



Part 25. Special Topics

Chapter 1. Fraud Handbook

Section 1. Overview/Definitions

25.1.1 Overview/Definitions

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Manual Transmittal

December 16, 2011

Purpose

(1) This transmits revised IRM 25.1.1, Fraud Handbook, Overview/Definitions.

Material Changes

(1) The changes made to this IRM are listed in the table below.

IRM	Description
Audience	Replaced "Large & Mid-size Business (LMSB)" with "Large Business & International (LB&I)" .
25.1.1.1(6)	Replaced "a potentially fraudulent situation" with "first indicators of fraud" .
25.1.1.1(7)	Added a comment (new paragraph) about the FTA Program.
25.1.1.2.1(b)	Replaced "the latter are" with "proof is" .

- 25.1.1.2.4(3) Add "Concealment of assets" as a bullet item.
- 25.1.1.3(1)b. Replaced "process" with "action" .
- 25.1.1.3(2)a. Replaced "process" with "action" .
- 25.1.1-1 (Title 18 USC Section 287) Deleted "for T/P" and identified the footnote "*" as a note.

Effect on Other Documents

This material supersedes IRM 25.1.1, dated January 1, 2003.

Audience

Criminal Investigation (CI), Large Business & International (LB&I), Small Business/Self-Employed (SB/SE), Tax Exempt/Government Entities (TE/GE), Wage & Investment (W&I), Counsel.

Effective Date

(12-16-2011)

Signed: Celia Richardson, Acting Director, Fraud/BSA, SB/SE

25.1.1.1 (12-16-2011)

Overview

1. This section provides an overview of fraud and defines the elements of fraud.
2. This handbook is a comprehensive guide for IRS employees service-wide in the recognition and development of potential fraud issues, referrals for criminal fraud, duties and responsibilities in joint investigations, civil fraud cases and other related fraud issues.
3. The primary objective of the fraud program is to foster voluntary compliance through the recommendation of criminal prosecutions and/or civil penalties against taxpayers who evade the assessment and/or payment of taxes known to be due and owing.
4. The discovery and development of fraud is the result of effective investigative techniques. Techniques employed by compliance employees should be designed to disclose not only errors in accounting and application of tax law, but also irregularities that indicate the possibility of fraud.
5. Generally, for fraud to be considered the compliance employee must show:
 - A. An additional tax due and owing due to a deliberate intent to evade tax; or
 - B. The willful and material submission of false statements or false documents in connection with an application and/or return.
6. The fraud technical advisor (FTA) plays a vital role in the development of a potential fraud case. The FTA will be consulted in all cases involving potential criminal fraud, as well as those cases that have potential for a civil fraud penalty. The FTA serves as a resource person and liaison to compliance employees in all operating divisions. The FTA is available to assist in fraud investigations and offer advice on matters concerning tax fraud to all operating divisions. When a compliance employee suspects first indicators of fraud, the employee will discuss the case at the earliest possible opportunity with his/her manager. If the group manager concurs, the FTA will immediately be contacted and both the group manager and FTA will provide guidance to the compliance employee on how to proceed. Managers will encourage the early involvement of the FTA in all potential fraud cases.

7. The FTA Program is a service-wide program consisting of seven groups. The groups consist of revenue agents and revenue officers who are strategically located throughout the country to assist with the development of fraud. A list of the groups, FTA group managers and the FTAs can be found on the National Fraud Program (NFP) website <http://sbseservicewide.web.irs.gov/Fraud/default.aspx>.

25.1.1.2 (07-18-2008)

Definition of Fraud

1. **Fraud** is deception by misrepresentation of material facts, or silence when good faith requires expression, resulting in material damage to one who relies on it and has the right to rely on it. Simply stated, it is obtaining something of value from someone else through deceit.
2. Tax fraud is often defined as an intentional wrongdoing on the part of a taxpayer, with the specific purpose of evading a tax known or believed to be owing. Tax fraud requires both:
 - a tax due and owing; and
 - fraudulent intent.

25.1.1.2.1 (07-18-2008)

Definitions—General

1. The compliance employee must be familiar with the following legal terms in order to understand the requirements of proof:
 - A. Burden of Proof - the obligation to offer evidence that a court (judge or jury) could reasonably believe in support of a contention. In tax fraud cases, the burden of proof is on the Government.
 - B. Evidence - data presented to a judge or jury in proof of the facts in issue and which may include the testimony of witnesses, records, documents, or objects. Evidence is distinguished from proof in that proof is the result or effect of evidence.
 - C. Direct Evidence - evidence in the form of testimony from a witness who actually saw, heard, or touched the subject of questioning. Direct evidence, which is believed, proves existence of fact in issue without inference or presumption.
 - D. Circumstantial Evidence - evidence based on inference and not personal observation.
 - E. Presumption (of law) - a rule of law that a judge or jury will draw a particular inference from a particular fact, or from particular evidence, unless and until the truth of such inference is disproved.
 - F. Inference - a logical conclusion from given facts.
 - G. Preponderance of evidence - evidence that will incline an impartial mind to one side rather than the other so as to remove the cause from the realm of speculation. It does not relate merely to the quantity of evidence. Simply stated, evidence which is more convincing than the evidence offered in opposition.
 - H. Reasonable doubt - a doubt that would cause a prudent person to hesitate before acting in matters of importance to themselves. Such a doubt will leave a juror's mind uncertain after examination of the evidence.
 - I. Willful Intent to Defraud - an intentional wrongdoing with the specific purpose of evading a tax believed by the taxpayer to be owing.

- J. *Clear and Convincing Evidence* - evidence showing that the thing to be proved is highly probable or reasonably certain. This is a greater burden of proof than preponderance of the evidence but less than beyond a reasonable doubt.

25.1.1.2.2 (05-19-1999)

Requirements of Proof

1. Understanding the requirements of proof is essential in establishing fraud. In all criminal and civil tax fraud cases, the burden of proof is on the Government.
2. The major difference between civil and criminal fraud is the degree of proof required.
 - A. In **criminal** cases, the Government must present sufficient evidence to prove guilt beyond a reasonable doubt.
 - B. In **civil fraud** cases, the Government must prove fraud by clear and convincing evidence.

25.1.1.2.3 (05-19-1999)

Civil vs. Criminal

1. Civil fraud results in a remedial action taken by the government such as assessing the correct tax and imposing civil penalties as an addition to tax, as well as retrieving transferred assets. Civil penalties are assessed and collected administratively as a part of the tax.
2. Criminal fraud results in a punitive action with penalties consisting of fines and/or imprisonment. Criminal penalties:
 - Are enforced only by prosecution;
 - Are provided to punish the taxpayer for wrongdoings; and
 - Serve as a deterrent to other taxpayers.
3. A tax fraud offense may result in both civil and criminal penalties.

25.1.1.2.4 (12-16-2011)

Avoidance vs. Evasion

1. Avoidance of tax is not a criminal offense. Taxpayers have the right to reduce, avoid, or minimize their taxes by legitimate means. One who avoids tax does not conceal or misrepresent, but shapes and preplans events to reduce or eliminate tax liability within the perimeters of the law.
2. Evasion involves some affirmative act to evade or defeat a tax, or payment of tax. Examples of affirmative acts are deceit, subterfuge, camouflage, concealment, attempts to color or obscure events, or make things seem other than they are.
3. Common evasion schemes include:
 - Intentional understatement or omission of income,
 - Claiming fictitious or improper deductions,
 - False allocation of income, and/or
 - Improper claims, credits, or exemptions,

- Concealment of assets.

25.1.1.3 (12-16-2011)

Indicators of Fraud vs. Affirmative Acts of Fraud

1. Indicators of Fraud:

- A. Taxpayers who knowingly understate their tax liability often leave evidence in the form of identifying earmarks (or indicators).
- B. Serve as a sign or symptom, or signify that actions *may* have been done for the purpose of deceit, concealment or to make things seem other than what they are. Indications in and of themselves do not establish that a particular action was done.
- C. Examples include substantial unexplained increases in net worth, substantial excess of personal expenditures over available resources, bank deposits from unexplained sources substantially exceeding reported income, and documents that appear to be altered or false.

2. Affirmative Acts (Firm Indications) of Fraud:

- A. Those actions that establish that a particular action *was* deliberately done for the purpose of deceit, subterfuge, camouflage, concealment, some attempt to color or obscure events, or make things seem other than what they are.
- B. Fraud cannot be established without affirmative acts of fraud.
- C. Examples include omissions of specific items where similar items are included, concealment of bank accounts or other assets, failure to deposit receipts to business accounts, and covering up sources of receipts.

25.1.1.4 (05-19-1999)

Criminal Statutes

1. Willfulness is a common element of tax crimes. Willfulness is defined as a voluntary, intentional violation of a known legal duty. A good faith misunderstanding of the law or good faith belief that one is not violating the law negates willfulness.
2. Exhibit 25.1.1-1 is a listing of the elements necessary for the most common statutes under which criminal prosecution may be recommended by CI.

Exhibit 25.1.1-1

Criminal Violations

Criminal Statutes

Title 26 USC Section 7201 (Evasion) Felony

Elements Necessary For Prosecution

- (1) Willfulness
- (2) Attempt to evade or defeat (usually involves concealment or deception) tax or payment thereof
- (3) Tax deficiency

Title 26 USC Section 7202 (Trust Fund Violation—Willful Failure to Collect or Pay Over Tax) Felony

- (1) Willfulness
- (2) Requirement to collect, truthfully account for, and pay over employment taxes
- (3) Either failure to collect any tax or failure to truthfully

Title 26 USC Section 7203 (Failure to File or Failure to Pay) Misdemeanor

account for and pay over any tax or both

- (1) Willfulness
- (2) Requirement to file a return, pay an estimated tax or tax, maintain records, or supply information
- (3) Failure to file a return, pay an estimated tax or tax, maintain records, or supply information

Title 26 USC Section 6050I in Conjunction with 26 USC Sections 7203 and 7206 (Trade or Business Required to File a Form 8300 for Receiving More Than \$10,000 Cash) Felony

- (1) Willfulness
- (2) Subject to reporting requirement relating to cash of more than \$10,000 received in trade or business
- (3) Evasion of reporting requirement by:
 - a. Causing a trade or business to fail to file report, or
 - b. Causing a trade or business to file false report, or
 - c. Structuring transactions to avoid report

Title 26 USC Section 7204 (Employee Wage Statements) Misdemeanor

- (1) Duty to deduct and withhold employment tax or income tax (26 USC 3102(a), 3402(a))
- (2) Duty to timely furnish to the employee a written statement showing specified information concerning the deductions (26 USC 6051)
- (3) Furnishing a false or fraudulent statement to an employee, or the failure to furnish a statement to an employee at the required time and in the required manner
- (4) Willfulness

Title 26 USC Section 7205 (False W-4) Misdemeanor

- (1) Duty to supply information to employer regarding income tax withholding (26 USC 3402(f)(2))
- (2) Furnishing false or fraudulent information or failure to supply information which would require an increase in tax to be withheld
- (3) Willfulness

Title 26 USC Section 7206(1) (False return) Felony

- (1) Making and subscribing a return, statement or other document under penalties of perjury
- (2) Knowledge that it is not true and correct as to every material matter
- (3) Willfulness

Title 26 USC Section 7206(2) (Assisting in Preparation of False Return) Felony

- (1) Aiding or assisting in, procuring, counseling, or advising the preparation or presentation of a document in connection with matters arising under the internal revenue laws
- (2) Document was false as to a material matter
- (3) Willfulness

Title 26 USC Section 7206(4) (Removal or Concealment with Intent to Defraud) Felony

- (1) Tax imposed on property
- (2) Property on which tax is imposed or will be imposed or levy is authorized
- (3) Removal or concealment
- (4) Intent to evade or defeat assessment or collection of tax

Title 26 USC Section 7206(5) (Compromises & Closing Agreements) Felony

- (1) Willful concealment of property or
- (2) Willful withholding, falsifying and destroying records.
- (3) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement.

Title 26 USC Section 7207 (Submission of False Documents) Misdemeanor

- (1) Wilfulness
- (2) Delivery or disclosure to any officer or employee of the Internal Revenue Service of any list, return, account, statement, or other document
- (3) Return, statement, or other document is false or fraudulent as to a material matter
- (4) Knowledge of material falsity

Title 26 USC Section 7212(a) "Omnibus Clause") Felony

- (1) Corrupt effort, endeavor, or attempt
- (2) To impede, obstruct or interfere with
- (3) Due administration of Title 26

Title 26 USC Section 7212(a) (Corrupt or Forcible Interference) Felony or Misdemeanor

- (1) Use of force or threats
- (2) To intimidate, impede or obstruct
- (3) An officer or employee of the U.S. acting in official capacity under Title 26

Title 26 USC Section 7212(b) (Forcible Rescue of Seized Property) Felony

- (1) Forcible rescue or attempt to forcibly rescue
- (2) Seized property
- (3) Knowledge of seizure

Title 26 USC Section 7215 (Collection & Paying Tax) Misdemeanor

- (1) Taxpayer was a person required to collect, account for, and pay over income tax withholding on wages and FICA taxes
- (2) Taxpayer was notified of the failure to collect, account for, and pay over
- (3) Taxpayer failed to collect, account for, and pay over the taxes, while not entertaining a reasonable doubt as to whether the law required the taxpayer to do so, and the failure was not due to circumstances beyond the taxpayer's control

Title 26 USC Section 7232 (Failure to Register) Felony

- (1) Fails to register in connection with taxable purchase — diesel fuel and special motor fuels or
- (2) Falsely represents that he is registered or
- (3) Willfully makes false statement in an application for registration.

Title 18 USC Section 2 (Aiding and Abetting) Felony or Misdemeanor

- (1) Taxpayer associated with the criminal venture
- (2) Taxpayer knowingly participated in the venture, and
- (3) Taxpayer sought by his or her actions to make the venture succeed

Title 18 USC Section 152(1) (Concealment of Property) Felony

- (1) Bankruptcy proceeding was in existence;
- (2) Individual fraudulently concealed the property from the custodian; and
- (3) Property belonged to the bankruptcy estate.

Title 18 USC Section 152(2) (False Oath or Account) Felony

- (1) Existence of a bankruptcy proceeding;
- (2) Statement under oath;
- (3) Statement must be material;
- (4) Statement must be false; and
- (5) Statement was made knowingly and fraudulently.

Title 18 USC Section 152(3) (False Declarations) Felony

- (1) Existence of a bankruptcy proceeding;

- (2) Individual made a false declaration, certificate, verification, or other statement in relation to the bankruptcy proceeding;
- (3) Statement was material; and
- (4) Statement was known to be false.

Title 18 USC Section 152(4) (False Claims) Felony

- (1) Bankruptcy proceedings have commenced;
- (2) Individual presented or caused to be presented a proof of claim in the bankruptcy;
- (3) Proof of claim was false as to a material matter; and
- (4) Individual knew the proof of claim was false and acted knowingly and fraudulently.

Title 18 USC Section 152(5) (Fraudulent Receipt of Property) Felony

- (1) Individual receives a material amount of property from a debtor;
- (2) Such transfer occurred after the filing of a case under Title 11; and
- (3) Acts were done with the intent to defeat the provisions of Title 11.

Title 18 USC Section 152(6) (Extortion and Bribery) Felony

- (1) Individual gives, offers, receives, or attempts to obtain money or property, remuneration, compensation, reward, advantage, or promise for acting or forbearing to act in any case under Title 11; and
- (2) Action was made knowingly and fraudulently.

Title 18 USC Section 152(7) (Fraudulent Transfer or Concealment) Felony

- (1) Individual fraudulently transferred or concealed the defendant's property or the property of another; and
- (2) Such act of transfer or concealment was done with the intent to defeat the provisions of Title 11, or in contemplation of a case under Title 11.

Title 18 USC Section 152(8) (Destruction or Alteration of Recorded Information) Felony

- (1) Bankruptcy proceeding existed;
- (2) Individual concealed, destroyed, or mutilated the documents;
- (3) Such documents related to the property or financial affairs of the debtor; and
- (4) Individual acted knowingly and fraudulently.

Title 18 USC Section 152(9) (Withholding of Recorded Information) Felony

- (1) Bankruptcy proceeding existed;
- (2) Individual withheld from the trustee entitled to its possession; books, documents, records, or papers;
- (3) Such documents related to the property or financial affairs of the debtor; and
- (4) Individual withheld the documents knowingly and fraudulently.

Title 18 USC Section 157 (Bankruptcy Fraud) Felony

- (1) Defendant devised or intended to devise a scheme or artifice to defraud; and
- (2) For the purpose of executing or concealing such scheme or artifice or attempting to do so;
- (3) Files a petition under Title 11; or
- (4) Files a document in a proceeding under Title 11; or
- (5) Makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under Title 11.

Title 18 USC Section 286 (Conspiracy to Defraud the Government with Respect to Claims) Felony

- (1) An agreement, combination, or conspiracy to defraud the United States
- (2) By obtaining or aiding to obtain the payment of any false, fictitious or fraudulent claim.

Title 18 USC Section 287 (False Fictitious or Fraudulent Claims) Felony

- (1) Knowingly makes or presents (statute does not require that person providing false information to return discounter* who filed return actually file return to be guilty under 287)
- (2) False, fictitious or fraudulent claim
- (3) Knowing that claim filed is false, fictitious or fraudulent.

Note:

* Files return for a percentage of the refund.

Title 18 USC Section 371 (Conspiracy) Felony

- (1) The general conspiracy statute encompasses two distinct types of conspiracies;
 - a. Conspiracy to commit *any* federal offense
 - b. Conspiracy to defraud the United States or *any* agency thereof, which includes the Service
- (2) Essential elements of a Section 371 offense are:
 - a. *Agreement* by two or more parties
 - b. To *commit an offense* against the United States; or, *to defraud* the United States or one of its agencies
 - c. *Overt act* by one or more of the parties in furtherance of the agreement*Requisite intent* to defraud or to commit the substantive offense

Title 18 USC Section 1001 (False Statements) Felony

- (1) Either:
 - a. Falsifying, concealing or covering up any material fact by any trick, scheme, or device; or
 - b. Making false, fictitious or fraudulent statements or representations; or
 - c. Making or using any false writing or document.
- (2) Knowingly and willfully.
- (3) In a matter within the jurisdiction of a department or agency of the United States.
- (4) False matter was of a material nature.

Title 18 USC 1956 (Laundering of Monetary Instruments) Felony

- (1) Whoever knowing that property involved is proceeds from a specified unlawful activity (SUA).
- (2) Person knew that proceeds was from some activity that constitutes a felony under state, federal or international law;
 - a. Conducts or attempts to conduct a financial activity involving proceeds of a SUA
 - b. With intent to promote the SUA or
 - c. With intent to engage in conduct in violation of 7201 or 7206 or whoever knowing the transaction is
 - i. Designed to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds

of the SUA or
ii. To avoid a transaction reporting requirement under a
State or Federal law.

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