

22.3 Filing False Tax Return (26 U.S.C. § 7206(1))

The defendant is charged in [Count _____ of] the indictment with filing a false tax return in violation of Section 7206(1) of Title 26 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant signed and filed a tax return for the year [*specify year*] that [he] [she] knew contained [false] [incorrect] information as to a material matter;

Second, the return contained a written declaration that it was being signed subject to the penalties of perjury; and

Third, in filing the false tax return, the defendant acted willfully.

A matter is material if it had a natural tendency to influence, or was capable of influencing, the decisions or activities of the Internal Revenue Service.

Comment

See Instruction 22.6 (Willfully—Defined) as to the meaning of “willfully” in the context of prosecutions for violations of Title 26.

Section 7206 creates several distinct crimes. This instruction applies to § 7206(1) and should be modified if the charge arises under § 7206(3), (4), or (5). If the charge arises under § 7206(2), see Instruction 22.4 (Aiding or Advising False Income Tax Return).

False information is material if it had a natural tendency to influence or was capable of influencing or affecting the ability of the IRS to audit or verify the accuracy of the tax return or a related return. See *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (explaining material statement has “natural tendency to influence, or [be] capable of influencing, the decision of the decision making body to which it was addressed” (quoting *Kungys v. United States*, 485 U.S. 759, 770 (1988))); see also *United States v. Peterson*, 538 F.3d 1064, 1067 (9th Cir. 2008) (suggesting district courts should use materiality language approved in *Gaudin*). A false statement “need not have actually influenced the agency, and the agency need not rely on the information in fact for it to be material.” *United States v. Matsumaru*, 244 F.3d 1092, 1101 (9th Cir. 2001) (quoting *United States v. Serv. Deli Inc.*, 151 F.3d 938, 941 (9th Cir. 1998)).

When a corporation makes a distribution to a stockholder initially characterized as a “distribution,” that “distribution” may subsequently be legitimately characterized as a non-taxable “return of capital” if the corporation has no earnings. *Boulware v. United States*, 552 U.S. 421, 430-31 (2008).

The tax return must have been filed. *See United States v. Boitano*, 796 F.3d 1160, 1163 (9th Cir. 2015).

Revised Sept. 2015