



# FY 2009 Congressional Budget Tax Division



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## I. Overview

### A. Introduction

The Tax Division requests a total of 634 permanent positions (369 attorneys), 577 full-time equivalent (FTE) work years (includes four reimbursable FTE), and \$101,016,000 for FY 2009. The Tax Division represents the United States in virtually all - civil and criminal, trial and appellate - litigation arising under the internal revenue laws, in all state and federal courts except the United States Tax Court. To be successful in administering the tax laws, the Internal Revenue Service requires Tax Division support to, among other things, enforce, and defend its summonses while its examinations are ongoing, and to collect and defend its tax assessments when the examinations are complete. At any given time, the Tax Division's civil trial attorneys have nearly 7,000 civil cases in process. In any given year, the Tax Division's civil appellate attorneys handle about 700 civil appeals, about half of which are from decisions of the Tax Court, where IRS attorneys represent the Commissioner. To help achieve uniformity in nationwide standards for criminal tax prosecutions, the Tax Division's criminal prosecutors authorize all grand jury investigations and all prosecutions involving violations of the internal revenue laws. Alone, or in conjunction with Assistant United States Attorneys, Tax Division prosecutors investigate and prosecute the crimes. In the last few years, the Division has authorized between 1300 and 1800 criminal tax investigations and prosecutions per year.

The Tax Division's criminal and civil, trial, and appellate litigation activities are an important and indispensable part of our Nation's tax system. The Division contributes to tax enforcement in many ways: by the immediate and long-term financial impact of its cases, by the salutary effect our civil and criminal litigation has on voluntary compliance with the tax laws; by ensuring fair and uniform enforcement of the tax laws; by defending IRS employees against charges arising from the conduct of their official duties; and by lending the financial crimes expertise of our tax prosecutors to the enforcement of other laws involving a financial aspect.

1. **Financial Impact: Immediate as well as Long-Term.** The Division's work has an immediate financial impact on the Federal Treasury. For the past four fiscal years (FY 2004 – FY 2007), the Tax Division's investment in attorneys has yielded a 14:1 payoff for the Federal Treasury. That is, taking into account solely the tax dollars collected and the tax refunds not paid as a result of our civil tax litigation, the Division's civil trial attorneys alone have returned \$14 for each dollar the Division has invested in attorneys throughout the entire Division.

Yet, significant as these dollars are, they pale in comparison to the long-term financial impact of the Division's work. The Division is currently defending refund suits that collectively involve nearly \$9 billion dollars.<sup>1</sup> This amount measures only the amount involved in the lawsuits themselves. It does not include the amounts at issue with the same taxpayers for other years nor the amounts at issue with other taxpayers who will be bound by the outcome of the litigation. Decisions in the Division's cases may reduce the need for future administrative and judicial tax proceedings, by creating binding precedents that settle questions of law that govern millions of taxpayers. Moreover, millions more dollars are saved each year because the Division successfully defends the Government against many other tax-related suits brought by taxpayers and third parties.

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<sup>1</sup> See IRS 2006 statistics, [www.irs.gov/taxstats/article/0,,id=168593,00.html](http://www.irs.gov/taxstats/article/0,,id=168593,00.html), Table 27.

2. ***Improving Voluntary Compliance.*** The Tax Division’s success rate in its litigation - more than 90% - has an enormous effect on voluntary tax compliance.<sup>2</sup> By law, the IRS can make public neither the fact of an IRS audit, nor its result. By contrast, the Tax Division’s important tax litigation victories receive wide media coverage, leading to a significant multiplier effect on voluntary compliance.<sup>3</sup> Efforts of the IRS and the Tax Division over the last six years are having a positive effect on voluntary compliance. According to an annual survey commissioned by the IRS Oversight Board, nearly nine out of ten Americans feel that it is “not at all” acceptable to cheat on income taxes.<sup>4</sup> This renewed willingness to adhere to the tax laws results in part from the Administration’s increased focus on tax enforcement and the Congress’s provision of greater resources to the effort. Furthermore, because the Tax Division is an integral part of the IRS’s enforcement efforts, the Division is partially responsible for the IRS’ ability to collect \$3.5 trillion in taxes each year.
3. ***Fair and Uniform Enforcement of Tax Law.*** The Tax Division plays a major role in assuring the public that the tax system is enforced uniformly and fairly. Because the Division independently reviews the merits of each case the Internal Revenue Service requests be brought or defended, it is able to ensure that the Government’s litigating positions are consistent with applicable law and policy. An observation about the Division made nearly 70 years ago still rings true today: “[T]he Department of Justice, as the Government’s chief law office, is in a position to exercise a more judicial and judicious judgment...With taxes forming a heavy and constant burden it is essential that there be this leavening influence in tax litigation. Next to the constant availability of the courts, the existence of the Division is the greatest mainstay for the voluntary character of our tax system.”<sup>5</sup>
4. ***Defending IRS Officials and the United States against Damage Suits.*** The Tax Division vigorously defends IRS agents and officers, and the Government itself, against unmeritorious damage suits. Absent representation of the quality provided by the Division, these suits could cripple or seriously impair effective tax collection and enforcement.
5. ***Expertise in Complex Financial Litigation.*** The Division’s investigations, prosecutions, and civil trials often involve complex financial transactions and large numbers of documents. The Division is able to use the unique expertise its attorneys have developed in litigating complex tax cases to assist in other important areas of law enforcement, including:
  - fighting terrorism as part of the Joint Terrorism Task Force, by investigating and prosecuting people and organizations that funnel money to terrorists;
  - attacking corporate fraud as part of the President’s Corporate Fraud Task Force;

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<sup>2</sup> A widely regarded study concluded that the marginal indirect revenue-to-cost ratio of a criminal conviction is more than 16 to 1. While no comparable study of civil litigation exists, the same research suggests that IRS civil audits -- the results of which are not publicly disclosed -- have an indirect effect on revenue that is more than 10 times the adjustments proposed in those audits. Alan H. Plumley, *The Determinants of Individual Income Tax Compliance*, pp. 35, 40, Internal Revenue Service Publication 1916 (1996).

<sup>3</sup> “The IRS ... found that taxpayers who heard about IRS audit activity via the media [rather than through word of mouth] were less likely to cheat...” Leandra Lederman, *The Interplay Between Norms and Compliance*, 64 Ohio. St. L. J. 1453, 1494-95 (2003), quoting Robert M. Melia, *Is the Pen Mightier than the Audit?*, 34 Tax Notes 1309, 1310 (1987).

<sup>4</sup> See IRS Oversight Board, February, 2007, <http://www.treas.gov/irsob/releases/index.shtml>.

<sup>5</sup> Lucius A. Buck, *Federal Tax Litigation and the Tax Division of the Department of Justice*, 27 Va. L. Rev. 873, 888 (1940).

- stopping drug trafficking as part of the Organized Crime and Drug Enforcement Task Force (OCDETF); and
- investigating public corruption by working on prosecution teams with attorneys from various United States Attorney's Offices and the Department's Criminal Division.

A solid infrastructure is essential to the Tax Division's achieving the Department's performance goals. This infrastructure includes office automation support operations, the Justice Consolidated Office Network (JCONIA) system within the Division, access to adequate litigation support, including courtroom presentation technologies, and the organizational and technical infrastructure to support the use of emerging technologies and automated tools for trial preparation, electronic filing, and courtroom presentation. The IT investment requested for FY 2009 is 13 FTE and \$5,711,000. No IT enhancements are requested for FY 2009.

The Division delivers an impact far greater than its budget with great efficiency. In the OMB's 2005 Program Assessment Rating (PART) review, the Division received a score of 85, which is deemed "effective" and is the highest level awarded by OMB (see page 27 for details).

Beginning in FY 2007, electronic copies of the Department of Justice's Congressional Budget justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.usdoj.gov/jmd/2009justification/>.

### ***A. Full Program Costs***

The Tax Division consists of a single Decision Unit (General Tax Matters) supporting the Department's Strategic Goal 2 – Prevent Crime, Enforce Federal Laws, and Represents the Rights and interests of the American People.

This Strategic Goal defines the two broad programs areas:

- Civil Tax Litigation and Appeals - \$74,707,000
- Criminal Tax Prosecution and Appeals - \$26,309,000

Historically, 74% percent of the Division's budget and expenditures can be attributed to its Civil Tax Litigation and Appeals and 26% percent to Criminal Tax Prosecution and Appeals. The FY 2009 budget request assumes this same allocation.

This budget request incorporates all costs to include mission costs related to cases and matters, mission costs related to oversight and policy, and overhead.

### ***B. Performance Challenges***

The Tax Division faces two serious and immediate challenges to the accomplishment of its mission. We cannot permit it to be true that, as Leona Helmsley reportedly said, only "little people" pay taxes. The Tax Division will continue supporting the IRS's increased and increasingly sophisticated tax enforcement efforts to do more than go after the so-called "low-hanging fruit" of taxes avoided or evaded by simple schemes.

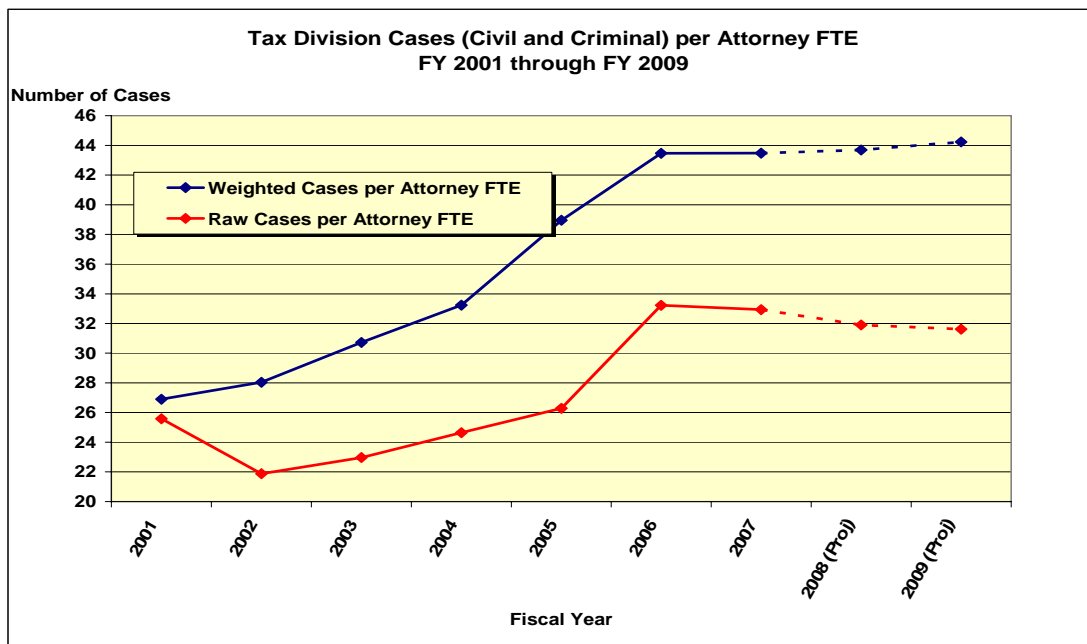
## External – The Ease of Modern Tax Avoidance and Evasion

The Internet and financial globalization are making tax avoidance and evasion easier to accomplish and harder to detect than ever before. These modern efforts to escape taxation require extensive resources and expertise to combat because such schemes often result in highly complex litigation involving international transactions. A team of Tax Division attorneys, rather than one, is often required to defeat these sophisticated challenges to tax liability.

## Internal – Increasing Workload

The Tax Division's workload is directly related to IRS enforcement efforts. In FY 2006, Congress increased the IRS's enforcement budget by an additional \$442 million. The President's FY 2008 budget request sought an additional \$440 million above that already increased amount for IRS enforcement activities. Historically, each increase in IRS enforcement activity leads to increased Division workload, with a lag time of about two years. The Division's existing attorney workforce, however, is already working beyond capacity. Division attorneys worked an average of 2,005 hours in FY 2007 (exclusive of leave) and 1,988 hours in FY 2006. A full-time schedule is 1,800 work hours, so each attorney is already working the equivalent of thirteen months per year and cannot reasonably be expected to handle heavier workloads.

The Tax Division works continuously on maximizing its efficiency. The Division tracks the number of significant litigation activities performed by each civil attorney. As the Division's workload has increased, Division civil attorneys have been working demonstrably harder, by completing more significant litigation activities per year. Similarly, on the criminal side, the Division tracks the number of criminal referrals (targets) made to the Division and the number of prosecutions authorized. Moreover, the Division's case mix—both civil and criminal—is becoming increasingly complex.



The above graph depicts the constantly increasing workload for Division attorneys from FY 2001 through FY 2009. Further efficiency gains for both civil and criminal attorneys will be increasingly difficult to achieve.

## **II. Summary of Program Changes**

**Not Applicable**

### **III. Appropriations Language and Analysis of appropriations Language**

**Not applicable (Part of General Litigating Activities).**



#### IV. Decision Unit Justification

##### A. General Tax Matters

<b>General Tax Matters - TOTAL</b>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount</b>
2007 Enacted	563	515	85,729
2008 Enacted	634	573	92,781
Adjustments to Base	0	0	8,235
2009 Current Services	634	573	101,016
2009 Program Increases	0	0	0
2009 Request	634	573	101,016
<b>Total Change 2008-2009</b>	0	0	8,235

## 1. PROGRAM DESCRIPTION

### a) CIVIL TAX LITIGATION

The Tax Division is responsible for all matters arising under the internal revenue laws in all state and federal trial courts, except the Tax Court, and in appeals from all trial courts, including the Tax Court. Tax Division trial attorneys defend the United States in suits brought against it relating to the tax laws, including tax shelter cases, refund suits, and other suits seeking monetary or other relief. Tax Division trial attorneys also bring suits that the IRS has requested, including suits to stop tax scam promoters and preparers; suits to collect unpaid taxes; and suits to allow the IRS to obtain information needed for tax enforcement. Tax Division Civil Appellate attorneys represent the United States in all appeals from trial court decisions.

#### Halting the Spread of Tax Shelters

The proliferation of abusive tax shelters is a significant problem confronting our tax system. Abusive tax shelters for large corporations and high-income individuals cost the government billions of dollars annually, according to Treasury Department estimates. A February 2005 GAO report concluded that 207 Fortune 500 companies engaged in tax shelter transactions, costing the Federal Treasury as much as \$56 billion.<sup>6</sup>

Tax shelters typically involve multiple, complex, and sometimes well-disguised transactions that have been structured to provide substantial tax benefits that were not intended by Congress, or that otherwise lack economic substance independent of those tax benefits. Sophisticated tax professionals promote these complicated transactions to corporations and wealthy individuals. Because these cases involve enormous sums of money and often attract significant media attention, a coordinated and effective effort is essential to prevent substantial losses to the Treasury and to deter future use of such tax shelters by other taxpayers.

The Tax Division plays a critical role in the government's efforts to combat abusive tax shelters by defending in federal trial and appellate courts the IRS's disallowance of sham tax benefits. The cases the Division defends directly involve millions of dollars in tax revenue, and affect billions of dollars of tax revenue owed by other taxpayers. For example, the Division recently prevailed at the trial court in **BB&T**, the first litigated LILO (Lease-In/Lease-Out) tax shelter case – an important victory that sets the tone for the many LILO and related cases that follow. Although the case itself directly involved less than \$5 million, when Congress addressed these particular shelters prospectively in 2004 legislation, the 10-year revenue estimate provided for the legislative amendments was \$26.56 billion.<sup>7</sup> The IRS reportedly has an inventory of LILO and related cases involving 50 different taxpayers and more than 1,500 separate transactions involving billions of dollars.

The Tax Division has also prevailed in a number of “Son of BOSS” shelters,<sup>8</sup> in which billions are at stake collectively. In **Colm Producer** and **Kornman** (N.D. Tex.), *appeal pending*, involving short-sale transactions, the district court held that the participants had improperly claimed large artificial losses. Although only about \$800,000 is at issue in these cases, the government stood to lose \$100 million in tax revenues if the taxpayers prevailed, and another \$100 million in a related case. The

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<sup>6</sup> GAO, Tax Shelters: Services Provided by External Auditors, GAO-05-171 (February, 2005), p. 12.

<sup>7</sup> Staff of the Joint Committee on Taxation, “Estimated Budget Effects of the Conference Agreement for H.R. 4520, The ‘American Jobs Creation Act of 2004,’” October 7, 2004.

<sup>8</sup> Son of BOSS tax shelters are similar in design to the so-called “BOSS” tax shelter (“Bond and Option Sales Strategy”).

Division also won a major victory in *Cemco* (N.D. Ill.), *appeal pending*, a Son of BOSS shelter involving foreign currency options. The court upheld the IRS's disallowance of artificial tax losses and the assertion of accuracy-related penalties, as well as retroactive application of certain Treasury Regulations. This case represented a potential revenue loss of \$3.7 million. And the Division won yet another Son of BOSS case, involving BLIPS,<sup>9</sup> when the district court in *Klamath Strategic Investment Fund* (E.D. Tex.), found that the loan transaction at issue lacked economic substance. BLIPS was the subject of two Senate investigations and is presently the subject of a pending criminal case in the Southern District of New York against the promoters. This BLIPS variation was used in 91 similar partnerships that also have suits pending which the Tax Division is defending.

Despite victories in significant cases, however, the number of tax shelter lawsuits being litigated by the Tax Division continues to increase. As of September 30, 2007, the Division had 92 groups of cases. The Tax Division treats as one "group" two or more tax shelter cases that involve the same scheme and/or the same promoter, are handled by the same opposing lawyer(s), and are filed in the same judicial district, whether or not the cases have been consolidated by the court. For example, the 91 so-called Presidio cases pending in the Northern District of California, each involving a "Son of BOSS" tax shelter, facilitated by the same promoter, are treated as one group. The Tax Division anticipates that over the next several years, tax shelters will continue to be contested in the federal district courts and in the Court of Federal Claims.

### **Stopping the Promoters of Schemes and Scams**

There are a host of less-sophisticated tax schemes and scams that unscrupulous promoters aggressively market to customers of all income ranges. The schemes run the gamut from legally frivolous scams based on discredited tax theories to complex schemes involving multiple transactions and entities set up to conceal income and assets. Since January, 2001, the Tax Division has sought and obtained injunctions against more than 300 tax-fraud promoters and return preparers. These scams, which are often sold by promoters holding themselves out as tax experts, in reality are false and fraudulent tax-relief packages sold to customers who should and in many cases do know that they are fraudulent.

For example, in FY 2007, the Division:

- brought the biggest injunction case ever brought against a tax preparation firm. The case involved injunction suits in four cities against the largest franchise owner in the Jackson Hewitt system—the nation's second largest tax-preparation firm. The franchise prepared more than 100,000 federal income-tax returns annually. The suits alleged massive and widespread fraud in preparing customers' returns that resulted in more than \$70 million in revenue losses. One customer's Jackson Hewitt-prepared tax return falsely claimed he was a barber who was entitled to a fuel tax credit for buying 25,000 gallons of gasoline for off-highway business use. The complaint pointed out that the customer would have had to drive 1,370 miles each day, seven days a week, to consume that much fuel in one year, leaving little if any time to cut hair. The litigation ended with injunctions entered against the franchise owner and a number of its employees, including senior and mid-level managers. The case received nationwide publicity, including coverage on *NBC Nightly News* and in the *New York Times*, *Wall Street Journal*, and many other major papers. A former IRS Commissioner commented that the case is likely to improve significantly the way the tax-preparation industry operates.

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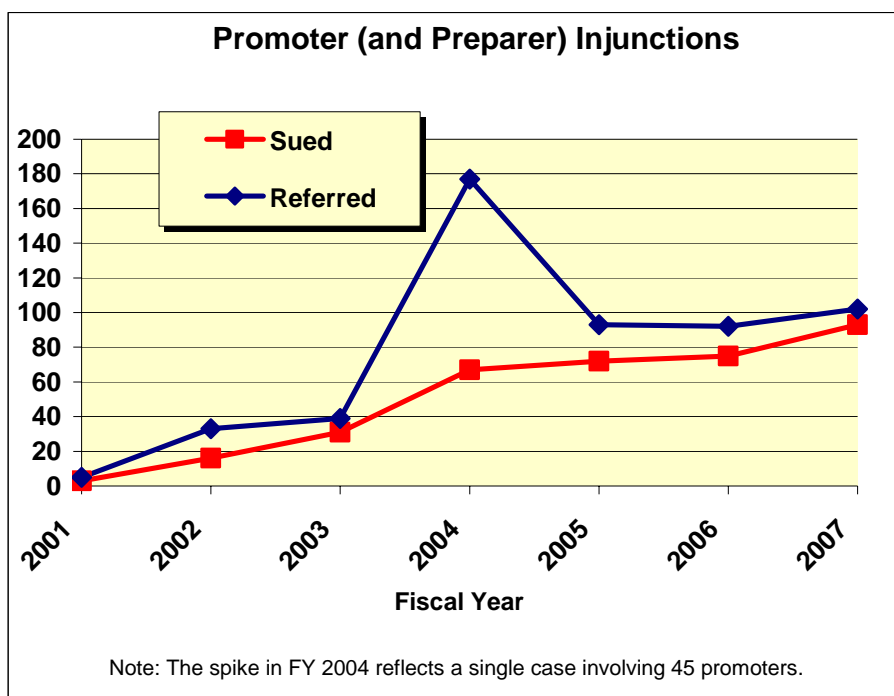
<sup>9</sup> BLIPS stands for "Bond Linked Indexed Premium Strategy."

- obtained an injunction against Robert Arant, shutting down an illegal “private bank” that Arant operated to help customers hide income and assets from the IRS without leaving a paper trail. Evidence provided to the court showed almost \$28 million in customer funds was passed through Arant’s private bank.
- obtained a permanent injunction barring Robert L. Schulz and his organizations, We the People Congress and We the People Foundation, from promoting a nationwide tax scheme that helped employers improperly stop tax withholding taxes from wages. The court said that the defendants’ Tax Termination Package caused an estimated harm to the U.S. Treasury of more than \$4 million.

During the past five years, the Division has enjoined schemes that threatened to cost the Federal Treasury more than two and one-half billion dollars in lost revenues, and placed an enormous administrative burden on the IRS. If permitted to go unchecked, these schemes would undermine public confidence in the integrity of our tax system, and require the IRS to devote substantial resources to detecting, correcting, and collecting the resulting unpaid taxes.

The Tax Division has encouraged the Internal Revenue Service to attack these schemes at their source, by targeting and investigating the promoters before they attract more customers and require more IRS examination and collection activity. The Tax Division has helped the IRS develop an expedited referral process so that cases can be quickly and properly investigated. Division employees have helped train hundreds of Internal Revenue Service agents and lawyers about developing injunction and penalty cases against tax scam promoters.

During FY 2007, the Division filed suit against 96 promoters and preparers, a 28% increase over FY 2006. The following chart shows the increasing number of successful injunction suits brought by the Division.



## **Assisting with IRS Information Collection and Examinations**

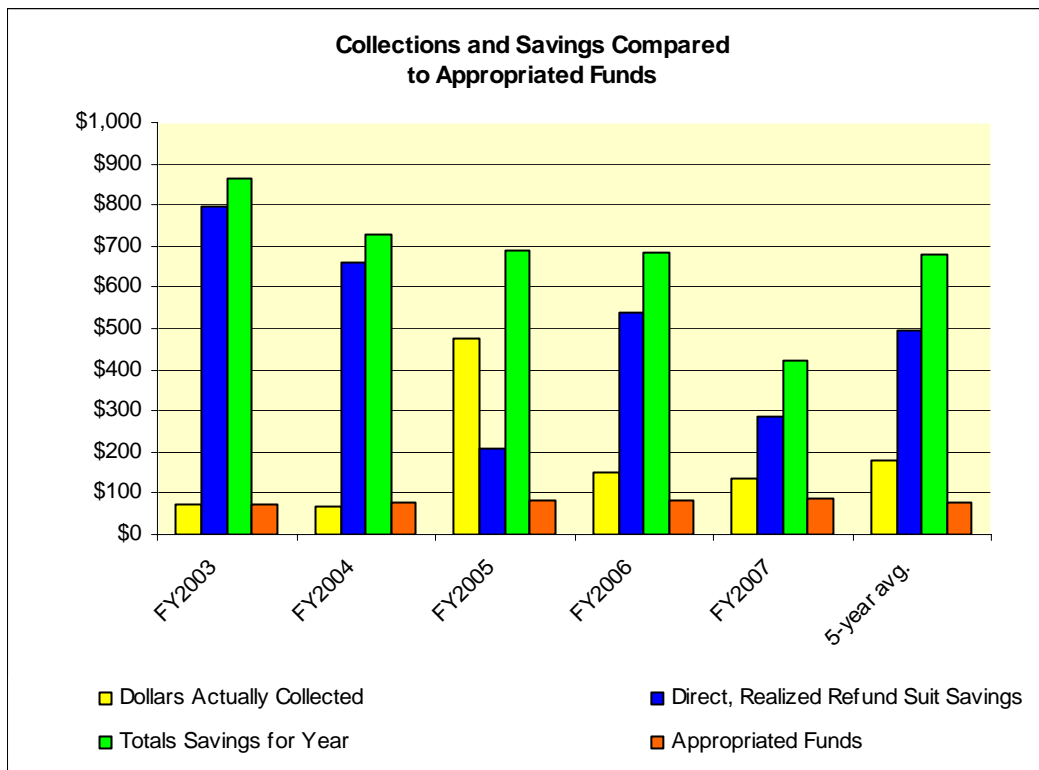
Individuals or businesses sometimes seek to thwart an IRS investigation by refusing to cooperate with IRS administrative summonses requesting information. When that happens, the IRS frequently asks the Tax Division to bring suit in federal court seeking a court order to compel compliance with the summons. These judicial proceedings afford the government the ability to obtain information in appropriate cases. They also provide important procedural and substantive rights to those affected by the summons. As the IRS increases its audit activity and criminal investigations and seeks more information from individuals who might be part of the Tax Gap, we anticipate being asked to enforce more of the sensitive and complicated summons cases that the Tax Division handles.

The Tax Division's summons enforcement work in the past few years has been very effective. The Division spearheaded enforcing summonses aimed at identifying high-income taxpayers who were playing the audit lottery. For example, when prominent law firms and public accounting firms began marketing tax shelters to corporations and wealthy individuals, the firms rebuffed the IRS's requests for information that the firms were required by law to maintain and provide, essentially stalling as the clock ran out on the IRS. By bringing suits against some of the nation's largest accounting and law firms, the Division enforced IRS summonses issued to *Jenkins & Gilchrist*, *Sidley Austin Brown & Wood*, *KPMG*, *BDO Seidman*, and *Arthur Andersen*.

In a similar effort the Division worked closely with the IRS to obtain the records necessary to identify United States taxpayers who were hiding money offshore, obtaining court permission for the IRS to serve "John Doe" summonses on credit card processing companies and payment intermediaries like *PayPal*. To date, the IRS has opened investigations on more than 2,200 taxpayers as a result of these information-gathering efforts, and more than 1,650 have settled their resulting tax liabilities with the IRS. The government's victories in these highly publicized cases not only helped gather necessary documents to identify customers seeking to hide behind a veil of secrecy, but the surrounding publicity reassures law-abiding taxpayers that the tax laws are being enforced.

## **Collecting Unpaid Taxes**

Another area in which the Division contributes significantly to closing the Tax Gap is its active civil litigation to collect tax debts. The focus and goal of this litigation is to enforce the tax laws and collect taxes that would otherwise go unpaid. Collection suits have a direct, and positive, effect on the Treasury. The Division typically collects more each year than its entire budget, as illustrated by the following chart. Given that the IRS only refers to the Tax Division tax debts that the IRS has been unable to collect through administrative means, the Division's efforts are a tremendous return on investment in collecting the most difficult debts.



While the direct return alone is impressive, the Division’s collection litigation also brings substantial indirect benefits. It assures honest taxpayers that those who engage in illegal activity will suffer the consequences. And it boosts voluntary compliance by warning scofflaws.

### Defending the United States

Tax cases filed against the United States comprise nearly 75% of the Division’s caseload, both in the number of cases to be litigated and in the number of attorney work hours devoted to them each year. The Division has no choice but to defend these lawsuits, which include requests for refund of taxes, challenges to federal tax liens, claims of unauthorized disclosure and allegations of wrongdoing by IRS agents. The Division’s representation of the government saves the Treasury hundreds of millions of dollars annually by retaining money that taxpayers seek to have refunded and by ensuring that spurious damages claims are denied. As of September 30, 2006, the Division was defending tax refund cases worth almost \$9 billion to the Federal Treasury.<sup>10</sup>

Not all significant Tax Division cases involve sophisticated tax shelters. Some involve other significant issues. For example, the Tax Division is currently defending a number of lawsuits brought by hospitals seeking refunds of social security taxes attributable to wages paid to medical residents. The IRS estimates that, if the Tax Division were not able to develop case law supporting the Government’s position on this issue, the Federal Treasury would have to pay billions of dollars in refunds, and would cease to collect billions more in future years. Since December 1, 2006, the United States has prevailed at the trial court level in three separate medical-residents cases, involving the *Detroit Medical Center*, the *Albany Medical Center*, and *Memorial Sloane-Kettering Cancer Center*. More are pending at trial and at the administrative level (with the IRS), and two of our trial court victories are pending appeal to the United States Courts of Appeals.

<sup>10</sup> See IRS 2006 statistics, [www.irs.gov/taxstats/article/0..id=168593.00.html](http://www.irs.gov/taxstats/article/0..id=168593.00.html), Table 27.

The Division has also been successful in fending off other types of claims, as exemplified by its February 2, 2007, victory in the United States District Court for the District of Arizona in an action brought by *Aloe Vera of America* and others. In that case, plaintiffs alleged that IRS employees had wrongfully disclosed their tax information, and sought more than \$1 billion in damages, plus punitive damages, based on a decline in stock value allegedly attributable to the claimed improper disclosures.

### **Civil Appellate Cases**

The Tax Division's appellate attorneys represent the United States in all appeals involving federal tax statutes in the United States courts of appeals and their state government equivalents (except for appeals from the Southern District of New York). The Division's appellate attorneys also assist the Solicitor General of the United States by preparing initial drafts of pleadings and briefs in tax cases filed in the Supreme Court. The Division likewise closely reviews all adverse decisions entered by the lower courts in tax cases to determine whether the government should appeal, and prepares a recommendation to the Solicitor General. The appellate section generally recommends appeal only in those cases where there is a substantial likelihood the government will ultimately prevail or where an important principle is at stake. Careful review of these cases not only ensures that Department resources are spent wisely on only meritorious appeals, but also advances the Tax Division's mission of promoting the fair and correct development, and uniform enforcement of the federal tax laws.

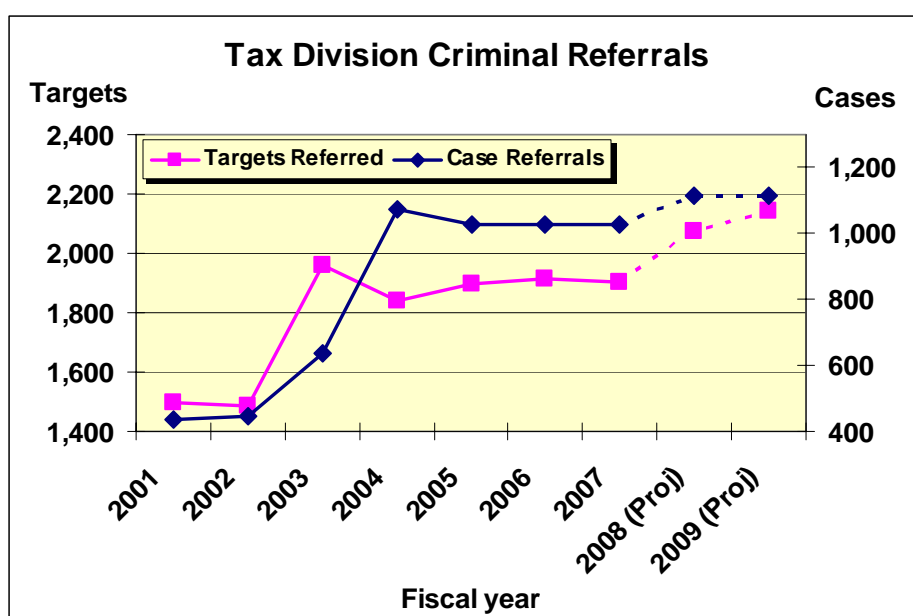
A number of recent appellate cases illustrate the Tax Division's continuing success in having courts uphold the IRS's disallowance of tax benefits from sham transactions. In *Castle Harbour*, the Second Circuit held that the IRS properly imposed \$62 million in additional income taxes against a subsidiary of General Electric Capital Corporation, which had entered into a sham partnership agreement with two Dutch banks. In *Coltec Industries, Inc. v. United States*, the Federal Circuit reaffirmed the longstanding economic substance doctrine and rejected the taxpayer's attempt to deduct a \$375 million tax loss it claimed to have incurred using a contingent-liability tax shelter. The IRS estimates that contingent liability tax shelters were used to escape taxes on \$5 billion in taxable income. In January, 2006, the Sixth Circuit in *Dow Chemical* denied tax deductions of more than \$33 million, based on the court's holding that Dow's corporate-owned life insurance (COLI) program was an economic sham. Overall, an estimated \$5 billion is at stake in COLI tax shelters. Significantly, the Supreme Court in early 2007 denied certiorari when *Coltec* and *Dow* sought to have these Tax Division victories reviewed and overturned.

Other appellate decisions, although sometimes turning on narrow tax issues, have a broad impact on tax administration. In the first appellate decision concerning the "mark-to-market" rules of section 475 of the Internal Revenue Code, for example, the Seventh Circuit in *JP Morgan Chase* held that the Tax Court had properly rejected the taxpayer's valuation of its financial derivatives, and remanded the case because the Tax Court had failed to give sufficient deference to the Commissioner's valuation. In a recent Ninth Circuit decision, the court of appeals rejected the taxpayer's argument that because he had exercised stock options using borrowed funds, he should recognize income when the stock was later sold (at a low price), rather than earlier, when the option was exercised (at a much higher price). And such esoteric issues as the Internal Revenue Code provisions on interest rates on tax over- or underpayments can save the United States hundreds of millions of dollars, as was the case with the Tax Division's recent victory in *Exxon-Mobil*.

## b) CRIMINAL PROSECUTIONS AND APPEALS

The Tax Division authorizes, and either conducts or supervises, all prosecutions involving the federal tax laws. The Division's two-pronged mission is to prosecute criminal tax violations and promote a uniform nationwide approach to criminal tax enforcement. In many cases, the Tax Division receives requests from the IRS to prosecute tax violations after the IRS has investigated them administratively. In other cases, the IRS asks the Tax Division to authorize grand jury investigations to determine whether prosecutable tax crimes have occurred. Tax Division prosecutors review, analyze, and evaluate these referrals to assure that uniform standards of prosecution are employed and that criminal tax violations warranting prosecution are prosecuted. After the Division authorizes tax charges, the cases are handled either by a United States Attorney's Office (USAO) or, in complex cases or cases in which the USAO is recused or requests assistance, by the Tax Division's experienced prosecutors. Tax Division prosecutors conduct training seminars for IRS criminal investigators and Assistant U.S. Attorneys, and often provide advice to other federal law enforcement personnel, including the DEA and FBI.

The following chart illustrates that the criminal workload has increased, and that this trend is projected to continue. Moreover, as the case evaluation workload has increased, so, too, has the trial workload, but to an even greater degree. From 2004 to 2007, the average number of trial assignments per attorney increased by almost 18%.



The Tax Division's criminal trial attorneys investigate and prosecute individuals and corporations that attempt to evade taxes, willfully fail to file returns, submit false tax forms, or otherwise violate the federal tax laws. They also investigate and prosecute tax violations that have been committed along with other criminal conduct, such as narcotics trafficking, securities fraud, bankruptcy fraud, healthcare fraud, organized crime, and public corruption. In addition, Tax Division attorneys investigate and prosecute domestic tax crimes involving international conduct, such as the illegal use of offshore trusts and foreign bank accounts to conceal taxable income and evade taxes. They also conduct Organized Crime and Drug Enforcement Task Force (OCDETF) and terrorism-related criminal investigations, and prosecute organizers of Internet scams.



The Tax Division's Criminal Appeals and Tax Enforcement Policy Section (CATEPS) conducts appeals in criminal tax cases prosecuted by Division attorneys and supervises appeals in matters tried by the USAOs around the country. Similar to the initial review of tax cases by criminal trial attorneys, the appellate review plays a vital role in promoting the fair, correct, and uniform enforcement of the internal revenue laws. CATEPS also assists in the negotiation of international tax assistance treaties and policy issues, such as the application of the sentencing guidelines.

### **“Pure Tax Crimes”**

The core of the Tax Division's criminal work involves so-called “legal source income” cases. These cases encompass tax crimes involving unpaid taxes on income earned legally (*e.g.*, a restaurateur who skims cash receipts or a doctor who inflates deductible expenses.) These cases often involve difficult issues of tax law or complex methods of proof, and as a result the United States Attorneys' Offices frequently call upon the special skills that Tax Division prosecutors bring to the prosecution of white-collar crime.

Evasion of taxes on income from legal sources significantly erodes the federal tax base. The Division's enforcement activities are a strong counter to that erosion, providing a significant deterrent to those who contemplate shirking their tax responsibilities. These prosecutions often receive substantial local press and media coverage, and assure law-abiding citizens who pay their taxes that tax cheats are not getting away with it. The government's failure to vigorously prosecute such cases would undermine the confidence of law-abiding taxpayers and jeopardize the government's ability to operate a revenue collection system whose cornerstone is voluntary compliance.

During the past year, Division attorneys investigated and prosecuted cases involving tax crimes committed by individuals from all walks of life, including corporate executives, business owners, attorneys, accountants, doctors, dentists, movie actors, and others.

For example, on March 28, 2007, a federal judge in *United States v. Walter Anderson* (D.D.C.), sentenced the defendant, a telecommunications entrepreneur, to nine years in prison for tax fraud. In September 2006, the defendant pleaded guilty to federal income tax evasion and fraud for failing to report approximately \$365 million in income he earned from various business ventures between 1995 and 1999 – the largest personal tax evasion case ever. Anderson crafted an elaborate scheme using offshore corporations and nominees in tax haven jurisdictions to conceal his assets and income.

### **Return-Preparer Fraud**

Corrupt accountants and unscrupulous tax return preparers present a serious law enforcement concern. Some accountants and return preparers dupe unwitting clients into filing fraudulent returns, while others serve as willing “enablers,” providing a veneer of legitimacy for clients predisposed to cheat. In either case, the professionals often commit a large number of frauds, and their status as “professionals” may be perceived as legitimizing tax evasion, thereby promoting disrespect for the law. Tax Division attorneys vigorously investigate and prosecute such cases. For example, on July 20, 2007, in *United States v. Louis Wayne Ratfield* (S.D. Fla.), a federal judge sentenced the defendant, a return preparer, to more than 12 years in prison for tax fraud. In April, a federal jury had convicted the defendant for promoting a tax fraud scheme involving “common law trusts” and for preparing false income tax returns that cost the federal Treasury more than \$9.3 million in lost taxes.

## **“Tax Protest” Schemes**

“Tax protest” schemes include frivolous claims that a taxpayer is somehow exempt from paying his fair share of taxes. Such schemes include claims that an individual is a “sovereign citizen” not subject to U.S. laws, that the U.S. income tax is unconstitutional, that the 16<sup>th</sup> Amendment to the United States Constitution was never ratified, and that Section 861 of the Internal Revenue Code provides that only income from sources outside the United States is taxable. Other related conduct includes taxpayers taking sham “vows of poverty” or harassing government employees and judges. On October 17, 2006, in *United States v. Wesley Trent Snipes, et al.* (M.D. Fla.), for example, the court unsealed an indictment charging movie actor Wesley Snipes with six counts of failing to file income tax returns for 1999 through 2004. Snipes and two other defendants, Eddie Kahn and Douglas Rosile (a former CPA), are also charged with conspiracy to defraud the United States and presenting false claims for refund. They were associated with “American Rights Litigators,” which promoted the frivolous 861 scam. That trial is scheduled to commence in January, 2008.

## **Abusive Promotions**

The Division also prosecutes persons who promote or use fraudulent tax shelters and other schemes to evade taxes and hide assets. The number of taxpayers who use these schemes to improperly reduce, or totally evade, their federal income tax liabilities has increased significantly in recent years. One type of scheme involves the use of domestic or foreign trusts to evade taxes. Promoters of these schemes, often using the Internet, aggressively market trusts by employing strained, if not demonstrably false, interpretations of the tax laws. Employing what they often call “asset protection trusts” (ostensibly designed to guard an individual’s assets from creditors, including the IRS), these promoters are in fact helping taxpayers fraudulently assign income and conceal their ownership of income-producing assets in order to evade paying taxes.

On March 23, 2007, in *United States v. James Auffenberg, et al.* (S.D. Ill.), a grand jury returned a 21-count indictment charging Auffenberg, a prominent automobile dealer in Southern Illinois, three promoters of a tax fraud scheme in the U.S. Virgin Islands, and their related entities with a variety of tax and wire fraud-related charges. The indictment alleges that Auffenberg and others joined a partnership promoted to wealthy individuals. The indictment alleges that Auffenberg and the other limited partners fraudulently claimed to be U.S. Virgin Islands residents, and subsequently prepared and filed false tax returns with the Virgin Islands Bureau of Internal Revenue instead of filing returns with the Internal Revenue Service. Between 1999 and 2002, more than \$300 million was cycled through partnership accounts, resulting in more than \$74 million in fraudulent tax credits. The indictment also seeks the forfeiture of \$16.2 million in cash. Trial is pending.

A Tax Division attorney continues to work full time with attorneys and IRS agents in *United States v. Jeffrey Stein* (S.D.N.Y.), which involves KPMG officers and associates who have been charged with conspiracy to defraud the United States by promoting fraudulent tax shelters designed to assist high-net-worth individuals evade income tax on billions of dollars of income. Three individual defendants pled guilty in 2007. The Tax Division also has a prosecutor assigned full time to *United States v. Robert Coplan* (S.D.N.Y.), the second investigation stemming from the KPMG prosecution. An indictment was returned in May, 2007, charging Coplan, Martin Nissenbaum, Richard Shapiro, and Brian Vaughn with, *inter alia*, tax evasion and conspiracy to defraud the United States by attempting to disguise tax shelters (initially named VIPER, Value Ideas Produce Extraordinary Results) as legitimate investments. One co-defendant, Belle Six, has pled guilty and forfeited more than \$13 million.

## **Illegal Source Income**

Tax Division attorneys also play significant roles in investigating and prosecuting tax violations committed in the course of other criminal conduct. Where criminals evade taxes on income from illegal sources, tax charges provide a valuable complement to charges for the underlying criminal activity. One area where this frequently occurs is narcotics trafficking cases generated by the Organized Crime and Drug Enforcement Task Force program, which the Tax Division actively supports. Tax Division attorneys also fight against international terrorism, and litigate tax charges related to health care fraud, securities fraud, public corruption, and money laundering.

Likewise, in *United States v. Jack A. Abramoff* (D. D.C.), the defendant, a high-profile lobbyist in Washington, D.C., entered a guilty plea to a charge of conspiracy to commit honest-services fraud and income tax evasion in connection with his efforts to lobby members of Congress and others. The Tax Division and components of the Justice Department's Criminal Division conducted this high-profile public corruption investigation and prosecution. The defendant awaits sentencing.

## **Obtaining Restitution in Criminal Tax Cases**

The Tax Division has taken the lead in developing and implementing a policy to seek court-ordered restitution in criminal tax cases to recover proven unpaid taxes. The Tax Division chaired a Restitution Task Force, which included representatives from the United States Attorneys Offices, the United States Probation Office, and the Internal Revenue Service (IRS), as well as criminal and civil Tax Division attorneys, to standardize restitution procedures in criminal tax cases. As a result of the work of the task force, the IRS created a special office to monitor and process all restitution payments nationwide. In addition, the Division developed written guidance for Assistant US Attorneys, and sample restitution language for use in criminal tax cases.

Restitution is an important tool in reducing the Tax Gap, because criminals who have disposed of or dissipated assets instead of paying restitution may face additional incarceration. This avenue of recovery can also relieve the IRS of the necessity of determining and collecting an assessment of the civil tax liability.

## **Enforcing the United States' Tax Laws in Today's Global Economy**

Use of foreign tax havens is on the rise. Increased technical sophistication of financial instruments and the widespread use of the Internet have made it easy to instantly move money in and out of the United States, around the world, irrespective of national borders. Using tax havens facilitates evasion of U.S. taxes and the commission of related financial crimes.

Offshore tax schemes are difficult to detect and prosecute. The IRS and the Tax Division are allocating resources to target taxpayers who engage in offshore activity for the purpose of underreporting income.<sup>11</sup> Income tax evaders and other criminals use banks located in tax haven countries that have strict bank secrecy laws and that will not, or cannot, provide assistance to investigators for the United States. Sophisticated criminals may also use non-traditional tax haven countries, such as Latvia or Germany. Despite these difficulties, the Division has been successful in prosecuting these tax cheats.

For example, on April 11, 2007, in *United States v. Joseph A. Francis* (D. Nev.), a federal grand jury in Reno, Nevada returned an indictment charging the defendant with income tax evasion. The

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<sup>11</sup> Reducing the Federal Tax Gap: A Report on Improving Voluntary Compliance, Internal Revenue Service, August 2, 2007.

indictment alleges that the defendant, whose companies produce and sell the *Girls Gone Wild* videotapes and DVDs, used offshore bank accounts and nominee entities to conceal income he earned during 2002 and 2003. During those years, the defendant allegedly deducted more than \$20 million in false business expenses and transferred more than \$15 million from an offshore bank account to a brokerage account in California using the name of a Cayman Islands corporation.

### **International Cooperation to Investigate Evasion of U.S. Taxes**

The Tax Division provides advice and assistance to United States Attorneys and IRS agents seeking information and cooperation from other countries for both civil and criminal investigations and cases. Recently, the Division has worked with attorneys and agents seeking information from numerous countries, including Finland, Sweden, Germany, Israel, Canada, the Cayman Islands, the Netherlands Antilles, Brazil, Panama, Venezuela, the United Kingdom, Ireland, and Switzerland.

The Tax Division also works to increase cooperation with foreign nations, recognizing that reciprocal engagements ultimately further the Division's mission. For example, the Division recently met with representatives of the Australian Federal Police to respond to their request for advice and assistance in conducting multi-agency investigations into numerous tax avoidance and money-laundering schemes, some of which may become important to U.S. law enforcement. The Division has also responded to inquiries from the Embassy of Japan concerning various aspects of our income tax laws.

The Division is continuing to help the IRS and the Treasury Department develop a new model Tax Information Exchange Agreement (TIEA) and is continuing to help Treasury negotiate and implement TIEAs and tax treaties with various foreign governments. Notably, after years of negotiations in which the Tax Division assisted, important TIEAs with tax haven countries are finally in effect with the Cayman Islands, Jersey, Guernsey, the Isle of Man, and the British Virgin Islands. The Division also assisted in drafting and negotiating the TIEA with Brazil, which was signed in the spring of 2007.

### **War on Terrorism**

The Tax Division contributes to the war on terrorism as a member of several task forces in conjunction with the Criminal Division and other Department components. For example, on March 7, 2007, in *United States v. Islamic American Relief Agency, et al.* (W.D.Mo.) the court unsealed an indictment charging the Islamic American Relief Agency, along with five officers, employees and associates, with illegally transferring funds to Iraq in violation of federal sanctions. The defendants were also charged with stealing government funds and corruptly endeavoring to obstruct the due administration of the Internal Revenue Code, by misusing tax-exempt charity status to raise and transfer funds to Iraq in violation of federal sanctions, and by attempting to avoid government detection of their illegal activities. The case is pending trial.

### **Corporate Fraud and other Financial Crimes**

In addition, through the President's Corporate Fraud Task Force, chaired by the Deputy Attorney General, the Tax Division investigates and prosecutes corporate fraud. The Division also participates in the formulation of national policies, programs, strategies and procedures in cooperation with other law enforcement components in a coordinated attack on financial crime.

In addition to providing tax advice to other Divisions and agencies, the Tax Division and IRS frequently consult on new and sensitive tax issues and litigation. For example, Tax Division attorneys regularly make training presentations to IRS revenue agents and other IRS personnel across the country to educate them on how to develop evidence that will support a suit to shut down a promotion at its source—the promoters and salesmen.

### **Civil/Criminal Coordination**

Finally, as part of its effort to stop abusive tax scheme promotions, the Division uses parallel civil and criminal proceedings. Select Tax Division personnel, through a joint IRS/DOJ task force, work closely together to coordinate the appropriate use of both civil and criminal tools to stop tax fraud. The task force prepared an extensive report and recommendation on this topic for the Tax Division's Assistant Attorney General and the Commissioner of Internal Revenue, and the Tax Division has implemented many of its recommendations.

## 2. Performance Tables

### PERFORMANCE AND RESOURCES TABLE

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Decision Unit/Program: **GENERAL TAX MATTERS**

DOJ Strategic Goal/Objective: Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

#### WORKLOAD/RESOURCES

Workload:		Final Target		Actual		FY 2008 Enacted		Changes		Requested (Total)	
		FY 2007	FY 2007	FY 2007	FY 2007	FY 2008 Enacted	FY 2008 Enacted	Current Services Adjustments and FY 2009 Program Changes	FY 2009 Request	FY 2009 Request	FY 2009 Request
CRIMINAL	1. Number of Cases received from the IRS and USAO for authorization and review	1,030	1,030			1,226					1,226
	<b>Average Number of Significant Litigation Activities per Attorney-Work Year</b>										
CIVIL	1. Average Number of Briefs, Written Pleadings, etc.	96	96			96		0			96
	2. Average Number of Trials, Arguments, other Hearings per Atty. Work Year	15	15			15		0			15
	3. Average Number of Appellate Cases Received	500	500			500		0			500
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
	Total Costs & FTE's *	504	\$85,473	504	\$85,473	573	\$92,781	0	\$8,235	573	\$101,016
	[Brackets indicate reimbursement amount for OCDETF - not included in shown total]	[3]	[\$532]	[3]	[\$533]	[5]	[\$533]	[1]	[\$61]	[4]	[\$594]
TYPE/ Strategic Objective	<b>PERFORMANCE/RESOURCES</b>	FY 2007		FY 2007		FY 2008 Enacted		Current Services Adjustments and FY 2009 Program Changes		FY 2009 Request	
Program Activity	<b>CRIMINAL PROSECUTION &amp; APPEALS - Total Costs &amp; FTE</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		142	\$22,261	142	\$22,261	161	\$24,165	0	\$2,144	161	\$26,309
Output	1. Number of Investigations Authorized		n/a		757		n/a		n/a		n/a
Output	2. Number of Prosecutions Authorized		n/a		1,284		n/a		n/a		n/a
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division		95%		100%		85%		0%		95%
Program Activity	<b>CIVIL LITIGATION &amp; APPEALS - Total Costs &amp; FTE</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		365	\$63,212	365	\$63,212	412	\$68,616	0	\$6,091	412	\$74,707
Outcome	1. Civil Cases Successfully Litigated in the Trial Courts		90%		96%		90%		0%		90%
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals		85%		99%		85%		0%		85%
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals		60%		56%		60%		0%		60%
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions) **		n/a		\$424.0		n/a		n/a		n/a
	<b>EFFICIENCY MEASURE</b>		Target		Actual		Target				Target
	1. Increase the average # of significant civil litigation activities per one civil attorney FTE ***		114.29		116.68		115.29				116.29

Data Definition, Validation, Verification, and Limitations:

\* Consolidated decision units (from 4 decision units to 1), with 2 program activities criminal and civil that each include appellate functions and a proration of M&A.

\*\* Actuals based on activities through September 30, 2006; excludes IRS cases not yet referred, deterrent effect on other taxpayers, and amounts subsequently collected by the IRS administratively.

\*\*\* Tax will realize an efficiency when more activities are completed compared to the number of FTE it takes to perform the activities. "Significant Activities" are actions taken by attorneys to advance the litigation of a particular case, including court filings, trials, hearings, memoranda, depositions, written discovery, court-ordered conferences, and alternative dispute resolution.

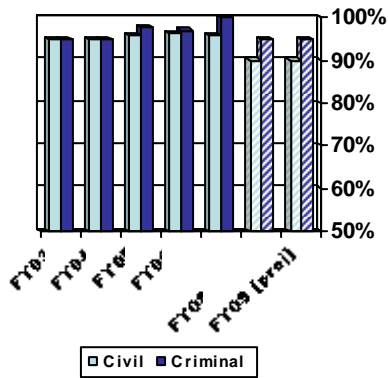
<b>PERFORMANCE MEASURE TABLE</b>											
<b>Decision Unit: GENERAL TAX MATTERS</b>											
Performance Report and Performance Plan Targets		FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007		FY 2008	FY 2009
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
Program Activity	<b>CRIMINAL PROSECUTION &amp; APPEALS</b>										
Output	1. Number of Investigations Authorized	489	628	655	568	628	664	n/a	757	n/a	n/a
Output	2. Number of Prosecutions Authorized	877	967	1,130	1,381	1,274	1,180	n/a	1,284	n/a	n/a
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division	98%	99%	96%	95%	98%	97%	95%	100%	95%	95%
Program Activity	<b>CIVIL LITIGATION &amp; APPEALS</b>										
Outcome	1. Civil Cases Successfully Litigated in the Trial Courts	96%	96%	95%	95%	96%	96%	90%	96%	90%	90%
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals	89%	97%	93%	97%	95%	97%	85%	99%	85%	85%
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals	68%	72%	67%	78%	60%	78%	60%	56%	60%	60%
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	\$815.2	\$1,335.5	\$866.2	\$728.0	\$686.3	\$686.1	n/a	\$424.0	n/a	n/a
	<b>EFFICIENCY MEASURE</b>										
	1. Increase the average # of significant civil litigation activities per one civil attorney FTE *				111.29	116.68	123.66	114.29	116.68	115.29	116.29

\* Efficiency measure not required prior to FY04.

### 3. Performance, Resources, and Strategies

The General Tax Matters Decision Unit contributes to the Department’s Strategic Goal 2: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People. Within this Goal, the Decision Unit’s resources specifically address Strategic Objective 2.7: Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction.

**Cases Favorably Resolved (TAX)**



**Data Definition:** Favorable civil resolutions are through a judgment or settlement. Each civil decision is classified as a Government win, partial win, or taxpayer win; for this report, success occurs if the Government wins in total or in part. Criminal cases are favorably resolved by convictions which includes defendants convicted after trial or by plea agreement at the trial court level in prosecutions in which the Tax Division has provided litigation assistance at the request of a USAO.

**Data Collection and Storage:** The Tax Division utilizes a litigation case management system called TaxDoc.

**Data Validation and Verification:** The Tax Division has established procedures to collect and record reliable and relevant data in TaxDoc. Management uses the data to set goals, manage cases and project workload. The statistics in this table are provided on a monthly basis to Division management for their review.

**Data Limitations:** The Tax Division lacks historical data on some activities that are now tracked in the case management system. The information system may cause variations in the way some statistics are presented.

The goals of the Tax Division are to increase voluntary compliance, maintain public confidence in the integrity of the tax system, and promote the sound development of law.

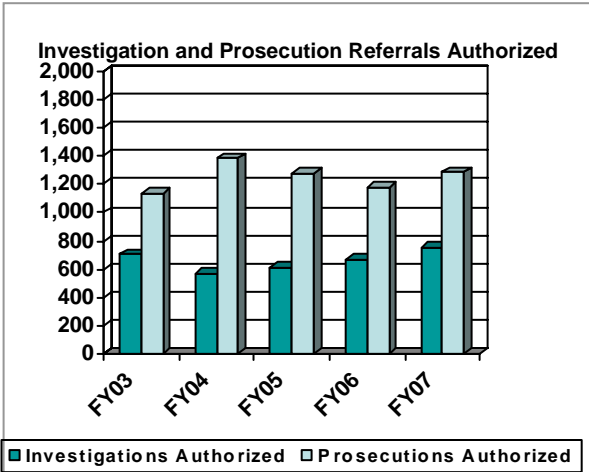
**Performance Measure 1:** Percentage of Cases Favorably Resolved

**FY 2007 Target:** 90% for Civil Trial and 95% for Criminal.

**FY 2007 Actual:** 96% for Civil Trial and 100% for Criminal.

**Discussion:** The outcome measure for this decision unit is favorable resolution of all cases. The Department of Justice Strategic Plan sets Department-wide goals for the litigating components: 90% of criminal cases favorably resolved Department-wide and 80% of civil cases favorably resolved. As illustrated in the chart “Cases Favorably Resolved (TAX),” the Tax Division has exceeded the Department’s goal for the last several years. In FY 2007, favorable outcomes were achieved in 96% of all civil and 100% of all criminal cases litigated by the Tax Division, including non-tax cases. To meet the targets for this measure, the Tax Division requires \$101,016 thousand. These resources are essential if we are to continue attaining the Department’s targets for this measure. Without sufficient resources, the Division will be forced to focus the majority of its resources on defensive cases which would result in affirmative cases - cases the IRS requests the Division to prosecute - being declined. If this occurs, the Division will not be able to meet its targets for this measure.





**Performance Measure 2: Criminal Investigation and Prosecution Referrals Authorized**

**FY 2007 Target:** N/A

**FY 2007 Actual:** 757 Investigations  
1,284 Prosecutions Authorized

**Discussion:** The Tax Division also measures the number of authorized investigation and prosecution referrals in criminal cases. In FY 2007, the Division authorized 757 grand jury investigations and 1,284 prosecutions of individual defendants. Changes in the number of authorized investigations are largely proportional to the number of investigations initiated by the Internal Revenue Service.

Consistent with Department guidance, there is no FY 2008 or FY 2009 performance goal for authorized investigations and prosecutions.

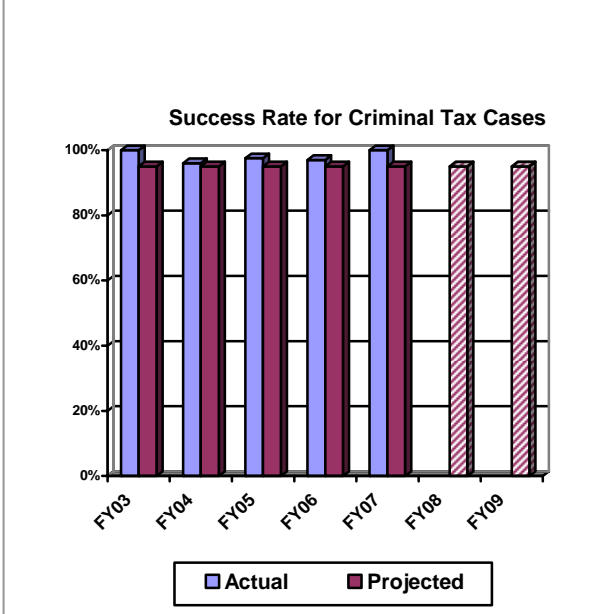
**Performance Measure 3: Success Rate for Criminal Tax Cases**

**FY 2007 Target:** 95%

**FY 2007 Actual:** 100%

**Discussion:** The Tax Division’s Criminal Trial Sections assume responsibility for some cases at the request of the USAOs, generally multi-jurisdictional investigations and prosecutions, and cases with significant regional or national importance. Although many of these cases are difficult to prosecute, the Division has maintained a conviction rate at or greater than 95%. In FY 2007, the Division’s conviction rate was 100% in tax cases.

For FY 2008, FY 2009, and FY 2010, the Tax Division has established a conviction rate goal of 95%. While the Tax Division is very proud of its conviction rate, the emphasis is on uniform and fair enforcement of the tax laws.



**Data Definition:** Investigation and Prosecution Referrals are grand jury investigation and criminal prosecution requests referred to the Tax Division for review to ensure that federal criminal tax enforcement standards are met. The number of prosecution referrals authorized is a defendant count; investigations may involve one or more targets. The Success Rate is convictions divided by the total of convictions and acquittals. “Convictions” includes defendants convicted after trial or by plea agreement at the trial court level in criminal tax prosecutions in which the Tax Division has provided litigation assistance at the request of a USAO. Defendants acquitted are defendants acquitted in the district court in cases in which the Tax Division provided litigation assistance.

**Data Collection and Storage:** The Tax Division utilizes a litigation case management system known as TaxDoc. The Division periodically reviews the complement of indicators that are tracked.

**Data Validation and Verification:** There are procedures to collect and record pertinent data, enabling Section Chiefs to make projections and set goals based on complete, accurate and relevant statistics.

**Performance Measure 4: Civil Cases Successfully Litigated**

**FY 2007 Target:** Trial Courts – 90%  
 Taxpayer Appeals – 85%  
 Government and Cross Appeals – 60%

**FY 2007 Actual:** Trial Courts – 96%  
 Taxpayer Appeals – 99%  
 Government and Cross Appeals – 56%

**Discussion:** For civil cases, the Tax Division measures cases successfully litigated, in total or in part, by the resolution of a claim through judgment or other court order. In FY 2007, the target for Government and Cross Appeals was not met due to the loss of cases involving the same issue. Since there are relatively few government appeals, the loss of a single case has a large impact on the measure.

We anticipate that maintaining this level of success will result in legal precedent that provides taxpayers, including individuals, businesses and industries, with guidance regarding their tax obligations; the collection of significant tax revenues; and the protection of the government against unfounded taxpayer claims.

**Performance Measure 5: Tax Dollars Collected and Retained**

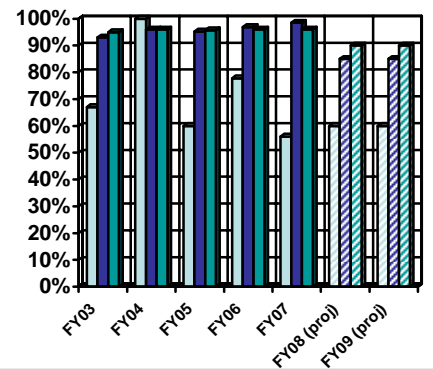
**FY 2007 Target:** N/A

**FY 2007 Actual:** \$424 million

**Discussion:** The Tax Division collects substantial amounts for the federal government in affirmative litigation, and retains even more substantial amounts in defensive tax refund and other litigation. For FY 2007, the Division collected \$136.5 million and retained \$287.2 million.

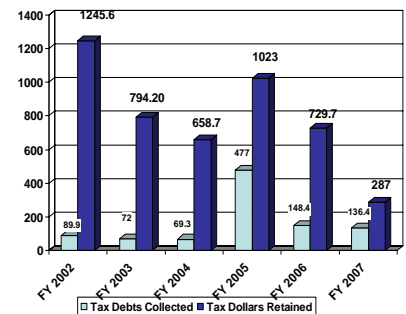
In addition to this measurable impact, the Division’s litigation affects the revenue at issue in many cases being handled administratively by the IRS, and determines tax liabilities of litigants for many tax years not in suit. Its litigation successes also foster overall compliance with the tax laws. This substantial financial impact is a consequence of the Division’s consistent and impartial enforcement of the tax laws. The Division does not measure these indirect effects of its litigation.

**Civil Cases Successfully Litigated [TAX]**



Legend:  
 □ Appellate Courts - Gov't & Cross Appeals  
 ■ Appellate Courts - Taxpayer Appeals  
 ■ Trial Courts

**Tax Debts Collected and Dollars Retained (\$s in Millions)**



**Data Definition:** A decision is the resolution of a claim through judgment or other court order. Each decision is classified as a Government win, partial win, or taxpayer win; for this report, success occurs if the Government wins in whole or in part. Appellate cases are classified as Taxpayer Appeals, Government Appeals, or Cross Appeals. The number of Government or Cross Appeals is generally less than 10% of the number of taxpayer appeals. **Tax Debts Collected** represents dollars collected on pending civil cases and outstanding judgments. **Tax Dollars Retained** represents the difference between claim amount sought and received by opposing parties in refund suits closed during the period.

**Data Collection and Storage:** The Tax Division utilizes a case management system known as TaxDoc.

**Data Validation and Verification:** The Tax Division has established procedures to collect and record reliable and relevant data in TaxDoc. Management uses the data to set goals, manage cases and project workload. The statistics in this table are provided on a monthly basis to Division management for their review.

**Data Limitations:** The Tax Debts Collected and Dollars Retained indicator fluctuates in response to the type and stage of litigation resolved during the year.

## **a. Strategies to Achieve FY 2009 Goals:**

With the resources requested for FY 2009, the Division will concentrate on curtailing the activity of promoters, enablers, and tax professionals (including return preparers, accountants, and lawyers) who help others avoid taxes illegally. The Division's long-standing coordinated approach to tax enforcement is a particularly effective component to the Administration's goal to reduce the Tax Gap. Because the Tax Division's work already encompasses the elements of an effective tax enforcement program, the organization is well suited to expand existing programs with greater benefits in return. With the implementation of the strategies discussed below, the Tax Division will be well positioned to meet or exceed the Departmental outcome measure, "Percentage of Cases Favorably Resolved".

### **Civil Litigation**

The Tax Division's primary civil strategy to achieve its goals is to litigate, both defensively and affirmatively, federal civil tax cases filed by and against taxpayers in the federal courts. Through this litigation, the Division ensures the tax laws are properly enforced, by targeting particularly acute tax enforcement problems that threaten tax administration.

The Tax Division defends the Federal Treasury against tax refund claims arising from complex and abusive corporate and individual tax shelters that are estimated to cost the Treasury billions annually. Individual cases frequently involve millions of dollars, and their outcomes affect many similarly situated taxpayers and issues.

The IRS received significant additional funding for enforcement efforts in FY 2006, a large portion of which is dedicated to challenging abusive tax shelters. In addition to stepping up audits and investigations, the IRS is increasing its use of "settlement initiatives," under which the IRS publicly states the terms to which it would agree to resolve disputes concerning the taxes (and penalties and interest) owing as a result of specific abusive transactions. Tax Division litigation directly supports the effectiveness of IRS settlement initiatives. Its summons enforcement litigation has required shelter promoters to turn over customer lists and transaction documents, permitting the IRS to identify shelter participants who otherwise might evade detection. In addition, the Division's litigation challenging the merits of abusive tax shelters allows the IRS to assert the credible threat that shelter participants will lose in court, thereby encouraging settlement.

The Division also has renewed efforts to target fraudulent tax schemes and those who create and promote them. The Division has obtained numerous injunctions against promoters of these schemes and has obtained enforcement of IRS administrative summonses seeking information and documents about the schemes, their promoters and participants. During the last several years, the Division sued to enjoin dozens of tax-scheme promoters—who cost the Treasury billions of dollars each year by pushing bogus tax advice (*e.g.*, tax credits for slavery reparations; claims that income earned within the United States was not subject to federal taxation) over the Internet and in the media—and has obtained court orders shutting down several multimillion-dollar schemes.

The Tax Division also deals with the fallout from abusive promotions, defending the Government in the hundreds of new cases brought each year that involve frivolous tax-protest claims—many of them the same claims targeted through the Division's injunction suits.

Vigorous and successful defense of these cases is essential to preserve public confidence in the tax system and to assure that honest taxpayers are not discouraged from voluntarily paying their taxes by the perception that those who engage in illegal tax-protest activity have “gotten away with it.” The Division works closely with the IRS to identify holders of bank accounts in offshore, tax haven countries that are used to evade taxes, thus facilitating the prosecution of account-holders who have committed U.S. tax law violations. As part of an IRS initiative, the Tax Division has obtained court orders allowing the IRS to identify U.S. taxpayers who use credit cards issued by offshore banks in tax haven countries by obtaining data from major credit card companies, companies that process credit card transactions, and merchants and retailers where the credit cards were used. The Division is also handling collection and other enforcement actions against taxpayers identified through the initiative.

As part of its representation of the government in the courts, the Tax Division conducts in each civil tax case an independent review of the IRS’s views and administrative determinations to help ensure that the Government’s position is consistent with applicable law and policy. This independence, backed by a willingness to engage in aggressive litigation where appropriate, promotes the effective collection of taxes owed, while also serving as a check against potential abuses in tax administration.

### **Criminal Enforcement**

The Division’s criminal enforcement strategy is to vigorously and consistently enforce the criminal tax laws in order to punish offenders, deter future violations, and reassure honest taxpayers that they will not bear an undue share of the federal tax burden.

The Division’s criminal prosecution activity has matched the vigor of its civil litigation efforts, with a similar increased focus on abusive tax schemes and their promoters. The Division has obtained numerous convictions of promoters of large and complex schemes that were widely marketed. Several recent indictments of promoters illustrate the continuing commitment to resolving this growing problem. The schemes identified in these cases involve a variety of illegal practices, including the use of offshore accounts to evade taxes, the refusal by employers to pay withholding taxes on employee wages, bogus trust arrangements, and abusive tax shelters. Additionally, the Tax Division has redoubled its efforts to prosecute tax crime involving income from a legal source—such as the consultant who reports only part of his income, the restaurant owner who skims from the cash register, or the doctor who keeps two sets of bookkeeping records. The IRS estimates that hundreds of millions in tax revenue is lost yearly through the evasion of taxes on income from legal sources.

The Division also concentrates on several other types of tax law violations. Every year, the Division prosecutes a number of “tax protestors” who evade taxes and harass IRS employees. It also investigates and prosecutes tax violations occurring in the course of other criminal conduct, such as narcotics trafficking (supporting the Organized Crime and Drug Enforcement Task Force (OCDETF)), corporate fraud, securities fraud, bankruptcy fraud, health care fraud, organized crime, public corruption and terrorism. Representatives of the Tax Division are also liaison attorneys with the various regions of OCDETF, and are formal members of its policy-formation body.

## **b. Program Assessment Rating Tool (PART)**

The Division received a FY 2005 PART score of 85, which is deemed “effective” and is the highest level awarded by OMB. The Tax Division and other litigating components are taking three follow-up actions to improve performance.

*(1) Seeking regular, independent evaluations of the program’s effectiveness at resolving cases in favor of the government.*

In FY 2006, the Department’s Justice Management Division (JMD) offered a proposal to the Management and Planning Staff (MPS) and Office of the Inspector General (OIG) to perform an independent evaluation of the GLA components (GLAs). The proposal recommended that MPS perform initial background interviews in a manner consistent with OIG yellow book regulations. MPS would later hand off their preliminary research to the OIG to review and offer their findings and recommendations. The OIG was unable to include the GLA evaluation in its FY 2007 docket. The OIG has indicated it may be able to evaluate the components over several years starting in FY 2008 to meet the PART follow-up action of “Performing an independent evaluation of the GLAs.”

*(2) Establishing leadership training and mentoring program to continue improving the quality of the program’s management.*

The Tax Division and other litigating components have established leadership training and mentoring programs to continue improving the quality of program management. The Tax Division provides mentoring support to all new attorneys. Five attorney managers have completed the Department’s SES career development program. The Division assessed leadership competencies of all Division managers (through the 2006 skills assessment survey) and is using that data to assess developmental needs to close any skill gaps in leadership competencies. The Division also currently has one employee participating in the Department’s Leadership Excellence Achievement Program (LEAP).

*(3) Working with the Department’s Chief Information Officer to evaluate and purchase litigation software that will improve productivity and efficiency.*

The Tax Division and other litigating components are working jointly on two projects. One is the Litigation Case Management System (LCMS) which will provide an efficient and effective means to track litigation handled by the Department. A contract was awarded in June 2006 and the project is in the planning and design phase. Additionally, the Tax Division participated in another project dealing with the requirements definition, system design, and build phases for the Consolidated Debt Collection System (CDCS), which tracks debts collected through litigation. The Tax Division implemented CDCS in December, 2007.

**VI. E-Gov Initiatives**

The Justice Department is fully committed to the President’s Management Agenda (PMA) and the E-Government initiatives that are integral to achieving the objectives of the PMA. The E-Government initiatives serve citizens, business, and federal employees by delivering high quality services more efficiently at a lower price. The Department is in varying stages of implementing E-Government solutions and services including initiatives focused on integrating government wide transactions, processes, standards adoption, and consolidation of administrative systems that are necessary tools for agency administration, but are not core to DOJ’s mission. To ensure that DOJ obtains value from the various initiatives, the Department actively participates in the governance bodies that direct the initiatives and we communicate regularly with the other federal agencies that are serving as the “Managing Partners” to ensure that the initiatives meet the needs of the Department and its customers. The Department believes that working with other agencies to implement common or consolidated solutions will help DOJ to reduce the funding requirements for administrative and public-facing systems, thereby allowing DOJ to focus more of its scarce resources on higher priority, mission related needs. DOJ’s modest contributions to the Administration’s E-Government projects will facilitate achievement of this objective.

**A. Funding and Costs**

The Department of Justice participates in the following E-Government initiatives and Lines of Business:

Business Gateway	E-Travel	Integrated Acquisition Environment	Case Management LoB
Disaster Assistance Improvement Plan	Federal Asset Sales	IAE - Loans & Grants - Dun & Bradstreet	Geospatial LoB
Disaster Assist. Improvement Plan - Capacity Surge	Geospatial One-Stop	Financial Mgmt. Consolidated LoB	Budget Formulation Execution LoB
E-Authentication	GovBenefits.gov	Human Resources LoB	IT Infrastructure LoB
E-Rulemaking	Grants.gov	Grants Management LoB	

The Department of Justice E-Government expenses – DOJ’s share of E-Gov initiatives managed by other federal agencies – are paid for from the Department’s Working Capital Fund (WCF). These costs, along with other internal E-Government related expenses (oversight and administrative expenses such as salaries, rent, etc.) are reimbursed by the components to the WCF. The Tax Division reimbursement amount is based on the anticipated or realized benefits from an E-Government initiative. The Tax Division E-Government reimbursement to the WCF is \$95,000 for FY2008. The anticipated Tax Division E-Government reimbursement to WCF is \$33,000 for FY2009.

# TAX DIVISION

**ASSISTANT  
ATTORNEY GENERAL**

**DEPUTY ASSISTANT  
ATTORNEY GENERAL**

**DEPUTY ASSISTANT  
ATTORNEY GENERAL**

**DEPUTY ASSISTANT  
ATTORNEY GENERAL**

**DEPUTY ASSISTANT  
ATTORNEY GENERAL**

**OFFICE OF  
MANAGEMENT AND  
ADMINISTRATION**

**OFFICE OF  
TRAINING AND  
CAREER  
DEVELOPMENT**

**OFFICE OF  
LEGISLATION  
AND POLICY**

**CRIMINAL  
ENFORCEMENT  
SECTIONS**

**CRIMINAL  
APPEALS AND TAX  
ENFORCEMENT  
POLICY SECTION**

**APPELLATE  
SECTION**

**OFFICE OF  
REVIEW**

**CIVIL TRIAL  
SECTIONS**

**LITIGATION  
COUNSELS**

Approved by:



**ALBERTO R. GONZALES**  
Attorney General

Date: September 12, 2005

**B: Summary of Requirements**

**Summary of Requirements**  
 Tax Division  
 Salaries and Expenses  
 (Dollars in Thousands)

	FY 2009 Request		
	Perm. Pos.	FTE	Amount
<b>FY 2007 Enacted</b>	563	515	85,729
<b>FY 2008 Enacted</b>	634	573	92,781
Adjustments to Base			
Increases:			
2009 pay raise (2.9%)	0	0	1,387
2008 pay raise annualization (3.5%)	0	0	525
Annualization of 2008 positions (FTE)	0	20	0
Annualization of 2008 positions (dollars)	0	0	3,290
Annualization of 2007 positions (dollars)	0	(32)	0
Retirement 1.3%	0	0	54
Health Insurance	0	0	222
Employees Compensation Fund	0	0	(3)
GSA Rent	0	0	918
DHS Security Charge	0	0	2
Program Base Adjustment	0	12	1,753
Postage	0	0	6
Printing and Reproduction	0	0	2
Working Capital Fund ATB (JUTNet) - ATTACHMENT J	0	0	320
Subtotal Increases	0	0	8,476
Decreases:			
Change in Compensable Days	0	0	(241)
Total Adjustments to Base	0	0	8,235
<b>FY 2009 Current Services</b>	<b>634</b>	<b>573</b>	<b>101,016</b>
<b>FY 2009 Total Request</b>	<b>634</b>	<b>573</b>	<b>\$101,016</b>
FY 2008 - 2009 Total Change	0	0	8,235



**Summary of Requirements**  
 Tax Division  
 Salaries and Expenses  
 (Dollars in Thousands)

Estimates by budget activity	FY 2007 Enacted			FY 2008 Enacted			FY 2009 Adjustments to Base			FY 2009 Current Services			FY 2009 Increases			FY 2009 Offsets			FY 2009 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
General Tax Matters	563	515	85,729	634	573	92,781	0	0	8,235	634	573	101,016	0	0	0	0	0	0	634	573	101,016
<b>Total</b>	<b>563</b>	<b>515</b>	<b>\$85,729</b>	<b>634</b>	<b>573</b>	<b>\$92,781</b>	<b>0</b>	<b>0</b>	<b>\$8,235</b>	<b>634</b>	<b>573</b>	<b>\$101,016</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>634</b>	<b>573</b>	<b>\$101,016</b>
Reimbursable FTE		5			5			0			4			0			0				4
Total FTE		520			578			0			577			0			0				577
Other FTE:																					
LEAP		0			0			0			0			0			0				0
Overtime		0			0			0			0			0			0				0
Total Comp. FTE		520			578			0			577			0			0				577

**D: Resources by DOJ Strategic Goal and Strategic Objective**

**Resources by Department of Justice Strategic Goal/Objective**

**Tax Division**

(Dollars in Thousands)

Strategic Goal and Strategic Objective	FY 2007 Enacted		FY 2008 Enacted		FY 2009 Current Services		FY 2009				FY 2009 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Increases		Offsets		Direct, Reimb. Other FTE	Direct Amount \$000s
							Direct Reimb. FTE	Direct Amount \$000s	Direct Reimb. FTE	Direct Amount \$000s		
<b>Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People</b>												
2.7 Criminal Prosecution and Appeals	146	22,328	162	24,165	162	26,309	0	0	0	0	162	26,309
2.7 Civil Litigation and Appeals	374	63,401	416	68,616	415	74,707	0	0	0	0	415	74,707
<b>Subtotal, Goal 2</b>	<b>520</b>	<b>85,729</b>	<b>578</b>	<b>92,781</b>	<b>577</b>	<b>101,016</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>577</b>	<b>101,016</b>
<b>GRAND TOTAL</b>	<b>520</b>	<b>\$85,729</b>	<b>578</b>	<b>\$92,781</b>	<b>577</b>	<b>\$101,016</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>\$0</b>	<b>577</b>	<b>\$101,016</b>

## E. Justification for Base Adjustments

### Justification for Base Adjustments

#### Tax Division

(dollars in thousands)

#### Increases

2009 pay raise. This request provides for a proposed 2.9 percent pay raise to be effective in January of 2009. This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$1,387, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits \$977 for pay and \$410 for benefits).

Annualization of 2008 pay raise. This pay annualization represents first quarter amounts (October through December) of the 2008 pay increase of 3.5 percent included in the 2008 President's Budget. The amount requested \$525, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits \$370 for pay and \$155 for benefits).

Annualization of additional positions approved in 2007 and 2008. This provides for the annualization of no additional positions appropriated in 2007 and 58 additional positions enacted in the 2008 President's budget. Annualization of new positions extends to 3 years to provide for entry level funding in the first year with a 2-year progression to the journeyman level. For 2007 increases, this request includes an increase of \$0 for full-year payroll costs associated with these additional positions. For 2008, this request includes a decrease of \$0 for one-time items associated with the increased positions, and an increase of \$3,290 for full-year costs associated with these additional positions, for a net increase of \$3,290.

	FY 2007 Increases (\$000)	Annualization Required for 2009 (\$000)	FY 2008 Increases (\$000)	Annualization Required for FY 2009 (\$000)
Annual salary rate of 58 new positions			4,498	4,498
Less lapse (50 %)			2,249	2,249
Net Compensation	0	0	2,249	2,249
Associated employee benefits			665	665
Travel			130	130
Transportation of Things			35	35
Communications/Utilities			45	45
Printing/Reproduction			0	0
Other Contractual Services:				
25.2 Other Services			101	101
25.3 Purchase of Goods and Services from Government Accts.			65	65
25.4 Operation and Maintenance of Facilities			0	0
25.6 Medical Care			0	0
Supplies and Materials			10	0
Equipment			35	0
<b>TOTAL COSTS SUBJECT TO ANNUALIZATION</b>	<b>0</b>	<b>0</b>	<b>3,335</b>	<b>3,290</b>

Retirement. Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on U.S. Department of Justice Agency estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 1.3 percent per year. The requested increase of \$54 is necessary to meet our increased retirement obligations as a result of this conversion.

Health Insurance: Effective January 2007, this component's contribution to Federal employees' health insurance premiums increase by 7.2 percent. Applied against the 2008 estimate of \$3,075, the additional amount required is \$222.

Employees Compensation Fund: The \$3 decrease reflects payments to the Department of Labor for injury benefits paid in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

General Services Administration (GSA) Rent GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$918 is required to meet our commitment to GSA. The costs associated with GSA rent were derived through the use of an automated system, which uses the latest inventory data, including rate increases to be effective in FY 2009 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. Rate increases have been formulated based on GSA rent billing data.

DHS Security Charges. The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$2 is required to meet our commitment to DHS. The costs associated with DHS security were derived through the use of an automated system, which uses the latest space inventory data. Rate increases expected in FY 2009 for Building Specific Security have been formulated based on DHS billing data. The increased rate for Basic Security costs for use in the FY 2009 budget process was provided by DHS.

Base Program Adjustment: This adjustment provides for base program costs of \$1,753, to enable the Tax Division to maintain mission critical operations--for which funds have been previously appropriated--at anticipated FY09 levels. It will fund items such as personnel costs for previously authorized positions, operational travel and supplies, and information technology maintenance costs. These costs cannot be deferred without severe negative impact on mission-critical base operations.

Postage: Effective May 14, 2007, the Postage Service implemented a rate increase of 5.1 percent. This percentage was applied to the 2008 estimate of \$111 to arrive at an increase of \$6.

Government Printing Office (GPO): GOP provides an estimated rate increase of 4%. This percentage was applied to the FY 2008 estimate of \$72 to arrive at an increase of \$2.

JUTNet. The Justice United Telecommunications Network (JUTNet) is a new system will provide a more reliable, secure, and economic connectivity among the many local office automation networks deployed throughout the Department, as well as a trusted environment for information sharing with other government agencies and remote users, field agents, and traveling staff personnel. JUTNet will utilize uniform security, updated encryption protocols, and eliminate network inefficiencies existing with the current systems. Funding of \$320 is required for this account.

#### Decreases

Changes in Compensable Days: The decrease costs of one compensable day in FY 2009 compared to FY 2008 is calculated by dividing the FY 2008 estimated personnel compensation \$52,609 and applicable benefits \$10,526 by 261 compensable days. The cost decrease of one compensable day is \$241.

## F: Crosswalk of 2007 Availability

### Crosswalk of 2007 Availability

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Decision Unit	FY 2007 Enacted			Reprogrammings / Transfers			Reallocations			Carryover/ Recoveries			FY 2007 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
General Tax Matters	563	515	85,729	0	0	0	0	0	3,500	0	0	933	563	515	90,162
<b>TOTAL</b>	<b>563</b>	<b>515</b>	<b>\$85,729</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>0</b>	<b>\$3,500</b>	<b>0</b>	<b>0</b>	<b>\$933</b>	<b>563</b>	<b>515</b>	<b>\$90,162</b>
Reimbursable FTE		5												5	
Total FTE		520			0			0			0			520	
Other FTE															
LEAP		0			0			0			0			0	
Overtime		0			0			0			0			0	
Total Compensable FTE		520			0			0			0			520	

Reallocations. Funds distributed from GLA's ALS account to Tax Division's ALS account

Unobligated Balances. Funds were carried over from FY 2006 from the ALS account. The Tax Division brought forward \$451,947 from fun provided in 2006 for ALS.

**G: Crosswalk of 2008 Availability**

**Crosswalk of 2008 Availability**

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Decision Unit	FY 2008 Enacted			Reprogrammings / Transfers			Carryover/ Recoveries			FY 2008 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
General Tax Matters	634	573	\$92,781	0	0	\$0	0	0	\$3,203	634	573	\$95,984
<b>TOTAL</b>	<b>634</b>	<b>573</b>	<b>\$92,781</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>0</b>	<b>\$3,203</b>	<b>634</b>	<b>573</b>	<b>\$95,984</b>
Reimbursable FTE		5									5	
Total FTE		578			0			0			578	
Other FTE												
LEAP		0			0			0			0	
Overtime		0			0			0			0	
Total Compensable FTE		578			0			0			578	

Unobligated Balances. Funds were carried over from FY 2007 from the ALS account. The Tax Division brought forward \$3,203,000 from funds provided in 2007 for ALS.

**H: Summary of Reimbursable Resources**

**Summary of Reimbursable Resources**

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Collections by Source	FY 2007 Enacted			FY 2008 Planned			FY 2009 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Organized Crime & Drug Enforcement	7	5	630	6	5	533	7	4	594	1	(1)	61
Debt Collection (3% Fund)	0	0	1,704	0	0	2,235	0	0	0	0	0	(2,235)
Internal Revenue Service	0	0	85	0	0	0	0	0	0	0	0	0
<b>Budgetary Resources:</b>	<b>7</b>	<b>5</b>	<b>\$2,419</b>	<b>6</b>	<b>5</b>	<b>\$2,768</b>	<b>7</b>	<b>4</b>	<b>\$594</b>	<b>1</b>	<b>(1)</b>	<b>(\$2,174)</b>

**I: Detail of Permanent Positions by Category**

**Detail of Permanent Positions by Category**  
 Tax Division  
 Salaries and Expenses

Category	FY 2007 Enacted		FY 2008 Enacted		FY 2009 Request					
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	ATBs	Program Increases	Program Decreases	Total Pr. Changes	Total Authorized	Total Reimbursable
Attorneys (905)	339	5	369	4	0	0	0	0	369	5
Paralegals / Other Law (900-998)	96	1	109	1	0	0	0	0	109	1
Personnel Management (200-299)	8	0	8	0	0	0	0	0	8	0
Clerical and Office Services (300-399)	99	1	127	1	0	0	0	0	127	1
Accounting and Budget (500-599)	9	0	9	0	0	0	0	0	9	0
Library (1400-1499)	1	0	1	0	0	0	0	0	1	0
Information Technology Mgmt (2210)	11	0	11	0	0	0	0	0	11	0
<b>Total</b>	<b>563</b>	<b>7</b>	<b>634</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>634</b>	<b>7</b>
Headquarters (Washington, D.C.)	533	7	604	6	0	0	0	0	604	7
U.S. Field	30	0	30	0	0	0	0	0	30	0
Foreign Field	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>563</b>	<b>7</b>	<b>634</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>634</b>	<b>7</b>



**K: Summary of Requirements by Grade**

**Summary of Requirements by Grade**

Tax Division  
Salaries and Expenses

Grades and Salary Ranges	FY 2007 Enacted		FY 2008 Enacted		FY 2009 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
SES, \$111,676 - \$168,000	23		23		23		0	
GS-15, \$110,363 - 143,471	253		270		270		0	
GS-14, \$93,822 - 121,967	62		97		97		0	
GS-13, \$79,397 - 103,220	42		42		42		0	
GS-12, \$66,767 - 86,801	15		15		15		0	
GS-11, \$55,706 - 72,421	42		42		42		0	
GS-10, 50,703 - 65,912	2		2		2		0	
GS-9, \$46,041 - 59,852	41		47		47		0	
GS-8, 41,686 - 54,194	62		62		62		0	
GS-7, \$37,640 - 48,933	17		30		30		0	
GS-6, \$33,872 - 44,032	2		2		2		0	
GS-5, \$30,386 - 39,501	2		2		2		0	
GS-4, \$27,159 - 35,303	0		0		0		0	
GS-3, \$24,194 - 31,451	0		0		0		0	
GS-2, \$22,174 - 27,901	0		0		0		0	
GS-1, \$19,722 - 24,664	0		0		0		0	
<b>Total, appropriated positions</b>	<b>563</b>		<b>634</b>		<b>634</b>		<b>0</b>	
<b>Average SES Salary</b>		<b>152,700</b>		<b>\$158,045</b>		<b>\$162,628</b>		
<b>Average GS Salary</b>		<b>\$96,033</b>		<b>\$99,208</b>		<b>\$102,085</b>		
<b>Average GS Grade</b>		<b>12.74</b>		<b>12.71</b>		<b>12.71</b>		

## L: Summary of Requirements by Object Class

### Summary of Requirements by Object Class

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Object Classes	FY 2007 Actuals		FY 2008 Enacted		FY 2009 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	432	48,173	501	52,825	501	57,494	0	4,669
11.3 Other than full-time permanent	72	1,479	72	1,531	72	1,575	0	44
11.5 Total, Other personnel compensation	0	823	0	852	0	877	0	25
<i>Overtime</i>	0	0	0	0	0	0	0	0
<i>Other Compensation</i>	0	0	0	0	0	0	0	0
11.8 Special personal services payments	0	0	0	0	0	0	0	0
<b>Total</b>	<b>504</b>	<b>50,475</b>	<b>573</b>	<b>55,208</b>	<b>573</b>	<b>59,946</b>	<b>0</b>	<b>4,738</b>
Other Object Classes:								
12.0 Personnel benefits		12,036		13,250		15,277		2,027
13.0 Benefits to Former Personnel		0		0		0		0
21.0 Travel and transportation of persons		3,001		3,414		3,414		0
22.0 Transportation of things		716		829		829		0
23.1 GSA rent		11,686		13,610		14,528		918
23.3 Comm., util., & other misc. charges		1,029		1,148		1,474		326
24.0 Printing and reproduction		99		72		74		2
25.2 Other services		3,782		2,666		2,890		224
25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc..)		1,214		1,638		1,638		0
25.7 Operation and maintenance of equipment		301		201		201		0
26.0 Supplies and materials		632		612		612		0
31.0 Equipment		502		133		133		0
<b>Total obligations</b>		<b>\$85,473</b>		<b>\$92,781</b>		<b>\$101,016</b>		<b>\$8,235</b>
Unobligated balance, start of year				(3,203)		0		
Unobligated balance, end of year		3,203						
Recoveries of prior year obligations								
<b>Total DIRECT requirements</b>		<b>\$88,676</b>		<b>\$95,984</b>		<b>\$101,016</b>		
Reimbursable FTE:	3		5		4		(1)	
Full-time permanent	504		573		573		0	0
23.1 GSA rent (Reimbursable)		39		41		43		2
25.3 DHS Security (Reimbursable)		0		0		0		0