

22.6 Willfully—Defined (26 U.S.C. §§ 7201, 7203, 7206, 7207)

To prove that the defendant acted “willfully,” the government must prove beyond a reasonable doubt that the defendant knew federal tax law imposed a duty on [him] [her], and the defendant intentionally and voluntarily violated that duty.

[If the defendant acted on a good faith misunderstanding as to the requirements of the law, [he] [she] did not act willfully even if [his] [her] understanding of the law was wrong or unreasonable. Nevertheless, merely disagreeing with the law does not constitute a good faith misunderstanding of the law because all persons have a duty to obey the law whether or not they agree with it. Thus, to prove that the defendant acted willfully, the government must prove beyond a reasonable doubt that the defendant did not have a good faith belief that [he] [she] was complying with the law.]

Comment

Sections 7201-7207 of the Internal Revenue Code use the term “willfully.” In *Cheek v. United States*, 498 U.S. 192, 201 (1991), the Supreme Court set forth the following definition: “Willfulness, as construed by our prior decisions in criminal tax cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.” This same definition applies to both misdemeanors and felonies in the Revenue Code. *See United States v. Pomponio*, 429 U.S. 10, 12 (1976) (citing *United States v. Bishop*, 412 U.S. 346, 359–60 (1973)). “In other words, if you know that you owe taxes and you do not pay them, you have acted willfully.” *United States v. Easterday*, 564 F.3d 1004, 1006 (9th Cir. 2009). Despite earlier case law suggesting the contrary, the element of willfulness does not require that the defendant have the financial ability to pay the taxes. *See id.* at 1005 (holding that *United States v. Poll*, 521 F.2d 329 (9th Cir. 1975), is no longer controlling authority in light of intervening Supreme Court decisions). In a prosecution alleging a failure to file a tax return, the government is not required to prove an intent to evade or defeat a tax. *United States v. Meredith*, 685 F.3d 814, 826 (9th Cir. 2012). “Intent to evade or defeat taxes is merely one possible way to establish willfulness,” and “[a]ny voluntary act committed with the specific intent to disobey or disregard the law qualifies as willfulness.” *Id.*

The bracketed second paragraph of this instruction may be used when there is evidence the defendant acted on a good faith but erroneous belief as to the requirements of the tax laws. In *United States v. Trevino*, 419 F.3d 896, 901 (9th Cir. 2005), the Ninth Circuit explained:

The government’s burden of proving willfulness requires negating [1] a defendant’s claim of ignorance of the law *or* [2] a claim that because of a *misunderstanding of the law*, he had a *good-faith belief* that he was not violating any of the provisions of the tax laws. This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist. *Cheek v. United States*, 498 U.S.

192, 202 (1991) (emphasis added) . . . In order to rely on a good faith defense, the defendant must in fact have some “belief;” either that her own understanding was correct, or that she in good faith relied on the tax advice of a qualified tax professional. *See United States v. Bishop*, 291 F.3d 1100, 1106–07 (9th Cir. 2002).

Nonetheless, Ninth Circuit precedent forecloses the argument that the defendant is entitled to a separate “good faith” instruction “when the jury has been adequately instructed with regard to the intent required to be found guilty of the crime charged.” *United States v. Hickey*, 580 F.3d 922, 931 (9th Cir. 2009) (holding no good faith instruction needed when jury properly instructed on intent to defraud).

The defendant’s views regarding the validity of a tax statute are irrelevant to the issue of willfulness and, if heard, the jury can be instructed to disregard such views. *See United States v. Powell*, 955 F.2d 1206, 1212 (9th Cir. 1992) (concluding that district court did not plainly err in instructing that “[m]ere disagreement with the law, in and of itself, does not constitute good faith misunderstanding under the requirements of law[] [b]ecause it is the duty of all persons to obey the law whether or not they [agree with it]”).

Willfulness is a state of mind that may be established by evidence of fraudulent acts. *See United States v. Voorhies*, 658 F.2d 710, 715 (9th Cir. 1981); *see also United States v. Conforte*, 624 F.2d 869, 875 (9th Cir. 1980).

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