



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

9.1.3

JANUARY 30, 2023

EFFECTIVE DATE

(01-30-2023)

PURPOSE

- (1) This transmits revised IRM 9.1.3, Criminal Statutory Provisions and Common Law.

MATERIAL CHANGES

- (1) Updated 9.1.3.1 title from “Overview” to “Program Scope and Objectives” and statement #3 to remove “Links” verbiage and add “Summary Information” verbiage in all bullet points.
- (2) Added 9.1.3.3, Acronym Table. Acronyms added to correlate with body of the IRM.
- (3) Section 9.1.3.4.5, added “Title 26, Subtitle F”
- (4) Section 9.1.3.4.5.1 removed second statement “Title 18 USC 3551 repealed 18 USC 1, Definition of Crimes”.
- (5) Section 9.1.3.4.6(1) and 9.1.3.5 (1) removed “Internal Revenue Code”.
- (6) Section 9.1.3.4.6(3) removed “Civil Activity at the close of the Subject Criminal Investigation” and “Chapter 9.6 includes IRM 9.6.2, Plea Agreements and Sentencing Process; IRM 9.6.3, Pre Trial Procedures; and IRM 9.6.4, Trial”. Added “IRM 9.5.14, Closing Procedures; and Chapter 9.6, Trial and Court Related Activities”.
- (7) Updated 9.1.3.5.8 to include verbiage, “A conviction for violation of 26 USC 7207 can result in a fine of not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.”
- (8) Updated sections 9.1.3.5.11 and 9.1.3.5.12 to include verbiage, “See 26 USC 7210 for specific details.”
- (9) Section 9.1.3.5.13 inserted a new bullet to discuss the Supreme Court decision *Marinello v. United States* with verbiage, “Based upon the U.S. Supreme Court decision in ***Marinello v. United States***, 138 S. Ct. 1101 (2018), the prosecution must prove the defendant was aware of a pending tax-related proceeding, such as an examination or investigation, or could reasonably foresee that such a tax proceeding would commence when the defendant corruptly engaged in, or by force or threats of force, engaged in the impeding behavior” causing the remaining bullets to renumber.
- (10) Updated 9.1.3.6 title to “Title 18 - Crimes and Criminal Procedure Applicable to Fraud and Miscellaneous Investigations”. Removed second statement “Note that 18 USC 1028, which concerns identity theft, is discussed in IRM 9.5.3”.
- (11) Added section 9.1.3.6.9 - 18 USC 510, Forging endorsements on Treasury checks, bonds, or securities of the United States.
- (12) Added section 9.1.3.6.11 - 18 USC 1028A, Aggravated Identity Theft
- (13) Added section 9.1.3.6.12 - 18 USC 1029, Fraud and Related Activity in Connection with Access Devices
- (14) Updated IRM reference in 9.1.3.6.16.1.1 to IRM 1.2.2.14.1

- (15) Updated sections 9.1.3.6.20, 9.1.3.6.22, and 9.1.3.6.23 to include “See IRM 9.5.5, Money Laundering and Currency Crimes and Chapter 9.7, Asset Seizure and Forfeiture sections for more information.”.
- (16) Exhibit 9.1.3-1 added Title 15 violations and updated Title 18 and Title 31 to current statute regulations
- (17) Exhibit 9.1.3-1 moved Title 33 to the end of the USC codes, added “Virgin Islands Code” to the title, and changed the codes from USC to VIC.
- (18) Exhibit 9.1.3-2 was updated to current statute guidelines
- (19) Added Exhibit 9.1.3-3 to list statutes investigated by the Alcohol, Tobacco Tax, and Trade Bureau
- (20) Additional revisions, deletions, and grammatical changes were made throughout the section, that did not result in substantive changes but contributed to procedural clarity of the subject matter.
- (21) New subsections have been added, prompting new IRM section and subsection numbering.

EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.1.3 dated February 24, 2010.

AUDIENCE

CI

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9.1.3

Criminal Statutory Provisions and Common Law

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9.1.3.1
(01-30-2023)
**Program Scope and
Objectives**

- (1) Federal crimes are statutory crimes. Statutory law refers to laws enacted and established by a legislative body. Federal prosecution is limited to the areas prescribed by Federal statute.
- (2) Various aspects of the law are defined in this section.
- (3) The section also provides:
 - Summary information of the more frequently used penal sections of the United States Code (USC), Title 26 and Title 18 and some elements that need to be established to sustain prosecution.
 - Summary information of the penal statutes of the USC, Title 31, that are within the jurisdiction of IRS.
 - Summary information of the statutes governing the statute of limitations for criminal prosecution for both Title 26, Title 18 and Title 31 prosecutions.
 - Information relating to criminal fines and penalties.
- (4) This section does not include the text of the civil and criminal forfeiture statutes within CI jurisdiction (see IRM 9.7, Asset Seizure and Forfeiture concerning those topics). See Exhibit 9.1.3-1 which provides a list of those statutes within the jurisdiction of CI, including the forfeiture statutes.

9.1.3.1.1
(01-30-2023)
Authority

- (1) See IRM 9.1.2, Authority for the delegated authority relating to 9.1.3, Criminal Statutory Provisions and Common Law.

9.1.3.1.1.1
(01-30-2023)
Acronym Table

- (1) The table lists commonly used acronyms and their definitions:

Acronym	Definition
AUSA	Assistant United States Attorney
BSA	Bank Secrecy Act
CI	Criminal Investigation
CT	Criminal Tax
DOJ	Department of Justice
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
SA	Special Agent
SAC	Special Agent in Charge
SSA	Supervisory Special Agent
TTB	Alcohol and Tobacco Tax and Trade Bureau
U.S.	United States
USAO	United States Attorney's Office

Acronym	Definition
USC	United States Code

9.1.3.2
(07-29-1998)

Definitions of Law

- (1) Laws are rules of conduct which are prescribed or formally recognized as binding and are enforced by the governing power.

9.1.3.2.1
(07-29-1998)

Statutory Law

- (1) Statutory law refers to laws enacted and established by a legislative body. All Federal crimes are statutory, but common law is frequently used for defining words used in the statutes. For example, statutes provide penalties for attempted evasion of income tax, but they do not define the terms “attempt” and “evasion.”

9.1.3.2.2
(05-15-2008)

Common Law

- (1) The common law is the body of law that develops and derives through judicial decisions, rather than from legislative enactments.

9.1.3.2.3
(07-29-1998)

Substantive Law

- (1) Substantive law creates, defines, and regulates rights, duties, responsibilities, and obligations, whereas adjective or remedial law provides rules for enforcing rights or obtaining redress for their invasion.

9.1.3.2.4
(07-29-1998)

Adjective Law

- (1) Adjective law provides rules of procedure or practice concerning proceedings before, during, and after trial, and rules of evidence relating to the admission of evidence at trial and the testing of the credibility and competency of witnesses.

9.1.3.2.5
(01-30-2023)

Criminal Law

- (1) Criminal law is the branch of law that defines crimes and provides punishment. A crime is an offense against a state or the United States and is generally not punished through a private action.
- (2) Criminal sanctions, generally involving imprisonment and fines, are covered in Title 26, Subtitle F, Chapter 75 of the USC. In addition, some of the criminal sanctions in Title 18, and Title 31 of the USC, also apply to Title 26 matters.

9.1.3.2.5.1
(01-30-2023)

Authorized Sentences

- (1) Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute shall be sentenced in accordance with 18 USC 3551, Authorized Sentences.
- (2)

9.1.3.2.5.2
(05-15-2008)

Parties to Criminal Offenses

- (1) See subsection 9.1.3.4.1 and subsection 9.1.3.4.2 pertaining to 18 USC 2, Principals and 18 USC 3, Accessory After the Fact.

9.1.3.2.6
(01-30-2023)

Civil Law

- (1) Civil law is the body of law concerning civil or private rights and remedies, as contrasted with criminal law.

- (2) Civil sanctions for tax offenses, which are generally assessed as additions to the tax imposed and are also referred to as ad valorem penalties, are covered in Chapter 68 of the IRC. Examples of civil penalties include:
 - a. Delinquency penalty (not exceeding 25 percent) for failure to file a timely return or to pay tax (26 USC 6651)
 - b. Accuracy-related penalty, a 20 percent penalty for negligence or disregard of rules or regulations (26 USC 6662)
 - c. Fraud penalty, a 75 percent penalty on the portion of an underpayment that is due to fraud (26 USC 6663)
- (3) For more information concerning civil issues that may affect a criminal investigation or prosecution, see IRM 9.5.13, Civil Considerations; IRM 9.5.14, Closing Procedures; and Chapter 9.6, Trial and Court Related Activities.

9.1.3.2.7
(05-15-2008)
Statutes of Limitations

- (1) Statutes of limitations are Federal and state statutes setting maximum time periods during which certain actions can be brought or rights enforced.
- (2) See subsection 9.1.3.6 for a discussion of the statute of limitations on criminal prosecution in general and with respect to specific offenses.

9.1.3.3
(01-30-2023)
Title 26 - Criminal Offenses Under the Internal Revenue Code

- (1) Tax crimes are defined in Chapter 75 of the IRC of 1986, entitled Crimes, Other Offenses, and Forfeitures. In addition, an offense under 26 USC 6050I may be subject to criminal sanctions. Unless otherwise indicated, the following penal sections of the IRC apply to all taxes imposed by Title 26. The subsections that follow provide links to the statute and in some instances the elements of the offense and common law interpretations.

9.1.3.3.1
(05-15-2008)
26 USC 6050I - Structuring Transactions to Evade Cash Reporting

- (1) Title 26 USC 6050I requires trades and businesses to file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business when in receipt of more than \$10,000 in cash from one transaction or two or more related transactions.
- (2) Title 26 USC 6050I(f) prohibits structuring transactions to evade these reporting requirements.
- (3) For more information concerning the penalties associated with a violation of 26 USC 6050I, see subsection 9.1.3.3.4.
- (4) As of January 1, 2002, pursuant to the provisions of the USA Patriot Act, Form 8300 has a dual filing requirement under both Titles 26 and 31 (see 31 USC 5331). Therefore, care must be taken to ensure that disclosure of Forms 8300 and information extracted from these forms is made under the appropriate guidelines. For further information, see IRM 9.3.1, Disclosure.

9.1.3.3.2
(05-15-2008)
26 USC 7201 – Attempt to Evade or Defeat Tax

- (1) Title 26 USC 7201 prohibits willfully attempting in any manner to evade or defeat any tax or the payment thereof.
- (2) Under 26 USC 7201, a violation of the statute is punishable by a maximum fine of \$100,000 (\$500,000 in the case of a corporation), or imprisonment of not more than five years, or both, together with the costs of prosecution. However, the criminal fine provisions under 18 USC 3571 increase the maximum permissible fines for a violation of 26 USC 7201 to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any

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person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

9.1.3.3.2.1 (05-15-2008) **26 USC 7201 – Avoidance Distinguished from Evasion**

- (1) 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/she 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 to make 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 investigation 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.

9.1.3.3.2.2 (01-30-2023) **26 USC 7201 - Elements of the Offense**

- (1) Whether the offense at issue involves the evasion or defeat of the assessment of a tax or of its payment, the elements of 26 USC 7201 are the same. However, the courts have interpreted the terms differently in some instances. These differences are noted in the explanations below. The elements of the offense are:
 - a. An additional tax due and owing
 - b. An affirmative attempt in any manner to evade or defeat any tax, or the payment thereof
 - c. Willfulness
- (2) The following paragraphs provide additional details concerning each element of the offense.

9.1.3.3.2.2.1 (05-15-2008) **26 USC 7201 – Additional Tax Due and Owing**

- (1) The government must establish that at the time the offense was committed the defendant owed more tax than he/she reported. However, the government is not required to prove the precise amount of tax evaded. Rather, the government may satisfy its obligation by showing that the amount of tax evaded was substantial. "Substantial" is a relative term and 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.

Note: Where there is an evasion or attempted evasion of the payment of tax, courts have interpreted the element of additional tax due and owing somewhat differently. In such cases, the amount of tax due and owing need not be an amount in excess of the total tax reported. Instead, it could be an amount of tax that was shown on the return but was not paid.

- (2) Carryback losses are technically no legal impediment to prosecution for years in which they eliminate a tax liability. However, the probability of conviction could be lessened where it is shown that a tax deficiency does not exist by operation of law.
- (3) Likewise, the acceptance by government agents of a waiver agreement (Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax

and Acceptance of Overassessment) does not bar prosecution. However, experience has demonstrated that attempts to pursue both the criminal and the civil aspects of an investigation concurrently may jeopardize the successful completion of the criminal investigation. As a result, Policy Statement 4-26 (formally P-4-84, Balancing Civil and Criminal Aspects) provides, among other things, that the consequences of civil enforcement actions on matters involved in a criminal investigation and prosecution investigation should be carefully weighed.

9.1.3.3.2.2.2
(01-30-2023)

**26 USC 7201 – Attempt
to Evade or Defeat Any
Tax or Payment Thereof**

- (1) The substance of the offense under 26 USC 7201 is the term “attempt in any manner”. 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.
- (2) Courts have held, however, that the term “attempt” implies some affirmative act or the commission of some overt act. This affirmative act need not be the filing of a false or fraudulent return, although most cases in this area do involve the filing of such a return. Courts have also held that a false statement made to Treasury agents for the purpose of concealing unreported income is an attempt to evade or defeat a tax.
- (3) The willful omission of a duty or the willful failure to perform a duty imposed by statute does not per se constitute an attempt to evade or defeat a tax. 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. The Supreme Court in *Spies v. United States* provided examples of conduct that may imply “the attempt to evade or defeat any tax”, such as:
 - a. Keeping a double set of books
 - b. Making false entries, alterations, invoices, or documents
 - c. Destroying books or records
 - d. Concealing assets or covering up sources of income
 - e. Handling one’s affairs to avoid making records usual in transactions of the kind
 - f. Any conduct, the likely effect of which would be to mislead or to conceal
- (4) The term “attempt” does not mean that one whose efforts are unsuccessful cannot be convicted under 26 USC 7201. 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. 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.
- (5) 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.
- (6) 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. Likewise, there may be a willful attempt to evade tax and a willful failure to file a return for the same year.

- (7) The mere failure or willful failure to pay a tax does not constitute an attempt to evade or defeat the payment of that tax. The above discussion of the need for an affirmative action or the commission of some overt act applies equally to this offense. Examples of actions that might constitute the attempted evasion of the payment of tax include:
- a. Concealing assets
 - b. Reporting income through others
 - c. Misappropriating, converting, and diverting corporate assets
 - d. Filing late returns
 - e. Failing to withhold taxes as required by law
 - f. Filing false declarations of estimated taxes
 - g. Filing false tentative corporate returns
- (8) Courts have held that disbursement of available funds to creditors other than the government, or to corporate stockholders is not in itself an attempt to evade or defeat the payment of taxes.

9.1.3.3.2.2.3
(05-15-2008)
26 USC 7201 – Willfulness

- (1) To satisfy the third element of 26 USC 7201, the attempt to evade or defeat a tax or the payment thereof must be willful. Willfulness is defined as the voluntary, intentional violation of a known legal duty. Mere understatement of income and the filing of an incorrect return does not in itself constitute a willful attempt to evade tax. Absent an admission or confession, willfulness is rarely subject to direct proof and generally must be inferred from the facts and circumstances. Willfulness may be inferred from any conduct, the likely effect of which would be to mislead or conceal, such as that exemplified in Spies.
- (2) This definition of willfulness applies to all Title 26 offenses where willfulness is an element, unless stated otherwise.

9.1.3.3.3
(05-15-2008)
26 USC 7202 – Willful Failure to Collect or Pay Over Tax

- (1) A willful failure to collect or pay over tax is a criminal offense under 26 USC 7202.
- (2) Under 26 USC 7202, a violation of the statute is punishable by a maximum fine of \$10,000 or imprisonment of not more than five years, or both, together with the costs of prosecution. However, the criminal fine provisions under 18 USC 3571 increase the maximum permissible fines for a violation of 26 USC 7202 to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.
- (3) Violations under this section usually involve employers who fail to truthfully account for and pay over employment taxes, including Social Security taxes, Federal unemployment tax, and income tax withheld from employee wages. This type of offense is distinct from the failure to file returns, which is covered by 26 USC 7203 and the filing of false and fraudulent returns, which is covered by 26 USC 7206(1).

9.1.3.3.1

(01-30-2023)

26 USC 7202 - Elements of the Offense

- (1) The elements of the offense under 26 USC 7202 are:
 - a. A duty to collect, truthfully account for, and pay over the tax
 - b. A failure to collect and/or truthfully account for and pay over the tax
 - c. Willfulness (see subsection 9.1.3.3.2.3)
- (2) The following paragraphs provide additional details concerning each element of the offense.

9.1.3.3.1.1

(05-15-2008)

26 USC 7202 – Duty to Collect, Account for, and Pay Taxes

- (1) The duty to truthfully account for and pay over any tax is considered to be an inseparable dual obligation. Failure to pay, even though an accounting is made in the return filed, leaves the duty as a whole unfulfilled.
- (2) However, considerable difficulty has been encountered in determining the person charged with the duty of collecting, accounting for and paying over taxes, especially in investigations involving small corporations where the precise duties of the officers are not clearly defined or consistently carried out. For example, in one investigation, it was determined that although the president of the corporation was the dominating force in the management of the firm, there were other officers who signed some returns and engaged in financial activities on behalf of the corporation. As a result, it was unclear whether the president was the officer under a duty to perform the required acts and the indictment was ultimately dismissed. Another case held 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” referenced in 26 USC 7202 and defined in 26 USC 7343.

9.1.3.3.1.2

(05-15-2008)

26 USC 7202 – Willfulness

- (1) Willfulness under 26 USC 7202 is the same as for all Title 26 offenses (i.e., the voluntary, intentional violation of a known legal duty). Evil motive or bad purpose is not needed to establish willfulness. For example, a successful prosecution under this section was based upon the following facts: The subject 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 accounts 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/her 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.

9.1.3.3.1.3

(05-15-2008)

26 USC 7202 – Statute of Limitations

- (1) The position of the Department of Justice (DOJ), Tax Division, is that the statute of limitations for violations of 26 USC 7202 is six years, as provided in 26 USC 6531(4).

Note: Two Federal district courts have concluded that the statute of limitations is three years.

9.1.3.3.4
(01-30-2023)

26 USC 7203 - Willful Failure to File Return, Supply Information, or Pay Tax

- (1) Generally, a willful failure to file a return, supply information, or pay tax is a misdemeanor under 26 USC 7203. However, in the case of a willful violation of any provision of section 6050I, the violation is a felony.
- (2) Although they are covered by the same statute, any one of the following violations is considered a separate offense:
 - a. A willful failure to make any type of required return
 - b. A willful failure to pay any estimated tax or tax
 - c. A willful failure to keep records
 - d. A willful failure to supply information
- (3) With respect to misdemeanors under 26 USC 7203, the provision imposes a maximum fine of \$25,000 (\$100,000 for a corporation), or imprisonment of not more than one year, or both, together with the costs of prosecution. With respect to felonies involving willful violations of 26 USC 6050I, the statute imposes a fine and/or imprisonment of not more than five years.
 - a. However, 18 USC 3571 increases the maximum permissible fine for misdemeanor offenses under 26 USC 7203 to not more than \$100,000 for individuals and not more than \$200,000 for corporations.
 - b. Under 18 USC 3571, felony offenses under 26 USC 7203 involving willful violations of 26 USC 6050I are punishable by a maximum fine of not more than \$250,000 for individuals and \$500,000 for corporations.
 - c. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

Note: Title 26 USC 7203 does not apply to a person who fails to pay estimated tax if there is no addition to tax under section 6654 or 6655 with respect to such failure.

9.1.3.3.4.1
(01-30-2023)

26 USC 7203 - Elements of the Offense

- (1) The elements of the offense under 26 USC 7203 are:
 - a. A legal duty to file an income tax return, supply information, maintain records, or pay a tax for the taxable year charged
 - b. A failure to fulfill this legal duty
 - c. Willfulness (see subsection 9.1.3.3.2.2.3)
- (2) The following paragraphs provide additional details concerning each element of the offense.

9.1.3.3.4.1.1
(05-15-2008)

26 USC 7203 - Legal Duty to File Return, Supply Information, Maintain Records, or Pay a Tax

- (1) In general, persons liable under 26 USC 7203 include those defined in 26 USC 7343 as follows:

“ The term ‘person’ 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. ”
- (2) The requirements for making and filing a return are set forth in Chapter 61 of the Code. In corporate investigations, it may be difficult to determine which officer is responsible for filing the corporate returns. The issue of who has the legal duty to file is a question of fact to be determined by competent evidence.

Such evidence may include proof of signing past Federal or state returns, or a statement in the corporate bylaws or minutes of directors' meetings.

- (3) The general requirement or duty to keep records is provided by 26 USC 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 types of businesses. For example, evidence that a return was prepared from third-party records (banks, brokers, employers) may obviate the necessity for an individual to keep records.

9.1.3.3.4.1.2
(05-15-2008)
**26 USC 7203 - Failure to
File a Timely Return**

- (1) In order to show that a return was not filed timely, the government must establish the due date of the return as provided by statute or regulations and a failure to file the return within such time. The time within which a return must be filed has been held to be the date set out in the USC or under regulations prescribed by the Secretary, as extended (if applicable) by the Secretary or the Secretary's delegate. The date when a return is due under the USC 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 must be filed on or before the 15th day of April following the close of the calendar year; or, if made on a fiscal year basis, such returns must be filed on the 15th day of the fourth 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, such returns are due on the 15th day of the third month following the close of the fiscal year (26 USC 6072(b)). Title 26 USC 6075 provides the deadlines for filing estate and gift tax returns, and 26 USC 6071 and the regulations promulgated thereunder provide the deadlines for filing excise tax returns and other returns required under the particular type of tax involved.
- (2) The Treasury regulations under 26 USC 6050I provide that Form 8300 is required to be filed by the 15th day after the date the cash was received. If that date falls on a Saturday, Sunday or legal holiday, the form is required to be filed the next business day. In addition, the statute itself provides that the individual/entity filing the form must provide a written statement to each person required to be named on the Form 8300 on or before January 31 of the year following the calendar year for which the return was required to be made.
- (3) In addition to proving the due date of the return, the government must establish that the person did not file the return by that date. Usually, this is accomplished by providing evidence that the subject did not file a return in the area of his/her legal residence or principal place of business or IRS Campus.

9.1.3.3.4.1.3
(05-15-2008)
**26 USC 7203 -
Willfulness**

- (1) Willfulness means the voluntary, intentional, violation of a known legal duty.
- (2) The government must establish that the failure to file the return was willful. However, as distinguished from willfulness in a tax evasion investigation, the government need not prove a tax evasion motive. In this context, "willful" means voluntary, purposeful, deliberate, and intentional, as distinguished from accidental, inadvertent, or negligent.

- 9.1.3.3.4.1.3.1
(05-15-2008)
26 USC 7203 - Willful Failure to Pay Tax
- (1) 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.
 - (2) When charging willful failure to pay tax, 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.
- 9.1.3.3.4.1.3.2
(05-15-2008)
26 USC 7203 - Willful Failure to Keep Records
- (1) Willfulness will also be inferred if a concealment motive is part of the failure to keep records. However, an important factor in the probability of conviction in these investigations may be a substantial deficiency attributable to the failure to keep records.
- 9.1.3.3.4.1.3.3
(05-15-2008)
26 USC 7203 - Willful Failure to Supply Information
- (1) The willfulness required to be shown when charging willful failure to supply information is the deliberate and intentional withholding of required information. For example, the deliberate and intentional failure 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.
- 9.1.3.3.4.1.4
(05-15-2008)
26 USC 7203 - Statute of Limitations
- (1) Under 26 USC 6531(4), the statute of limitations for willful failure to file returns (other than information returns) or to pay tax is six years. A three-year statute of limitations applies to willful failure to file information returns such as partnership returns, and to willful failure to keep records or supply information. The statute of limitations for willful failure to file a Form 8300 is three years.
- 9.1.3.3.5
(05-15-2008)
26 USC 7204 - Fraudulent Statement or Failure to Make Statement to Employees
- (1) Title 26 USC 7204 prohibits the willful furnishing of a withholding statement under 26 USC 6051 (i.e., Forms W-2 and W-3) that is false or fraudulent. The statute also makes it a crime willfully to fail to furnish such a statement.
 - (2) Under 26 USC 7204, violations of the statute are punishable by a maximum fine of \$1,000 or imprisonment of not more than one year, or both. However, 18 USC 3571 increases the maximum fine to not more than \$100,000 for individuals or \$200,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.
- 9.1.3.3.5.1
(01-30-2023)
26 USC 7204 - Elements of the Offense
- (1) The elements of the offense under 26 USC 7204 are:
 - a. A legal duty to deduct employment tax or to withhold income tax (see 26 USC 3102(a) and 26 USC 3402(a))
 - b. A legal duty to timely furnish to the employee a written statement showing specified information concerning the deductions (see 26 USC 6051)
 - c. Furnishing a false or fraudulent statement to an employee, or failing to furnish the required statement to an employee at the required time and in the required manner
 - d. Willfulness, (see subsection 9.1.3.3.2.2.3)
 - (2) A successful prosecution under this section was based upon the following facts:

- a. In order to attract and retain workers, an individual devised a scheme whereby actual weekly wages paid were recorded on regular weekly payroll sheets, the sum total of which was deducted by the company for income tax purposes.
- b. Individual payroll sheets were 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.
- c. At the end of the year, the employees whose names were shown on individual payroll sheets were furnished with false withholding statements (Forms W-2,) based upon the false payroll sheets. The employees whose names did not appear on payroll sheets did not receive withholding statements.
- d. The furnishing of false and fraudulent statements to some employees and the failure to furnish withholding statements to other employees constituted separate violations under this section.

9.1.3.3.6
(05-15-2008)
**26 USC 7205 -
Fraudulent Withholding
Exemption Certificate or
Failure to Supply
Information**

- (1) Title 26 USC 7205 prohibits the willful supplying of false or fraudulent information to an employer on a withholding exemption certificate (Form W-4), as well as the willful failure to supply information that would require an increase in withholding.
- (2) Under 26 USC 7205, a violation of the statute is punishable by a maximum fine of \$1,000 or imprisonment of not more than one year, or both. However, the criminal fine provisions under 18 USC 3571 increase the maximum permissible fines for a violation of 26 USC 7205 to not more than \$100,000 for individuals and \$200,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

9.1.3.3.6.1
(01-30-2023)
**26 USC 7205(a)
(Withholding on Wages)
– Elements of the
Offense**

- (1) The elements of the offense under 26 USC 7205(a) are:
 - a. The defendant had a legal duty to supply an employer with a signed Form W-4 relating to the number of withholding exemptions claimed (see 26 USC 3402(f)(2))
 - b. The defendant furnished the employer with a signed Form W-4, or failed to supply the employer with a signed Form W-4
 - c. If supplied, the information provided was false or fraudulent
 - d. Willfulness (see subsection 9.1.3.3.2.2.3)
- (2) The employee is required to notify his/her employer within 10 days of a change in his/her withholding exemption status which requires an increase in tax to be withheld. There is no penalty for failing 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.

9.1.3.3.6.2
(01-30-2023)

26 USC 7205(b) (Backup Withholding on Interest and Dividends) – Elements of the Offense

- (1) This criminal provision applies to interest and dividend income. Generally, interest and dividend income is not subject to the withholding tax. However, the USC provides a system of backup withholding which applies. When one of the following is true:
 - The payee fails to provide a taxpayer identification number (TIN)
 - The IRS notifies the payor that the payee's TIN is incorrect
 - The IRS notifies the payor that the payee is underreporting interest and dividends; or
 - The payee fails to certify to the payor, when opening a new account after 1983, that he/she is not subject to backup withholding
- (2) The elements of the offense under 26 USC 7205(b) are:
 - a. The payee had a legal duty under 26 USC 3406(d) to certify to the payor that the payee was not subject to backup withholding on interest and dividends
 - b. The payee furnished a false certification of such information
 - c. Willfulness (see subsection 9.1.3.3.2.2.3)

9.1.3.3.6.2.1
(05-15-2008)

26 USC 7205 - Statute of Limitations

- (1) A three year statute of limitations applies (26 USC 6531), and the offense is a misdemeanor.
- (2) For offenses that involve furnishing false or fraudulent information, the statute of limitations runs from the date the document is filed.
- (3) It is unclear whether willful failure to supply information to an employer is a continuing offense for purposes of determining when the statute of limitations begins to run, in which case the limitations period would begin when the last act of the offense had occurred. The safe practice is to assume that it is not a continuing offense, and that the statute of limitations runs from the date the information was required to be supplied. However, if all other facts indicate that prosecution should be recommended for this offense, the continuing offense theory may be argued.

9.1.3.3.7
(01-30-2023)

26 USC 7206 - Fraud and False Statements

- (1) The offenses proscribed by 26 USC 7206 include:
 - a. Willfully making a false declaration under penalties of perjury
 - b. Willfully assisting in the preparation of a false tax document
 - c. Executing fraudulent bonds, permits and entries
 - d. Removing or concealing taxable goods with intent to defraud
 - e. Willfully concealing property or withholding/falsifying documents in connection with any compromise or closing agreement
- (2) Under 26 USC 7206, a violation of the statute is punishable by a maximum fine of \$100,000 (\$500,000 in the case of a corporation), or imprisonment of not more than three years, or both, together with the costs of prosecution. However, the criminal fine provisions under 18 USC 3571 increase the maximum permissible fines for a violation of 26 USC 7206 to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

9.1.3.3.7.1

(01-30-2023)

26 USC 7206(1) (False or Fraudulent Return, Statement, or Other Document Made Under Penalty of Perjury) – Elements of the Offense

- (1) In general, 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, has committed a criminal offense under 26 USC 7206(1).
- (2) The elements of this offense are:
 - a. The making and signing of a return, statement or other document containing a written declaration that it was signed under the penalties of perjury
 - b. The inclusion in the document of information that was false as to a material matter
 - c. The defendant's lack of belief that the document was true and correct as to every material matter
 - d. Willfulness (see subsection 9.1.3.3.2.2.3)
- (3) This code section may apply regardless of whether the defendant's purpose was to evade or defeat the payment of taxes. For example, prosecution for this offense may be appropriate when the government is able to prove the falsity of a partnership return, even if the government is not able to prove a resulting tax deficiency.
- (4) A matter is material if:
 - a. It must be reported for a correct computation of tax
 - b. It tends to influence or is capable of influencing the ability of the Service to audit or verify the accuracy of the return or a related return

It is not necessary that the false statement actually affect the Service or that the Service actually rely on the statement.
- (5) Although the offense is complete upon signing the statement or document, prosecutions under this section should involve only false returns or statements presented to or filed with the IRS. This sanction is appropriate when it is possible to prove the falsity of a return but it is difficult to establish a tax deficiency, or when the falsification results in a relatively small amount of tax evaded when compared to the total tax liability.
- (6) If an individual files a false and fraudulent return, it is possible for him/her to incur criminal liability both for attempting to defeat and evade the payment of tax and for making a false and fraudulent statement under penalty of perjury.

9.1.3.3.7.2

(01-30-2023)

26 USC 7206(2) (Aid or Assistance in Preparation or Presentation of False or Fraudulent Return, Affidavit, Claim or Other) – Elements of the Offense

- (1) The elements of the offense under 26 USC 7206(2) are:
 - a. The defendant aided or assisted in, or procured, counseled, or advised the preparation or presentation of a return or other document in connection with a matter arising under the internal revenue laws;
 - b. The return or other document was false as to a material matter (see subsection 9.1.3.3.7.1); and
 - c. Willfulness (see subsection 9.1.3.3.2.2.3)
- (2) Actual preparation of the false return is not necessary to sustain a conviction. Therefore, this subsection applies not only to return preparers but also to anyone who participates in the fraud. For example, it may apply to corporate

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officers, preparers of corporate tax forms other than returns, tax shelter promoters and others who provide legal advice knowing the advice will be used for tax return preparation.

- (3) Although the offense generally is predicated on the filing of a tax return or other document, courts have reached different conclusions as to whether filing is a required element of the offense.

Note: The Ninth Circuit has held that an offense was not committed under 26 USC 7206(2) unless the document containing the false statement was filed with the IRS.

- (4) In situations where a defendant willfully provided information or a document to an intermediary who was required by law to file an information return with or to transmit the document to the IRS, courts have held that the offense under 26 USC 7206(2) was complete when the defendant presented the information or document to the intermediary.
- (5) Aiding or assisting in the preparation of a false return and subscribing to a false return are two separate offenses. A defendant could therefore be prosecuted under both 26 USC 7206(1) and 26 USC 7206(2) for the same false return.
- (6) To establish the element of willfulness, the government must prove that the defendant acted with the purpose and objective of violating the internal revenue laws. However, a defendant may have willfully and knowingly prepared false and fraudulent income tax returns for another, even if the fraud involved was without the knowledge or consent of the person required to make the return. By contrast, if the person required to make the return was aware of the fraud, the defendant is entitled to have the court caution the jury to weigh accomplice testimony carefully.
- (7) In all race track payoff investigations, 26 USC 7206(2) should be used either as the primary statutory provision or as a supplement to 18 USC 1001. Title 26 USC 7206(2) should be charged when prosecuting either the “ten percenter” (i.e., a person who cashes the winning ticket in place of the true winner, in exchange for a percentage of the winnings) or the true winner.

9.1.3.3.7.3
(01-30-2023)

26 USC 7206(4) (Removal or Concealment with Intent to Defraud) – Elements of the Offense

- (1) The elements of the offense under 26 USC 7206(4) are:
 - a. A tax is or shall be imposed on any goods or commodities, or levy is authorized upon any property
 - b. The defendant removed, deposited or concealed, or was concerned in removing, depositing or concealing, such goods, commodities or property
 - c. The defendant did so with intent to evade or defeat the assessment or collection of any tax
- (2) Concealment under 26 USC 7206(4) includes not only secreting the item at issue or hiding it away, but also preventing its discovery or withholding knowledge of it. Thus, it is not necessary for the government to prove a physical removal, concealment or transfer from one place to another. An offense under 26 USC 7206(4) may be established by showing that book entries falsified the transfer of property rights.

9.1.3.3.7.3.1
(05-15-2008)

**26 USC 7206(4) – Statute
of Limitations**

- (1) The statute of limitations for removal or concealment with intent to defraud is three years (26 USC 6531).

9.1.3.3.8
(01-30-2023)

**26 USC 7207 -
Fraudulent Returns,
Statements, or Other
Documents**

- (1) Title 26 USC 7207 prohibits the willful and knowing delivery or disclosure to the IRS of a false or fraudulent document (regardless of whether it is signed under penalties of perjury). A conviction for violation of 26 USC 7207 can result in a fine of not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.
- (2) The elements of this offense are:
- a. The defendant delivered to any officer or employee of the IRS a list, return, account, statement or other document
 - b. The return, statement, or other document was false or fraudulent as to any material matter
 - c. Willfulness (see subsection 9.1.3.3.2.2.3)
- (3) Title 26 USC 7207 is generally reserved for investigations arising out of the presentation of false or altered documents by individuals in response to requests for substantiation of claimed deductions during the course of an examination, when the computed tax deficiencies are considered de minimus in relation to the circumstances of the investigation, and the means and methods used in committing the offense are commensurate with charging a misdemeanor rather than a felony.

9.1.3.3.9
(05-15-2008)

**26 USC 7208 - Offenses
Relating to Stamps**

- (1) This offense relates primarily to counterfeiting or fraudulently mutilating, removing, or reusing tax stamps. It occurs most in the excise tax area. See 26 USC 7208 for specific details.

9.1.3.3.10
(05-15-2008)

**26 USC 7209 -
Unauthorized Use or
Sale of Stamps**

- (1) This offense relates primarily to the unauthorized use or sale of tax stamps. See 26 USC 7209 for specific details.

9.1.3.3.11
(01-30-2023)

**26 USC 7210 - Failure to
Obey Summons**

- (1) Failure to obey an IRS summons is a criminal offense under 26 USC 7210. See 26 USC 7210 for specific details.

9.1.3.3.12
(05-15-2008)

**26 USC 7211 - False
Statements to
Purchasers or Lessees
Relating to Tax**

- (1) Title 26 USC 7211 prohibits making a false statement concerning taxes to a purchaser or lessee. See 26 USC 7211 for specific details.

9.1.3.3.13
(01-30-2023)

26 USC 7212 - Attempts to Interfere With Administration of Internal Revenue Laws

- (1) In general, 26 USC 7212 prohibits attempts to interfere with the administration of the Internal Revenue laws.
- (2) Title 26 USC 7212(a) establishes two general categories of prohibited conduct: (i) corruptly or forcibly endeavoring to impede any officer or employee from acting in an official capacity; and (ii) corruptly or forcibly obstructing or impeding (or endeavoring to obstruct or impede) the due administration of the Internal Revenue Code. The second category of conduct prohibited by 26 USC 7212(a) is described in what is known as the “omnibus clause.” Title 26 USC 7212(b) prohibits the forcible rescue (or the attempt to forcibly rescue) property that has been seized under the Internal Revenue Code.
- (3) Pursuant to the statute, the two types of offenses established by 26 USC 7212(a) are punishable by a maximum fine of \$5,000 or imprisonment of not more than 3 years, or both, except that if the offense is committed only by threats of force the punishment is a maximum fine of not more than \$3,000 and imprisonment of not more than one year. The statute also provides that the offense established by 26 USC 7212(b) is punishable by a fine of not more than \$500, or not more than double the value of the property rescued (whichever is greater), or imprisonment of not more than 2 years. However, the criminal fine provisions under 18 USC 3571 increase the maximum permissible fines for these offenses to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.
- (4) Prosecutions under the first clause of 26 USC 7212(a) typically involve acts or threats of force against an individual IRS employee acting in an official capacity. Such prosecutions do not require authorization from the Department of Justice, Tax Division, and are directly referred to the US Attorney’s Office (see Tax Division Directive No. 129; IRM 9.5.12).
- (5) However, the omnibus clause makes clear that force or the threat of force is not an element of the offense under 26 USC 7212(a). Rather, the statute may apply to an individual who “corruptly” endeavors to impede the administration of the tax laws. The term “corruptly” generally implies an intent to obtain an improper advantage, but there is no requirement that the evidence establish such an intent.
- (6) Based upon the U.S. Supreme Court decision in *Marinello v. United States*, 138 S. Ct. 1101 (2018), the prosecution must prove the defendant was aware of a pending tax-related proceeding, such as an examination or investigation, or could reasonably foresee that such a tax proceeding would commence when the defendant corruptly engaged in, or by force or threats of force, engaged in the impeding behavior.
- (7) Examples of conduct to which the omnibus clause may apply include, but are not limited to, providing false information, destroying evidence, attempting to influence a witness to give false testimony, and harassing an IRS employee. A 26 USC 7212(a) charge may also be authorized in appropriate circumstances to prosecute a person who, prior to any audit or investigation, engaged in large-scale obstructive conduct involving the tax liability of third parties. Examples include, but are not limited to, assisting in preparing or filing a large number of fraudulent returns or other tax forms, or engaging in other corrupt conduct designed to obstruct the IRS from carrying out its lawful functions.

- (8) In cases where the obstructive conduct is in furtherance of a preexisting criminal scheme, Tax Division Directive No. 129 (superseding Directive No. 77) authorizes prosecutors to charge 26 USC 7212(a) in addition to charging the underlying tax crime. Prosecutions under the omnibus provision of 26 USC 7212(a) require tax division authorization.
- (9) The statute of limitations for violations of 26 USC 7212(a) is 6 years.

9.1.3.3.13.1
(01-30-2023)

26 USC 7212(b) (Forcible Rescue) – Elements of the Offense

- (1) The elements of the offense under 26 USC 7212(b) are:
 - a. Property was legally seized under Title 26
 - b. The defendant knew the property had been seized
 - c. The defendant forcibly and willfully retook the property
- (2) To be “forcible”, the rescue of property need not entail physical violence. Threatening language or intimidating conduct may be sufficient. The term “threats of force” as used in this subsection includes threats of bodily harm to an officer or employee of the United States or to a member of his/her family. It has been held that a forcible rescue under 26 USC 7212(b) includes the use of force against property, such as the breaking of a bank window, the removal of the IRS seal on a safe deposit box, or the removal of the box and its contents from the bank.
- (3) A defendant may be charged under 26 USC 7212(b) for forcibly retaking property that the government seized from a third party. To support a conviction under 26 USC 7212(b), the property must have been seized by an official with authority under the tax code to make the seizure. Disputes concerning other aspects of the legality of the seizure do not constitute a defense to the crime. Thus, it is no defense that the person retaking the property claims to be the real owner and that the property was seized by mistake.

Note: Title 18 USC 2233 also prohibits the forcible rescue of property and gives the IRS concurrent jurisdiction with the Federal Bureau of Investigation (FBI) over such crimes. Current practice dictates that determination of whether an alleged forcible rescue is to be investigated by CI or the FBI depends on whether the property was taken before or after it was adjudicated government property. The elements of 18 USC 2233 are provided below, in the section describing Title 18 statutes.

9.1.3.3.14
(05-15-2008)

26 USC 7215 - Offenses with Respect to Collected Taxes

- (1) Failure to comply with any provision of 26 USC 7512(b), which requires employers and others, upon notice, to collect employment taxes and deposit the withheld taxes in a special bank account held in trust for the United States, is a criminal offense under 26 USC 7215(a). Title 26 USC 7215(b) provides exceptions to the penalty if there was reasonable doubt as to whether the law required collection of tax, or if the failure to comply was due to circumstances beyond the control of the person required to collect the tax. For purposes of this statute, a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) is not considered “circumstances beyond the control” of a person.

9.1.3.3.14.1
(05-15-2008)

26 USC 7215 - Elements of the Offense

- (1) The elements of the offense under 26 USC 7215 are:
 - a. The defendant was a person required to collect, account for, and pay over employment taxes.

- b. The defendant was provided with the statutory notice prescribed by 26 USC 7512(a).
- c. The defendant failed to comply with the collection requirements.
- d. There was no reasonable doubt as to whether the law required collection of tax, and the failure was not due to circumstances beyond the defendant's control (see IRM 9.5.3, Criminal Investigation Strategies).

9.1.3.3.15
(05-15-2008)
**Other Criminal Statutes
in the United States
Code Within the
Jurisdiction of CI**

- (1) See Exhibit 9.1.3-1, Title 18, 26, and 31 Statutes within the Jurisdiction of Criminal Investigation, for the other criminal statutes contained within the USC. See the USC for specific details concerning these offenses.
- (2) See also Exhibit 9.1.3-2, Statutes Applicable when Charged in Conjunction with a Tax Money Laundering or Currency Violation for which CI has jurisdiction.

9.1.3.4
(01-30-2023)
**Title 18 - Crimes and
Criminal Procedure
Applicable to Fraud and
Miscellaneous
Investigations**

- (1) The following sections of Title 18 are criminal offenses within the jurisdiction of CI.

9.1.3.4.1
(01-30-2023)
18 USC 2 - Principals

- (1) Title 18 USC 2 is known as the "accomplice statute" and generally provides that a person may be convicted of a crime even if he/she did not personally perform every act constituting the crime. More specifically, 18 USC 2(a) provides that the following persons are punishable as principals: (i) a person who commits an offense against the United States; and (ii) a person who aids, abets, counsels, commands, induces or procures the commission of an offense against the United States. Title 18 USC 2(b) (frequently referred to as "causing") provides that a person is also punishable as a principal if that person willfully causes an act to be done which if directly performed by him or another would be an offense against the United States.

Note: Aiding and abetting is not an independent crime. Some underlying criminal offense must be proven in order for liability to attach under 18 USC 2.

- (2) So long as the government can show that an underlying offense was committed by a principal and that the principal was aided and abetted by the defendant, the defendant may be convicted under this statute even if the principal has not been indicted, convicted or even identified. Moreover, the fact that the principal may have been acquitted of the underlying offense does not bar prosecution of the aider and abettor for the same offense.
- (3) The elements of the offense under 18 USC 2 are:
 - a. The defendant associated with the criminal venture
 - b. The defendant knowingly participated in the venture
 - c. The defendant sought by his or her actions to make the venture succeed
- (4) Association with the criminal venture has been interpreted to mean the defendant shared the criminal intent of the principal. In prosecutions under 18 USC 2(a), the government must show that:

- a. The principal had the requisite criminal intent to commit the underlying offense; and
 - b. The aider and abettor had the same requisite intent. Under 18 USC 2(b), the government need only show that the one causing the commission of the prohibited act had the requisite criminal intent to commit the underlying offense. The intent of the principal is irrelevant.
- (5) In order to aid and abet, a person must do more than merely be present at the scene of a crime and have knowledge of its commission. The element of participation requires the government to show some active participation or encouragement, or some affirmative act designed to further the crime.
- (6) A corporation may be convicted for the criminal acts of its agents, under the theory of respondent superior, but criminal liability may be imposed on the corporation only where its agents are acting within the scope of their employment. However, the officers themselves may also be criminally liable for these same acts.

9.1.3.4.2
(05-15-2008)
**18 USC 3 - Accessory
After the Fact**

- (1) Under 18 USC 3, a person who, knowing that a crime has been committed, assists the offender in order to hinder or prevent his apprehension, trial or punishment is an accessory after the fact.

Note: This statute may be invoked by CI only when it relates to some other tax, money laundering or currency violation over which CI has jurisdiction.

9.1.3.4.3
(05-15-2008)
**18 USC 4 - Misprision of
Felony**

- (1) Under 18 USC 4, a person who, with knowledge of the actual commission of a felony, conceals this knowledge from a person in civil or military authority is guilty of misprision of felony.

Note: This statute may be invoked by CI only when it relates to some other tax, money laundering or currency violation over which CI has jurisdiction.

9.1.3.4.4
(05-15-2008)
**18 USC 111 - Assaulting,
Resisting, or Impeding
Certain Officers or
Employees**

- (1) Title 18 USC 111 prohibits forcibly assaulting, resisting or impeding a current or former Federal officer or employee while engaged in or on account of the performance of official duties.
- (2) This statute is broader than 26 USC 7212, which addresses attempts to interfere with administration of Internal Revenue laws and is set forth in the previous section.
- (3) Although relevant to the work of CI, 18 USC 111 is primarily enforced by the Treasury Inspector General for Tax Administration (TIGTA) (see IRM 9.5.11, Other Investigations).

9.1.3.4.5
(05-15-2008)
**18 USC 115 -
Influencing, Impeding, or
Retaliating Against a
Federal Official by
Threatening or Injuring a
Family Member**

- (1) Title 18 USC 115 prohibits the assault, kidnap or murder (or the attempted or threatened assault, kidnap or murder) of a family member of a Federal official with intent to impede, intimidate, interfere with or retaliate against the official's performance of his or her duties.

9.1.3.4.6
(05-15-2008)
**18 USC 286 - Conspiracy
to Defraud the
Government with
Respect to Claims**

- (1) Title 18 USC 286 makes it a crime to enter into an agreement, combination or conspiracy to defraud the United States or any Federal agency by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim.
- (2) In a prosecution under 18 USC 286, the government must prove that the defendants agreed to engage in a scheme to defraud the government and knew that the objective of the scheme was illegal. The government must also prove that the conspirators agreed to defraud the government by obtaining the payment of false claims against the government. The government need not establish an overt act undertaken in furtherance of the conspiracy in order to prove a violation of 18 USC 286 because, unlike 18 USC 371 (discussed below), a 18 USC 286 conspiracy does not require an overt act. However, as a practical matter, the elements of proof in 18 USC 286 investigations generally do not differ from proof in 18 USC 371 tax investigations, because in most false claims conspiracy investigations the existence of the agreement will be proven by acts that were undertaken in furthering the conspiracy or in consummating the attempt to obtain payment of the claim.

9.1.3.4.7
(05-15-2008)
**18 USC 287- False,
Fictitious or Fraudulent
Claims**

- (1) Title 18 USC 287 prohibits making or presenting to a Federal employee, officer or agency any claim against the United States or any Federal agency with the knowledge that such claim is false, fictitious or fraudulent.

9.1.3.4.7.1
(01-30-2023)
**18 USC 287- Elements of
the Offense**

- (1) The elements of the offense under 18 USC 287 are:
 - a. The defendant presented a claim against the Federal government
 - b. The claim was false, fictitious, or fraudulent
 - c. The defendant knew that the claim was false, fictitious, or fraudulent
- (2) Courts have defined both the terms “false” and “fictitious” within the meaning of 18 USC 287 as “untrue when made, and then known to be untrue by the person making it or causing it to be made.” The term “fraudulent” in this context has been defined to mean “known to be untrue, and made or caused to be made with the intent to deceive[.]”
- (3) Title 18 USC 287 does not require proof that the claim was honored or that the defendant successfully defrauded the government.
- (4) Whether the claim is false, fictitious or fraudulent must be determined based on the circumstances surrounding the presentation of the claim. It is not essential that the document making the claim contain fraudulent or fictitious information. For example, an income tax return that is correct on its face would constitute a false claim if the taxpayer filing the return knew that the refund shown to be due had already been paid upon the filing of a prior return. Similarly, the filing of a facially correct return claiming a refund of taxes that were withheld on behalf of a phantom employee (i.e., an individual whose name was entered on payroll but who did not perform work or receive wages) constitutes the presentation of a false claim under this statute.
- (5) Application of 18 USC 287 is particularly appropriate in instances where a false claim for refund has been filed. It is only necessary to prove the defendant filed the claim for refund knowing that he/she was not entitled to receive it.

9.1.3.4.8

(05-15-2008)

18 USC 371- Conspiracy to Commit Offense or to Defraud the United States

- (1) Title 18 USC 371, the general Federal conspiracy statute, defines the crime of conspiracy as follows: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be [guilty of a felony].... If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."
- (2) The criminal statutes in Title 26 of the USC do not include the crime of conspiracy. Therefore, tax-related conspiracies are generally prosecuted under 18 USC 371.

9.1.3.4.8.1

(01-30-2023)

18 USC 371 - Conspiracy in General

- (1) Conspiracy to commit an offense is a separate crime from the substantive offense that is the object of the conspiracy, and a defendant may be convicted of both the completed crime and the conspiracy. Similarly, an acquittal on a criminal charge does not preclude prosecution for conspiracy to commit the same offense.
- (2) The term "defraud," as used in 18 USC 371, is very broad and encompasses a vast array of conduct, including acts that do not constitute a crime under a separate Federal statute. The Supreme Court has held that "conspiracy to defraud the United States" means:
 - a. To cheat the government out of money or property; or
 - b. To interfere with or obstruct one of its lawful government functions by deceit, craft, trickery or other dishonest means. To prove a conspiracy to defraud, the government does not have to establish a pecuniary loss to the United States or show that the government was actually harmed. Further, the government is not required to show that the fraud was a crime on its own.
- (3) Although there can be a conspiracy to violate almost any statute or to defraud any government agency, two types of conspiracy are of special concern to the IRS:
 - a. Klein conspiracies (i.e., conspiracies to defraud the IRS); and
 - b. conspiracies to commit tax offenses
- (4) Klein conspiracies are those that relate to the second clause of 18 USC 371, known as the "defraud clause". Tax-related conspiracies are those that relate to the first clause of 18 USC 371, known as the "offense clause". The DOJ, Tax Division Criminal Tax Manual contains a detailed discussion of these two types of conspiracies, which should be consulted for additional information.

9.1.3.4.8.2

(05-15-2008)

18 USC 371 - Klein Conspiracy

- (1) A Klein conspiracy, which is named for the leading case of *United States v. Klein*, is a conspiracy to defraud the government by impeding and impairing the lawful functions of the IRS in computing, assessing and collecting Federal income taxes.
- (2) Thus, if evidence is developed in an investigation that indicates an agreement to use deceit, craft, trickery or dishonest means to interfere with the lawful government functions of the IRS, then there is a potential Klein conspiracy.

- (3) The government must be able to show that the intent of each member of an alleged Klein conspiracy was to impede the functions of the IRS. However, the government does not have to prove that tax evasion was the motive for the conspiracy to defraud.

9.1.3.4.8.3
(05-15-2008)
**18 USC 371 - Conspiracy
to Commit a Tax Offense**

- (1) Unlike a Klein conspiracy charge, a charge of conspiracy under the offense clause of 18 USC 371 requires reference in the indictment to another criminal statute that defines the object of the conspiracy.

9.1.3.4.8.4
(01-30-2023)
**18 USC 371 - Elements
of the Offense**

- (1) The elements of the offense under 18 USC 371 are:
 - a. The existence of an agreement by two or more persons to commit an offense against the United States or to defraud the United States;
 - b. The defendant's knowing and voluntary participation in the conspiracy; and
 - c. The commission of an overt act in furtherance of the conspiracy

9.1.3.4.8.4.1
(05-15-2008)
**18 USC 371 - Knowing
and Voluntary
Participation**

- (1) In order to establish a defendant's membership in a conspiracy, the government must prove that the defendant knew of the conspiracy and intended to join it and to accomplish the object of the conspiracy.
- (2) A defendant may become a member of a conspiracy without knowing all the details of the unlawful scheme and without knowing all the members. Similarly, a defendant may become a member of a conspiracy even if that person agrees to play a minor role in the conspiracy, so long as he/she understands the essential nature of the scheme and intentionally joins it.
- (3) A conspirator is responsible for offenses committed by another member of the conspiracy if the conspirator was a member of the conspiracy when the offense was committed and if the offense was committed in furtherance of, or as a foreseeable consequence of, the conspiracy. The government is not required to prove that each defendant specifically agreed to commit the offense or knew that the offense would be committed. Moreover, one who joins an ongoing conspiracy is deemed to have adopted the prior acts and declarations of conspirators made after the formation of and in furtherance of the conspiracy.
- (4) Mere knowledge that something illegal is going on is insufficient to show membership in a conspiracy. Thus, if a corporate officer knew that several other officers were meeting at a particular place to fraudulently rewrite a set of business records in an attempt to mislead an examining IRS agent, but the officer did not participate in any way to further the plan, he/she would not be considered a co-conspirator.
- (5) A defendant's liability for substantive offenses committed by co-conspirators terminates when the defendant's membership in the conspiracy ends. A conspirator may only withdraw from a conspiracy by an affirmative action to defeat the object of the conspiracy.
- (6) A showing of withdrawal before the limitations period or before the commission of the first overt act is a complete defense to a conspiracy charge.
- (7) When only two persons are charged with conspiracy and there is no evidence implicating anyone else, acquittal or reversal as to one results in the acquittal

or reversal as to the other. 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 conviction may stand despite the fact that the other named defendant is acquitted. The rule that acquittal of all alleged conspirators except one results in acquittal of all applies only to acquittals on the merits. Thus, if the charge against one of two conspirators is dismissed as the result of a nolle prosequi, it would not affect the investigation against the other since a nolle prosequi does not amount to a dismissal on the merits.

- (8) 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.
- (9) 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.

9.1.3.4.8.4.2
(05-15-2008)

18 USC 371 - Agreement

- (1) Without an agreement, there can be no conspiracy.
- (2) The agreement need not be expressly stated, be in writing, or cover all the details of how it is to be carried out. The existence of an agreement may be proved by inference from the actions and statements of the conspirators or from the surrounding circumstances of the scheme.
- (3) It is not necessary that each conspirator know or see the others, but it is necessary to prove that each person charged in the conspiracy knew of the agreement and voluntarily joined the conspiracy intending to achieve the object of the agreement.
- (4) A single conspiracy may have multiple objectives and involve a number of sub-agreements to commit each of the specified objectives. Multiple-object conspiracy cases frequently raise the issue of whether there is a single conspiracy or multiple conspiracies. In determining whether a single conspiracy or multiple conspiracies exist, the general test is whether there was one overall agreement to perform various functions to achieve the objectives of the conspiracy.
- (5) Because the government must prove that at least two culpable parties reached an agreement, proof of an agreement solely between a defendant and a government agent or informant (who is merely pretending to agree) will not support a conspiracy conviction.
- (6) A conspiracy can exist between spouses. Also, a corporation that is not wholly-owned can conspire with its own officers, employees or stockholders.

9.1.3.4.8.4.3
(05-15-2008)

18 USC 371 - Overt Act

- (1) An overt act is any act done by a member of the conspiracy for the purpose of accomplishing the object of the conspiracy. Because the purpose of the overt act requirement is to show that the conspiracy is underway, the overt act itself need not be criminal. Preparing, signing, and filing a false return are common overt acts in a conspiracy to attempt to defeat and evade the payment of tax by filing a false and fraudulent return.

- (2) The conspiracy offense is not complete until an overt act is performed by at least one of the conspirators to achieve the object of the conspiracy. Therefore, a showing of withdrawal from the conspiracy before the commission of the first overt act is a complete defense to a conspiracy charge.
- (3) After the object of the conspiracy has been achieved, any subsequent acts of concealment are not overt acts in furtherance of the conspiracy.

9.1.3.4.8.4.4
(05-15-2008)
18 USC 371 - Statute of Limitations

- (1) The statute of limitations for a conspiracy to evade taxes under the offense clause of 18 USC 371 and for a Klein conspiracy under the defraud clause of 18 USC 371 is six years. See 26 USC 6531.
- (2) The statute of limitations in a conspiracy begins to run from the last overt act proved.

9.1.3.4.8.4.5
(05-15-2008)
18 USC 371 - Duration of the Conspiracy

- (1) Once established, a conspiracy is presumed to continue until shown to terminate. A conspiracy is generally deemed to end when the core conspirators are arrested or when the object of the conspiracy has been accomplished. Determining the end of the conspiracy is particularly important in settling problems relating to the admissibility of evidence, prosecution of later joining conspirators, and the running of the statute of limitations. In determining the termination date, it is necessary to consider carefully the terms of the agreement.
- (2) If the conspiracy involves an attempt to evade and defeat the payment of income tax by filing a false and fraudulent income tax return, the conspiracy is ordinarily terminated at the time the return is filed. However, a conspiracy to evade taxes by making false statements to conceal unreported income was held to continue through the making of such statements.

9.1.3.4.9
(01-30-2023)
18 USC510 - Forging endorsements on Treasury checks, bonds, or securities of the United States.

- (1) Whoever, with intent to defraud-
 - a. Falsely makes or forges any endorsement or signature on a Treasury check, bond, or security of the United States: or
 - b. Passes, utters, or publishes, or attempts to pass, utter, or publish, any Treasury check, bond, or security of the United States bearing a falsely made or forged endorsement or signature:

Shall be fined under this title or imprisoned not more than ten years, or both.

- (2) Subsections (a) and (b) are limited in their use to violations with the intent to commit an identity theft tax crime.

9.1.3.4.10
(01-30-2023)
18 USC 1001 - Statements or Entries Generally

- (1) Title 18 USC 1001 makes it a crime to knowingly or willfully:
 - a. Falsify or conceal a material fact
 - b. Make a materially false, fictitious or fraudulent statement or representation
 - c. Make or use any false document knowing it to contain a materially false, fictitious or fraudulent statement or entry in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Federal government

Note: This statute may be invoked by CI only when it relates to some other tax, money laundering, or currency violation over which CI has jurisdiction.

- (2) The statute broadly covers false statements made directly or indirectly to the Federal government. Pecuniary loss to the government is not an element of the offense.
- (3) The statute is normally invoked in connection with false documents or statements submitted to an Internal Revenue agent during the course of an audit or investigation. The statute is not normally invoked in the case of a false statement on a return because, assuming the return is signed under penalties of perjury, 26 USC 7206(1) is considered a more appropriate charge.
- (4) Persons summoned to produce records in their possession, who falsely state that the records have been stolen and conspire to conceal them, may be prosecuted under both this statute and 18 USC 1503 (Obstruction of Justice).

9.1.3.4.10.1
(05-15-2008)
**18 USC 1001 - Elements
of the Offense**

- (1) The elements of the offense under 18 USC 1001 are:
 - a. The defendant made a false statement or representation, or made or used a false document.
 - b. In a matter within the jurisdiction of the executive, legislative or judicial branch of the Government of the United States.
 - c. The false statement, representation or document related to a material matter.
 - d. The defendant acted willfully (see subsection 9.1.3.3.2.2.3) and with knowledge of the falsity.

9.1.3.4.10.1.1
(05-15-2008)
**18 USC 1001 -
Jurisdiction**

- (1) Courts have given the term “jurisdiction,” as used in 18 USC 1001, an expansive reading. The jurisdiction of the executive, legislative or judicial branch has been interpreted to extend beyond the power to make final or binding determinations and to include matters within an agency’s investigative authority.
- (2) Because the executive branch is explicitly listed in the current version of the statute, it is clear that the statute applies to the IRS.

9.1.3.4.10.1.2
(05-15-2008)
**18 USC 1001 - False
Statements and
Materiality**

- (1) Title 18 USC 1001 prohibits false statements generally, not just statements or documents required by law or regulation. For example, an individual could commit a violation under this section by voluntarily furnishing a false and fraudulent net worth statement during an official investigation of his/her income tax liability.
- (2) The term “statement” includes both oral and written statements, and there is no requirement that the statement be under oath.
- (3) A statement may be false for purposes of this statute if it is technically true but is knowingly used for a false purpose. In contrast to perjury statutes, falsity may be proven under this statute by the uncorroborated testimony of a single witness.
- (4) The present wording of the statute clearly makes materiality an element of all aspects of this offense. The commonly used test for determining whether a matter is material is whether the falsity or concealment had a natural tendency to influence, or was capable of influencing, the agency or department.

9.1.3.4.10.1.3

(05-15-2008)

18 USC 1001 -**Knowledge and Willfulness**

- (1) As used in 18 USC 1001, the term “willful” simply means the defendant committed the offense deliberately and with knowledge.

9.1.3.4.11

(01-30-2023)

18 USC 1028A -**Aggravated Identity Theft**

- (1) Title 18 USC 1028A prohibits the knowing possession, transfer, and use of, without lawful authority, a means of identification of another person during or with relation to violations of a particular list of felonies. See also IRM 9.5.5, Money Laundering and Currency Crimes for more details.
- (2) For purpose of IRS, Criminal Investigation, the relevant felonies are:
- Section 641 (relating to theft of public money, property, or rewards;
 - Any provision contained in Title 18 Chapter 47 of the USC (relating to fraud and false statements), other than section 1028A or section 1028(a)(7), for example section 1029, relating to access device fraud;
 - Any provision contained in Title 18 USC Chapter 63 (relating to mail, bank, or wire fraud);
- (3) A conviction for Aggravated Identity Theft shall have a sentence of two years of incarceration in addition to the punishment provided for the underlying felony. The sentence will also run consecutive to any sentence imposed for other violations, unless the sentencing court decided to run the sentences concurrently using its discretion in accordance with the Sentencing Guidelines. See 18 USC 1028A(b)(4).

9.1.3.4.12

(01-30-2023)

18 USC 1029 - Fraud**Related Activity in Connection with Access Devices**

- (1) Whoever -
- Knowingly and with intent to defraud produces, uses, or traffics in one or more counterfeit access devices;
 - Knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices any one-year period, and by such conduct obtains anything of value aggregating \$1000 or more during that period;
 - Knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized devices;
 - Knowingly and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;
 - Knowingly and with intent to defraud effects transactions, with one or more access devices issued to another person or persons, to receive payment or any other thing of value during any one-year period the aggregate value of which is equal to or greater than \$1000,
- (2) The subsections (b), (c), and (e) are limited in their use to violations with the intent to commit an identity theft tax crime. See also IRM 9.5.5, Money Laundering and Currency Crimes for more details.

9.1.3.4.13

(05-15-2008)

18 USC 1341- Frauds and Swindles

- (1) Title 18 USC 1341 prohibits the use of the mail for the purpose of executing a scheme to defraud. The statute (known as the mail fraud statute) states in its entirety:
- “Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything

represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection within a presidentially declared major disaster or emergency... or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

Note: Per Tax Division Directive No. 128, dated October 29, 2004, the DOJ Tax Division may approve mail fraud charges in tax-related cases involving schemes to defraud the government or other persons if there was a large fraud loss or a substantial pattern of conduct and there is a significant benefit to bringing the charges instead of or in addition to Title 26 violations. Absent unusual circumstances, however, the Tax Division will not approve mail fraud charges in cases involving only one person’s tax liability, or when all submissions to the IRS were truthful. Mail fraud charges may be appropriate if the target filed multiple fraudulent returns seeking tax refunds using fictitious names, or using the names of real taxpayers without their knowledge. Fraud charges may also be considered if the target promoted a fraudulent tax scheme.

- (2) The elements of the offense under 18 USC 1341 are:
- a. The defendant devised or intended to devise a scheme to defraud.
 - b. The defendant used the mail for the purpose of executing, or attempting to execute, the scheme.

9.1.3.4.14
(05-15-2008)
**18 USC 1343 - Frauds by
Wire, Radio, or
Television**

- (1) Title 18 USC 1343 prohibits the transmission of any writings, pictures or sounds by means of wire, radio or television communication in interstate or foreign commerce for the purpose of executing a scheme to defraud. The statute (known as the wire fraud statute) states in its entirety: “Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency ... or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

Note: Per Tax Division Directive No. 128, dated October 29, 2004, the DOJ Tax Division may approve wire fraud charges in tax-related cases involving schemes to defraud the government or other persons if there was a large

fraud loss or a substantial pattern of conduct and there is a significant benefit to bringing the charges instead of or in addition to Title 26 violations. Absent unusual circumstances, however, the Tax Division will not approve wire fraud charges in cases involving only one person's tax liability, or when all submissions to the IRS were truthful. Wire fraud charges may be appropriate if the target filed multiple fraudulent returns seeking tax refunds using fictitious names, or using the names of real taxpayers without their knowledge. Fraud charges may also be considered if the target promoted a fraudulent tax scheme.

(2) The elements of the offense under 18 USC 1343 are:

- a. The defendant devised or intended to devise a scheme to defraud.
- b. The defendant used interstate wire communication for the purpose of executing, or attempting to execute, the scheme.

9.1.3.4.15
(01-30-2023)

18 USC 1344 - Bank Fraud

(1) Title 18 USC 1344 prohibits the knowing execution (or attempted execution) of a scheme to defraud a financial institution or to obtain any of the money or property owned by or under the control of a financial institution by means of false pretenses. The statute (known as the bank fraud statute) states in its entirety:

Whoever knowingly executes, or attempts to execute, a scheme or artifice:

- a. To defraud a financial institution
- b. To obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both

Note: Per Tax Division Directive No. 128, dated October 29, 2004, the DOJ Tax Division may approve bank fraud charges in tax-related cases involving schemes to defraud the government or other persons if there was a large fraud loss or a substantial pattern of conduct and there is a significant benefit to bringing the charges instead of or in addition to Title 26 violations. Bank fraud charges may be appropriate in the case of a fraud scheme that victimized a financial institution. For example, bank fraud charges would be appropriate where a defendant filed false refund claims and induced a financial institution to approve refund anticipation loans on the basis of the fraudulent information submitted to the IRS.

9.1.3.4.16
(05-15-2008)

18 USC 1621 - Perjury Generally

(1) Title 18 USC 1621, the general perjury statute, prohibits willfully giving testimony or signing a written statement under oath that one does not believe to be true.

Note: This statute may be invoked by CI only when it relates to some other tax, money laundering, or currency violation over which CI has jurisdiction.

9.1.3.4.16.1
(01-30-2023)

18 USC 1621 - Elements of the Offense

(1) The elements of the offense under 18 USC 1621 are:

- a. The defendant made a statement under an oath before a competent tribunal, officer or person, in any case in which a Federal law authorizes an oath to be administered
- b. The statement was false
- c. The defendant acted willfully
- d. The false statement was material to the proceedings

9.1.3.4.16.1.1
(01-30-2023)
18 USC 1621 - Oath

- (1) Proof of the competency and authority of the oath-giver may be required for prosecutions under 18 USC 1621. The source of a special agent's authority to administer an oath is derived from 26 USC 7602 and Delegation Order 25-104 (see IRM 1.2.2.14.1).
- (2) No specific form of oath is required. However, the wording must clearly indicate that the declarant is under oath and is required to speak the truth. When a special agent administers an oath, he/she should follow the language in 18 USC 1621 as a guide and advise the witness to testify truthfully.

9.1.3.4.16.1.2
(05-15-2008)
18 USC 1621 - False Statement

- (1) By its literal terms, 18 USC 1621 requires only that the person make a statement he/she does not believe to be true. The statute does not expressly require that the statement at issue be shown to be false. However, court decisions construing the statute make it unlikely that a prosecution for perjury would succeed if the defendant made a true statement that he/she believed to be false.
- (2) Courts usually require that the falsity of the statement be proven by the testimony of two witnesses or the testimony of one witness accompanied by some other form of corroboration. This is known as the "two witness" rule.

9.1.3.4.16.1.3
(05-15-2008)
18 USC 1621 - Materiality

- (1) The false statement at issue must be material to the proceedings. A false statement is material if it is capable of influencing (regardless of whether it actually influenced) the decision-making body to which it was addressed.
- (2) In order to establish the materiality of false testimony, the special agent should gather evidence concerning the purpose of the information sought from the witness and the relationship of this information to the other evidence that was provided. 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.
- (3) A special agent's principal consideration in determining whether a false statement given in the course of an official investigation was material should be whether the statement could have an effect on the investigation.

9.1.3.4.16.1.4
(05-15-2008)
18 USC 1621 - Willfulness

- (1) In order to constitute perjury, the false statement must have been made willfully (see subsection 9.1.3.3.2.2.3). Making a false statement as a result of confusion, mistake or faulty memory does not constitute perjury.

9.1.3.4.17
(05-15-2008)
18 USC 1622 - Subornation of Perjury

- (1) Title 18 USC 1622 makes it a crime to procure another person to commit perjury.
- Note:** This statute may be invoked by CI only when it relates to some other tax, money laundering, or currency violation over which CI has jurisdiction.

9.1.3.4.18
(05-15-2008)
**18 USC 1623 - False
Declarations Before
Grand Jury or Court**

- (1) Title 18 USC 1623 prohibits knowingly making (or using any material containing) a false material declaration in a judicial or grand jury proceeding when one is under oath or penalty of perjury.

Note: This statute may be invoked by CI only when it relates to some other tax money laundering, or currency violation over which CI has jurisdiction.

- (2) The “two witness” rule (see discussion of 18 USC 1621, above) does not apply to prosecutions under this statute. Rather, it is sufficient for the government to prove that the defendant made two or more statements under oath that were inconsistent to the degree that one of them was necessarily false. In such prosecutions, the government does not have to prove which irreconcilably contradictory declaration was false, so long as both were material and were made within the statute of limitations.
- (3) An admission of having made a false declaration can be a defense to 18 USC 1623. See 18 USC 1623(d) for specific details. This defense is not applicable in prosecutions brought under 18 USC 1621.

9.1.3.4.19
(05-15-2008)
**18 USC 1952 - Interstate
and Foreign Travel or
Transportation in Aid of
Racketeering
Enterprises**

- (1) Title 18 USC 1952 prohibits traveling in interstate or foreign commerce or using the mail with intent to distribute the proceeds of an unlawful activity or otherwise to further an unlawful activity.

9.1.3.4.20
(01-30-2023)
**18 USC 1956 -
Laundering of Monetary
Instruments**

- (1) Title 18 USC 1956 prohibits knowingly conducting or attempting to conduct a financial transaction involving the proceeds of an unlawful activity (a) with intent to further the unlawful activity or to violate 26 USC 7201 or 7206; or (b) with knowledge that the transaction is designed to conceal the nature or ownership of the proceeds. See IRM 9.5.5, Money Laundering and Currency Crimes and Chapter 9.7, Asset Seizure and Forfeiture sections for more information.

9.1.3.4.21
(05-15-2008)
**18 USC 1957- Engaging
in Monetary
Transactions in Property
Derived from Specified
Unlawful Activity**

- (1) Title 18 USC 1957 prohibits knowingly engaging or attempting to engage in a monetary transaction in criminally derived property. See IRM 9.5.5, Money Laundering and Currency Crimes and Chapter 9.7, Asset Seizure and Forfeiture sections for more information.

9.1.3.4.22
(01-30-2023)
**18 USC 1960 -
Prohibition of
Unlicensed Money
Transmitting Businesses**

- (1) Title 18 USC 1960 prohibits knowingly conducting, controlling, managing, supervising, directing or owning all or part of an unlicensed money transmitting business. See IRM 9.5.5, Money Laundering and Currency Crimes and Chapter 9.7, Asset Seizure and Forfeiture sections for more information.

- 9.1.3.4.23
(01-30-2023)
18 USC 1962 - Prohibited Activities
- (1) Title 18 USC 1962 makes it a crime for any person who has received income derived from a pattern of racketeering activity or through collection of an unlawful debt to use such income in acquiring or operating any enterprise engaged in interstate or foreign commerce. See IRM 9.5.5, Money Laundering and Currency Crimes and Chapter 9.7, Asset Seizure and Forfeiture sections for more information.
- 9.1.3.4.24
(05-15-2008)
18 USC 2071 - Concealment, Removal or Mutilation Generally
- (1) Title 18 USC 2071 makes it a crime for any person willfully and unlawfully to conceal, remove, mutilate or destroy (or to attempt to do so) any material filed or deposited with any judicial or public officer of the United States.
- 9.1.3.4.25
(05-15-2008)
18 USC 2231 - Assault or Resistance
- (1) Title 18 USC 2231 prohibits forcibly assaulting, resisting or impeding any person authorized to serve or execute search warrants or to make searches and seizures.
- (2) Title 18 USC 1501, which prohibits assaults upon or resistance to persons serving or executing legal process, is similar to 18 USC 2231 but carries a lighter penalty, includes non-forcible acts of obstruction and requires knowledge that the person impeded was an authorized person engaged in serving or executing process. Title 18 USC 2231 is restricted to forcible interference with searches and seizures, and there is no knowledge requirement.
- 9.1.3.4.26
(05-15-2008)
18 USC 2232 - Destruction or Removal of Property to Prevent Seizure
- (1) Title 18 USC 2232 prohibits the knowing destruction, damage or disposal (or attempted destruction, damage or disposal) of property for the purpose of preventing or impairing the government's authority to seize such property.
- 9.1.3.4.27
(05-15-2008)
18 USC 2233 - Rescue of Seized Property
- (1) Title 18 USC 2233 prohibits the forcible rescue or dispossession (or attempt to rescue or dispossess) any property seized under the Federal tax laws or by any person authorized to make searches and seizures.
- 9.1.3.4.27.1
(01-30-2023)
18 USC 2233 - Elements of the Offense
- (1) The elements of the offense under 18 USC 2233 are the same as those for 26 USC 7212(b), which is an analogous statute:
- The property was legally seized
 - The defendant knew the property had been seized
 - The defendant forcibly and willfully retook the property
- 9.1.3.4.28
(01-30-2023)
18 USC 2339A - Providing Material Support to Terrorists
- (1) Title 18 USC 2339A prohibits providing material support or resources knowing or intending that they be used in preparation for or in carrying out a violation of a criminal statute related to terrorism.
- (2) The statute provides in pertinent part:
- Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of Section 32, 37, 81, 175, 229, 351,

831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, or 2340A of this title, section 236 of the Atomic Energy Act of 1954 (42 USC 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. [...]

b) Definitions. – As used in this section –

(1) The term "material support or resources" means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel [...], and transportation, except medicine or religious materials[.]

9.1.3.4.28.1
(05-15-2008)
**18 USC 2339B -
Providing Material
Support or Resources to
Designated Foreign
Terrorist Organizations**

- (1) Title 18 USC 2339B prohibits knowingly providing material support or resources to a foreign terrorist organization, or attempting or conspiring to do so.

9.1.3.4.28.2
(05-15-2008)
**18 USC 2339C -
Prohibitions Against the
Financing of Terrorism**

- (1) Title 18 USC 2339C prohibits unlawfully and willfully providing or collecting funds with the intention or knowledge that such funds will be used to carry out a terrorist act, as defined in the statute.

9.1.3.5
(05-15-2008)
TITLE 31

- (1) The regulations issued by the Secretary of the Treasury in 31 CFR Part 103 provide detailed requirements for financial recordkeeping and reporting of currency and foreign transactions. These regulations also give the IRS authority to enforce certain requirements and to investigate certain violations of Part 103. Title 31 CFR 103.56(b)(8) gives the IRS authority to examine for Title 31 compliance all financial institutions that are not currently examined by Federal bank supervisory agencies, excluding brokers or dealers in securities. Title 31 CFR 103.56(c)(2) gives the IRS authority to investigate all criminal violations of Title 31 (except with respect to reports of the transportation of currency or monetary instruments under 31 USC 5316).
- (2) For more information concerning Title 31 and money laundering, see IRM 9.5.5, Money Laundering and Currency Crimes.
- (3) The Title 31 criminal statutes within the jurisdiction of CI are discussed below.

9.1.3.5.1
(05-15-2008)
**31 USC 5322(a) and (b) -
Criminal Penalties**

- (1) Title 31 USC 5322(a) and (b) provide criminal penalties for willful violations of the reporting requirements, other than the requirement of reporting foreign currency transactions (31 USC 5315) and the prohibition against structuring transactions to evade reporting requirements (31 USC 5324).

- 9.1.3.5.2
(05-15-2008)
31 USC 5324 - Structuring Transactions to Evade Reporting Requirement Prohibited
- (1) In general, Title 31 USC 5324 prohibits structuring any transaction with one or more domestic financial institutions for the purpose of evading reporting requirements.
 - (2) Title 31 USC 5324(a) prohibits engaging in any of the following acts for the purpose of evading reporting requirements:
 - a. Causing or attempting to cause a domestic financial institution to fail to file a Currency Transaction Report (CTR), or fail to make a log entry for purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks over \$3,000.
 - b. Causing or attempting to cause a domestic financial institution to file a CTR, or make a log entry for purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks over \$3,000, that contains a material omission or misstatement of fact.
 - c. Structuring or assisting in structuring, or attempting to structure or assist in structuring, any transaction with one or more domestic financial institutions.
 - (3) The Money Laundering Suppression Act of 1994, Pub. L. 103-325 (September 23, 1994), amended 31 USC 5324 by adding a criminal penalty provision that does not include a "willfulness" requirement.
- 9.1.3.5.3
(05-15-2008)
31 USC 5331- Reports Relating to Coins and Currency Received in Nonfinancial Trade or Business
- (1) Title 31 USC 5331 requires that the receipt of more than \$10,000 in coins or currency in one transaction (or two or more related transactions) by a person engaged in a non-financial trade or business be reported to the Financial Crimes Enforcement Network.
 - (2) Title 26 USC 6050I (discussed above) is a parallel statute requiring trades and businesses to file Form 8300 when in receipt of more than \$10,000 in cash from one transaction or two or more related transactions. The statute that forms the basis of the charge determines whether the investigation is covered by 26 USC 6103 disclosure restrictions (see subsection 9.1.3.3.1).
- 9.1.3.5.4
(05-15-2008)
31 USC 5332 - Bulk Cash Smuggling Into or Out of the United States
- (1) Title 31 USC 5332 prohibits smuggling more than \$10,000 in currency or other monetary instruments into or out of the United States.
- 9.1.3.6
(05-15-2008)
Statutes of Limitations on Criminal Prosecution
- (1) The statutes that provide the limitations periods for criminal prosecutions are:
 - a. Title 26 USC 6531
 - b. Title 18 USC 3282
 - (2) For information concerning the statute of limitations for civil forfeiture, see IRM 9.7.2, Civil Seizure and Forfeiture.
- 9.1.3.6.1
(05-15-2008)
26 USC 6531 - Periods of Limitation on Criminal Prosecutions
- (1) Title 26 USC 6531 provides a three-year statute of limitations for most criminal offenses arising under the internal revenue laws.
 - (2) However, a six-year limitations period applies to the following offenses, which are described or specifically enumerated in 26 USC 6531:
 - a. Title 26 USC 7201 (evasion of tax or payment)

- b. Title 26 USC 7202 (failure to collect, account for or pay over tax)
- c. Part of 26 USC 7203 (failure to pay tax; failure to file certain returns)
- d. Title 26 USC 7206(1) (filing false return)
- e. Title 26 USC 7206(2) (aiding or assisting in preparation of false return)
- f. Title 26 USC 7207 (delivering or disclosing false document)
- g. Title 26 USC 7212(a) (attempting to interfere with the administration of the internal revenue laws)
- h. Title 18 USC 371 (conspiracy to commit tax evasion; conspiracy to defraud the internal revenue service)

9.1.3.6.2
(05-15-2008)

**18 USC 3282 - Offenses
Not Capital**

- (1) Title 18 USC 3282 provides a five-year statute of limitations for criminal offenses not covered by 26 USC 6531, other than capital offenses.

9.1.3.6.3
(02-24-2010)

**Running of the Statute
of Limitations**

- (1) Generally, the statute of limitations begins to run on the day the offense is completed (see DOJ, Tax Division Criminal Tax Manual section 7.02[1][a]). For example, if a false income tax return were filed on April 20, 2021, the statute of limitations would begin to run on April 20, 2021, and, provided there were no circumstances to toll the statute (see below), it would expire on April 20, 2027. Once the statute of limitations expired, prosecution would be barred.
- (2) (2) The specific elements of the offense at issue must be examined to determine when the offense is completed. As illustrated below, different events “complete” different offenses:
 - a. Filing a false return: In general, the offense is complete on the day the return is filed. However, if the return is filed early, the offense is complete on the statutory due date, which is provided by 26 USC 6072 (but see below). If the return is filed late, the offense is complete on the day the return is received by the IRS Campus. If an extension of time to file has been granted, the offense is complete when the return is filed, regardless of whether it is filed before or after the extension date.
 - b. Failure to file a tax return: The offense is complete on the date the return is due. If a defendant has obtained an extension of time to file a tax return, there is no duty to file until the extension date. The extension date applies only if the extension is valid (see 26 USC 6081 and the regulations thereunder for the required procedures). An extension of time to file does not extend the time for payment of tax due on the return. Therefore, a request for an extension is only valid when accompanied by payment of the taxpayer’s estimated tax liability.
 - c. Tax evasion: The general rule is that the offense is complete on the date the last affirmative act took place or the statutory due date of the return, whichever is later. For example, the affirmative act of evasion may be a false statement made to collection agents after the return is filed. In such a case, the offense would be complete at the time the false statement was made.
 - d. Conspiracy: The offense is complete on the date of the last overt act proved. This last overt act may be performed by any member of the conspiracy and must be in furtherance of the object of the conspiracy.
- (3) As indicated above, if a false return is filed early, the offense is not complete until the statutory due date. See 26 USC 6513, incorporated by reference into 26 USC 6531. However, in such cases, the conservative approach would be to

measure the statute of limitations from the date on which the return was actually filed. If this approach would bar prosecution, prosecutors may argue that the statutory filing date applies.

- (4) If the statutory due date falls on a Saturday, Sunday, or legal holiday, the filing of the return on the next succeeding business day is considered timely (see 26 USC 7503). However, the statutory due date remains unchanged. Therefore, the calculation of the statute of limitations in investigations involving early filed returns or failures to file should use the statutory due date regardless of the day of the week on which that date falls. See Rev. Rul. 81-269, 1981-46 I.R.B.13.

9.1.3.6.4
(05-15-2008)
Tolling of the Statute of Limitations

- (1) To “toll” the statute of limitations means 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 of the statute of limitations.
- (2) The provisions related to the tolling of the statute of limitations are found in 26 USC 6531 and 18 USC 3290.

9.1.3.6.4.1
(01-30-2023)
26 USC 6531 – Tolling Provision

- (1) Under 26 USC 6531, the statute of limitations is tolled for the time during which:
 - a. The offender is outside the United States (for any reason)
 - b. The offender is a fugitive from justice within the meaning of 18 USC 3290
- (2) In addition, 26 USC 6531 provides that where a complaint is instituted before a commissioner of the United States within the limitations period, the period is extended until nine months after the date of making the complaint. In order for this extension to apply, the complaint must allege sufficient facts to support a probable cause finding that the defendant has committed a tax crime.

9.1.3.6.4.2
(05-15-2008)
18 USC 3290 – Fugitives from Justice

- (1) Title 18 USC 3290 states in its entirety: “No statute of limitations shall extend to any person fleeing from justice.”
- (2) There is disagreement among the courts as to the intent required under this statute. Several courts have held that mere absence from the prosecution jurisdiction is sufficient to toll the statute of limitations. Others have held that the intent to avoid arrest or prosecution must be proved.

9.1.3.6.4.3
(05-15-2008)
18 USC 1073 – Flight to Avoid Prosecution or Giving Testimony

- (1) Title 18 USC 1073 provides criminal sanctions for moving or traveling in interstate or foreign commerce with intent either (a) to avoid prosecution, custody or confinement after conviction; or (b) to avoid giving testimony in any criminal proceedings; or (3) to avoid service of lawful process.

9.1.3.7
(05-15-2008)
18 USC 3571 – Sentence of Fine

- (1) The criminal statutes described above generally provide a maximum fine that may be imposed as punishment for the offense. However, 18 USC 3571 raises the maximum permissible fines for all Federal criminal offenses, unless the law setting forth the offense specifies no fine or explicitly exempts the offense from the application of 18 USC 3571.

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Exhibit 9.1.3-1 (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title 15	Violations
Bribery of a Foreign official under the Foreign Corrupt Practices Act (FCPA)	15 USC 78dd-1
Accounting Violations under the Foreign Corrupt Practices Act (FCPA)	15 USC 78m
 Title 18	 Violations
Aiding, abetting, counseling, commanding, inducing, or procuring the commission of an offense relating to a violation listed in this section	18 USC 2
Receiving, relieving, comforting, or assisting an offender to hinder or prevent his apprehension, trial, or punishment relating to a violation listed in this section	18 USC 3
Misprision of felony (failure to disclose and concealment of information about commission of a felony) relating to a violation listed in this section	18 USC 4
Assaulting, resisting, or impeding Federal officers or employees	18 USC 111
Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member	18 USC 115
Concealment of assets, false oaths and claims; and bribery	18 USC 152
Bankruptcy fraud	18 USC 157
Bribery of public officials and witnesses	18 USC 201
Taking from official files, papers relating to claims or using papers so taken	18 USC 285
Conspiring to defraud the United States with respect to claims	18 USC 286
False, fictitious, or fraudulent claims upon the United States	18 USC 287
Conspiracy to commit an offense against or to defraud the United States relating to a violation listed in this section	18 USC 371
Conspiracy to impede or injure an officer relating to a violation listed in this section	18 USC 372
Power of courts relating to a violation listed in this section	18 USC 401
Contempts constituting crimes relating to a violation listed in this section	18 USC 402
Counterfeiting, forging, or falsifying powers of attorney, orders, receipts, or other writings to obtain money from or to defraud the United States, etc.	18 USC 495
Fictitious obligations	18 USC 514

Exhibit 9.1.3-1 (Cont. 1) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title 15	Violations
Bribery of a Foreign official under the Foreign Corrupt Practices Act (FCPA)	15 USC 78dd-1
Accounting Violations under the Foreign Corrupt Practices Act (FCPA)	15 USC 78m
 Title 18	 Violations
Embezzlement and Theft- Public money, Property or Records	18 USC 641
Impersonating an officer or employee of the United States (IRS only)	18 USC 912
Impersonator making search or arrest	18 USC 913
Forging endorsements on Treasury checks, bonds, or securities of the United States	18 USC 510(a)(1) or 510(a)(2)
Making false, fictitious, or fraudulent written or oral statements or representing a matter within the jurisdiction of a department or agency of the United States relating to a violation listed in this section	18 USC 1001
Possessing false writings or documents to enable another to obtain money from the United States relating to a violation listed in this section	18 USC 1002
Fraud and related activity in connection with identification documents	18 USC 1028
Aggravated Identity Theft	18 USC 1028A
Fraud and Related Activity in Connection with the Trafficking of Access Devices	18 USC 1029(a)(2)
Fraud and Related Activity in Connection with the Possession of Access Devices	18 USC 1029(a)(3)
Fraud and Related Activity in Connection with Conducting Transactions with Access Devices	18 USC 1029(a)(5)
Concealing person from arrest relating to a violation listed in this section	18 USC 1071
Flight to avoid prosecution or giving testimony	18 USC 1073
Protection of officers and employees of the United States	18 USC 1114
Mail Frauds and Swindles	18 USC 1341
Fraud by Wire, Radio, or Television	18 USC 1343
Bank Fraud	18 USC 1344

Exhibit 9.1.3-1 (Cont. 2) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title15	Violations
Bribery of a Foreign official under the Foreign Corrupt Practices Act (FCPA)	15 USC 78dd-1
Accounting Violations under the Foreign Corrupt Practices Act (FCPA)	15 USC 78m
 Title 18	 Violations
Obstructing or assaulting a duly authorized server of a writ or process of a US Court or a US Magistrate relating to a violation listed in this section	18 USC 1501
Influencing or injuring officer or juror generally	18 USC 1503
Obstruction of proceedings before departments, agencies, and committees	18 USC 1505
Obstruction of Court Orders	18 USC 1509
Obstruction of criminal investigations relating to a violation in this section	18 USC 1510
Tampering with a witness, victim, or an informant	18 USC 1512
Retaliating against a witness, victim, or an informant	18 USC 1513
Perjury relating to a violation	18 USC 1621
Procuring another to commit perjury (subornation of perjury) relating to a violation listed in this section	18 USC 1622
False declaration before a grand jury or court relating to a violation	18 USC 1623
Interstate or foreign travel or transportation in aid of racketeering enterprises	18 USC 1952
Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity with the intent to promote the carrying on of specified unlawful activity	18 USC 1956A1AI
With the intent to engage in conduct constituting a violation of 18 USC 7201 or 18 USC 7206	18 USC 1956A1AII
Knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control, of proceeds of specified unlawful activity	18 USC 1956A1BI
To avoid a transaction reporting requirement under state or Federal law	18 USC 1956A1BII

Exhibit 9.1.3-1 (Cont. 3) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title 15	Violations
Bribery of a Foreign official under the Foreign Corrupt Practices Act (FCPA)	15 USC 78dd-1
Accounting Violations under the Foreign Corrupt Practices Act (FCPA)	15 USC 78m
 Title 18	 Violations
Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States	18 USC 1956A2
With the intent to promote the carrying on of a specified unlawful activity	18 USC 1956A2A
Knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or part to conceal or disguise the nature, the location, the source, the ownership, or the control, of proceeds of a specified unlawful activity	18 USC 1956A2B
To conceal or disguise the nature, the location, the source, the ownership, or the control, of proceeds of a specified unlawful activity	18 USC 1956A2BI
To avoid a transaction reporting requirement under state or Federal law	18 USC 1956A2BII
Whoever conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate a specified unlawful activity, with the intent	18 USC 1956A3
To promote the carrying on of specified unlawful activity	18 USC 1956A3A
To conceal or disguise the nature, the location, the source, the ownership, or the control, of proceeds of specified unlawful activity	18 USC 1956A3B
To avoid a transaction reporting requirement under state or Federal law	18 USC 1956A3C
Conspiracy to commit violations of 18 USC 1956 or 18 USC 1957 (as of 10/1994 renumbered as 18 USC 1956H)	18 USC 1956G
Conspiracy to commit violations of 18 USC 1956 or 18 USC 1957	18 USC 1956H
Engaging in monetary transactions in property derived from a specified unlawful activity	18 USC 1957
Illegal money transmitting business	18 USC 1960

Exhibit 9.1.3-1 (Cont. 4) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title15	Violations
Bribery of a Foreign official under the Foreign Corrupt Practices Act (FCPA)	15 USC 78dd-1
Accounting Violations under the Foreign Corrupt Practices Act (FCPA)	15 USC 78m
 Title 18	 Violations
Prohibited activities of racketeer influenced and corrupt organizations	18 USC 1962
Concealing, removing, mutilating government records and reports	18 USC 2071
Assaulting, resisting, or interfering with a person making an authorized search or seizure	18 USC 2231
Destroying or removing property to prevent its seizure	18 USC 2232
Destruction or removal of property to prevent seizure	18 USC 2233
Providing material support to terrorists	18 USC 2339A
Providing material support or resources to designated foreign terrorist organization	18 USC 2339B
Prohibitions against the financing of terrorism	18 USC 2339C
Revocation of probation	18 USC 3565
Jury trial of criminal contempts	18 USC 3691

Exhibit 9.1.3-1 (Cont. 5) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title 26	Violations
Structuring transactions to evade reporting requirements for returns relating to cash received in trade or business	26 USC 6050I
Evasion of tax in any matter	26 USC 7201
Failure to collect or account for and pay over tax	26 USC 7202
Failure to file return, pay tax, keep records, or supply information	26 USC 7203
Fraudulent statement or failure to make statement to employees	26 USC 7204
Fraudulent withholding exemption certificate or failure to supply information	26 USC 7205
Making and subscribing a false return, statement, or other document under the penalties of perjury	26 USC 72061
Aiding or advising the preparation or presentation of a false return, affidavit, claim, or other document	26 USC 72062
Executing a false bond, permit or other document, or aiding or advising such an execution	26 USC 72063
Removing, depositing, or concealing property subject to tax or levy with intent to evade	26 USC 72064
Concealing property, withholding, mutilating or falsifying a record, or making a false statement in connection with a compromise or closing agreement	26 USC 72065
Fraudulent returns, statements, or other document	26 USC 7207
Counterfeiting, mutilating, and other offenses relating to tax stamps	26 USC 7208
Unauthorized use or sale of stamps	26 USC 7209
Failure to obey summons	26 USC 7210
False statement to a purchaser or lessee relating to amount of tax involved in purchase or lease	26 USC 7211
Forcible interference with administration of the Internal Revenue Laws	26 USC 7212A
Forcible rescue of seized property	26 USC 7212B
Offenses by officers and employees of the United States	26 USC 7214
Failure to comply with notice (under IRC 7512) to collect withheld income and social security taxes and collected excise taxes and to deposit such taxes in a special bank account	26 USC 7215
Failure to obtain license for collection of foreign items (dividends and interest)	26 USC 7231
Failure to register or give bond, or false statement by manufacturer or producer of gasoline or lubricating oil	26 USC 7232

Exhibit 9.1.3-1 (Cont. 6) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title 26	Violations
Representation that the retailer's excise tax is excluded from the price of an article	26 USC 7261
Violation of occupational tax laws relating to wagering, failure to pay Special Tax	26 USC 7262
Possession of taxable goods with intent to sell in fraud or avoid payment of taxes thereon	26 USC 7268
Failure to affix stamps on foreign insurance policy with intent to evade tax	26 USC 7270
Penalty for offenses relating to certain airline tickets and advertising	26 USC 7275
Unlawful to have or possess any property used in violating provisions of Internal Revenue Law	26 USC 7302
 Title 31	 Violations
Financial institution's requirement to file currency transaction report	31 USC 5313A
Record and reports on foreign financial agency accounts	31 USC 5314
Search and forfeiture of monetary instruments	31 USC 5317
Special Measures regarding international transactions of primary money laundering concern	31 USC 5318A
Failure to maintain procedures	31 USC 5318A2
Failure to file SAR's	31 USC 5318G
Notification to subject of SAR	31 USC 5318G2
Failure to establish an anti-money laundering program	31 USC 5318H
Due diligence with respect to private banking and correspondent accounts with foreign persons	31 USC 5318I
Prohibition on correspondent account with foreign shell bank	31 USC 5318J
 Criminal violation of Title 31 reporting requirements	 31 USC 5322A
Criminal violation of Title 31 reporting requirements involving other criminal activity	31 USC 5322B
Cause or attempt to cause a domestic financial institution to fail to file a required report	31 USC 5324A1
Cause or attempt to cause a domestic financial institution to file a required report that contains a material omission or misstatement of fact	31 USC 5324A2

Exhibit 9.1.3-1 (Cont. 7) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation**

Title 26	Violations
Structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions	31 USC 5324A3
Cause or attempt to cause a trade or business to fail to file report	31 USC 5324B1
Cause or attempt to cause a trade or business to file a report that contains a material omission or misstatement	31 USC 5324B2
Structure any transaction with one or more non-financial trade or businesses.	31 USC 5324B3
Fail to file or cause a person to fail to file a CMIR	31 USC 5324C1
International monetary instrument transactions - No person shall, for the purpose of evading the reporting requirements of section 5316.	31 USC 5324C2
Failure to register as a money transmitting businesses	31 USC 5330
Reports relating to Currency received in a non-financial Trade or Business	31 USC 5331
Bulk cash smuggling into or out of the United States	31 USC 5332
Title 50	Violation
Section 50 USC 1705 sets forth criminal and civil penalties for violating the IEEPA statutes.	50 USC 1705
Title 33, Virgin Islands Code Taxation & Finance - Virgin Islands	Violations
Attempt to evade or defeat tax	33 VIC §1521
Conspiracy to evade or defeat tax	33 VIC §1522
Willful failure to collect or pay over tax	33 VIC §1523
Willful failure to file return, supply information, or pay tax	33 VIC §1524
Fraud and false statements	33 VIC §1525
Fraudulent returns, statements, or other documents	33 VIC §1526
Offenses relating to stamps	33 VIC §1527
Unauthorized use or sale of stamps	33 VIC §1528
Failure to obey summons	33 VIC §1529
False statements to purchases or lessees relating to tax	33 VIC §1530
Attempts to interfere with administration of the internal revenue laws	33 VIC §1531
Unauthorized disclosure of information	33 VIC §1532
Offenses by officers and employees of the Virgin Islands	33 VIC §1533

Exhibit 9.1.3-1 (Cont. 8) (01-30-2023)**Statutes within the Jurisdiction of Criminal Investigation****Title 18 Penalty Statutes within CI's Jurisdiction**

Criminal Penalties	18 USC 1963
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Title 18 Civil Seizures within CIs Jurisdiction

Civil Forfeiture	18 USC 981
Criminal Forfeiture	18 USC 982
Civil Forfeiture of Fungible Property	18 USC 984

Title 31 Civil Statutes which if Violated can Trigger Criminal Statutes within CIs Jurisdiction

Reports on Domestic Coin Currency Transactions (CTR Requirements)	31 USC 5313
Records and Reports on Foreign Financial Agency Transactions (FBARS)	31 USC 5313

Exhibit 9.1.3-2 (01-30-2023)**Statutes Applicable When Charged in Conjunction with a Tax or Money Laundering Violation over which CI Has Jurisdiction**

Virgin Islands-Conspiracy to Commit and Offense	14 VIC 551
Bribery of a Foreign official under the Foreign Corrupt Practices Act (FCPA)	15 USC 78dd-1 ML
Accounting Violations under the Foreign Corrupt Practices Act (FCPA)	15 USC 78m ML
Concealment of Assets, False Oaths and Claims; and Bribery	18 USC 152
Bankruptcy Fraud	18 USC 157
Bribery of Public Officials and Witnesses	18 USC 201
Bribery, graft, and conflicts of interest - Compensation to Members of Congress, officers, and others in matters affecting the Government.	18 USC 203
Bribery, graft, and conflicts of interest - Acts offending a personal financial interest	18 USC 208
Bribery, graft, and conflicts of interest - Receipt of commissions or gifts for procuring loans	18 USC 215
Bribery, graft, and conflicts of interest - Penalties and injunctions	18 USC 216
Bribery, graft, and conflicts of interest - Bribery in sporting contests	18 USC 224
Taking or Using Papers Relating to Crimes	18 USC 285
Conspiracy to Impede or Injure Officer	18 USC 372
Power of Court	18 USC 401
Contempt Constituting Crimes	18 USC 402
Counterfeiting, forging, or falsifying powers of attorney, orders, receipts, or other writings to obtain money from or to defraud the United States, etc.	18 USC 495
Fictitious obligations	18 USC 514
Embezzlement and Theft- Public money, Property or Records	18 USC 641
Embezzlement and theft - Theft or bribery concerning programs receiving Federal funds	18 USC 666
Impersonating an Officer or Employee of the United States	18 USC 912
Impersonator Making Arrest or Search	18 USC 913
Possession of False Papers to Defraud the United States	18 USC 1002
Bank Entries, Reports, and Transactions	18 USC 1005
Dept of Housing and Urban Development and Federal Housing Administration Transactions	18 USC 1010

Exhibit 9.1.3-2 (Cont. 1) (01-30-2023)**Statutes Applicable When Charged in Conjunction with a Tax or Money Laundering Violation over which CI Has Jurisdiction**

Loan and Credit Applications Generally	18 USC 1014
Fraud and Related Activity in Connection with Identification Documents	18 USC 1028
Fraud and Related Activity in Connection with Access Devices	18 USC 1029
Concealing person from arrest relating to a violation listed in this section	18 USC 1071
Flight to Avoid Prosecution or Giving Testimony	18 USC 1073
Protection of Officers and Employees of the United States	18 USC 1114
Frauds and Swindles	18 USC 1341
Frauds by Wire, Radio, or Television	18 USC 1343
Bank Fraud	18 USC 1344
Attempt and Conspiracy (Frauds and Swindles)	18 USC 1349
Assault on Process Server	18 USC 1501
Influencing or Injuring Officer, or Juror Witness Generally	18 USC 1503
Obstruction of Proceedings before Departments, Agencies, and Committees	18 USC 1505
Obstruction of Court Orders	18 USC 1509
Obstruction of Criminal Investigations	18 USC 1510
Tampering with a Witness, Victim, or an Informant	18 USC 1512
Retaliating Against a Witness, Victim, or an Informant	18 USC 1513
Destruction, alteration, or falsification of records in Federal investigations and bankruptcy	18 USC 1519
Court Security Improvement Act - Retaliating against a Federal official by filing false lien or encumbrance	18 USC 1521
Penalty for failure to appear	18 USC 3146
Machine guns, destructive devices, and certain other firearms - Prohibited Acts	26 USC 5861
Greenmail - Imposition of tax	26 USC 5881
Procedure and Administration - Miscellaneous Provisions Sec 7512. Separate accounting for certain collected taxes, etc	26 USC 7512
Bulk Currency Smuggling	31 USC 5332

Exhibit 9.1.3-3 (01-30-2023)**Statutes within the Jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau**

Description	Violation
Knowingly shipping, transporting, receiving, possessing, selling, distributing, or purchasing contraband tobacco products	18 USC 2342(a)
False statement or representation regarding required records of anyone who ships, sells, or distributes more than 10,000 cigarettes in a single transaction	18 USC 2324(b)
Fraud and Related Activity in Connection with the record keeping, reporting, and inspection relating to tobacco	18 USC 2343(a)
Criminal penalty relating to distilled spirits for failure to file application	26 USC 5601(a)(2)
Criminal penalty relating to distilled spirits for false or fraudulent application	26 USC 5601(a)(3)
Criminal penalty relating to distilled spirits for failure or refusal of distiller warehouse-man, or processor to give bond	26 USC 5601(a)(4)
Criminal penalty relating to distilled spirits for false, forged, or fraudulent bond	26 USC 5601(a)(5)
Criminal penalty relating to distilled spirits for distilling on prohibited premises	26 USC 5601(a)(6)
Criminal penalty relating to distilled spirits for unlawful production, removal, or use of material fit for production of distilled spirits	26 USC 5601(a)(7)
Criminal penalty relating to distilled spirits for unlawful production of distilled spirits	26 USC 5601(a)(8)
Criminal penalty relating to distilled spirits for unauthorized use of distilled spirits in manufacturing process	26 USC 5601(a)(9)(A)
Criminal penalty relating to distilled spirits for unauthorized use of imported distilled spirits in manufacturing process	26 USC 5601(a)(9)(B)
Criminal penalty for defrauding US of any tax from the processing of distilled spirits	26 USC 5601(a)(10)(A)
Criminal penalty relating to aiding and abetting unlawful processing of distilled spirits	26 USC 5601(a)(10)(B)
Criminal penalty for unlawful purchase, receipt, or processing of distilled spirits	26 USC 5601(a)(11)
Criminal penalty for unlawful removal or concealment of distilled spirits	26 USC 5601(a)(12)
Criminal penalty for creation of fictitious proof	26 USC 5601(a)(13)
Criminal penalty for distilled spirits, including distilling after notice of suspension	26 USC 5601(a)(14)

Exhibit 9.1.3-3 (Cont. 1) (01-30-2023)**Statutes within the Jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau**

Criminal penalty for unauthorized withdrawal, use, sale, or distribution of distilled spirits for fuel use	26 USC 5601(a)(15)
Criminal penalty for tax fraud by distiller	26 USC 5602
Fraudulent noncompliance penalty relating to failing to keep records, returns, and reports	26 USC 5603(a)(1)
Fraudulent noncompliance penalty relating to making false entries in records, returns, and reports	26 USC 5603(a)(2)
Fraudulent noncompliance penalty relating to canceling, altering, or obliterating records, returns, and reports	26 USC 5603(a)(3)
Fraudulent noncompliance penalty relating to hindering or obstructing any internal revenue officer from inspecting records, returns, and reports	26 USC 5603(a)(4)
Fraudulent noncompliance penalty relating to failing or refusing to preserve or produce records, returns, and reports.	26 USC 5603(a)(5)
Criminal penalty relating to failing to keep records, returns, and reports	26 USC 5603(b)(1)
Criminal penalty relating to falsifying records, returns, and reports	26 USC 5603(b)(2)
Criminal penalty relating to destroying records, returns, or reports	26 USC 5603(b)(3)
Criminal penalty relating to hindering or obstructing any internal revenue officer from inspecting records, returns, and reports	26 USC 5603(b)(4)
Criminal penalty relating to failing or refusing to preserve or produce records, returns, and reports	26 USC 5603(b)(5)
Criminal penalty relating to transporting, possessing, buying, selling, or transferring any distilled spirit without the required closure	26 USC 5604(a)(1)
Criminal penalty relating to fraudulently emptying a container without breaking required closure	26 USC 5604(a)(2)
Criminal penalty relating to emptying any distilled spirit from an immediate container bearing any mark or brand required by law without effacing and obliterating such mark or brand as required	26 USC 5604(a)(3)
Criminal penalty regarding the use of a bottle for distilled spirits without removing and destroying the original closure	26 USC 5604(a)(4)
Criminal penalty regarding the unlawful removal, changing or defacing any mark, brand, label, or seal affixed to any case or bottle of distilled spirits	26 USC 5604(a)(5)
Limited TTB Use: Criminal penalty regarding purchasing, selling, receiving, with intent to transport any empty cask or package having any mark or brand to be affixed to any cask or package containing distilled spirits	26 USC 5604(a)(6)

Exhibit 9.1.3-3 (Cont. 2) (01-30-2023)**Statutes within the Jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau**

Criminal penalty regarding changing or altering any mark or brand on any cask or package containing distilled spirits	26 USC 5604(a)(7)
Criminal penalty relating to return of materials used in manufacture of distilled spirits, or from which distilled spirits may be recovered	26 USC 5605
Criminal penalties relating to containers of distilled spirits	26 USC 5606
Criminal penalty for unlawful use, recovery, or concealment of denatured distilled spirits or articles	26 USC 5607
Criminal penalty for fraudulent claim for drawback	26 USC 5608(a)
Criminal penalty for unlawful relanding	26 USC 5608(b)
Felony criminal penalty for violations of laws and regulations relating to wine	26 USC 5661(a)
Limited TTB Use: Misdemeanor criminal penalty for violations of laws and regulations relating to wine	26 USC 5661(b)
Criminal penalty for alternation of wine labels	26 USC 5662
Criminal penalty for evasion of beer tax and fraudulent noncompliance with requirements	26 USC 5671
Criminal penalty for failure of brewer to comply with requirements and to keep records and file returns	26 USC 5672
Criminal penalty for unlawful production of beer	26 USC 5674(a)
Criminal penalty for unlawful removal of beer	26 USC 5674(b)
Criminal penalty for intentional removal of defacement of brewer's marks and brands by someone other than the owner	26 USC 5675
Criminal penalty for failing to post required sign	26 USC 5681(a)
Criminal penalty for posting or displaying false sign	26 USC 5681(b)
Criminal penalty for a premises where no sign is placed or kept	26 USC 5681(c)
Criminal penalty for breaking locks or gaining access	26 USC 5682
Criminal penalty for removal of liquors under improper brands	26 USC 5683
Criminal penalty for having, possessing, or using liquor or property intended to be used in violating provisions of Chapter 51	26 USC 5686(a)
Criminal penalty for offenses not specifically covered	26 USC 5687
Criminal penalty for willful failure to pay occupational tax	26 USC 5731(c)
Criminal penalties relating to tobacco products for engaging in a business unlawfully	26 USC 5762(a)(1)
Criminal penalties relating to tobacco products for failing to furnish information or furnishing false information	26 USC 5762(a)(2)

Exhibit 9.1.3-3 (Cont. 3) (01-30-2023)**Statutes within the Jurisdiction of the Alcohol and Tobacco Tax and Trade Bureau**

Criminal penalties relating to tobacco products for failing to pay or evading tax	26 USC 5762(a)(3)
Criminal penalties relating to tobacco products for removing tobacco products or cigarette papers or tubes unlawfully	26 USC 5672(a)(4)
Criminal penalties relating to tobacco products for purchasing, receiving, possessing, or selling tobacco products or cigarette papers or tubes unlawfully	26 USC 5672(a)(5)
Criminal penalties relating to tobacco products for destroying, obliterating, or detaching marks, labels, or notices before packages are emptied	26 USC 5672(a)(6)
Unlawful business without permit to engage in the business of importing distilled spirits, wine, or malt beverages into the United States	27 USC 203(a)
Unlawful business without permit to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling distilled spirits	27 USC 203(b)
Unlawful business without permit to engage in the business of purchasing for resale wholesale distilled spirits, wine, or malt beverages	27 USC 203(c)
Competition and unlawful practices regarding exclusive outlet	27 USC 205(a)
Competition and unlawful practices regarding Tied House	27 USC 205(b)
Competition and unlawful practices regarding commercial bribery	27 USC 205(c)
Competition and unlawful practices regarding consignment sales	27 USC 205(d)
Competition and unlawful practices regarding labeling	27 USC 205(e)

