

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 1

The Defendant is charged in 6 counts of the indictment with violating 26 U.S.C. § 7201. This law provides that “[a]ny person who willfully attempts in any manner to evade or defeat any tax ... or the payment thereof of, shall” ... be guilty of an offense against the laws of the United States.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 2

An offense under §7201 requires proof of the following essential elements:

First, that the defendant owed a substantial amount for income taxes;

Second, that the defendant attempted to evade payment of such taxes; and

Third, that the attempt was committed willfully.

As has been said before, the burden is on the prosecution to prove every element of the offense charged beyond a reasonable doubt. The law never imposes on the defendant in a criminal case the burden of producing any evidence or of calling any witnesses.

See United States v. England, 347 F.2d 425, 430-31 (7th Cir. 1965).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 3

To establish the crime of income tax evasion as charged in each count of the indictment, the prosecution must prove beyond a reasonable doubt that the defendant willfully attempted to evade or defeat the payment of a tax due and owing to the government. This involves the specific intent to evade the payment of the **tax**, and some willful commission or affirmative action taken by the defendant in furtherance of that intent.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 4

The failure to act is an act of omission, and is neither an act of commission or an affirmative action.

Failing to file tax returns, failing to keep records, failing to report and failing to pay income taxes are not affirmative acts or acts of commission.

See *Sansone v. United States*, 380 U.S. 343, 351 (1964); *Lawn v. United States*, 355 U.S. 339, 361 (1958); *Spies v. United States*, 317 U.S. 492, 496 (1942).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 5

The specific intent of willfulness is an essential element of the offense of attempting to evade taxes.

The term "**willfully**" used in connection with this offense means voluntarily, purposefully, deliberately and intentionally as distinguished from accidentally, inadvertently, or negligently.

Mere negligence, even gross negligence, is not sufficient to constitute willfulness under the criminal law.

An attempt to evade the payment of taxes is willful if the defendant's actions were voluntary and purposeful, and committed with the specific intent to evade the payment of the taxes; that is to say, with a bad purpose or evil motive to disobey or disregard the law which required the defendant to pay the taxes lawfully assessed against him.

On the other hand, the defendant's conduct is not willful if you find that his actions were the result of negligence, inadvertence, accident or reckless disregard for the requirements of the law, or due to his good faith misunderstanding of the requirements of the law.

Section 35.31, **Devitt** and Blackmar, Federal Jury Practice and Instructions, Third Edition, 1977.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 6

As I explained to you earlier, the charge of income tax evasion includes the lesser charge of willful failure to file federal income tax returns.

If you find the defendant not guilty of income tax evasion, or if after making every reasonable effort to reach a unanimous verdict on that charge, you find that you cannot agree, then you must go on to consider whether the government has proved the lesser charge of willful failure to file federal income tax returns.

If you decide that the government has proved this lesser charge beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the verdict form. If you decide that the government has not proved this lesser charge beyond a reasonable doubt, say so by having your foreperson mark the appropriate place on the form. Your foreperson should then sign the form, put the date on it and return it to me.

You cannot convict the defendant for both tax evasion and willful failure to file federal income tax returns for the same tax period.

See *United States v. Boone*, 951 F.2d 1526, 1541 (9th Cir. 1991); *United States v. Snyder*, 766 F.2d 167, 171 (4th Cir. 1985); and *United States v. Buckley*, 586 F.2d 498, 504-05 (5th Cir. 1979)(§7203 offenses are lesser included offenses of §7201).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 7

Section **§7203** of the Internal Revenue Code provides that "Any person required" by law or regulation "to make a return ... who willfully fails to ... make such return ... at the time required by law or regulations" shall be guilty of an offense against the laws of the United States.

Devitt and Blackmar, Federal Jury Practice and Instructions, Third edition, **§35.28**, as modified.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 8

Title 26 United States Code §7203 makes it a federal offense for anyone to willfully fail to file a federal income tax return when required to do so by the Internal Revenue laws or regulations.

The defendant can be found guilty of that offense only if all of the following facts are proved beyond a reasonable doubt:

First: That the defendant was required by law or regulation to make
a return of his income for the taxable year charged;

Second: That the defendant failed to file a return at the time required by law; and

Third: That the defendant's failure to file the return was willful.

As has been said before, the burden is on the prosecution to prove every element of the offense charged beyond a reasonable doubt. The law never imposes on the defendant in a criminal case the burden of producing any evidence or of calling any witnesses.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 9

The crimes charged in this case is a serious crime which requires proof of specific intent before the defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove that the defendant willfully failed to do an act which the law requires, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

An act or a failure to act is committed "willfully" if done voluntarily and intentionally and not because of mistake or accident or other innocent reason. As stated before, with respect to an offense such as charged in this case, specific intent must be proved beyond a reasonable doubt.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 10

'Willfulness" is negated by the defense of a good faith mistake of the laws requirements. To make such a determination, one must inquire into the defendant's mind, him mental attitude and approach to the situation which the law required of him some act. If you find that the defendant, subjectively in his own mind, believed that he was not required by the law to file the returns in question, it will be your duty to acquit him.

See *United States v. Aitken*, 755 F.2d 188 (1st Cir. 1985); *United States v. Phillips*, 775 F.2d 262 (10th Cir. 1985); *United States v. Whiteside*, 810 F.2d 1306 (5th Cir. 1987).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 11

The law might very clearly tax specified receipts, yet a defendant might be able to prove that he honestly believed the receipts were nontaxable, and therefore he did not act willfully. Whether the defendant's beliefs about the legality of his actions were right or wrong, reasonable or unreasonable, is irrelevant to willfulness; the only issue is whether those beliefs were in fact held.

If you believe that the defendant held sincere and honest beliefs that his receipts were not taxable, it is your duty to acquit him.

See *United States v. Aitken*, 755 F.2d 188 (1st Cir. 1985).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 12

The Anti-Injunction Statute, 26 U.S.C. §7421, is a law that prevents any person from commencing a lawsuit or civil action against the government that is designed to enjoin or prevent the assessment or collection of any tax. Thus for income taxes, which are taxes that fall within the scope of the Anti-Injunction Statute, no person can civilly sue the government to enjoin, prevent, or challenge any assessment or collection of an income tax.

Further, no person can bring any type of civil action seeking declaratory judgment pursuant to 28 U.S.C. §2201, because the law prevents all actions for declaratory judgments with respect to federal taxes.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 13

Thus, a person is prevented by law from civilly seeking a determination of his liability for income taxes and from seeking to prevent the assessment or collection of an income tax allegedly due and owing.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 14

Because of the operation of law, a party must make his own decisions, unaided by a civil court, regarding his liability for income taxes and the assessment and collection of income taxes. Accordingly, a person may study case law and statutes to aid him in making those decisions. As a result, he may reach a belief and decision concerning his liability for income taxes and about what he is required and not required to do in reference to this subject.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 15

In forming opinions and beliefs regarding one's liability for income tax, the requirement for one to make certain returns, and any other aspect of income tax law, a person may rely upon decisions of the United States Supreme Court and other courts.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 16

In relying upon opinions of the U.S. Supreme Court in reference to tax matters, a person can reach certain conclusions and beliefs regarding his liability for a tax and the applications of tax law to him. If he does rely upon U.S. Supreme Court opinions, he is not acting "willfully" within the meaning of the law that the defendant is charged with having violated. This is so even if he misinterprets or misunderstands such opinions.

See *United States v. Bishop*, 412 U.S. 346, 93 S.Ct. 3008 (1973).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 17

If the defendant acted in good faith, that is to say he actually believed the actions he took were allowable by law, then he is not guilty of the offenses of **tax** evasion or willfully failing to file income **tax** returns. It does not matter whether the defendant was right or wrong in his beliefs, nor does it matter if his beliefs make sense, or sounds reasonable to you the jury or to me as the judge. The only thing that matters is whether or not the defendant actually believed he was correct in his actions. Also, it is not the defendant's burden to prove that he did believe his actions were correct, but rather it's the Government's burden to prove that he did not.

It is for you, the jury, to decide whether the Government has proven that the defendant willfully committed **tax** evasion or failed to file any **tax** returns by proving beyond a reasonable doubt that he did not actually believe his actions were correct, and by proving all the other elements that I have explained to you in these instructions, or whether the defendant believed his actions were proper. If you find that the Government has failed to meet its burden, then you must find the defendant not guilty of these offenses. If there is any doubt in your mind as to this issue, or even if you conclude that the defendant could have only believed his actions were proper by abysmal ignorance and the rankest kind of stupidity, yet you find that he believed he was correct, you must find the defendant not guilty.

See *United States v. Powell*, 955 F.2d 1206 (9th Cir. 1991); *Cheek v. United States*, 498 U.S. 192, 111 S.Ct. 604 (1991); *United States v. Murdock*, 290 U.S. 387, 393, 396 (1933); *Sansone v. United States*, 380 U.S. 343, 353 (1965); *In re Winship*, 397 U.S.

358, 364 (1970); *United States v. Bishop*, 412 **U.S.** 346, 360 (1973); *United States v. Pomponio*, 429 **U.S.** 10, 11 n. 2, 13 (1976); *Moore v. United States*, 429 **U.S.** 20, 22 (1976); *United States v. Aitken*, 755 **F.2d** 188 (1st Cir. 1985); *United States v. Martell*, 199 **F.2d** 670 (3rd Cir. 1952); *United States v. Wilkim*, 385 **F.2d** 465, 474 (4th Cir. 1967); *Mann v. United States*, 319 **F.2d** 404, 409 (5th Cir. 1963); *United States v. Burton*, 737 **F.2d** 439 (5th Cir. 1984); *United States v. Bass*, 784 **F.2d** 1282 (5th Cir. 1986); *Schwachter v. United States*, 237 **F.2d** 640 (6th Cir. 1956); *United States v. England*, 347 **F.2d** 425, 430-31 (7th Cir. 1965); *United States v. Lisowski*, 504 **F.2d** 1268, 1270 (7th Cir. 1974); *United States v. Lewis*, 671 **F.2d** 1025, 1027 (7th Cir. 1982); *United States v. Oggloian*, 678 **F.2d** 671, 674 (7th Cir. 1982); *United States v. Dack*, 747 **F.2d** 1172 (7th Cir. 1984); *United States v. Green*, 757 **F.2d** 116, 123 (7th Cir. 1985); *United States v. Mueller*, 778 **F.2d** 539 (9th Cir. 1985); *United States v. Gallery*, 774 **F.2d** 1456 (9th Cir. 1985); *United States v. Phillips*, 775 **F.2d** 262 (10th Cir. 1985); *United States v. Wells*, 790 **F.2d** 73, 75 (10th Cir. 1986); *Haigler v. United States*, 172 **F.2d** 986, 989 (10th Cir. 1949); and *United States v. Goetz*, 746 **F.2d** 705 (11th Cir. 1984).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 18

In this case, the defendant is not presumed to know the law.

See *Ratzlaf v. United States*, 510 U.S. 135, 114 S.Ct. 655 (1994); *United States v. Alt*, 996 F.2d 827 (6th Cir. 1993); and *United States v. Rogers*, 18 F.3d 265 (4th Cir. 1994).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 19

Section 6001 of the Internal Revenue Code reads as follows:

'Every person liable for any **tax** imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns and comply with such rules and regulations as the Secretary may from time to time prescribe.'

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 20

Section 6011 of the Internal Revenue Code reads as follows:

'When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary.'

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 21

The Privacy Act provides that every federal agency which collects information from the public shall inform each individual whom it asks to supply information, on the form which it uses to collect information or on a separate form, of the following:

(1) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) the principle purpose or purposes for which the information is intended to be used;

(3) the routine uses which may be made of the information; and

(4) the effects on him, if any, of not providing all or any part of the requested information.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 22

In the Paperwork Reduction Act, a "collection of information" "... means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for **an** agency, regardless of form or format, calling for answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons..."

See 44 U.S.C. §3502(3)

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 23

A "collection of information" is defined as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons... 'Collection of information' includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information," and it " refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan **and/or** an instrument calling for the collection or disclosure of information, or any of these, as appropriate."

See 5 C.F.R. §1320.3(c)

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 24

Any federal agency which desires to collect information from the American public by means of a "collection of information" must submit that request to the Director of the Office of Management and Budget. The Director has the authority to approve the "collection of information" as one which is valid and may be used by federal agencies to collect information.

See 44 U.S.C. §3507.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 25

An agency shall not engage in a collection of information without obtaining from the Director of the Office of Management and Budget a control number to be displayed upon the collection of information.

See 44 U.S.C. §3507(a).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 26

"In the case of collections of information published in regulations," the current OMB control number applicable for a regulation may appear in a tabular list.

See 5 C.F.R. §1320.3(f)

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 27

No person shall be subject to any penalty for failing to maintain or provide information to any agency if the collections of information does not display a current control number assigned by the Director, or fails to state that such a request is not subject to the law.

See 44 U.S.C. §3512.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 29

You have no right to find the Defendant guilty only for the purpose of deterring others from committing crime.

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 30

There is a distinction between the civil liability of a defendant and a defendant's criminal liability. This is a criminal case.

The defendant is charged under the law with the commission of a crime, and the issue of whether the defendant has or has not settled any civil liability for the payment of taxes is not to be considered by you in reaching a verdict. Your verdict in this case has no effect on the government's ability to collect any back taxes and penalties in a civil case.

See *Spies v. United States*, 317 U.S. 492,495 (1943); *United States v. Burkhardt*, 501 F.2d 993, 996 (6th Cir. 1974); *United States v. Dack*, 747 F.2d 1172, 1174-75 (7th Cir. 1984); *United States v. Buras*, 633 F.2d 1356, 1360 (9th Cir. 1980); *United States v. Vwrhies*, 658 F.2d 710, 714 (9th Cir. 1981); *Devitt and Blackmar*, Federal Jury Practice and Instructions, §35.17, Third Edition, 1977 (as modified).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 31

You are instructed that the Commissioner of the Internal Revenue has the power to make a return and assess a tax when no return has been filed.

See 26 U.S.C. §6020(b)

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 32

An American citizen such as the defendant has a right to rely upon representations and statements made by the government and appearing in official publications.

See *Raley v. Ohio*, 360 U.S. 423, 438, 79 S.Ct. 1257, 1266 (1959); *Cox v. Louisiana*, 379 U.S. 559, 85 S.Ct. 476 (1965); *United States v. Laub*, 385 U.S. 475, 87 S.Ct. 574 (1967).

DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 33

A defendant convicted of income tax evasion may be imprisoned for a period of 5 years.

A defendant convicted of willful failure to file federal income tax returns may be imprisoned for a period of 1 year.

See *United States v. Catcher*, 830 F.Supp 411 (M.D.Tenn. 1993).

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the forgoing upon the below named counsel for the United States by depositing the same in the United States mail, postage prepaid, in an envelope addressed to him at his correct mailing address:

Thomas Bradley
U.S. Attorney's Office
Federal Building and U.S. Courthouse
222 West 7th Avenue, #9, Room 253
Anchorage, Alaska 99513-7567

Dated this the) 9 day of June, 2004.



Lance Wells