or to one of the tax services to identify the specific district in which the country is located, will facilitate proper direction of collateral requests.

(4) See 625.3 for treatment of documents submitted with collateral reports.

640 (1-18-80) 9781
Chronological Worksheet

Special agents may be required to maintain Criminal Investigation Division chronological worksheet, Form 4365, to record the sources, dates of origin and other facts and circumstances involved in obtaining leads and evidence in investigations. Completed chronological worksheets relating to investigations should be maintained as a permanent part of the district case file. Exhibit 600-15 is a sample chronological worksheet.

650 (1-18-80) 9781
Legal Action Reports

651 (1-18-80) 9781
General

(1) Current information concerning the movement and disposition of criminal cases is provided regional and National Office officials through the prompt submission by special agents of Forms 1327 (Report of Legal Action) (Report Symbol NO-CP:1-19). Form 1327 will be prepared or updated and mailed on the same day the reported action takes place. Air mail will be used when the delivery date will be materially advanced. Legal actions, especially those involving matters significant to tax administration or cases of national importance will be reported by the Chief, Criminal Investigation Division, to the regional and National offices by telephone or telegram and promptly confirmed by submission of Form 1327. Instructions for preparing Form 1327 are set forth in Exhibit 600-16.

(2) Care should be taken to ensure that any remarks or conclusions that are critical of officials or employees of any department or agency of the Government are adequately supported by the facts in the case.

(3) Form 1327 is also utilized to furnish data for statistical operations reports. The disposition of all cases forwarded to the U.S. Attorney will be reported, including those closed without court action. A Form 1327 reporting a "no true bill" will not be considered as closing a case unless the report specifically so states, inasmuch as many such cases are resubmitted or submitted to a subsequent grand jury. If a case is held open for further consideration, after the return of a "no true bill," and it is later decided to take no further action, a Form 1327 reporting the decision and closing the case should be submitted. Forms 1327 reporting closing actions, such as sentences, dismissals, and acquittals returned by the U.S. Attorney, will state the methods of evasion presented in the last proceeding related to the criminal violations alleged.

(4) Form 4930, Criminal Investigation Case/Project Record (Turnaround), should be prepared in accordance with Exhibit 400-3 of IRM 9570, Case Management and Time Reporting System Handbook, when a pertinent legal action occurs.

652 *(10-3-80)* 9781
Procedures

(1) Federal Rules of Criminal Procedure prohibit the disclosure of an indictment before it is returned in open court. Generally a Form 1327, Report of Legal Action (Report Symbol NO-CP:CI-19), on an indictment will be submitted at the time the grand jury makes its report to the court. However, where it is anticipated that the grand jury's report to the court will be delayed, as in the secret or sealed indictments, a Form 1327 will be promptly submitted showing that the case was presented to the grand jury, and that a supplemental Form 1327 will be mailed at the time the grand jury returns its report in open court.

(2) The Form 1327 will be updated each time court action takes place. Routine and special distribution requirements for Form 1327 are contained in IRM 9531.2:(2) through 9531.2:(6).

653 *(1-18-80)* 9781
No True Bill Cases

When a grand jury fails to return a true bill, Form 1327 will be prepared by the special agent assigned to the case indicating whether the agents were able to present all the facts to the grand jury, and whether the facts or other circumstances point out the desirability of obtaining supplemental information to strengthen the case. The report will comment upon appearance before the grand jury of the defendant or any defense witnesses, and upon any other relevant matters. It should contain the special agent's conclusion as to the probable reason for the grand jury's action and the special agent's views concerning resubmission of the case to the same or subsequent grand jury.

654 *(1-18-80)* 9781
Cases in Which a Conviction is Not Obtained

(1) In every case which a United States Attorney declines to prosecute, or which is dismissed before or during trial, or in which the jury is unable to reach a verdict, or which results in a verdict of not guilty, Form 1327 will include a narrative of the circumstances which, in the special agent's opinion, resulted in the action taken. In a tried case, a transcript of pertinent remarks and decision of the judge should accompany the report.

(2) The special agent will not seek out any of the jurors in a tried case for the purpose of soliciting information to be incorporated in the Form 1327 unless approved in advance by the National Office. However, the special agent should include any pertinent information proffered to him/her by jurors acting on their own initiative or submitted by them to other Government representatives.

655 *(1-18-80)* 9781
Cases Containing Unique or Important Matters of Law

Unique, important, or unusual matters of law arising in any case, regardless of its outcome, will be reported on Form 1327. This information is particularly desired in cases which will not ordinarily be reported in any legal or tax service. Copies of the court's decisions or remarks may be transmitted with the Form 1327.

656 *(1-18-80)* 9781
Reporting Arrests

(1) The special agent shall immediately report to his/her Group Manager any arrests that he/she makes. The Group Manager shall immediately report such information to the Chief. Such notification may be by wire or telephone.

(2) When it is necessary to make an arrest prior to consulting the United States Attorney, he/she shall be notified promptly of the arrest, advised fully of the facts in the case, and requested to represent the Government in the preliminary examination before the United States magistrate.

(3) In addition to the reporting procedure in (1) and (2) above, the special agent will prepare a Form 1327-A, Arrest Report (see Exhibit 600-7), before the close of the next business day following the arrest. The form will be submitted in the original and six copies and, upon approval by the Chief, the following distribution will be made:

(a) original to appropriate U.S. Attorney.

(b) two copies to Director, Criminal Investigation Division, Attention: CP:I:O.

(c) one copy to Chief Counsel, IRS, Attention: Director, Criminal Tax Division.

(d) one copy to ARC (Criminal Investigation).

(e) one copy to District Counsel.

(f) one copy to Chief's file.

(g) Also see IRM 9531.2.

(4) If the arresting agent believes valid reasons exist for opposing release of the prisoner on personal bond, these reasons will be brought to the attention of the United States Attorney prior to the bail hearing. The U.S. Attorney may request that the agent prepare Bail Reform Act Form No. 1, AO-201, for use at the hearing. The form is available at the Clerk's Office for each U.S. District Court. The original will be furnished to the U.S. Attorney and a duplicate will be retained in the Criminal Investigation case file.

660 *(1-18-80)* 9781
Claim for Reward Reports

(1) In any case where the special agent participated to conclusion and in which it is known that a claim for reward has been or will be filed, the special agent will prepare a separate claim for reward report. It will be made in an original and two copies and will be clearly labeled "Official Use Only." Upon conclusion of an investigation where prosecution is not recommended the special agent will prepare a claim for reward report as soon as he/she is in a position to make a final recommendation concerning the percentage of reward, if any, to which the informant is entitled. In prosecution cases preparation of the report may be deferred pending disposition of the criminal aspects of the case.

(2) In a prosecution case, if the claim for reward report is prepared before the disposition of the criminal aspects, it will be forwarded to the Chief for approval, after which the report will be retained in a suspense file until the criminal aspects of the case have been disposed of. At that time, the report will be reviewed by the special agent, updated if necessary to include further developments affecting the claim, and forwarded by the Chief, to the Chief, Examination Division, Attention: Informants Claims Examiner, for processing.

(3) The report will contain a consideration of the applicable factors stated as the Service criteria for allowance or rejection of informant's claims for reward, as detailed in IRM 9300. In addition, it will include the following.

(a) Name and address of informant.

(b) Name, case number, and address of the taxpayer, nature of the informant's relationship with the taxpayer and manner in which the information was obtained by the informant.

(c) A statement as to whether the information caused the investigation and whether any of the years involved had been examined previously, including the results of any such prior examination.

(d) A statement as to the value of the information furnished in relation to the facts developed by the investigation, specifying which adjustments were brought about by the information and the amount of taxes and penalties recommended as a result of those adjustments, if known.

(e) A statement regarding the extent of any assistance rendered by the informant during the course of the investigation and any additional information which may be pertinent, such as prosecution of the taxpayer.

(f) A recommendation by the special agent as to whether the informant is entitled to a reward, and if so, the percentage of the total recovery to which the informant is entitled. See IRM 9371 for the basis for computing rewards.

(g) The cooperating officer, if any, shall indicate his/her concurrence or nonconcurrence with the special agent's recommendation by signing a statement to that effect near the bottom of the last page of the original and all copies of the report. If the cooperating officer does not agree with the recommendation of the special agent as to the allowability of a reward or the percentage determined as appropriate, the cooperating officer will prepare and forward to the Informants Claims Examiner a separate report setting forth the reasons for his/her nonagreement.

670 *(1-18-80)* 9781
Supplemental Reports

(1) Supplemental reports add to or clarify information contained in a final report previously submitted on the same subject. A supplemental report may be initiated by a special agent to transmit information gathered since submission of the final report, or may be submitted in response to requests for information or clarification from the District Counsel or other offices processing or reviewing final reports.

(2) See 625.2 for information concerning the procedure in numbering exhibits for Supplemental Reports. Also see IRM 9357 relative to Supplemental Investigations.

680 *(1-18-80)* 9781
Grand Jury Investigation Reports

A report, similar in content to a special agent's final report, should be prepared and addressed to the attorney for the Government upon the conclusion of the grand jury investigation. The report, whether with or without prosecution recommendation, is to be transmitted to designated District Counsel attorneys. Prior to transmitting the report to the District Counsel attorneys who will review the report, those attorneys and necessary secretarial personnel will be identified and a written request from the Government attorney naming such individuals to assist him/her will be obtained. Documents governed by the secrecy provisions of Rule 6(e)

should be bound in exhibit folders separate from all other documents and clearly identified so as to facilitate subsequent identification of the source of documents. Copies of the report will not be supplied to the District Director or to any persons not specifically authorized by the attorney for the Government as his/her assistants. (see IRM 9267.5)

690 *(1-18-80)* 9781

Reporting Derogatory Information Relating to Enrolled Persons, Attorneys, and Certified Public Accountants

691 *(1-18-80)* 9781

General

(1) Special agents who have reason to believe that an enrolled person or an attorney or certified public accountant has violated any provisions of the laws or regulations governing practices before the IRS, or receives information to that effect, shall make a written report which shall be immediately forwarded by the Chief, Criminal Investigation Division, through the District Director, to the Director of Practice, Department of Treasury, Washington D.C. 20220. Derogatory information coming to the attention of regional Criminal Investigation personnel should be reported in writing through the ARC (Criminal Investigation) to the Regional Commissioner for reference to the Director of Practice. The written report forwarded to the Director of Practice shall include sufficient detailed information, including any documentation or exhibits to substantiate the information regarding each specific violation to enable the Director of Practice to fully understand the basis of the alleged violation. If the information also involves allegations of employee misconduct or an attempt to corrupt an employee, Criminal Investigation personnel are required to report the matter directly to Inspection rather than through channels to the Director of Practice.

(2) If an enrolled person, attorney or certified public accountant becomes the subject of a Criminal Investigation Division investigation, Inspection and the Director of Practice will be notified, in writing, by the Chief, Criminal Investigation Division, through the District Director. If the investigation does not result in prosecution, a copy of the special agent's report will be forwarded, through the District Director, to the Director of Practice, together with such documentation or exhibits obtained during the investigation to substantiate the information regarding each specific violation to enable the Director of Practice to fully understand the basis of the alleged violation.

(3) In prosecution cases, and whenever an enrolled person, attorney or certified public accountant becomes the subject of a Report of Legal Action, Form 1327, an extra copy of Form 1327 will be prepared and forwarded by the Chief, Criminal Investigation Division, through the District Director, to the Director of Practice for his/her information and files. If the legal action does not result in a conviction, at such time as the criminal features of the case are disposed of, a copy of the special agent's report will be forwarded by the Chief, through the District Director, to the Director of Practice. If the subject is convicted, after sentencing, a copy of the judgment and commitment order, together with a copy of the special agent's report, will be forwarded by the Chief, through the District Director, to the Director of Practice.

(4) Because disciplinary proceedings cannot be instituted against attorneys and certified public accountants unless they are engaged in actual practice before the Service, reports of violations by such persons should contain a statement regarding their recent appearances before the Service together with a copy of declarations filed pursuant to Section 10.3 of Treasury Department Circular 230.

692 *(1-18-80)* 9781

Procedure for Reporting Derogatory Information Concerning Unenrolled Preparers of Tax Returns

(1) As set forth in current procedures, unenrolled preparers of tax returns to be eligible to represent the taxpayers must adhere to the same standards of professional conduct as enrolled persons. The successful policing of compliance with these standards depends to a great extent upon the vigilance of IRS employees in reporting instances where violations occur.

(2) Any special agent who has reason to believe that an unenrolled preparer's conduct or practices have been or are such as to render the preparer ineligible to represent taxpayers shall immediately communicate such information, through appropriate supervisory channels, to the District Director. If the information concerning the preparer also involves information or allegations of employee misconduct, or an attempt by the preparer to corrupt an employee, the matter should be reported to Inspection in the same manner as set out in IRM 9558.1. Inspection will be notified, through the District Director, whether an investigation is approved that involves an unenrolled preparer of tax returns.

(3) The District Director will determine from the pertinent facts in each case whether the unenrolled preparer is eligible or ineligible to appear as a taxpayer's representative. (An unenrolled preparer is not eligible to represent taxpayers under investigation by the Criminal Investigation Division. However, such preparer is not precluded from appearing solely in the role of a witness.) Where the District Director determines, either before or after the preparer has been recognized, that the preparer's conduct or practices have been or are such as to render the preparer ineligible to appear as a taxpayer's representative, the District Director, in accordance with the procedures in IRM 4053.3:(2), shall so inform the preparer in writing, except under the circumstances related in (4) below. A copy of the District Director's final determination of ineligibility will be transmitted to the Director, Examination Division, for the Director, Examination Division's information in the event the unenrolled preparer may claim to be aggrieved and communicates with the Director, Examination Division. It should be observed that prohibited solicitation and advertising by the preparer are included as specific grounds for revocation of eligibility.

(4) If the Criminal Investigation Division is conducting a criminal investigation of an unenrolled preparer, or if a criminal case involving the preparer is pending at any level, the District Director will not take any action toward declaring such person ineligible to represent taxpayers in the District Director's district under the provisions of (3) above without first consulting the division or office having control of the criminal case. Accordingly the Chief, Criminal Investigation Division, will, upon request, furnish the District Director an opinion as to whether the issuance of a notice of proposed determination of ineligibility to a preparer who is under criminal investigation would in any way prejudice the criminal case. Likewise, the Chief will obtain for the District Director through usual channels the views of the District Counsel or the Department of Justice appropriate, if a criminal case against the preparer is pending at one of those levels. The Chief should obtain the views of the United States Attorney by direct communication when the criminal case against the preparer is pending with that official. The issuance of a notice of proposed determination of ineligibility to an unenrolled preparer because of advertising, solicitation or other course of conduct not related to the pending criminal case may not be prejudicial to the criminal case. However, when a criminal case involving an unenrolled preparer is under investigation or pending, a proposed notice to such preparer must be considered on its merits by the office then having jurisdiction of the criminal case. No action will be taken that would jeopardize a pending criminal case.

Federal Court Procedures and Related Matters

710 (1-18-80) 9781
Law Governing Federal Courts

(1) Since the general police power is still lodged in the several states, Federal prosecution is limited to the areas prescribed by Federal statute. Thus, Federal crimes are exclusively statutory crimes. A fundamental consideration never to be lost sight of is that the jurisdiction of all courts of the United States is limited by the Constitution. The district courts and Courts of Appeals have been established by Congress under the authority of the Constitution. The district courts of the United States have general jurisdiction of all offenses against the laws of the United States. The criminal and civil statutes which special agents are normally concerned with are set forth in Chapter 200, and the statutory periods of limitations on institution of criminal proceedings are in 240.

(2) Under the provisions of an act of Congress on June 29, 1940, the Supreme Court prescribed "Rules of Criminal Procedure for the District Courts of the United States." These procedural rules, as amended, became law on November 21, 1946, and are published in full as a separate volume of Title 18, USC. As stated in Rule 1, the rules govern the procedure in the courts of the United States and before United States Magistrates in criminal proceedings. They are "intended to provide for the just determination of every criminal proceeding" and "shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay" (Rule 2).

720 (1-18-80) 9781
Federal Rules of Criminal Procedure (Pre-Trial)

721 (1-18-80) 9781
Complaint (Rule 3)

(1) A complaint is a sworn written statement made before a United States Magistrate or, if not reasonably available, other person empowered to commit persons charged with offenses against the United States. [U.S. Judge, chancellor, judge of Supreme or Superior Court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate of any State where the offender may be found. (18 USC 3041)] It should set forth the substantial and material features of the offense charged and should be worded substantially in the statutory language of the offense. It must be sworn to positively and not merely aver information and belief, and should be based upon the complainant's personal knowledge or supported by other proof. [*U.S. v. Langsdale; Giordenello v. U.S.*] Usually the special agent signs the complaint.

(2) The filing of a complaint before a United States Magistrate prior to the expirration of the statute of limitations will extend the period nine months from the date filed in internal revenue cases. [26 USC 6531] Exhibit 700-1 is a sample complaint. The Supreme Court held that a complaint using this format contained sufficient probable cause and was valid since it directly indicated that the defendant committed the crime charged, and it disclosed the source of the directly incriminating information. [*Jaben v. U.S.*] *Complaints are also discussed in Subsection 319.4:(3).*

722 (1-18-80) 9781
Warrant or Summons Upon Complaint (Rule 4)

(1) If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that a defendant has committed an offense, the magistrate will issue a warrant for his/her arrest to any officer authorized by law to execute it. Upon the request of the attorney for the Government the magistrate will issue a court summons (instead of a warrant) requiring the defendant to appear before the magistrate at a stated time and place to answer the complaint. If the defendant fails to appear in response to the summons, a warrant shall be issued. A warrant is executed by arrest of the defendant. More than one warrant or summons may be issued on the same complaint in order to facilitate service and return where several defendants are named in the same complaint. Physical delivery of the warrant to the officer is not necessary to the timely institution of the complaint. The officer need not have physical possession of the warrant in order to arrest lawfully, but upon request must show it to the defendant as soon as possible. A warrant for arrest in a criminal case is effective anywhere in the United States.

(2) Text 383 through 396 set out information relative to special agents' activities in connection with search warrants and arrests.

723 *(1-18-80)* 9781
Preliminary Examination (Rule 5)

(1) At the initial appearance of the arrested person, the judge or magistrate shall fix a date for the preliminary examination to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it. The examination shall be held within a reasonable time after the initial appearance, but in any event not later than—

(a) Ten days after the date of the initial appearance if the arrested person is held in custody without any provision for release, or is held in custody for failure to meet the conditions of release imposed, or is released from custody only during specified hours of the day; or

(b) Twenty days after the initial appearance if the arrested person is released from custody under any condition other than a condition described in (a) above.

(2) With the arrested person's consent, the date fixed for the preliminary examination may be later than that prescribed by (1) above, or may be continued one or more times from the date initially fixed. Without the arrested person's consent, dates later than that prescribed by (1) above, or continuances may be fixed only by an order of a judge of the appropriate United States district court after a finding that extraordinary circumstances exist, and that the delay of the preliminary hearing is indispensable to the interests of justice.

(3) Failure to comply with the above provisions shall result in the discharge of the arrested person from custody or from the requirement of bail or any other condition of release, without prejudice, however, to the institution of further criminal proceedings against him/her relative to the charge upon which he/she was arrested.

(4) No preliminary examination is required nor shall an arrested person be released in accordance with (3) above if, at any time after the initial appearance before the judge or magistrate and prior to the date fixed for the preliminary examination pursuant to (1) and (2) above, indictment is returned, or, in appropriate cases, an information is filed in a United States court against such person.

(5) At the preliminary hearing, the accused may cross-examine witnesses against him/her and may introduce evidence in his/her own behalf. The accused is not required to plead at this time. If the magistrate concludes from the evidence that there is probable cause to believe the accused has committed an offense, or if the accused waives preliminary examination, the magistrate shall forthwith hold the accused to answer in the district court; otherwise the magistrate shall discharge him/her. This would not prevent subsequent indictment of the accused on the same charge.

(6) Subject to the control of the United States Attorney, agents are authorized to conduct the prosecution at the committal trial for the purpose of having the offenders held for action of the grand jury. This will ordinarily be done only when the attorney for the Government is not available. [IRC 5557]

724 *(1-18-80)* 9781
The Grand Jury (Rule 6)

(1) The grand jury consists of 16 to 23 members summoned by order of the court. They serve until discharged by the court, but not longer than 18 months. An indictment may be found only upon concurrence of 12 or more jurors. Otherwise, a "no bill" is returned. The court may direct that an indictment be kept secret until the defendant is in custody or has given bail. In that event the clerk seals the indictment and no person may disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons. [Rule 6(e), FRCP]

(2) Grand jury proceedings are kept secret to: prevent the escape of those whose indictment may be contemplated; ensure freedom to the grand jury in its deliberations by protecting its members from annoyance and undue influence; prevent subornation of perjury or tampering with witnesses; and protect the reputations of persons investigated but not indicted. Accordingly, while it is in session, the only persons who may be present are attorneys for the Government, the witness under examination, a stenographer or operator of a recording device, and interpreters when needed. An indictment may be dismissed upon a showing that an unauthorized person was present during the proceedings. No person other than the jurors may be present while the grand jury is deliberating or voting. [Rule 6(d), FRCP]

(3) Disclosure of matters occurring before the grand jury may be made to those Government personnel deemed necessary by a Government attorney to assist in the performance of his/her duty to enforce Federal criminal law. With the consent of the Government attorney, agents of the Service may examine documents and records which are before the grand jury, inspect its minutes, and assist in the investigation of possible criminal tax violations. An intentional violation of Rule 6 may be punished as a contempt of court.

(4) Federal rules do not impose any obligation of secrecy upon witnesses [Rule 6(e), FRCP, Note of Advisory Committee], although some Federal jurisdictions require an oath of secrecy.

(5) A grand jury is not obliged to grant a request from a prospective defendant to appear before it as a witness. However, Justice Department procedures provide that where no burden upon the grand jury or delay of its proceedings is involved, reasonable requests of a prospective defendant to personally testify before the grand jury are to be given favorable consideration. This may be done provided that such witness explicitly waives his/her privilege against self-incrimination, is represented by counsel or voluntarily and knowingly appears without counsel, and consents to full examination under oath.

(6) After the grand jury's functions have ended, a trial court may order disclosure of its minutes to the defendant if he/she shows a "particularized need" to support an attack upon the indictment, to impeach a witness or refresh his recollection, or, in a perjury prosecution, to inspect his/her own grand jury testimony.

(7) Under 18 USC 3331, a special grand jury may be convened for a period of up to thirty-six months. Although such grand jury can inquire into all offenses against the criminal laws of the United States, its main activities are related to organized crime, and misconduct and misfeasance in office involving organized criminal activity by an appointed public officer or employee.

725 *(1-18-80)* 9781
Indictment and Information

725.1 *(1-18-80)* 9781
Definitions of Indictment and Information

(1) An indictment (Exhibit 700-2) is an accusation in writing found and presented by a grand jury to the court in which it is impaneled charging that the person named therein has done some act, or been guilty of some omission, which, by law, is a criminal offense.

(2) An information (Exhibit 700-3) is an accusation in writing against a person named therein for some criminal offense and is filed with the court by a competent officer on his/her oath of office.

725.2 *(1-18-80)* 9781
Indictment and Information Distinguished (Rules 7a and 7b)

(1) In criminal tax cases, an indictment is returned by the grand jury and presented to the court by the foreman of the grand jury. An information is filed with the court by the United States Attorney.

(2) Misdemeanors may be prosecuted by either indictment or information; felonies must be prosecuted by indictment, unless waived by the defendant in open court. If indictment is waived, a felony may be prosecuted by information. As here used a felony is an offense which may be punished by imprisonment of more than one year; a misdemeanor is any other offense. [18 USC 1]

(3) The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced. [Rule 7(e), FRCP]

725.3 *(1-18-80)* 9781
Bill of Particulars (Rule 7f)

(1) A bill of particulars is a written statement of the specific charges against which the defendant must defend. It is designed to aid the defendant in properly answering the allegations and in preparing for trial by informing him/her of the particular transactions in question in order to avoid surprise at the trial and to protect him/her against a second prosecution for the same offense. It need not set forth all the evidence to be used in support of the charges. Generally, the granting of a bill of particulars is within the discretion of the trial judge.

(2) Where it is granted, the Government is faced with the problem of complying with the order of the court without, at the same time, disclosing so much of the Government's evidence as to jeopardize successful prosecution. Generally, information concerning the nature and source of income allegedly understated and the manner in which the returns are claimed to be false and fraudulent will be allowed by the court, but not the evidence by which the Government will attempt to prove the charges set forth in the indictment.

(3) With simplified forms of indictments and informations now approved, the bill of particulars is especially important because, although not technically a part of the indictment, the Government's proof is limited by statements in the bill. However, the Government has the right to amend its bill of particulars "at any time subject to such conditions as justice requires."[Rule 7(f), FRCP.]

725.4 *(1-18-80)* 9781
Joinder of Offenses and Defendants (Rule 8)

(1) Two or more offenses (felonies or misdemeanors or both) may be charged in the same indictment or information in a separate count for each offense, if they are of similar character or are based on the same act or transaction or on two or more acts or transactions constituting parts of a common scheme or plan. For example, separate counts of an indictment may charge conspiracy to defraud and income tax evasion.

(2) Two or more defendants may be charged in the same indictment or information if they participated in the same transaction or series thereof constituting an offense. They may be charged in one or more counts together or separately and all need not be charged in each count. This applies in cases involving equal partners whose knowledge of unreported partnership income can be established by the same evidence.

726 *(1-18-80)* 9781
Arraignment and Preparation for Trial

726.1 *(1-18-80)* 9781
Arraignment (Rule 10)

An arraignment consists of calling a defendant before a judge, reading the indictment to him/her or informing him/her of the charge, calling on him/her to state whether he/she is guilty or not guilty, and entering his/her plea. The defendant will be given a copy of the indictment or information before he/she is called upon to plead.

726.2 *(1-18-80)* 9781
Pleas (Rule 11)

(1) A defendant may plead not guilty, guilty or, with the consent of the court, nolo contendere (no contest). The court may refuse to accept a plea of guilty, and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is factual basis for the plea.

(2) If a not guilty plea is entered, the court proceeds by setting a date for trial.

(3) If the defendant pleads guilty or nolo contendere at arraignment, the procedural steps prior to and during trial as prescribed in Rule 12 through Rule 31 do not apply and the court proceeds to hear the facts preliminary to imposing sentence. Some courts do not permit persons other than attorneys who are officers of the court to address the court—in such instances the Government attorney will present the facts for the Government. However, many courts are informed of the facts by the investigating special agent or other representative of the Criminal Investigation Division. The role of the special agent in this regard is especially important since his/her oral presentation of facts in open court forms the only supporting basis of the offenses charged in the information or indictment. Text 73(13).2 discusses the procedures prescribed in Rule 32 with respect to pre-sentence report by the Court's probation officer, sentencing, and judgment.

(4) A plea of nolo contendere subjects the defendant to the same punishment as a plea of guilty, but does not admit the charges. It cannot be used against him/her as an admission in any civil suit for the same act.

726.3 *(1-18-80)* 9781
Motions Raising Defenses and Objections (Rule 12)

All defenses and objections raised before trial are by motion (e.g., motion for bill of particulars, for discovery and inspection, to suppress, etc.) and are limited to those capable of determination without the trial of the general issues. Defenses or objections based on defects in the institution of the prosecution or in the indictment or information (except lack of jurisdiction of the court or failure to charge an offense) *must* be raised before trial or they are waived, unless the court is shown cause to grant relief from the waiver.

726.4 *(4-15-81)* 9781
Depositions (Rule 15)

(1) Whenever, due to exceptional circumstances of the case, it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that his/her testimony be taken by deposition and that any designated documents or tangible objects, not privileged, be produced at the same time and place.

(2) The usual practice is for the deposition to be taken before a magistrate appointed by the court with counsel for both sides examining and cross-examining the witness under oath. At the trial a part or all of the deposition, so far as admissible under the rules of evidence, may be used as evidence if the witness is unavailable, as defined by Rule 804(a) of the Federal Rules of Evidence, or the witness gives testimony at the trial or hearing inconsistent with his/her deposition. The Government as well as the defense, may read into evidence any relevant part of the deposition not offered by the other party.

(3) Under 18 USC 3503, whenever it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved, the court at any time after filing of an information or indictment may upon motion of such party and notice to the parties order that the testimony of such witness be taken and that any book, paper, document, record, recording or other material not privileged be produced at the same time and place. A motion by the Government to obtain an order under this section shall contain certification by the Attorney General or the Attorney General's designee that the legal proceeding is against a person who is believed to have participated in an organized crime activity. The deposition may be used if the witness is unavailable or for impeachment purposes when the witness testifies.

726.5 *(4-15-81)* 9781
Discover and Inspection and Subpoenas for Production of Documentary Evidence (Rules 16 and 17(c))

(1) Pre-trial opportunities for the Government and the defense to examine documentary and real evidence within the opposing party's possession, custody or control are afforded by Rule 16 which provides "that, upon motion of the defendant, the court may order the Government's attorney to permit the defendant to inspect and copy or photograph any relevant:

(a) Written or recorded statements or confessions made by the defendant;

(b) Results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the case;

(c) Recorded testimony of the defendant before a grand jury, or

(d) Books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, upon a showing of materiality to the preparation of the defense and that the request is reasonable.

(2) Except as to the items in (b), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal Government documents made by Government agents in connection with the investigation or defense of the case, or of statements made by Government witnesses (other than the defendant) to agents of the Government except as provided in 18 USC 3500." (See 737.82.) "If the court grants relief under (b) or (d), it may, upon motion of the Government, condition its order by requiring that the defendant permit the Government to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies of portions thereof, which the defendant intends to produce at the trial, upon a showing of materiality to the presentation of the government's case and that the request is reasonable. Except as to scientific or medical reports, this does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendants or his attorneys

or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by Government or defense witnesses, or by prospective Government or defense witnesses, to the defendant, his agents or attorneys. If, subsequent to compliance with an order issued pursuant to Rule 16, and prior to or during trial, a party discovers additional material previously requested or ordered which is subject to discovery or inspection, he shall promptly notify the other party or his attorney or the court of the existence of the additional material."

(3) Rule 17(c) provides a means by which the Government or a defendant can, by subpoena duces tecum, prior to trial, compel production of evidentiary material (books, papers, documents, or other objects). The court may on motion quash or modify the subpoena if compliance would be unreasonable or oppressive. It may also on motion let the Government or defendant inspect the material before trial. In some circumstances, a court may, under this rule, allow a defendant to subpoena a transcript of his statement made to Government agents, to be used, for instance, to impeach a Government witness' testimony about its contents.

(4) It has been held that the defendant is not entitled under these rules to inspect documents such as: agent's reports, which are not ordinarily admissible [*U.S. v. Iozia*] (although a report may be material for cross-examination, and may be inspected if the agent uses it to refresh his/her recollection) [*Montgomery v. U.S.* See also 18 USC 3500]; and agents' "work products," consisting of workpapers and summaries [*Schneider v. U.S.*], statements of third parties made to the investigating agents [*U.S. v. Anthony M. Palermo*], confidential information such as names of informers and sources of information received from them, unless the evidentiary value of such may fairly be considered "essential to the defense". [*U.S. v. Schneiderman*]

(5) The amount of information the Government or the defendant can obtain through the discovery procedure of Rule 16 and the subpoena process of Rule 17(c) depends upon the ruling of the district judge. Some, following the liberal policy indicated by the Supreme Court in the Bowman Diary case, have held that broad discovery procedures expedite a trial and are necessary to better safeguard the rights of defendants. [*U.S. v. Raymond A. O'Connor*] Others have held that due to its heavy burden of proof the Government should not be required to disclose its case to the defendant, and that the rules should be strictly construed. [*U.S. v. Iozia*]

726.6 *(1-18-80)* 9781
Motions to Suppress Evidence and for Return of Property (Rule 41(e))

(1) A motion may be made for the return of unlawfully seized property and to suppress for use as evidence anything so obtained. The motion shall be made before trial unless opportunity for it did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion may entertain the motion at the trial. The motion may also be made before an indictment is returned.

(2) This motion may be made either in the district where the property was seized or where the trial is to be held.

(3) The grounds for the motion are that the property was illegally seized without warrant, or the warrant is insufficient on its face, or the property seized is not that described in the warrant, or there was not probable cause for the issuance of the warrant, or the warrant was illegally executed. (See 383.3.)

(4) Under this rule motions have been made seeking the suppression of private books, records, papers, statements or any other documents or evidence obtained as leads or clues therefrom on the ground that they were obtained in violation of the defendant's constitutional rights. Some instances in which such motions have been granted are:

(a) Adopting items seized by city police following an agreement between them and special agents to cooperate in investigating gaming cases. [*U.S. v. Silbert*]

(b) Failure of affidavit to set forth sufficient facts or chain of circumstances to show the existence of probable cause in support of a search warrant. [*U.S. v. Lassoff*]

(c) Deceiving taxpayer into believing his/her books were to be used for civil purposes only when one of the purposes of the investigation was to obtain evidence of his/her criminal wrongdoing with internal revenue employees. [*U.S. v. Wheeler*]

(d) Practice of subterfuge by special agent who remained in the background without disclosinng to taxpayer his assignment to the case, while directing the revenue agent to obtain extensive information of incriminatory nature from taxpayer's records. [*U.S. v. Lipschitz*]

(e) Examining contents of a taxpayer's filing cabinet including certain records, invoices and papers without his knowledge or consent. [*U.S. v. Guerrina*]

726.7 *(1-18-80)* 9781
Other Matters Before Trial

The court may order multiple indictments or informations to be tried together if they could have been joined in a single indictment or information (Rule 13). However, if it appears that a defendant or the Government is prejudiced by a joinder of offenses or defendants or trials, the court may order separate trials of courts, grant a severance of defendants, or provide whatever other relief justice requires (Rule 14).

727 *(5-9-80)* 9781
Venue

(1) Venue is the place in which a case is brought to trial; it does not relate to jurisdiction, which means the authority by which a court can take cognizance of and decide a case. Proceedings are undertaken in the district in which the offense is committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses. Exceptions to the general rule are:

(a) In a judicial district consisting of two or more divisions the arraignment may be had, a plea entered, the trial conducted or sentence imposed in any division if the defendant consents (Rule 19).

(b) The case may be transferred from the district where prosecution is pending or where the arrest warrant was issued to the district where the defendant was arrested or is held if the defendant states, in writing, that he/she wishes to plead guilty or nolo contendere, to waive trial in the district in which indicted or in which the arrest warrant was issued, and to consent to the disposition of the case in the district in which he/she was arrested or is held. The United States Attorney for each district must agree (Rule 20).

(c) The court upon motion of the defendant will transfer the proceeding to another district if satisfied that there exists so great a prejudice against the defendant that he/she cannot obtain a fair and impartial trial in the district where the prosecution is pending (Rule 21(a)), or if it appears that for the convenience of the parties and witnesses, and in the interest of justice, the proceeding should be transferred (Rule 21(b)).

(d) If an offense described in IRC 7201 or 7206(1), (2) or (5) involves use of the mails, and if prosecution is begun in a judicial district other than the one in which the defendant resides, he/she may elect to be tried in the district in which he/she was residing at the time alleged offense was committed; provided he/she files a motion in the district in which the prosecution was begun within 20 days after arraignment. (Section 3237 (G), Title 18 USC)

(2) Venue in failure to file cases lies in the judicial district of the internal revenue district where the returns were required to be filed. [*Yarborough v. U.S.*] For example, venue of a failure to file case involving a Miami taxpayer would lie in the Middle Judicial District of Florida since the District Director's office is located in Jacksonville. An individual taxpayer is required to file his/her return in the internal revenue district where he/she resides or his/her principal place of business is located. [Sec. 6091(b)(1), IRC] If he/she resides in one revenue district and has his/her principal place of business in another, he/she may be tried, for failure to file a return, in the judicial district of either revenue district. [*U.S. v. Commerford*] Where direct filing with the service center has been instituted, an option to hand carry returns to the District Director's office has been authorized in the Service regulations. This provision establishes venue in the judicial district where the District Director's office is located as well as in the judicial district where the service center is located. Where a defendant resides in a revenue district located in one judicial district, and has his/her principal place of business in a revenue district located in a second judicial district, and is required to file his/her return at a service center located in still another judicial district, venue may lie in any of the three judicial districts. A regulation authorizing the filing of a return at a permanent post of duty became effective on July 1, 1977 and applies to all returns which were required to be filed on or after this date.

(3) In tax evasion cases where the crime is alleged to have been committed by the filing of a false and fraudulent return, venue lies in the collection and judicial district where the return is filed [*U.S. v. Warring*], unless the defendant makes the election discussed in (1)(d) above. If a return is prepared, signed, and deposited in the mail in one judicial district and filed in another, venue may be fixed in the former district if the

indictment charges attempted evasion by preparation, signing or depositing a fraudulent return in the mail in a particular judicial district. [*U.S. v. Albanese*] A taxpayer was properly indicted in the district where the accountant prepared the return from information sent to him by the taxpayer. [*U.S. v. Harold Gross*] Although the tax evasion was not yet complete when the return was prepared, because it had not yet been filed, the court held that the offense occurs not only where the return is signed, mailed, and filed, but in every district where the taxpayer has committed acts that are part of the evasion. Where an indictment charges attempted tax evasion by maintaining false records, trial may be held in the judicial district in which the records were maintained. [*Beaty v. U.S.*]

(4) If the crime is that of aiding or assisting in, or procuring, counseling, or advising preparation, or presentation of false and fraudulent returns, the case can be tried in the judicial district where the specified acts were committed. [*U.S. v. Kelley*] If the acts took place in one judicial district and the document was filed in another, venue may lie in the district of filing. [*Newton v. U.S.*] For willfully making and subscribing a document known not to be true, see 418.12.

(5) Service Policy provides that it is preferable for deterrent purposes that venue be established in the judicial district of the taxpayer's place of residence or place of business, rather than in the judicial district of the District Director, unless compelling reasons exist. Hence, the special agent should strive to gather evidence to establish venue at the taxpayer's residence or place of business whenever there is a choice in venue for a trial for tax violations.

730 *(1–18–80)* 9781
Trials and Related Federal Rules of Criminal Procedure

731 *(1–18–80)* 9781
Trial by Jury or by Court

731.1 *(1–18–80)* 9781
Provisions of the Constitution

The Constitution of the United States provides in part: "The trial of all Crimes, except in Cases of Impeachment, shall be by jury. . . ." and "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . ."

731.2 *(1–18–80)* 9781
Provisions of Federal Rules (Rule 23)

Trial will be by jury unless the defendant waives a jury trial in writing with the approval of the court and consent of the Government. [*Singer v. U.S.*] Juries consist of 12 persons, but prior to verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12. If a jury trial is waived, the court decides the case on the basis of the competent, relevant evidence presented, determining the facts and applying the law involved.

731.3 *(4–15–81)* 9781
Trial by United States Magistrates

Title 18 U.S.C. 3401 provides that a United States magistrate, when specially designated to exercise such jurisdiction by the district court or courts he/she serves, shall have the jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed in that judicial district. A defendant must consent in writing to trial by magistrate, the consent specially waiving trial, judgement and sentencing by a judge of the district court.

732 *(1–18–80)* 9781
Trial Jurors (Rule 24)

Statutory law determines the manner in which the trial jurors are selected. [62 Stat. 951, 28 USC 1861–1865] The rule prescribes the examination of the petit jury, but the manner of questioning prospective jurors is discretionary with the court. Usually the court conducts the examination and then permits the defendant (or his/her attorney) and the attorney for the Government to supplement the examination by further inquiry as deemed proper. Any juror will be excused for cause if he/she admittedly is unable to render a verdict on the evidence alone and on the law as the court charges. In addition to challenges for cause, the defendant is given 10 peremptory (without cause) challenges and the Government 6 in felonies; each has 3 peremptory challenges in misdemeanors. If there is more than one defendant, the court may allow the defendants additional peremptory chal-

lenges to be exercised separately or jointly. The court may direct that not more than 6 jurors in addition to the regular jury be called as alternate jurors. They sit with the regular jurors and replace, in the order in which they are selected, any who become unable to perform their duties prior to the time the jury retires to consider its verdict. If the regular jury remains intact the alternates are dismissed following the court's instructions in the case. Each side is entitled to 1 additional peremptory challenge if 1 or 2 alternate jurors are to be impaneled, 2 additional peremptory challenges if 3 or 4 alternate jurors are to be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impaneled, to be used only with respect to such alternates.

733 *(1-18-80)* 9781
Disability of Judge (Rule 25)

This rule provides for the replacement of the presiding judge if by reason of absence from the district, death, sickness or other disability the judge is unable to perform his/her duties after a verdict or finding of guilt or during the trial.

734 *(1-18-80)* 9781
Evidence (Rule 26)

In all trials the testimony of witnesses is taken orally in open court, unless otherwise provided by law or these rules. The admissibility of evidence is governed by the Federal Rules of Evidence. This is a comprehensive code of evidence intended to govern the admissibility of proof in all trials before the Federal courts. Information about the admission of testimony and documentary evidence is set forth in 320, 340 and 350.

735 *(1-18-80)* 9781
Opening Statements

The prosecution opens; the defense follows. An opening statement primarily is to advise the jury what each party intends to prove. In some districts no opening statement is made. The defense may decline to make an opening statement or defer opening until the completion of the Government's case. Usually the prosecution will explain each count of the indictment and then outline the evidence to support it. Generally, where defense counsel elects to make an opening statement at the outset, he/she will explain to the jury that the defendant need prove nothing, that the defendant's plea of not guilty is a denial of all the charges, and that the jury should keep an open mind until the entire case is presented.

736 *(1-18-80)* 9781
Presentation of Case

The Government goes first in presenting proof of the offenses charged. It does this by questioning witnesses and introducing documentary evidence. Upon conclusion of the direct examination of each witness by the United States Attorney, the witness is turned over to the defense counsel for cross-examination, if desired. After cross-examination the Government has the opportunity for redirect examination as to matters brought out on the cross-examination. Upon the conclusion of the Government's case the prosecution rests and the defendant then has the burden of going forward with the evidence. The prosecution may cross-examine defense witnesses, and after the defendant rests, may offer proof in rebuttal.

737 *(1-18-80)* 9781
Witnesses

737.1 *(1-18-80)* 9781
Definition

A witness is a person who can testify as to what he/she knows from having heard, seen, or otherwise observed.

737.2 *(1-18-80)* 9781
Competence

(1) The judge rather than the jury determines the competency of a witness to testify. A witness will ordinarily be presumed to have the mental capacity to testify. That capacity may be challenged in situations involving: infants—the trial judge should decide if the child is sufficiently mature to make an intelligent statement of what he/she saw, heard, or observed; mental derangement—an insane person usually will be permitted to testify if he/she understands the obligations of an oath and the consequences of lying, and can tell an intelligent story of what he/she saw take place; and intoxication—the test as to a witness on the stand is whether he/she is capable of making an intelligent and truthful statement.

(2) In a Federal criminal case, a husband and wife are competent to testify for each other, but not against each other without the consent of both, except where one spouse has committed

some offense against the other, or the case involves polygamy or some other crime detrimental to the marital relationship. Generally, divorce removes the incompentency of husband and wife to testify against each other, except as to confidential communications made by one to the other during marriage. (See also 344.4 and 344.9.)

(3) A convicted perjurer may testify and the jury must determine credibility. A Federal officer (even one who is a witness in the case) may be permitted to sit in the courtroom during the trial, to advise the United States Attorney. A defendant in the criminal case is a competent witness and his/her testimony must be judged in the same way as that of any other witness, with due regard for his/her personal interest in the outcome of the case.

737.3 *(1-18-80)* 9781
Credibility

(1) The jury (or judge if a jury is waived), determines the weight and credibility of a witness' testimony. A witness is presumed to tell the truth. Credibility is judged by whether the witness had the capacity or opportunity to observe or be familiar with the subject matter of his/her testimony and to remember it. Among the matters affecting credibility are the witness' interest, bias, prejudice, demeanor on the stand, prior inconsistent statements, prior mental derangement, intoxication at the time of the transaction to which he/she testifies, and prior convictions of a felony or a crime involving moral turpitude. If a witness gives contradictory testimony the jury may accept the portion it believes and reject the remainder. It may reject the witness' entire testimony if he/she has testified falsely as to a material point.

(2) If neither party will vouch for a witness the court may call and question such witness and allow both sides the right of cross-examination and impeachment.

737.4 *(1-18-80)* 9781
Impeachment

737.41 *(1-18-80)* 9781
Impeachment of Opposing Witness

(1) The principal purpose of impeachment is to lessen the likelihood that the court or jury will believe the witness' story. A witness may be impeached by bringing out on cross-examination or through other witnesses facts:

(a) Proving that the witness made a statement out of court (it could be before a grand jury) that is inconsistent with his/her testimony on the witness stand provided it is relevant to the case and a foundation is laid by inquiring of the witness on cross-examination whether he/she did or did not make such a statement to a certain named person at a certain named time and place.

(b) Showing bias, such as family relationship, friendship, gratitude, obligation, employment, hatred, injured feelings and the like [Wigmore on Evidence, sec. 948-953], interest growing out of the relationship between the witness and the cause of action, e.g.; partner, creditor, or corruption, such as acceptance of a bribe to testify, or expression of willingness to give false testimony. [Wigmore, sec. 956-965]

(c) Establishing insanity or drunkenness at the time of the events testified to, or while on the stand, or in the interval between the two if it was of such a degree as to affect the witness' mental faculties. [Wigmore, sec. 931-933)

(d) Showing a bad reputation for truth and veracity in the community in which the witness resides [Wigmore, sec. 920-923] or

(e) Proving through cross-examination that the witness has been convicted of a specific crime, or putting into evidence a record of his/her conviction. Evidence of his/her arrest not admissible. The test to be applied is whether the conviction inquired about tends to prove a lack of character with respect to the witness' credibility.

(2) In certain instances an impeached witness may be rehabilitated. If testimony as to his/her bad character for veracity has been given, testimony of his/her reputation for good character in that respect may be offered. [Wigmore, sec. 1105] If a witness has been impeached by showing that he/she made a prior statement inconsistent with his/her testimony on the stand, it may be shown that he/she made prior statements consistent with his/her testimony in certain situations. For example, the story of the witness may be assailed as a recent fabrication or evidence may be offered showing a cause for his/her bias. If so, it may be shown that the witness made a statement similar to his/her testimony on the stand before he/she had any reason to fabricate [Wigmore, sec. 1129] or prior to the occasion for bias. [Wigmore, sec. 1128]

(3) When a defendant takes the stand in his/her own defense he/she is subject to impeachment like any other witness. The law does not presume that a defendant is of good character; it merely prevents the prosecution from going into the matter during the original presentation of its case. When the defendant takes the stand, he/she does so not only as a person accused of a crime, but also as a witness. As an accused, his/her character is not subject to attack unless he/she opens the question by offering evidence of his/her good character. Such evidence is to be considered by the jury on the issue of his/her guilt or innocence. Thus, if the defense offers evidence of good character (by testimony of the defendant or other witnesses) the prosecution can introduce evidence as to his/her bad character to be considered by the jury on the same issue. As a witness, his/her position is different and the prosecution can offer evidence of his/her bad character for consideration not upon his/her guilt or innocence but upon his/her credibility as a witness. [Wigmore, secs. 890, 891]

737.42 *(1-18-80)* 9781
Impeachment by a Party of His Own Witness

(1) A rule of law exists in many jurisdictions that a party will not be allowed to impeach a witness he/she has called because by putting the witness on the stand the party has guaranteed his/her credibility. However, the prosecution may impeach a Government witness: whom it is under a legal obligation to call; who has testified before a grand jury; or whom the court compels it to call, if in each instance it was surprised or prejudiced by his/her testimony. Most courts now permit impeachment for self-contradiction particularly if the party calling the witness has been surprised by variances from the latter's previous attitude and statements. The impeaching matter must be limited to the point of surprise and should not go beyond removing damage caused by surprise.

(2) The latitude allowed the prosecution in examining a hostile witness is wholly within the discretion of the trial judge. Questions may be in the nature of cross-examination and the witness may be asked if he/she made contradictory statements at other times. The United States Attorney may read prior inconsistent statements which the witness has given Government agents and ask him/her to verify the truth of such prior statements.

737.5 *(1-18-80)* 9781
Recall

The matter of recalling a witness for further testimony is ordinarily within the discretion of the trial judge.

737.6 *(1-18-80)* 9781
Refreshing Memory or Recollection

737.61 *(1-18-80)* 9781
Introduction

A witness may not be able to recall a fact about which he/she is called to testify. If so, that fact can be put into evidence in either of two ways, described as "past recollection recorded" or "present recollection revived."

737.62 *(1-18-80)* 9781
Past Recollection Recorded

A witness may not be able to state directly facts from present memory, but may be willing to swear that the contents of a memorandum which he/she or another prepared setting forth such facts, are true. On his/her so testifying the memorandum may be introduced into evidence as a record of his/her past recollection. The memorandum must have been made fairly contemporaneously with the facts or events recorded while the details were fresh in the memory of the witness. If it was written by another, the witness must testify that he/she read it at the time it was written and that it is true.

737.63 *(1-18-80)* 9781
Present Recollection Revived

A witness whose memory suddenly fails when asked about a certain fact may be able to refresh his/her memory by reference to some relevant paper. It may be a letter, book, memorandum, or anything counsel thinks will awaken his/her independent recollection of the fact sought to be established. The writing must, on request, be shown to opposing counsel for use on cross-examination to test the witness' actual memory, but is not admissible in evidence, unless independently admissible. [Wigmore on Evidence, sec. 758-765.]

737.7 *(1-18-80)* 9781
Specific Witnesses

737.71 *(1-18-80)* 9781
Expert Witness (Rule 28)

(1) An expert witness is one who has acquired ability to deduce correct inferences from hypothetically stated facts, or from facts involving scientific or technical knowledge. The trial judge determines whether his/her qualifications are sufficient. The court may appoint expert witnesses agreed upon by the parties or may select the expert itself. The expert advises the parties of his/her findings and may be called to testify by the court or by either party. He/she may also be cross-examined. The expert witness' testimony must be based upon facts personally perceived by or known to him/her or made known to him/her at the trial. The parties also may call expert witnesses of their own selection.

(2) In tax cases, expert witnesses may be used to testify concerning various matters such as handwriting comparison, accounting and bookkeeping matters, methods of operating a lottery and computation of income tax liability.

737.72 *(1-18-80)* 9781
Special Agent

(1) Testifying in court is one of the most important duties that a special agent may be called upon to perform. The agent's testimony concerning admissions of the taxpayer may be vital in establishing willfulness. He/she may also be required to testify about: the examination of the taxpayer's books, records, and tax returns; analyses or transcripts made of various book accounts, invoices, bank deposits, and canceled checks; specific amounts of income not entered in the taxpayer's records or reported in his/her tax returns; particular deductions of expenses for which no substantiation was offered or found during the investigation; statements made by the taxpayer explaining entries on the records or concerning unrecorded transactions; computations of unreported income established by evidence in the record; and the tax deficiencies based upon a hypothetical question. The agent may also be required to describe the records maintained by the taxpayer and explain in detail the extent to which he/she examined them, the procedures followed, and the facts discovered. (See 750, "Assisting United States Attorney.")

(2) The special agent as a witness must be thoroughly prepared and clear on the facts; present a neat, businesslike appearance; and testify in a natural, frank and forthright manner with a respectful attitude toward the court and jury. He/she is frequently subject to rigorous and lengthy cross-examination. The agent must then preserve an even, courteous demeanor and refrain from any display of anger, hostility, or evasiveness. Some rules of conduct for the special agent or other internal revenue official on the stand are:

(a) Listen to the question carefully and answer truthfully.

(b) Answer the question only. *Do not volunteer.* It may seriously affect the United States Attorney's strategy.

(c) Do not answer a question you do not understand. Tell the questioner that you do not understand.

(d) If an objection to a question is raised by either counsel, wait to answer until the court rules. Otherwise, a mistrial may result.

(e) Wait until the question is completed before attempting to answer.

(f) Anticipate the unexpected.

(g) Direct your answers to the jury but do not ignore the judge.

(h) Speak clearly and loudly enough to be heard by the juror farthest removed from the witness stand.

(i) Refrain from any demonstration of personal feelings.

737.73 *(1-18-80)* 9781
Revenue Agent

In a tax trial, the revenue agent is often used by the Government as the expert witness to establish the computations of deficiencies as set forth in the indictment or information. The revenue agent may also testify respecting various matters set forth in 737.72.

737.8 *(1-18-80)* 9781
Cross-Examination

737.81 *(1-18-80)* 9781
General Rules

(1) When a witness has finished his/her direct examination, the opponent has the right to cross-examine him/her. The purpose of cross-examination is to test the truth of the statements made by the witness. This is done by questions designed to: amplify the story given on direct examination so as to place the facts in a different light; establish additional facts in the cross-examining party's favor; discredit the witness' testimony by showing that testimony on direct examination was contrary to circumstances, probabilities, and other evidence in the case; and discredit the witness by showing bias, interest, corruption, or specific acts of misconduct. In view of such purposes, the courts allow a wide latitude on cross-examination and the cross-examiner may ask leading questions. Another method often used is to question the witness in such a manner as to obtain apparent inconsistent statements by going over the same ground covered in the direct examination.

(2) The general rule in Federal courts with respect to witnesses other than defendants, is that questions asked on cross-examination must pertain to matters brought out on direct examination. The rule is liberally construed and where the direct examination opens a general subject, the cross-examiner may go into any phase of that subject. If the cross-examiner wishes to obtain from the witness evidence on subjects not opened on direct examination, he/she must call the witness as his/her own witness and subject him/her to direct examination on such matters.

737.82 *(1-18-80)* 9781
Demands for Production of Statements and Reports of Witness

(1) Title 18, USC 3500 provides that after a witness has testified on direct examination the defendant may inspect any pre-trial statements of the witness relating to the subject matter about which he/she has testified. If the Government claims that the prior statement is not relevant, it is to be inspected by the trial court *in camera* (in private) so that the portion not relating to the subject matter of the witness' testimony can be excised before delivery to the defendant. If the Government refuses to comply with the production order the judge has discretion either to strike the testimony of the witness or to declare a mistrial.

(2) The term "statement" is defined in 18 USC 3500 as follows:

> "(1) A written statement made by said witness and signed or otherwise adopted or approved by him;
>
> "(2) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is substantially a verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or
>
> "(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury."

(3) A statement which is not substantially verbatim and has not been recorded contemporaneously does not have to be produced. A written statement made by a witness and signed or otherwise adopted or approved by him/her may be inspected by the defense whether or not it is contemporaneous with the interview to which it relates. An agent's interview report based upon notes read back to and approved by the witness is considered adopted by the witness and producible although the notes themselves have been destroyed. A summary of an oral statement made to a special agent which is not substantially verbatim does not have to be produced. The Supreme Court has outlined the reason for this rule:

> "It is clear that Congress was concerned that only those statements which could properly be called the witness' own words should be made available to the defense for purposes of impeachment. It was important that the statement could fairly be deemed to reflect fully and without distortion what had been said to the government agent. Distortion can be a product of selectivity as well as the conscious or inadvertent infusion of the recorder's opinions or impressions. It is clear from the continuous congressional emphasis on 'substantially verbatim recital,' and 'continuous narrative statements made by the witness recorded verbatim or nearly so . . .' that the legislation was designed to eliminate the danger of distortion and misrepresentation inherent in a report which merely selects portions, albeit accurately, from a lengthy oral recital. Quoting out of context is one of the most frequent and powerful modes of misquotation. We think it consistent with this legislative history, and with the generally restrictive terms of the statutory provision, to require that summaries of an oral statement which evidence substantial selection of material, or which were prepared after the interview without the aid of complete notes, and hence rest on the memory of the agent, not to be produced. Neither, of course, are statements which contain the agent's interpretations or impression." [*Anthony M. Palermo v. U.S.*]

(4) Where a Government agent interviewed a witness and recorded in his/her notebook a substantially verbatim statement in the witness' presence, the defense was entitled to production of relevant portions of the notebook as well as an exact typewritten copy of the statement which has been made from the agent's notes, but was not entitled to the agent's report. [*U.S.*

v. *Papworth*] When the agent is a witness, his/her report has been held to be a statement made by him/her, subject to defense inspection at the discretion of the court. [*U.S. v. Sheer*] Inspection is limited to the report alone, and does not include exhibits prepared from third party witness interviews, nor signed statements of the witnesses. [Ayash v. U.S.]

(5) In view of the substantial discretionary authority of a trial judge to permit defense inspection of reports, the special agent should avoid speculation about weaknesses of a case, and expressions indicating prejudice or dislike of a taxpayer in memorandums or reports. This should not preclude complete reporting of every material fact which tends to establish or disprove the alleged violation, and is essential to a thorough understanding of the case.

(6) In view of the use of pre-trial statements for impeachment purposes, a statement of a prospective Government witness containing information inconsistent with his/her prior statement should clearly set forth an explanation of the reasons for the inconsistencies.

737.9 *(1-18-80)* 9781
Redirect Examination

Following cross-examination the party calling the witness may ask him/her further questions respecting matters brought out on cross-examination. This is permitted to obtain the witness' explanation of the meaning of answers in the cross-examination, to clarify any apparent inconsistencies in his/her statements, or to rehabilitate him/her in the eyes of the jury if his/her character has been attacked.

738 *(1-18-80)* 9781
Stipulations

(1) A stipulation is an agreement between the prosecuting attorney and defense counsel respecting certain facts in the case. The purpose of a stipulation is to expedite the progress of the trial by eliminating the necessity of introducing evidence to prove undisputed facts. For example, the defense may admit the receipt of income, the acquisition of certain assets, the making of specified expenditures, or even the source and amount of income and the tax deficiency alleged. This would relieve the Government of the burden of producing evidence in court as proof of such matters and would leave willfulness as the only real issue to be proved. Since willfulness is usually inferred from the manner in which transactions are handled, and presenting a number of witnesses before a jury dramatizes the defendant's knowledge thereof, the Government exercises great care in agreeing to stipulations in cases involving willfulness.

(2) Stipulations are generally made in writing, such as agreements prior to trial; however, they may be stated orally in open court and recorded by the court reporter during the trial.

739 *(1-18-80)* 9781
Motion for Judgment of Acquittal (Rule 29)

(1) After the evidence on either side is closed, the court on motion of a defendant, or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged if the evidence is insufficient to sustain a conviction. The motion may be made orally or in writing. In some circuits the motion will be denied if the trial judge determines that the evidence, taken in the light most favorable to the Government, tends to show that the defendant is guilty beyond a reasonable doubt. In others it will be denied if the evidence is enough to send the case to the jury in a civil action. (See also 323.6.)

(2) If the motion for acquittal is made by the defense upon the conclusion of the Government's case and the motion is denied, the defendant may proceed by introducing evidence in his/her own behalf. This waives any objection to the denial. The defendant may renew his/her motion for judgment of acquittal after both sides rest. A failure to do so may foreclose any right on appeal to question the sufficiency of the evidence to sustain the conviction.

(3) The trial court may reserve decision on this motion, submit the case to the jury, and decide it either before the verdict, after it, or after the jury is discharged without reaching a verdict.

73(10) *(1-18-80)* 9781
Rebuttal

After the defense rests, the prosecution may offer proof in rebuttal to explain, counteract, or disprove the defendant's evidence. For example, after a defendant testified that he/she made substantial payments to a deceased brother-in-law for services rendered, the Government put into evidence the brother-in-law's tax return, which did not include any such amount, in order to discredit the defendant. [*Barshop v. U.S.*]

73(11) *(1-18-80)* 9781
Instructions to the Jury (Rule 30)

(1) Either party or both may file with the court written instructions regarding the law to be given the jury. The court will inform counsel of its proposed action on the requests before their arguments to the jury. It is sufficient if the substance of the requested instructions is given. Normally, the defense opens summation (final argument to the jury) and the Government follows, although some courts allow the Government to open, the defendant to follow, and the Government to close.

(2) The court then charges the jury as to the law. Objection, if any, to the charge or omissions therefrom must be made before the jury retires to consider its verdict. Failure to request special instructions or to make specific objections to the charge before the jury retires constitutes a waiver on the point on appeal unless, under Rule 52(b), there are "plain errors or defects affecting substantial rights. . ."

73(12) *(1-18-80)* 9781
Verdict (Rule 31)

(1) The conclusion of the jurors is the verdict. It must be returned to the judge in open court, and to convict or acquit it must be unanimous. Where there is more than one defendant, the jury may return a verdict or verdicts with respect to a defendant or defendants as to whom it is agreed. If the jury cannot agree regarding any defendant, he/she may be tried again.

(2) Where the indictment contains more than one count, each count is considered as if it were a separate indictment, so that acquittal on one or more counts will not generally be considered inconsistent with conviction on others.

(3) The defendant may be found guilty of an offense necessarily included in the offense charged, or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt constitutes an offense. The Supreme Court has indicated in this connection that, where some of the elements of the crime charged themselves constitute a lesser crime, the defendant, if the evidence justifies it, is entitled to an instruction which would permit the jury to return a verdict of guilty of the lesser offense. However, where the facts necessary to prove the crime charged are identical with those required to prove the lesser offense, the defendant is not entitled to an instruction which would permit the jury to make a choice between the two crimes in returning its verdict.

(4) The trial court will poll the jury at the request of either the Government or the defense or upon its own motion in order to be certain the verdict is unanimous. If upon poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

73(13) *(1-18-80)* 9781
Judgment (Rules 32 Through 35)

73(13).1 *(1-18-80)* 9781
Definition

A judgment of conviction sets forth the plea, the verdict or findings, and the adjudication and sentence. It must be signed by the judge and entered by the clerk.

73(13).2 *(1-18-80)* 9781
Presentence Investigation

In order to help the court impose sentence or grant probation, the probation service of the court may make a presentence investigation and report. The investigation and report are concerned with any prior criminal record of the defendant and personal background, individual characteristics, financial condition, and any circumstances which may have affected his/her behavior. In this connection, the probation officer will usually consult with the special agent on the case for information about the defendant's cooperation (or lack of it) during the investigation, the defendant's mental and physical history, whether he/she has made any payments on the tax deficiencies involved in the criminal case, other tax obligations due the government, and data regarding any other matters which might be helpful to the court in imposing sentence or granting probation. The court before

imposing sentence may disclose to the defendant or his/her counsel all or part of the material contained in the report of the presentence investigation and afford an opportunity to the defendant or his/her counsel to comment thereon. Any material disclosed to the defendant or his/her counsel shall also be disclosed to the attorney for the Government (Rule 32).

73(13).3 (1-18-80) 9781
Withdrawal of Plea of Guilty

A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his/her plea.

73(13).4 (1-18-80) 9781
Sentence

The sentence must be imposed without unreasonable delay and, pending sentence, the court may commit the defendant or continue or alter the bail. Before sentencing, the court will give the defendant an opportunity to make a statement in his/her own behalf and to present information in mitigation of his/her punishment. Within the limits set out in the criminal statute involved, the court has a wide discretion in determining sentence and it will rarely be upset by reviewing court. Although within the discretion of the trial court, consecutive sentences in tax cases where there has been a conviction on more than one count are seldom imposed. The court must arrest (withhold) judgment if the indictment or information does not charge an offense or if the court did not have jurisdiction of the offense charged. An illegal sentence may be corrected by the court at any time; however, definite time limitations are fixed for a reduction of sentence.

73(13).5 (1-18-80) 9781
Probation

After conviction of an offense not punishable by death or life imprisonment, the court may suspend sentence and place the defendant on probation. [18 USC 3651] A condition of probation may be that the defendant pay or make every effort to pay the tax ultimately determined. Failure to comply with the terms of probation may result in its revocation and imposition of sentence. The period of probation, together with any extension thereof, cannot exceed five years. [18 USC 3651] Since civil tax proceedings usually do not begin until the criminal features are closed, the condition of probation that the defendant pay the tax ultimately determined becomes inoperative in any case if the ultimate determination occurs more than five years after the date of sentence. [18 USC 3651] If the probation period is less than five years and the final determination of tax is not made during such period, that condition of probation will become inoperative unless the court modifies its order.

73(14) (1-18-80) 9781
Right of Appeal (Rule 37)

(1) An appeal by a defendant may be taken within 10 days after entry of the judgment or order appealed from, but if a motion for a new trial or an arrest of judgment has been made within the 10-day period an appeal from a judgment of conviction may be taken within 10 days after entry of the order denying the motion. When authorized by statute the Government may take an appeal in a criminal case within thirty days after entry of judgment. [See Title 18 USC sec. 3731 about Appeals by the United States from decisions based upon invalidity or construction of statutes, dismissing informations and indictments, and arresting judgments of conviction.]

(2) Appeal from the decisions of the Federal district courts is heard in the Court of Appeals for the appropriate circuit, except for certain statutory exceptions which permit the Government to appeal direct to the Supreme Court.

740 (1-18-80) 9781
Compromise of Criminal Tax Cases

(1) The Secretary of the Treasury or the Secretary's delegate may compromise any civil or criminal tax case prior to referral to the Department of Justice. [26 USC 7122(a).] The Secretary has delegated this authority to the Commissioner of Internal Revenue. [Sec. 601, 203 C.F.R.] (See IRM 5700, Offers in Compromise.) Strict compliance with the statutory provisions is required to effect a compromise. Accordingly, attempted settlement by subordinate Service officials will not bar criminal prosecution. A valid compromise is as complete a discharge from prosecution as an acquittal by a jury.

(2) The Criminal Investigation Division makes investigations of offers in compromise in cases in which criminal proceedings are pending only as specifically requested by the Chief Counsel or Regional Counsel. (See IRM 9262.4.)

(3) After referral of a case to the Department of Justice, authority to compromise rests with the Attorney General.

(4) Tender of tax or actual payment thereof prior to a verdict or plea of guilty is not a bar to criminal prosecution.

750 *(1-18-80)* 9781
Assisting the United States Attorney

751 *(1-18-80)* 9781
Planning for Presentation to Grand Jury and for Trial

(1) Prior to the presentation of a case before a grand jury, the special agent may be requested by the United States Attorney to review the case with him/her so that the latter may evaluate its merits, weaknesses, and particular problems. The special agent may assist in the preparation of the indictment form and may testify at length before the grand jury concerning the investigation. An indictment based solely on his/her testimony is valid even though he/she has no personal knowledge of the transactions on which his/her computations are based.

(2) The special agent will frequently be asked to aid in the preparation of a trial brief or trial book. A sheet (copy for U.S. Attorney and for each person who will assist in the trial) should be prepared for each witness showing his/her name and address, business or occupation; expected testimony, list and description of documents, if any, which he/she will produce or identify, location of the records or documents if not in the custody of the witness; and data of a derogatory nature including criminal record, pertinent to his/her reliability or credibility. Because of the Jencks Act (Section 3500, Title 18, U.S. Code), it is also advisable to list any documents such as question and answer statements, affidavits, or memorandums of interview obtained from the witness or prepared by the agent. (See 737.82.) The witness sheets may be placed in a looseleaf note book in the order in which the witnesses are expected to testify. If many are involved it is helpful for reference purposes to assign each a number and prepare a list of witnesses arranged and numbered in the same order as the witness sheets.

(3) Usually a folder should be prepared for each witness, bearing his/her name and number. Any documents, such as memorandums, affidavits, or question and answer statements relating to a witness should be placed in his/her folder. Documents obtained from a witness prior to trial which are to be offered as evidence and copies to be substituted when originals are withdrawn, and charts or schedules prepared to show the theory of the case or computation of unreported income should also be put in the appropriate witness folder.

(4) The special agent should study his/her notes and reports to refresh his/her memory concerning the general phases of the investigation and conferences with the taxpayer. The agent should arrange his/her notes, memorandums, workpapers, etc., to which he/she may have to refer while testifying, in an order which will provide for quick reference at the time of trial. He/she should also arrange to have copies of all statements, memorandums and reports that have any bearing on his/her testimony for presentation to the court if such data is requested by the defense under 18 USC 3500.

(5) The special agent may (with the approval of the United States Attorney) reinterview witnesses immediately before the trial begins to ascertain whether they have brought subpoenaed documents or physical evidence; recall their previous statements (it may be advisable for them to read transcripts of prior statements); and can identify the defendant and time and place of occurrence, if pertinent. The special agent should report any anticipated difficulties with the witnesses to the United States Attorney, who might decide against using a hostile witness or one thought to be unreliable.

(6) Assistance may also be given the United States Attorney in the formulation of the Government's answers to various pretrial motions, such as motions to suppress evidence, for a bill of particulars, for discovery and inspection, etc.

752 *(1-18-80)* 9781
Trial

752.1 (1-18-80) 9781
Responsibility and Conduct of Special Agent at Trial

(1) During the trial, the special agent ordinarily may be present at the counsel table with the United States Attorney and should give him/her any assistance he/she can. This may include maintaining all Government exhibits in proper order for ready reference and presentation; keeping a list of both Government and defense exhibits as they are introduced; and checking to ensure that Government witnesses are present and ready to testify. (See also 737.72.) The special agent should conduct himself/herself circumspectly when in the courtroom, showing respect for the judicial authority.

(2) The special agent may be called upon to prepare charts or schedules showing the taxpayer's sources of income, correct taxable income, or the related tax liability. The charts or schedules may reflect summaries of specific items, net worth increases, expenditures in excess of available resources shown on tax returns, or other transactions that lend themselves to visual presentation. In some instances such summaries have been formally introduced in evidence, in others they have been exhibited to the jury, and then, at the end of the case, used by the jury during deliberations. [*Beaty v. U.S.*, but see *Steele v. U.S.*] The need for charts, the type of charts, and the method of preparation will be affected by such considerations as the complexity of the case, the attitude of the court toward visual aids, the preferences of the United States Attorney, and available facilities. Hand drawn charts or schedules have been effectively used by special agents in the past. However, if commercial or government photocopy facilities are available in the area where the District Court is located, the charts may be drawn in small scale or typed on ordinary bond paper, and then enlarged by a photocopy process at a nominal cost. Advance arrangements for this service should be made to avoid delays during the trial. The special agent must base all charts and schedules upon evidence in the trial record. He/she must also be able to testify that he/she prepared the chart or that it was prepared under his/her supervision. If a special agent uses a bar graph, line graph or similar exhibit for trial purposes, he/she should show the unit of measurement on the chart.

(3) The special agent should listen carefully to all testimony, making notes from which he/she may alert the United States Attorney, at the appropriate time, as to any false, misleading or erroneous statements. The agent may also assist in preparing questions to be asked defense witnesses on cross-examination.

(4) The special agent should avoid any direct contact with the defendant at the trial in order to eliminate the possibility of any embarrassing or compromising situations arising. Likewise his/her association with defense counsel should be only in open court and with the knowledge and consent of the United States Attorney.

(5) The court will usually instruct the jury against any contact with the attorneys or witnesses in the case. Any attempts by the special agent to associate with a member or members of the jury may cause a mistrial.

(6) During the trial and after a verdict has been rendered in the case, the special agent should refrain from any demonstration of personal feelings in the matter.

(7) The special agent should not seek out any of the jurors in a tried case in which a conviction is not obtained for the purpose of soliciting information to be incorporated in the narrative report required by IRM 9533 unless approved in advance by the National Office. However, the report should include any information provided him/her by jurors acting on their own initiative or submitted by them to other Government representatives or third parties.

752.2 (1-18-80) 9781
Separation of Witnesses

(1) Some courts on their own motion or on request of either counsel will bar from the courtroom all witnesses except the one on the stand. This involves "(a) preventing the prospective witnesses from consulting each other, (b) preventing them from hearing a testifying witness, and (c) preventing them from consulting a witness who has left the stand; the last including consultation between witnesses who have left the stand, since they may be prospective witnesses." [Wigmore on Evidence (3d ed.) sec. 1840.] If the order of exclusion is knowingly disobeyed, the court may in its discretion disqualify the witness. [Wigmore, sec. 1842.]

(2) If this rule is invoked, the court may at the request of the United States attorney make an exception permitting necessary Service representatives to remain in the courtroom to assist in the trial.

760 *(1-18-80)* 9781
Case Settlement

761 *(1-18-80)* 9781
Internal Revenue Service (Joint Investigations)

(1) Information which may have a substantial effect on the civil settlement of a case may be developed after a special agent's report has been submitted. For example, this may occur while assisting counsel in preparing for trial or during trial for the criminal offense. Such information may consist of admissions of liability or relate to the existence of additional records or witnesses which may have an important bearing on the determination of the civil liability. In these instances, a special agent should obtain copies of any exhibits introduced during the trial which contain information not uncovered during the investigation and which may have a significant bearing on the civil liability. Procedures for the processing of this information are contained in IRM 9536.

(2) Civil settlement may also be effected in criminal cases prior to final disposition of the criminal features. Before imposition of sentence, after acceptance of a plea of guilty or conviction upon trial, the court may desire to know the final determination of the defendant's total tax liabilities as an element for its consideration in fixing sentence. Likewise, the defendant may wish to attempt to mitigate sentence by paying or arranging to pay his/her tax liabilities before sentence is passed.

(3) Since jurisdiction in criminal tax cases lies with the Department of Justice, action to effect civil settlement in the circumstances described in (2) above should be initiated by the United States Attorney. He/she will arrange, through the Department of Justice and the Chief Counsel (Criminal Tax Division), for civil settlement proceedings in the appropriate District Director's office. When instructed by the Chief, Criminal Investigation Division, the special agent who participated in the joint investigation will consult with and assist the Examination representative in the civil settlement negotiations.

(4) The civil fraud penalty may not be removed by an Appeals Office except upon the recommendation or concurrence of counsel in the following instances. These include where a civil fraud penalty is recommended in connection with a tax year or period, or is related or affects such year or period, for which the criminal prosecution against a taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for willful attempt to evade or defeat tax, or for willful failure to file a return. Where there has been a criminal conviction under IRC 7201, 7203, 7206(1) or 7207, the concurrence of counsel is required for any settlement that would reduce the amounts of any criminal fraud item.

762 *(1-18-80)* 9781
United States Tax Court

(1) The Tax Reform Act of 1969 changed the name of the Tax Court of the United States to the United States Tax Court and established it as a court of record under Article I, Section 8, Clause 9, of the Constitution. It is now part of the Judicial Branch of Government. In addition to the powers it already possesses, the Court has been given the power to punish contempt of its authority, and to enforce its decisions by issuing any writ, etc., which a District Court of the United States can issue. [IRC 7441-7456.]

(2) In a Tax Court trial evidence is admitted and excluded much as it would be in a civil nonjury trial in the United States District Court. In general, the Commissioner's determination of deficiency is presumed to be correct. [Rule 32, Tax Court Rules of Practice.] However, if the fraud penalty is asserted, the burden is upon the Commissioner to prove fraud with intent to evade tax. [IRC 7454(a).] The evidence in that respect must be "clear and convincing"; not "beyond a reasonable doubt" as in a criminal case, but more than a mere preponderance. The failure of the Commissioner to prevail on the fraud issue does not relieve the taxpayer of the burden of overcoming the prima facie correctness of the determination of the deficiencies unless the assessment was not made within the applicable period of limitations.

(3) Record of the disposition of the criminal case against a taxpayer is admissible in the Tax Court on the issue of fraud. Despite an acquittal in a criminal case, the same evidence may be sufficient to prove fraud in the civil cases. A conviction for attempted tax evasion in the district court is conclusive in Tax Court proceedings as to the fraud issue. A guilty plea in a criminal case will be received by the Tax Court as an admission to be given weight according to the circumstances. Without any explanation of the circumstances, it is sufficient to establish

fraud. However, such a plea in a failure to file case may constitute only a willful omission and passive neglect to perform a statutory duty and not render the taxpayer liable for the fraud penalty.

(4) The Commissioner is not barred from assessing the 50 percent fraud penalty by: the taxpayer's filing correct amended returns and paying additional taxes due after filing fraudulent returns; or the death of the taxpayer, since the penalty is for an offense against property rights and not personal rights.

(5) The responsibility during investigation for the development of evidence to sustain the ad valorem additions to the tax (except those concerning tax estimations) rests upon the special agent. Consequently, upon the trial of a Tax Court case where the fraud penalty is at issue, the special agent is often a principal witness for the Government.

(6) It is the duty of the special agent, in the preparation for trial and the presentation of the case in Tax Court, to consult with and assist the attorney assigned to the matter by the Regional Counsel.

770 *(1-18-80)* 9781

Citation of Cases

Exhibit 700-4, Table of Cases, is an alphabetical listing of court cases cited in this Handbook.

Exhibit 700-1

Complaint
Handbook Reference: 721:(2) ◊

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

UNITED STATES OF AMERICA)
)
—against—) COMPLAINT
)
_____)

Complaint for Violation of Section 7201,
Internal Revenue Code of 1954

Before _____ _____, United States Magistrate, _____ _____,
_____ _____.

The undersigned complainant, being duly sworn, states:

That he/she is a Special Agent (or Revenue Agent) of the Internal Revenue Service and, in the performance of the duties imposed on him/her by law, he/she has conducted an investigation of the Federal income tax liability of _____ _____ for the calendar year 19——, by examining the said taxpayer's tax return for the year 19—— and other years; (by examination and audit of the said taxpayer's business and financial books and records;) (by identifying and interviewing third parties with whom the said taxpayer did business;) (by consulting public and private records reflecting the said taxpayer's income;) (and by interviewing third persons having knowledge of the said taxpayer's financial condition).

That based on the aforesaid investigation, the complainant has personal knowledge that on or about the _____ day of _____, 19——, at _____, _____, in the _____ District of _____, _____ (who during the calendar year 19—— was married) did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by said taxpayer (and spouse) to the United States of America for the calendar year 19——, by filing and causing to be filed with the Director of Internal Revenue at _____, _____, a false and fraudulent (joint) income tax return (on behalf of said taxpayer and spouse), wherein he/she (it was) stated that his/her (their) taxable (or adjusted gross) income for the said calendar year 19—— was $ _____, and that the amount of tax due and owing thereon was the sum of $ _____, when in fact his/her (their joint) taxable (or adjusted gross) income for the said calendar year was the sum of $ _____, upon which said taxable income he/she owed (there was owing) to the United States of America an income tax of $ _____.

_____
Here type: Title of subscribing Internal Revenue Service Officer

Sworn to before me and subscribed in my presence, this —— day of ———, 19——.

_____
United States Magistrate

The bracketed descriptions of the kinds of investigations conducted by the subscribing agent may all be used if they correctly reflect the facts. Otherwise, the inapposite description should, of course, be deleted. When appropriate, the description of a different investigative course should be added or substituted based on the facts.

This form is adaptable for use in connection with situations where either an individual or a joint tax return has been filed. The bracketed portions in the second paragraph relate to a joint tax return and should be deleted if an individual return is involved.

Exhibit 700-2

Indictment
Handbook Reference: 725.1 ◊

INDICTMENT

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

UNITED STATES OF AMERICA	)	No. _____ _____
—against—	)	(26 United States Code
_____	)	Section 7201)

The grand jury charges:

That on or about the _____ day of _____, 19——, in the _____ District of _____, _____, late of _____, did willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him/her in the United States of America for the calendar year 19——, by filing and causing to be filed with the Director of Internal Revenue for the _____, Internal Revenue District of _____, at _____, a false and fraudulent income tax return wherein he/she stated that his/her taxable income for said calendar year was the sum of $ _____ and that the amount of tax due and owing thereon was the sum of $ _____, whereas, as he/she then and there well knew, his/her taxable income for the said calendar year was the sum of $ _____, upon which said net income he/she owed to the United States of America an income tax of $ _____.

In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

A True Bill.

_____
Foreman

_____
United States Attorney

Exhibit 700-3

Information
Handbook Reference: 725.1 ◊

INFORMATION

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

UNITED STATES OF AMERICA	)	No. _____ _____ _____
—against—	)	(26 United States Code Section 7203)
	)	

The United States Attorney charges:

That during the calendar year 19——, _____, who was a resident of the City of _____, State of _____, had and received a gross income of $ _____; that by reason of such income he/she was required by law, after the close of the calendar year 19——, and on or before April 15, 19——, to make an income tax return to the Director of Internal Revenue for the _____ Internal Revenue District of _____, stating specifically the items of his/her gross income and any deductions and credits to which he/she was entitled; that well knowing all of the foregoing facts, he/she did willfully and knowingly fail to make said income tax return to the said Director of Internal Revenue, or to any other proper officer of the United States.

In violation of Section 7203, Internal Revenue Code; 26 U.S.C., Section 7203.

Exhibit 700-4

Table of Cases ◊

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Handbook Section	Case Name and Citation
424.5	Adonis, U.S. v., 221 F 2d 717 (CA-3), 55-1 USTC 9310.
383.5	Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509 (1964).
323.4	Alaska v. American Can Co., 358 U.S. 224, 79 S. Ct. 274 (1958).
413.2, 727	Albanese, U.S. v., 224 F 2d 879 (CA-2), 55-1 USTC 9494, cert. denied 350 U.S. 845.
383.(12)	Alioto v. U.S., 216 F. Supp. 48, 63-1 USTC 9552 (E.D. Wis.).
433, 532, 533	Allen v. U.S., 194 F 2d 664 (CA-4).
323.4	American Can Co., Alaska, v.
411	Amos, In re, (CA-4), 66-1 USTC 9130.
383.3	Amos v. U.S., 255 U.S. 313, 41 S. Ct. 266 (1921).
416.2	Anderson, U.S. v., 328 U.S. 699.
356.3	Angelo, U.S. v., 153 F 2d 247 (CA-3).
383.3	Antonelli Fireworks Co., U.S. v., 155 F 2d 631 (CA-2, 1946).
419.3	Arnold v. U.S., 75 F 2d 144 (CA-9), 35-1 USTC 9086.
344.4	Ashby, U.S. v., 245 F 2d 684 (CA-5), 57-2 USTC 9743.
411	Augustine, U.S. v., 188 F 2d 359 (CA-3), 51-1 USTC 9247.
343.31	Austin-Bagley Corp., U.S. v., 31 F 2d 229 (CA-2, 1929).
445.2	Autenrieth v. Cullen, 418 F 2d 586 (1969), cert. denied, 397 U.S. 1036 (1970).
323.6	Avery v. Comm'r, 1 USTC 254 (CA-5).
41(11).2, 737.82	Ayash v. U.S., 352 F 2d 1009 (CA-10), 65-2 USTC 9739.

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342.16	Backer v. Comm'r, 275 F 2d 141 (CA-5), 60-1 USTC 9285.
344.2	Baird v. Koerner, 279 F 2d 623 (CA-9), 60-2 USTC 9527.
41(10).42	Baker v. U.S., 21 F 2d 903 (CA-4), cert. denied 276 U.S. 621.
342.15	Ballantyne v. U.S., 237 F 2d 657 (CA-5), 56-2 USTC 9959.
344.2	Banks v. U.S., 204 F 2d 666 (CA-8, 1953).
41(11).2, 424.4	Barcott v. U.S., 169 F 2d 929 (CA-9), 48-2 USTC 9377.
413.2	Bardin v. U.S., 224 F 2d 255 (CA-7), 55-1 USTC 9488, cert. denied 350 U.S. 383, 76 S. Ct. 134.
41(11).31	Barrow v. U.S., 171 F 2d 286 (CA-5), 49-1 USTC 9112.
73(10)	Barshop v. U.S., 191 F 2d 286 (CA-5), 51-2 USTC 9425, cert. denied 342 U.S. 920, 72 S. Ct. 367.
41(10).3	Bayer, U.S. v., 331 U.S. 532, 67 S. Ct. 1394.
413.2, 419.3, 41(11).2	Beacon Brass Co. v. U.S., 344 U.S. 43, 73 S. Ct. 77, 52-2 USTC 9528.
383.6	Beal v. U.S., 79 F 2d 135.
323.5, 342.12, 41(11).2	Beard v. U.S., 222 F 2d 84 (CA-4), 55-1 USTC 9400, cert. denied 350 U.S. 846, 76 S. Ct. 48.
353.24, 727, 752.1	Beaty v. U.S., 213 F 2d 712 (CA-4), 54-2 USTC 9466, cert. denied 348 U.S. 905, 75 S. Ct. 312.
322.3	Beauchamp v. U.S., 154 F 2d 413 (CA-6, 1946), cert. denied 329 U.S. 723, 67 S. Ct. 66, rehearing denied 329 U.S. 826.
41(10),42	Beck, C. W., U.S. v., 118 F 2d 178 (CA-7, 1941), cert. denied 313 U.S. 587, 61 S. Ct. 1121.
353.24	Beck, Dave, U.S. v., 59-2 USTC 9786.
41(11).33	Beck, Dave, v. U.S., 298 F 2d 622 (CA-9), 62-1 USTC 9227.
532	Beckanstin v. U.S., 232 F 2d 1 (CA-5).
36(10).4	Becker, U.S. v., 58-1 USTC 9403, aff'd 58-2 USTC 9885 (CA-2).
323.5	Bender, U.S. v., 218 F 2d 869 (CA-7), 55-1 USTC 9142.
323.4, 41(11).31	Benetti v. U.S., 97 F 2d 263 (CA-9), 38-2 USTC 9358.

Exhibit 700-4 Cont. (1)

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343.2	Benjamin, U.S. v., 120 F 2d 521 (CA-2).
323.7	Beno, U.S. v., 324 F 2d 582 (CA-2, 1963).
41(11).31	Berkovitz v. U.S., 213 F 2d 468 (CA-5), 54-1 USTC 9425.
41(11).33	Berra v. U.S., 221 F 2d 590 (CA-8).
418.52	Bittinger, U.S. v., 21 Int. Rev. Rec. 342, 24 Fed. Cases No. 14,599, (W.D. Mo., 1875).
419.3	Black, U.S. v., 216 F. Supp. 645 (W.D. Mo.), 63-2 USTC 9564.
243.2, 244.4, 343.2, 344.4	Blau v. U.S., 340 U.S. 159.
383.3	Block, Joseph Harry, U.S. v., 202 F. Supp. 705 (S.D. N.Y., 1962).
433	Blount, U.S. v., 339 F 2d 331, 64-2 USTC 9863.
41(10).42	Blue v. U.S., 138 F 2d 351 (CA-6, 1943), cert. denied 332 U.S. 736, 64 S. Ct. 1046.
41(10).43	Blumenthal v. U.S., 332 U.S. 539.
532	Boehm v. U.S., 123 F 2d 791 (CA-8), cert. denied 315 U.S. 800, rehearing denied 315 U.S. 828, 62 S. Ct. 794.
367.41	Bolich v. Rubel, 67 F 2d 894 (CA-2), 3 USTC 1184.
367.2	Boren v. Tucker, 239 F 2d 767 (CA-9), 57-1 USTC 9246.
418.22	Borgis, U.S. v., 182 F 2d 274 (CA-7), 50-1 USTC 9330.
426.2	Bostwick v. U.S., 218 F 2d 790 (CA-5), 55-1 USTC 9170.
323.5	Botany Mills v. U.S., 278 U.S. 282.
367.35	Boudreaux, U.S. v., 328 F. Supp. 154, 71-2 USTC 9635 (E.D. La., 1972).
344.2	Boughner, Tillotson v.
344.3	Bouscher, U.S. v., 316 F 2d 451 (CA-8), 63-1 USTC 9424.
344.3	Bowman v. U.S., 236 F. Supp. 548 (M.D. Pa.), 65-1 USTC 9134.
341.31, 342.12, 342.2:(1)	Boyd v. U.S., 116 U.S. 616, 6 S. Ct. 524 (1886).
522	Bradshaw v. U.S., 15 F 2d 970 (CA-9). Bratton v. U.S., 73 F 2d 795 (CA-10).
41(10).44	Braverman v. U.S., 317 U.S. 49, 42-2 USTC 9731.
418.62	Bregman, U.S. v., 306 F 2d 653 (CA-3), 62-2 USTC 9589.
41(10).41	Britton, U.S. v., 108 U.S. 199.
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