**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:**

Now that you have been sworn, I want to impress on you the seriousness of being a juror. I will give you some preliminary instructions to guide you in your participation in the trial. First, I will explain the charges against [the defendant] and the elements the government is required to prove. Then, I will explain what your duties are as jurors and how the trial will proceed. I will give you more detailed instructions at the conclusion of the evidence on the law, required proof, and how you should proceed to reach a verdict. Unless otherwise instructed, all instructions apply to both the government and [the defendant].

**PRELIMINARY INSTRUCTION NO. 1**

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented by \_\_\_\_\_\_\_\_\_\_\_. The defendant in this case is \_\_\_\_\_\_\_\_\_\_. [He] is represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

***Alternative instruction if the defendant is pro se***

**PRELIMINARY INSTRUCTION NO. 1**

This criminal case has been brought by the United States government. I will sometimes refer to the government as the prosecution. The government is represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The defendant in this case is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. [The defendant] has chosen to represent [himself] *pro se*, which means [he] will present [his] own defense in this case. [His] decision to represent [himself] has no bearing on whether [he] is guilty or not guilty, and it must not affect your consideration of the case.

The court has appointed attorney \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as [the defendant’s] stand-by counsel. [Insert attorney’s name] participation is at [the defendant’s] sole discretion and direction and [the defendant’s] interactions with stand-by counsel should not affect your consideration of the case.

**PRELIMINARY INSTRUCTION NO. 2**

There are three basic rules about a criminal case which you must keep in mind.

First, [the defendant] is presumed innocent until proven guilty.

Second, the burden of proof is on the government. [The defendant] has no burden to prove [his] innocence, or to present any evidence, or to testify. Since [the defendant] has the right to remain silent, the law prohibits you from considering, in arriving at your verdict, the fact that [the defendant] may not have testified.

Third, the government must prove [the defendant]’s guilt beyond a reasonable doubt. I will give you further instructions on this point later, but bear in mind that, in this respect, a criminal case is different than a civil case.

**PRELIMINARY INSTRUCTION NO. 3**

The charges against [the defendant] are stated in a document called an indictment [or in this case, a Superseding Indictment]. An indictment is brought by the government against a defendant and merely states the charges against a defendant. Its purpose is to give a defendant notice of the charges against [him]. It is only an accusation, nothing more. It is not proof of guilt or anything else.

In reaching a verdict in this case, you should not give any weight to the fact that an Indictment has been issued. Because the Indictment is not evidence of guilt, it may not be considered as such by you. A defendant is presumed to be innocent of the crimes charged. [He] begins the trial with a clean slate, and remains innocent unless and until you, after deliberations, conclude the government has proved [his] guilt beyond a reasonable doubt. [He] may not be found guilty by you unless all twelve of you unanimously find that the government has proved [his] guilt beyond a reasonable doubt. To carry its burden to convict on a stated count, the government must prove each element of the stated count beyond a reasonable doubt. [The defendant] is not on trial for any act or conduct not specifically charged in the Indictment.

**PRELIMINARY INSTRUCTION NO. 4**

**Note**: The purpose of Preliminary Instruction No. 4 is to state the charges against the defendant and detail the elements that will need to be proved to find the defendant guilty. Below is an example of how to structure this instruction using a three-count indictment.

***Example* PRELIMINARY INSTRUCTION NO. 4-A**

I am now going to read to you the opening paragraph and Count One of the Indictment.

[Insert background section of the indictment]

**COUNT ONE**

(18 U.S.C. § 514(a)(2) - Fictitious Obligations)

On or about \_\_\_\_\_\_\_\_\_\_, within the District of Utah and elsewhere, Defendant

**[insert the defendant’s name],**

a resident of \_\_\_\_\_\_\_\_\_, with intent to defraud the United States, passed, uttered, presented, offered, brokered, issued, sold, and attempted and caused to do the same, a false and fictitious instrument appearing, representing, purporting, and contriving through scheme and artifice to be an actual security and other financial instrument issued under the authority of the United States. Specifically, Defendant submitted and caused to be submitted a [insert nature of the instrument].

All in violation of Title 18, United States Code, Section 514(a)(2).

***Example* PRELIMINARY INSTRUCTION NO. 4-B**

To find [the defendant] guilty of Count One of the Indictment, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

First: [The defendant] passed, uttered, presented, or offered a false, fictitious, or fraudulent document, instrument or other item, which in this case is alleged to be [identify the document];

Second: That the [identify the document] appeared, represented, purported, or contrived through scheme or artifice to be an actual security or other financial instrument issued under the authority of the United States; and

Third: [The defendant] did so with the intent to defraud.

***Example* PRELIMINARY INSTRUCTION NO. 4-C**

Counts Two and Three of the Indictment charge [the defendant] with making false, fictitious, and fraudulent claims. The counts read as follows:

**COUNT TWO**

(18 U.S.C. § 287 - False, Fictitious, and Fraudulent Claims)

On or about \_\_\_\_\_\_\_\_\_\_\_, within the District of Utah and elsewhere, Defendant

**[insert the defendant’s name]**

a resident of \_\_\_\_\_\_\_\_\_, made and presented to the United States a claim for payment of a federal income tax refund in the amount of $\_\_\_\_\_\_\_\_ with knowledge that such claim was false, fictitious, and fraudulent. Defendant made the false claim by submitting a U.S. Individual Income Tax Return, Form 1040, for the tax year \_\_\_\_\_, in his own name, to the United States Department of Treasury, through the Internal Revenue Service, which return was based on false income and withholding stated on fictitious IRS Forms 1099-OID, Original Issue Discount.

All in violation of Title 18, United States Code, Section 287.

**COUNT THREE**

(18 U.S.C. § 287 - False, Fictitious, and Fraudulent Claims)

On or about \_\_\_\_\_\_\_\_\_\_, within the District of Utah and elsewhere, Defendant

**[insert the defendant’s name]**

a resident of \_\_\_\_\_\_\_\_\_\_, made and presented to the United States a claim for payment of a federal income tax refund in the amount of $\_\_\_\_\_\_\_ with knowledge that such claim was false, fictitious, and fraudulent. Defendant made the false claim by submitting a U.S. Individual Income Tax Return, Form 1040, for the tax year \_\_\_\_, in his own name, to the United States Department of the Treasury, through the Internal Revenue Service, which return was based on false income and withholding stated on fictitious IRS Forms 1099-OID, Original Issue Discount.

All in violation of Title 18, United States Code, Section 287.

To find [the defendant] guilty of Counts Two or Three of the Indictment, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt to convict for that particular count:

First: [The defendant] knowingly made and presented to the United States Department of the Treasury a claim against the United States;

Second: The claim was false, fictitious, or fraudulent; and

Third: [The defendant] knew that the claim was false, fictitious, or fraudulent.

*Continue this step for each subsequent count of the indictment.*

**PRELIMINARY INSTRUCTION NO. 5**

It will be your duty to find from the evidence what the facts are. The facts generally relate to who, what, when, where, why, and how. The facts must be supported by the evidence. Neither the lawyers nor I actually decide the facts. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as the court will give it to you. You must follow that law whether you agree with it or not.

Nothing the court may say or do during the course of the trial is intended to indicate nor should be taken by you as indicating what your verdict should be.

**PRELIMINARY INSTRUCTION NO. 6**

The evidence from which you will find the facts will consist of the testimony of witnesses, documents. and other things received into the record as exhibits, and any facts the attorneys agree or stipulate to or that the court may instruct you to find. Certain things are not evidence and must not be considered by you. I will list them for you now:

1. Statements, arguments and questions by the attorneys are not evidence. [If the defendant is representing him or herself, insert: Statements, arguments, and questions by the parties are not evidence. A party’s testimony as a witness under oath, however, is evidence in the case.]

2. Objections to questions are not evidence. The parties have an obligation to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the court’s ruling on it. If the objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that the court has excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions

on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness’s testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

***Additional instruction if the defendant is pro se***

**PRELIMINARY INSTRUCTION NO. 7**

[The defendant] has decided to represent [himself] in this trial and may or may not use the services of an attorney. [He] has a constitutional right to represent [himself]. [His] decision has no bearing on whether [he] is guilty or not guilty, and it must not affect your consideration of the case. Because [the defendant] has decided to present [his] own defense, you will hear [him] speak at various times during the trial. [He] may make an opening statement and closing argument. [He] may ask questions of witnesses, make objections, and argue to the court. I want to remind you that when [the defendant] speaks in these parts of the trial [he] is acting as an attorney in the case, and [his] words are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted.

You may also notice that [insert attorney’s name] is assisting [the defendant]. [He] is what is known as “stand-by counsel.” [His] role is to be available to assist [the defendant] throughout the trial process as [the defendant] represents himself. [Insert attorney’s name] generally will not address the jury unless the court and [the defendant] permit [him] to do so.

**PRELIMINARY INSTRUCTION NO. 8**

Now, a few words about your conduct as jurors.

First, I instruct you that, until you retire to the jury room at the end of the case to deliberate on your verdict, you are not to discuss the case with anyone or permit anyone to discuss it with you. This includes your family, other jurors, and anyone involved in the trial. Do not speak at all with any of the parties, the witnesses, or the lawyers. If anyone attempts in any way to talk to you about this trial during a recess, it is your obligation to tell me immediately.

Do not try to do any research or make any investigation about the case or about the parties on your own or as a group. Do not use dictionaries, the internet, or other reference materials to understand more about the case or the parties. Do not contact anyone to assist you. Do not attempt to visit any places mentioned in this case, either actually or on the internet, and do not in any other way try to learn about the case outside the courtroom.

Finally, keep an open mind throughout the trial. Evidence can only be presented one piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

After the trial is over and I have released you from the jury, you may then discuss the case with anyone, but you are not required to do so.

**PRELIMINARY INSTRUCTION NO. 9**

Ordinarily, the attorneys will develop all the relevant evidence that will be necessary for you to reach your verdict. However, in rare situations, a juror may believe a question is critical to reaching a decision on a necessary element of the case. In that exceptional circumstance, you may write out a question, raise your hand, and provide the question to the courtroom deputy while the witness is on the stand. I will then consider that question with the attorneys. If it is determined to be a proper and necessary question, I will ask it or allow counsel to ask the question. If I do not ask it, you should recognize that I have determined it is not a legally appropriate question and not worry about why it was not asked or what the answer would have been.

**PRELIMINARY INSTRUCTION NO. 10**

Because of the prevalence of computers and electronic communication technology, I provide a further caution to you. Serious problems have been caused around the country by jurors using computer and electronic communication technology. It is natural that we want to investigate a case, or to share with others our thoughts about the trial, and it is easy to do so with the internet and instant communication devices or services, such as Androids, iPhones, Facebook, Twitter, and so on.

Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends entirely on you, the jurors, reaching your decisions based on evidence presented to you in court, and not on other sources of information. You violate your oath as jurors if you conduct your own investigations or communicate about this trial with others.

Jurors have caused serious consequences for themselves and the courts by “googling” the parties, issues, or counsel; “tweeting” with friends about the trial; using Androids or iPhones to gather or send information on cases; posting trial updates on Facebook pages; using Wikipedia or other internet information sources, and so on. Even using something as seemingly innocent as “Google Maps” can result in a mistrial.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

Violations may also result in substantial penalties for the juror.

So I warn you again—do not use your cellphone or computer to investigate or discuss anything connected with this trial until it is completely finished. Do no internet research of any kind, and advise me if you learn of any juror who has done so.

**PRELIMINARY INSTRUCTION NO. 11**

If you would like to take notes during the trial, you may, but you are not required to take notes. If you decide to take notes, be careful not to get so involved in note taking that you become distracted, and remember your notes will not necessarily reflect exactly what was said. Your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. If you do take notes, you must leave them in the jury room at night and do not discuss the content of your notes until you begin deliberations.

**PRELIMINARY INSTRUCTION NO. 12**

The court reporter is making stenographic notes of everything that is said. The purpose is to have an accurate record of the proceeding and to assist any appeals. A typewritten copy of the testimony, however, will not be available for your use during deliberations.

**PRELIMINARY INSTRUCTION NO. 13**

At the end of trial, you must make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

**PRELIMINARY INSTRUCTION NO. 14**

During the trial it may be necessary for me to talk with the attorneys out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

**PRELIMINARY INSTRUCTION NO. 15**

The trial will generally proceed as follows:

1. Opening Statements. First, the government will make an opening statement, outlining what the case is about and what it thinks the evidence will show. Next, [the defendant] may, but does not have to, make an opening statement. Just as the indictment is not evidence, opening statements are neither evidence nor arguments. Their purpose is only to help you understand what the evidence will be. It is a road map to show you what is ahead.

2. Presentation of Evidence. The government will then present its witnesses and other evidence. [The defendant] may cross-examine the government’s witnesses. Following the government’s case, [the defendant] may, if [he] wishes, present witnesses, whom the government may cross-examine. [He] may also introduce other evidence. If [the defendant] submits other evidence, the government may introduce rebuttal evidence.

3. Instructions on the Law. Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. You must obey these instructions. You are not allowed to go against the law in reaching a verdict.

4. Closing Arguments. After all the evidence is in, the lawyers will summarize and argue the case. They will share with you their views of the evidence, how it relates to the law, and how they think you should decide the case.

5. Jury Deliberations. The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict. Your verdict must be unanimous.

The trial will now begin.