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**Note:** Modifications may need to be made depending on the gender of the defendant, the number of defendants (e.g. changing “him” to “her” or changing from singular to plural), and whether the defendant is representing him or herself. Anticipated areas for modification are identified in [brackets]. The defendant’s name should be inserted in the place of “defendant” in the brackets where appropriate.

**PREAMBLE**

**MEMBERS OF THE JURY:**

In any jury trial there are, in effect, two judges. I am the judge of the law. You, as jurors, are the judges of the facts. I presided over the trial and decided what evidence was proper for your consideration, and it is now my duty to explain to you the rules of law you must follow and apply in arriving at your verdict.

In explaining these rules of law, I will give you some general instructions that apply in every criminal case—for example, instructions about the burden of proof and insights that may help you to judge the believability of witnesses. I will also give you some specific rules of law that apply to this particular case. Finally, I will explain the procedures you should follow in your deliberations, and the possible verdicts you may return.

**INSTRUCTION NO. 1**

DUTY TO FOLLOW INSTRUCTIONS

It is your duty as jurors to follow the law as stated in the instructions of the court, and to apply the rules of law so given to the facts as you find them from the evidence in the case. In following my instructions, you must follow all of them and not single out some and ignore others. They are all equally important.

The parties may refer to these instructions in their arguments. If, however, any difference appears to you between the law as stated by the parties and that stated by the court in these instructions, you are of course to be governed by the court’s instructions.

You are not to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, you must follow the law as I give it to you in the instructions. It would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions, just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury depends upon the willingness of each individual juror to seek the truth as to the facts based upon the same evidence that has been presented to all the jurors, and to arrive at a verdict by applying the same rules of law that are presented in these instructions.

**INSTRUCTION NO. 2**

NO BIAS OR PREJUDICE AGAINST ANY PARTY

You have been chosen as jurors in this case to try the issues of fact presented by the allegations of the [superseding] indictment and the denial made by [the defendant’s] “not guilty” plea. It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You are to perform this duty without bias or prejudice as to any party. You must not be influenced by any personal likes or dislikes, opinions, or sympathy. That means you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case. The parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict.

**INSTRUCTION NO. 3**

PRESUMPTION OF INNOCENCE

[The defendant] has pled “not guilty” to the charges against [him] in the [superseding] indictment. [His] plea puts at issue the essential elements of the offenses as described in these instructions, and imposes on the government the burden of establishing each element by proof beyond a reasonable doubt.

The [superseding] indictment is not evidence of guilt. Indeed, [the defendant] is presumed by the law to be innocent. Even though a [superseding] indictment has been returned against [the defendant], [he] started this trial with absolutely no evidence against [him].

The law does not require [the defendant] to prove [his] innocence or produce any evidence at all, nor does it compel [him] in a criminal case to take the witness stand to testify. The government has the burden of proving [the defendant] guilty beyond a reasonable doubt, and if it fails to do so you must return a verdict of not guilty.

You have been instructed that [the defendant] is presumed to be innocent. This means you have been required to exclude from your mind even the slightest suspicion that [the defendant] is or may be guilty until you heard all of the evidence, have been instructed by the court as to the legal requirements for finding the defendant guilty, have heard all arguments of the parties, and have concluded after careful and thoughtful deliberation whether the government has proven [the defendant] guilty. As you start your deliberations, [the defendant] is not guilty and will remain so until and unless you have concluded otherwise after deliberations.

**INSTRUCTION NO. 4**

BURDEN OF PROOF­­––REASONABLE DOUBT

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of [the defendant’s] guilt. There are few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it in the most important of your own affairs. The government is not required to prove guilt beyond all doubt. It must, however, offer proof that excludes any “reasonable doubt” about [the defendant’s] guilt.

A reasonable doubt is a doubt based on reason and thoughtful analysis after careful and impartial consideration of all the evidence in the case. If, based on your consideration of the evidence, you are firmly convinced that [the defendant] is guilty of the crime charged, you must find [him] guilty. If, on the other hand, you think there is a real possibility that [he] is not guilty, you must give [him] the benefit of the doubt and find [him] not guilty.

**Alternative Instruction**

**INSTRUCTION NO. 4**

BURDEN OF PROOF

The government has the burden of proving [the defendant] guilty beyond a reasonable doubt, and if it fails to do so you must acquit [him].

While the government’s burden of proof is a strict or heavy burden, it is not necessary that [the defendant’s] guilt be proved beyond all possible doubt. It is only required that the government’s proof exclude any “reasonable doubt” concerning [the defendant’s] guilt. A “reasonable doubt” is a doubt based on reason and thoughtful analysis, after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it in the most important of your own affairs. If you are convinced that [the defendant] has been proved guilty beyond a reasonable doubt, find [him] guilty. If you are not so convinced, find [him] not guilty.

**INSTRUCTION NO. 5**

OBJECTIONS

It is the duty of the parties on each side of the case to object when the other side offers testimony or other evidence that the party believes is not properly admissible. You should not show prejudice against any attorney or party because that person has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of any party, the court does not, unless expressly stated, indicate any opinion as to the weight or effect of any such evidence. As stated before, you are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

If I have sustained an objection to a question addressed to a witness, you must disregard the question entirely, and may draw no inference from the wording of it or speculate as to what the witness might have said if he or she had been permitted to answer the question.

Similarly, if I have granted a motion to strike certain testimony, you must disregard that testimony and not let it influence your decision in any way.

**INSTRUCTION NO. 6**

“EVIDENCE” DEFINED

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have presented them; and all facts which may have been admitted or to which the parties stipulated.

A stipulation is an agreement among the parties that a certain fact is true. When the parties stipulate that a certain fact is true, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

Statements and arguments of the attorneys are not evidence in this case. [If the defendant testifies, insert here: A party’s testimony as a witness under oath, however, is evidence in the case.]

Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded. Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence presented in this case. In your consideration of the evidence, however, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts that you find have been proven such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion that reason and thoughtful analysis would lead you to draw from facts that are established by the evidence in the case.

You should weigh all of the evidence in the case, affording each piece of evidence the weight or significance you find it reasonably deserves.

If any reference by the court or by the attorneys to matters of evidence does not coincide with your own recollection, it is your recollection that should control during your deliberations.

**INSTRUCTION NO. 7**

EXCLUDED EVIDENCE

At times during the trial, I sustained an objection to a question. When an objection was sustained, it is your duty to disregard the question entirely.

Likewise, when I ordered you to disregard something you saw or heard, or stuck it from the record, you may not consider it or speculate about it. The same rule applies to any exhibits I did not permit you to see. You may not speculate about what the exhibit might have shown.

You must completely ignore all of these things. Do not even think about them. These things are not evidence, and you are bound by your oath not to let them influence your decision in any way.

**INSTRUCTION NO. 8**

DIRECT AND CIRCUMSTANTIAL EVIDENCE

You may consider both direct and circumstantial evidence. “Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. “Circumstantial evidence” is proof of a chain of facts and circumstances indicating the existence of a fact to be proven.

For example, if the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is circumstantial evidence of the fact.

There is no difference between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case, giving each piece of evidence the weight or significance you find it reasonably deserves.

Ultimately, you must weigh all of the evidence and be convinced of [the defendant’s] guilt beyond a reasonable doubt before you may return a guilty verdict.

**INSTRUCTION NO. 9**

EVIDENCE ADMITTED FOR A LIMITED PURPOSE ONLY

In certain instances, evidence may be admitted only for a particular purpose and not generally for all purposes. When evidence has been received for a limited purpose only, you may give it the weight you feel it deserves. You may not, however, use this evidence for any other purpose not specifically mentioned.

**INSTRUCTION NO. 10**

SUMMARIES AND CHARTS

Certain charts and summaries have been shown to you to help explain the evidence in this case. Their only purpose is to help explain the evidence. These charts and summaries are not evidence or proof of any facts.

**INSTRUCTION NO. 11**

JUDGING CREDIBILITY OF WITNESSES

An important part of your job will be making judgments about the testimony of the witnesses who testified in this case. You are the sole judges of the credibility or “believability” of each witness and the weight to be given to each witness’s testimony. When making these determinations, some factors to consider are:

1. The witness’s appearance, attitude, and behavior on the stand; the way the witness testified; and whether the witness impressed you as being honest;

2. The witness’s age, intelligence, and experience;

3. The witness’s opportunity and ability to see or hear the things about which the witness testified;

4. The accuracy of the witness’s memory;

5. Any motive of the witness to tell or not to tell the truth;

6. Any interest or disinterest a witness might have in the outcome of the case;

7. Any relationship the witness had with the plaintiff or [the defendant];

8. Any bias of the witness;

9. The witness’s opportunity and ability to understand the questions clearly and answer them directly;

10. The internal consistency of the witness’s testimony and its support or contradiction by other evidence.

You should think about the testimony of each witness you heard and decide how important that testimony was. You should also decide whether you believe all, or any part, of what each witness had to say.

In making that decision, I suggest you ask yourself a few questions: Did the witness impress you as honest? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome in this case? Did the witness seem to have a good memory? Did the witness clearly see or hear the things about which he or she testified? Did the witness have the opportunity and ability to understand the questions clearly and answer them directly? Did the witness’s testimony differ from the testimony of other witnesses?

When weighing conflicting testimony, you should consider whether the discrepancy has to do with a material fact or with an unimportant detail. Inconsistencies and contradictions in a witness’s testimony, or between the testimony of one witness and another, do not necessarily mean that a witness is lying. It is possible for two honest people to witness the same event and see or hear things differently. Additionally, an innocent misrecollection—like failure of recollection—is not uncommon. You may assess, however, the truthfulness or credibility of a witness’s testimony based on testimony that he or she does not recall an event, fact, or other matter.

Finally, you need not believe the testimony of a witness even though it is uncontradicted. You need not accept testimony as true simply because a number of witnesses agree with each other. You may decide that even the unanimous testimony of witnesses is erroneous. But you should act reasonably in deciding whether to reject uncontradicted testimony.

**INSTRUCTION NO. 12**

FALSE TESTIMONY

If you find that any witness testified falsely about any material fact, you may disregard his or her testimony, or you may accept such parts of it as you wish to accept and exclude such parts of it as you wish to exclude.

**INSTRUCTION NO. 13**

NUMBER OF WITNESSES CALLED BY A PARTY

Your decision should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. [The defendant] is not required to call any witnesses.

**INSTRUCTION NO. 14**

PRIOR INCONSISTENT STATEMENTS BY A WITNESS

The testimony of a witness may be discredited by showing that the witness testified falsely concerning a material matter, or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the testimony the witness gave at this trial.

Earlier statements of a witness are not admitted in evidence to prove that the contents of those statements are true. You may consider the earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and therefore whether they affect the credibility of that witness. You should not consider them proof of anything else. If you believe that a witness has been discredited in this manner, it is your exclusive right to give the testimony of that witness whatever weight you think it deserves.

**INSTRUCTION NO. 15**

DEFENDANT’S RIGHT NOT TO TESTIFY

A defendant in a criminal case has an absolute right under our Constitution not to testify. The fact that [the defendant] did not testify must not be discussed or considered by the jury in any way when deliberating and in arriving at your verdict. No presumption of guilt may be raised and no inference of any kind may be drawn from the fact that [the defendant] decided to exercise [his] privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

**INSTRUCTION NO. 16**

EYEWITNESS TESTIMONY

The value of testimony depends on the opportunity the witness had to observe the offender at the time of the offense and to make a reliable identification later.

In evaluating such testimony you should consider all of the factors mentioned in these instructions concerning your assessment of the credibility of any witness, and you should also consider, in particular, whether the witness had an adequate opportunity to observe the person in question at the time of the offense. You may consider, in that regard, such matters as the length of time the witness had to observe the person in question, the prevailing conditions at that time in terms of visibility or distance and the like, and whether the witness had known or observed the person at earlier times.

You should also consider whether the identification made by the witness after the offense was the product of their own recollection. You may consider, in that regard, the strength of the identification, and the circumstances under which the identification was made, and the length of time that elapsed between the occurrence of the crime and the next opportunity the witness had to see [the defendant].

If the identification by the witness may have been influenced by the circumstances under which [the defendant] was presented to them for identification, you should scrutinize the identification with great care.

**INSTRUCTION NO. 17**

LAW ENFORCEMENT WITNESSES

In this case, you have heard the testimony of law enforcement officers and government agents. The fact that a witness is employed by a state or federal government as a law enforcement officer does not mean that his or her testimony is deserving of any more or less consideration or greater or lesser weight than that of an ordinary witness. You should consider and weigh the testimony of a law enforcement officer in the same manner as you would consider and weigh the testimony of any other witness. You must decide what testimony you believe and what testimony you do not believe. It is your decision, after reviewing all the evidence, whether to accept the testimony of a law enforcement witness and to give that testimony whatever weight, if any, you find it deserves.

**INSTRUCTION NO. 18**

EXPERT WITNESSES

In some cases, such as this one, scientific, technical, or other specialized knowledge may assist the jury in understanding the evidence or in determining a fact in issue. A witness who has knowledge, skill, experience, training or education, may testify and state an opinion concerning such matters.

You are not required to accept such an opinion. You should consider opinion testimony just as you consider other testimony in this trial. Give opinion testimony as much weight as you think it deserves, considering the education and experience of the witness, the soundness of the reasons given for the opinion, and other evidence in the trial.

**INSTRUCTION NO. 19**

FINGERPRINT EXAMINER

Fingerprint examiners, as a group, may develop skills not possessed by members of the general public, skills that may give rise to opinions useful to you in your deliberations. A fingerprint examiner may spend a substantial amount of time looking at latent or partial prints and comparing them with known or full prints. In the course of their work, forensic fingerprint examiners may have acquired skill in identifying significant similarities and differences between partial prints and known prints.

The fingerprint examiner’s testimony is his opinion. It should not be considered by you as conclusive fact, but should be weighed along with all the evidence that you have heard in this case. His opinion should be treated the same as any other evidence, which means that you are free to give it the weight you believe it deserves. You may accept or disregard it in whole or in part.

Fingerprint examiners may be of assistance to you. However, their skill is practical in nature, and despite anything you may have heard, it does not have demonstrable certainty.

**INSTRUCTION NO. 20**

IDENTIFICATION

The government must prove, beyond a reasonable doubt, that the offenses charged in this case were actually committed and that it was [the defendant] who committed them. Thus, the identification of [the defendant] as the person who committed the offenses charged is a necessary and important part of the government’s case.

You should evaluate the credibility of any witness making an identification in the same manner as you would any other witness. You should also consider at least the following questions:

Did the witness have the ability and an adequate opportunity to observe the person who committed the offenses charged? You should consider, in this regard, such matters as the length of time the witness had to observe the person in question, the lighting conditions at that time, the prevailing visibility, the distance between the witness and the person observed, and whether the witness had known or observed the person before.

Is the testimony about an identification made after the commission of the crimes the product of the witness’s own recollection? In this regard, you should consider very carefully the circumstances under which the later identification was made, including the manner in which the defendant was presented to the witness for identification and the length of time that elapsed between the crimes and the witness’s subsequent identification.

If, after examining all of the testimony and evidence in this case, you have a reasonable doubt as to the identity of [the defendant] being the person who committed the offenses charged, you must find [the defendant] not guilty.

**INSTRUCTION NO. 21**

LAW ENFORCEMENT METHODS AND EQUIPMENT

Evidence has been received regarding law enforcement methods and equipment used in the investigation of this case. Likewise, evidence has been received concerning law enforcement methods and equipment which were not used in relation to the investigation.

You may consider this evidence for the purpose of evaluating the weight of the evidence produced by the government and the credibility of law enforcement personnel involved in the investigation. There is no legal requirement that the government, through its enforcement agents, must use all known or available crime detection methods or any particular type of equipment in its investigation. It is for you to decide the credibility of the evidence in light of the methods and equipment used. You are the sole judges of the credibility of the witnesses and the weight to be given to evidence.

**INSTRUCTION NO. 22**

SIMILAR ACTS

You have evidence of other [crimes] [acts] [wrongs] engaged in by [the defendant], which are not charged in the Indictment. You may consider that evidence only as it bears on [the defendant’s] [motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident] and for no other purpose. Of course, the fact that [the defendant] may have previously committed an act similar to the ones charged in this case does not mean that [the defendant] necessarily committed the acts charged in this case.

**INSTRUCTION NO. 23**

PRIOR CONVICTIONS

You have heard evidence that [the defendant] was convicted of a crime punishable by imprisonment for a term exceeding one year. This evidence has been brought to your attention only as it relates to an element of Count \_\_\_\_\_ in this case.

[You also have heard evidence that the defendant was convicted of a misdemeanor crime. This evidence has been brought to your attention only as it relates to an element in Count \_\_\_\_ in this case.]

The evidence that [the defendant] may have been convicted of another crime does not mean that [he] committed the crime charged in this case, and you must use the evidence only with regard to weighing and considering the element of the respective offense charged. You may find [him] guilty of the crimes charged here only if the government has proved beyond a reasonable doubt each element of the respective offenses charged in this case.

**INSTRUCTION NO. 24**

DEFENDANT’S NON-INVOLVEMENT

[The defendant] has asserted [he] was not present at the time when, or at the places where, [the defendant] is alleged to have committed the offenses charged in the indictment.

The government has the burden of proving that [the defendant] was present at the time and places specified in the offenses. Unless the government proves this beyond a reasonable doubt, you must find [the defendant] not guilty.

**INSTRUCTION NO. 25**

STATEMENT BY DEFENDANT

Evidence has been presented about statements attributed to [the defendant], which were allegedly made before and after the commission of the crimes charged in this case, but were not made in court. Such statements should always be considered by you with caution and weighed with care. You should give any such statement the weight you think it deserves, after considering all the circumstances under which the statement was made.

In determining whether any such statement is reliable and credible, consider the age, training, education, occupation, and physical and mental condition of [the defendant], and all the other circumstances in evidence surrounding the making of the statement.

After considering all this evidence, you may give such weight to any statement that you feel it deserves under all the circumstances. If you determine that a statement is unreliable or not credible, you may disregard the statement entirely.

**INSTRUCTION NO. 26**

EVIDENCE OF GOOD CHARACTER

There has been some evidence of [the defendant’s] reputation for good character. You should consider such evidence along with all the other evidence in the case.

Evidence of good character may be sufficient to raise a reasonable doubt whether [the defendant] is guilty, because you may think it improbable that a person of good character would commit such a crime. Evidence of a defendant’s character, inconsistent with those traits of character ordinarily involved in the commission of the crime charged, may give rise to a reasonable doubt.

You should also consider any evidence offered to rebut the evidence offered by [the defendant].

You should always bear in mind, however, that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

**INSTRUCTION NO. 27**

POSSIBLE GUILT OF ANOTHER

It is not up to you to decide whether anyone who is not on trial in this case should be prosecuted for the crime[s] charged. The fact that another person also may be guilty is not a defense to a criminal charge. The question of possible guilt of others should not enter your thinking as you decide whether [the defendant] has been proved guilty of the crime[s] charged.

**INSTRUCTION NO. 28**

CONDUCT CHARGED IN THE [SUPERSEDING] INDICTMENT

You are here to decide whether the government has proved beyond a reasonable doubt that [the defendant] is guilty of the offenses charged in the [superseding] indictment. [The defendant] is not on trial for any act or any conduct not specifically charged in the [superseding] indictment.

**INSTRUCTION NO. 29**

USE OF CONJUNCTIVE AND DISJUNCTIVE IN THE INDICTMENT

You will note the instructions that refer to the count[s] in the [superseding] indictment use the “conjunctive” to state the means by which [the defendant] can commit the charged offense[s], while instructions that contain the elements of the offenses use the “disjunctive” to state the means by which [the defendant] can commit the charged offense[s]. The charges are pled in the conjunctive (and), but can be proven in the disjunctive (or). In other words, it is not necessary for the government to prove beyond a reasonable doubt all means by which an element of an offense can be satisfied; rather, the government has properly charged alternative means by which it can meet its burden of proof beyond a reasonable doubt for a particular element of the crime.

**INSTRUCTION NO. 30**

OFFENSE COMMITTED “ON OR ABOUT” A DATE

You will note the [superseding] indictment charges that the offenses were committed “on or about” certain dates or between approximate dates. Although it is necessary for the government to prove beyond a reasonable doubt that each offense was committed on a date reasonably near the date alleged in the [superseding] indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

**INSTRUCTION NO. 31**

EACH COUNT TO BE DISTINCTLY CONSIDERED

[The defendant] has been charged with [two] counts in the [superseding] indictment. Each count, and the evidence pertaining to it, should be considered separately. The fact that you may find [the defendant] guilty or not guilty as to one count should not control your verdict as to the other count.

**Note:** The purpose of the following four instructions is to identify the indictment, state the statutory language of the crime charged (if applicable), the elements for that crime, and to provide any definitions that are necessary. Below is an example of how to structure this portion of the instructions.

**INSTRUCTION NO. 32 (EXAMPLE ONLY)**

[SUPERSEDING] INDICTMENT

[The defendant] is charged with attempting to evade or defeat the payment of federal income tax in violation of 26 U.S.C. § 7201 and with impeding Internal Revenue laws in violation of 26 U.S.C. § 7212(a). The superseding indictment against [the defendant] reads as follows:

The Grand Jury charges:

**COUNT I**

**26 U.S.C. § 7201**

(Attempt to Evade or Defeat Tax)

From on or about March 21, 2012, through on or about May 4, 2012, in the District of Utah and elsewhere,

DEFENDANT’S NAME,

defendant herein, willfully attempted to evade and defeat the payment of income tax due and owing by him to the United States of America, for the calendar years 2005, 2006, 2007 and 2010, by committing affirmative acts of evasion, including but not limited to the following:

(a) On or about March 22, 2012, defendant presented and caused to be presented to the IRS check no. 1103 in the amount of $342,699.41 drawn on closed account no. xxxxx3180 at Zion’s Bank. Check no. 1103 contained defendant’s social security number and stated “EFT only for discharge of debt” in the memo line and “Form 433-D” on the face of the check. IRS Form 433-D, Installment Agreement, is used to inform the IRS of an individual or entity’s intention to pay an outstanding tax liability with an initial payment and monthly installment payments thereafter.

(b) On or about March 26, 2012, defendant sent and caused to be sent a signed letter to the IRS Revenue Officer assigned to his case, stating that he had sent a $342,699.41 check to the IRS Service Center in Ogden, Utah as payment of the amount he owed to the IRS.

(c) On or about May 4, 2012, defendant mailed and caused to be mailed a signed, certified letter to the IRS Servicing Center in Ogden, Utah, claiming that he had previously submitted the above-mentioned check in the amount of $342,699.41 from Individual # 1’s checking account for the purpose of discharging his tax debt.

In violation of Title 26, United States Code, Section 7201.

**COUNT II**

**26 U.S.C. § 7212(a)**

(Impeding Internal Revenue Laws)

From in or about March 21, 2012, through in or about June 11, 2012, in the District of Utah and elsewhere,

DEFENDANT’S NAME

defendant herein, did corruptly endeavor to obstruct and impede the due administration of the internal revenue laws of the United States concerning the ascertainment, computation, assessment, and collection of federal income taxes by attempting to fraudulently cause amounts to be credited to his IRS tax account by committing acts, including, but not limited to the following:

(a) On or about March 22, 2012, defendant presented and caused to be presented to the IRS a check in the amount of $342,699.41, drawn on closed Zion’s Bank account no. xxxxx3180, which purported to discharge `defendant’s tax debt.

(b) On or about June 11, 2012, defendant issued and caused to be issued, and presented and caused to be presented to the IRS check nos. 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014 and 1015, each in the amount of $425,000, drawn on closed JP Morgan Chase Bank account no. xxxxx9660, payable to “U.S. Treasury,” and including defendant’s social security number and the statement “EFT only for discharge of debt” in the memo line. These ten checks were presented to at least six different IRS offices located in Utah (Ogden), Kentucky (Covington), New York (Holtsville), Missouri (Kansas City), California (Fresno) and Texas (Austin).

In violation of Title 26, United States Code Section 7212(a).

**INSTRUCTION NO. 33 (EXAMPLE ONLY)**

COUNT I:

ATTEMPT TO EVADE OR DEFEAT TAX

26 U.S.C. § 7201

[The defendant] is charged in count one of the superseding indictment with a violation of 26 U.S.C. § 7201. This law makes it a crime to attempt to evade or defeat the payment of federal income tax.

To find [the defendant] guilty of this crime you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: [The defendant] owed a substantial income tax liability to the federal government for the years charged in the superseding indictment;

Second: [The defendant] committed at least one of the alleged affirmative acts in an attempt to evade or defeat the tax; and

Third: [The defendant] acted willfully.

**INSTRUCTION NO. 33-A (EXAMPLE ONLY)**

*If the crime charged has relevant statutory language, include it first prior to outlining the elements required to be proven*.

COUNT I – 26 U.S.C. § 7201 – **FIRST ELEMENT**

The first element of count one the government must establish beyond a reasonable doubt is that [the defendant] owed substantial taxes. In other words, the government must prove a substantial amount of federal income tax is due and owing by [the defendant].

The meaning of the term “substantial” is not defined in absolute terms, but depends upon the facts and circumstances of each case. Any amount of unreported taxable income or tax due and owing, greater than sums relatively small under the particular circumstances, is substantial.

The superseding indictment does not allege a specific amount of tax due. The government is not required to prove the exact amount of outstanding tax due for the calendar years charged. The government is required only to prove, beyond a reasonable doubt, that the tax due was substantial for the calendar years charged.

**INSTRUCTION NO. 33-B**

COUNT I – 26 U.S.C. § 7201 – **SECOND ELEMENT**

The second element of count one that the government must establish beyond a reasonable doubt is that [the defendant] committed at least one of the affirmative acts alleged in the superseding indictment in an attempt to evade or defeat the payment of additional tax. To satisfy this element you must find that [the defendant] committed at least one of the affirmative acts alleged in count one of the superseding indictment.

An affirmative act could be any positive act of commission designed to, or that would be likely to, mislead government agencies, or to conceal, evade, or defeat a substantial tax liability. Even though three acts are alleged, proof of only one act is sufficient to satisfy this element.

To “evade or defeat” the payment of tax means to escape paying a tax owed other than allowed by law.

**INSTRUCTION NO. 33-C**

COUNT I – 26 U.S.C. § 7201 – **THIRD ELEMENT**

If you find that the government has proved the first and second elements of this offense, then the government must establish beyond a reasonable doubt that [the defendant] committed at least one of the acts willfully.

“Willfully” means a voluntary, intentional violation of a known legal duty. In other words, [the defendant] must have acted voluntarily and intentionally and with the specific intent to do something [he] knew the law prohibited––that is to say, with intent either to disobey or to disregard the law. [the defendant] did not act willfully if [he] acted through negligence, mistake, accident, or due to a good faith misunderstanding of the law.

In determining whether [the defendant] acted willfully, you may consider any actions or omissions by [the defendant], and all facts and circumstances in evidence that may aid in determining [the defendant]’s state of mind at the time [the defendant] acted. You may consider acts or omissions in years not specifically charged in the indictment.

A person’s intent may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. Nonetheless, you may infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted based on all of the surrounding circumstances, such as the manner in which the person acted, the means used, the conduct, and any statements the person made.

We are, in our daily affairs, continuously called upon to decide from the acts of others what their intentions or purposes are, and experience has taught us that frequently actions speak more clearly than spoken or written words. To this extent, you may rely on circumstantial evidence in determining [the defendant]’s state of mind at the relevant times.

*Continue this step for each remaining count in the Indictment*.

**INSTRUCTION NO. 34 (WITH SPECIFIC EXAMPLE)**

UNANIMOUS VERDICT

Your verdict must be unanimous on whether the government has proven the elements of each count charged.

[**Count One**

You must be unanimous on whether the government has proven any of the affirmative acts listed in count one. The government is not required to prove each act listed for you to return a guilty verdict on count one. But in order to return a guilty verdict, all twelve of you must agree upon which of the acts listed on the Special Verdict form, if any, [the defendant] committed.

Count one of the superseding indictment charges [the defendant] with engaging in acts in March and May of 2012 to evade or defeat tax due for income earned in calendar years 2005, 2006, 2007, and 2010. To find [the defendant] guilty of count one, your verdict must be unanimous as to which acts [the defendant] engaged in, if any, during March and May of 2012.

**Count Two**

Count two of the superseding indictment charges [the defendant] with engaging in acts in March and June of 2012 that constitute endeavors to corruptly obstruct or impede the due administration of the Internal Revenue laws. To find [the defendant] guilty of count two, your verdict must be unanimous that [he] committed a corrupt act during that time.]

**INSTRUCTION NO. 35**

INFLUENCE OF JUDGE ON VERDICT

If I have said or done anything in this case that makes it appear I have an opinion about [the defendant’s] guilt or innocence, disregard it. You are the sole judges of the facts and should in no way be influenced by what I have done here, except to follow my instructions on the law. Nothing said in these instructions and nothing in the verdict form prepared for your convenience is meant to suggest or convey in any way or manner what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

**INSTRUCTION NO. 36**

RECOLLECTION OF JURORS CONTROLS

If any reference by the court or by the parties to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

**INSTRUCTION NO. 37**

PUNISHMENT IS IRRELEVANT

The question of possible punishment of [the defendant] is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing sentence rests exclusively upon the court.

Your function is to weigh the evidence in the case and to determine whether [the defendant] is guilty beyond a reasonable doubt, solely upon consideration of the basis of such evidence. Under your oath as jurors, you cannot allow consideration of the punishment that may be imposed upon [the defendant], if convicted, to enter into your deliberations in any way.

POST ARGUMENT INSTRUCTIONS

**INSTRUCTION NO. 38**

GUIDANCE FOR JURY DELIBERATIONS

You have now heard all of the evidence and the arguments of the parties. In a moment you will be escorted to the jury room and each of you will have a copy of these instructions that I have given you. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson, who will preside over your deliberations and be your spokesperson here in the courtroom. I suggest that you should then review these instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law as stated in the instructions.

Once you have reviewed the instructions, you may also wish to review the [Special] Verdict form to understand the questions you will need to answer. I also suggest that before you begin discussing the issues presented to you for resolution, you may find it helpful for each of you to write down your own views about the case. This may help you to clarify your own thinking about the issues.

You should then begin to deliberate. When you have reached unanimous agreement as to your verdict, you will have the foreperson fill in the verdict form, date and sign the form, and then return your verdict to the courtroom.

Your deliberations will be confidential. You will not be required to explain your verdict to anyone.

**INSTRUCTION NO. 39**

COMMENCEMENT OF DELIBERATIONS

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his or her sense of pride may be aroused, and he or she may hesitate to recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

**INSTRUCTION NO. 40**

JURY DELIBERATIONS

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous. This means each of you must agree on the answer to each question on the [Special] Verdict form.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

**INSTRUCTION NO. 41**

COMMUNICATIONS WITH COURT DURING DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the court, you may send a note through a court security officer, signed by your foreperson or by one or more jurors. No member of the jury should attempt to communicate with the court by any means other than a signed writing; and the court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing or orally here in open court.

You will note from the oath the marshal will take that he, as well as any other person, is also forbidden to communicate in any way with any juror about any subject touching the merits of the case.

Bear in mind also that you are not to reveal to any person––not even to the court––how the jury stands numerically or otherwise until you have reached a unanimous verdict.

**INSTRUCTION NO. 42**

SCHEDULE FOR DELIBERATIONS

During your deliberations, you are able as a group to set your own schedule for deliberations. You may also set your own schedule for lunch and dinner breaks. I do ask that you notify the court by note about when you plan to recess and when you plan to reconvene to continue your deliberations, if applicable.

I would suggest that you not feel pressured to continue your deliberations after 8:00 p.m. Fatigue and stress from long deliberations raise the risk of compromising your convictions simply to finish the deliberations. This would be contrary to your duty as a juror to reach a just verdict. A good night’s rest and time for reflection may be helpful to resolve questions you may have.

If you do decide to continue your deliberations past 8:00 p.m., I ask that you notify the court by note. The court will then assess whether it is appropriate to continue deliberations later into the evening.