

**Tax Division  
United States Department of Justice**

**FY 2010 Performance Budget  
Congressional Justification**



**April 2009**



# Table of Contents

	Page No.
<b>I. Overview .....</b>	1
<b>II. Summary of Program Changes .....</b>	5
<b>III. Appropriations Language and Analysis of Appropriations Language...</b>	6
<b>IV. Decision Unit Justification .....</b>	7
A. General Tax Matters .....	
1. Program Description .....	8
2. Performance Tables .....	19
3. Performance, Resources, and Strategies .....	21
a. Strategies to Achieve Goal.....	24
<b>VI. Exhibits.....</b>	
A. Organizational Chart	
B. Summary of Requirements	
C. Program Increases/Offsets by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective	
E. Justification for Base Adjustments	
F. Crosswalk of 2007 Availability	
G. Crosswalk of 2008 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Grade	
L. Summary of Requirements by Object Class	
M. Status of Congressionally Requested Studies, Reports, and Evaluations	N/A
N. Modular Costs for New Positions	



## I. Overview

### A. Introduction

The Tax Division requests a total of 639 permanent positions (382 attorneys), 587 full-time equivalent (FTE) work years (includes five reimbursable FTE) and \$105,877,000 for FY 2010. The Tax Division represents the United States in virtually all litigation - civil and criminal, trial and appellate - 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 (as of the date of this writing FY 2005 - FY 2008), 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 over \$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 or 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 Tax Stats – 2008 Data Book, [www.irs.gov/taxstats/article/0,,id=205182,00.html](http://www.irs.gov/taxstats/article/0,,id=205182,00.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 are having a positive effect on voluntary compliance. According to the most recent survey by the IRS Oversight Board, 89 percent of those surveyed think it is “not at all” acceptable to cheat on taxes – the highest level ever recorded for this question on the survey.<sup>4</sup> As the Tax Division is an integral part of the IRS’s enforcement efforts, the Division is partially responsible for the IRS’ ability to collect \$1.7 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 2008 Taxpayer Attitude Survey, February, 2009, <http://www.treas.gov/irsob/board-reports.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 2010 is 13 FTE and \$6,126, 000. No IT enhancements are requested for FY 2010.

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/2010justification/>.

### ***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 Represent the Rights and interests of the American People.

This Strategic Goal defines the two broad programs areas:

- Civil Tax Litigation and Appeals - \$78,349,000
- Criminal Tax Prosecution and Appeals - \$27,528,000

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 2010 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.

#### **External – Reducing the Tax Gap**

The IRS estimates that the Tax Gap – the difference between the amount of taxes owed and the amount paid voluntarily and timely -- is more than \$345 billion every year. More recently, an independent analyst has estimated that the gross Tax Gap may have increased to \$400 billion as of 2006.<sup>6</sup> The IRS collects over \$2 trillion annually. Over \$1.96 trillion (or 98% of total collections) results from taxpayers' voluntary compliance with the tax law; the remainder, \$47 billion, comes from

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<sup>6</sup> See Toder, Eric, "Reducing the Tax Gap: The Illusion of Pain-Free Deficit Reduction," <http://www.urban.org/publications/411496.html>.

enforcement activity. The IRS Oversight Board recently cited reducing the Tax Gap as the “most serious problem facing tax administration today”.<sup>7</sup>

As explained more fully in the Program Description section, attacking the Tax Gap requires multiple approaches. Any effort to reduce the Tax Gap requires increased enforcement. But the challenge is to narrow that gap in a way that not only collects the revenue due, but also assures the public that enforcement actions are vigorous, fair, and uniform.

### **Internal – Increasing Workload**

The Tax Division’s workload is directly related to IRS enforcement efforts. Congress increased the IRS’s enforcement budget by an additional \$175 million in FY 2008 and \$490 million in FY 2009. 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 2,034 hours in FY 2008 (exclusive of leave) and 2,005 hours in FY 2007. A full-time schedule is 1,776<sup>8</sup> work hours, so each attorney, on average, is already working the equivalent of over 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.

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<sup>7</sup> IRS Oversight Board, FY 2009 Budget Recommendation, Special Report, March 2008.

<sup>8</sup> According to OMB, a full-time schedule is 1,776 work hours (excluding federal holidays, leave, training, and other non-productive hours). See OMB Circular A-76 (revised) (May 29, 2003).



## **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

<i>General Tax Matters</i>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount</b>
2008 Enacted with Rescissions	634	578	92,781
2008 Supplementals	0	0	0
2008 Enacted w/Rescissions and Supplementals	634	578	92,781
2009 Enacted	621	578	101,016
Adjustments to Base and Technical Adjustments	0	0	1,952
2010 Current Services	621	578	102,968
2010 Program Increases	18	9	2,909
2010 Request	639	587	105,877
<b>Total Change 2009-2010</b>	18	9	4,861

## 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.

Tax shelter litigation is among the most sophisticated and important litigation being handled by the Tax Division. Tax shelters are designed to generate large purposed tax benefits using multiple entities and complex financial transactions that lack a real business purpose or any real economic substance. Shelter cases often involve well-disguised transactions and tax-indifferent parties located in other countries, making discovery difficult and expensive to pursue. Successfully defending in federal trial and appellate courts the IRS's disallowance of sham tax benefits is critical to the government's efforts to combat abusive tax shelters. Because tax shelters typically 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 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 prevailed in a pair of the first LILO/SILO<sup>9</sup> shelter cases to be tried, *AWG v. United States*, *appeal pending*, and *Fifth-Third Bank v. United States*. The government victories in these two trials sent a clear message to taxpayers who had engaged in similar tax shelters that they had serious litigation hazards and helped lay the groundwork for an IRS settlement initiative involving the disposition, on terms extremely favorable to the government, of hundred of potential cases involving tens of billions of dollars. In *Jade Trading, LLC v. United States* (C.F.C.), *appeal pending*, the court determined the shelter did not have economic substance and that the claimed losses were not deductible.

As of December 31, 2008, the Division had 93 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

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<sup>9</sup> Lease In/Lease Out and Sale In/Lease Out transactions involve either a lease or a sale of assets, and then a lease-back of those assets, from a U.S. tax-indifference entity (e.g., a foreign entity or a U.S. nonprofit) to a U.S. taxpayer, with no change in the use of the assets, but generating immediate tax benefits for the U.S. taxpayer.

Northern District of California, each involving a “Son of BOSS” tax shelter, facilitated by the same promoter, are treated as one group. During FY 2008, the Division had a record six multi-week tax shelter trials, each requiring a team staffed by experienced attorneys.

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.

### **Tracking Down Owners of Unreported Offshore Accounts**

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, while also providing 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, the Division anticipates being asked to enforce more of the sensitive and complicated summons cases that it currently handles.

By filing suits to enforce summonses against people involved in promoting and facilitating offshore tax evasion, Tax Division attorneys have obtained hundreds of thousands of documents and identified thousands of people whom the IRS is now investigating for unreported and unpaid taxes. 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 case 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.

In *United States v. UBS, AG* (S.D. Fla.), filed in July, 2008, the Tax Division successfully obtained court approval for the issuance of a John Doe summons to Swiss banking giant UBS seeking the names of U.S. account holders with undeclared accounts. The approval and issuance of the summons generated worldwide publicity and should lead to greatly increased voluntary compliance by taxpayers. UBS having failed to comply with the summons in full, the Tax Division in February, 2009, filed in the same court a petition to enforce the summons. The petition alleges that United States taxpayers may have as many as 52,000 undeclared accounts with UBS, with approximately \$14.8 billion in assets as of the mid-2000s.

### **Shutting Down Tax Scams and Fraudulent Return Preparers**

There are a host of less sophisticated tax schemes and scams that unscrupulous promoters are aggressively marketing to middle- and lower-income individuals. Since January, 2001, the Tax Division has sought and obtained injunctions against more than 350 tax-fraud promoters and return preparers, including a record 78 in FY 2008. These scams, which are typically marketed by purported tax experts, in reality are nothing more than false and fraudulent “do-it-yourself” tax-relief packages sold to individuals who are uninformed or willfully naïve.

The schemes the Division has enjoined during the past eight years cost the Federal Treasury more than two 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 continues to encourage 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.

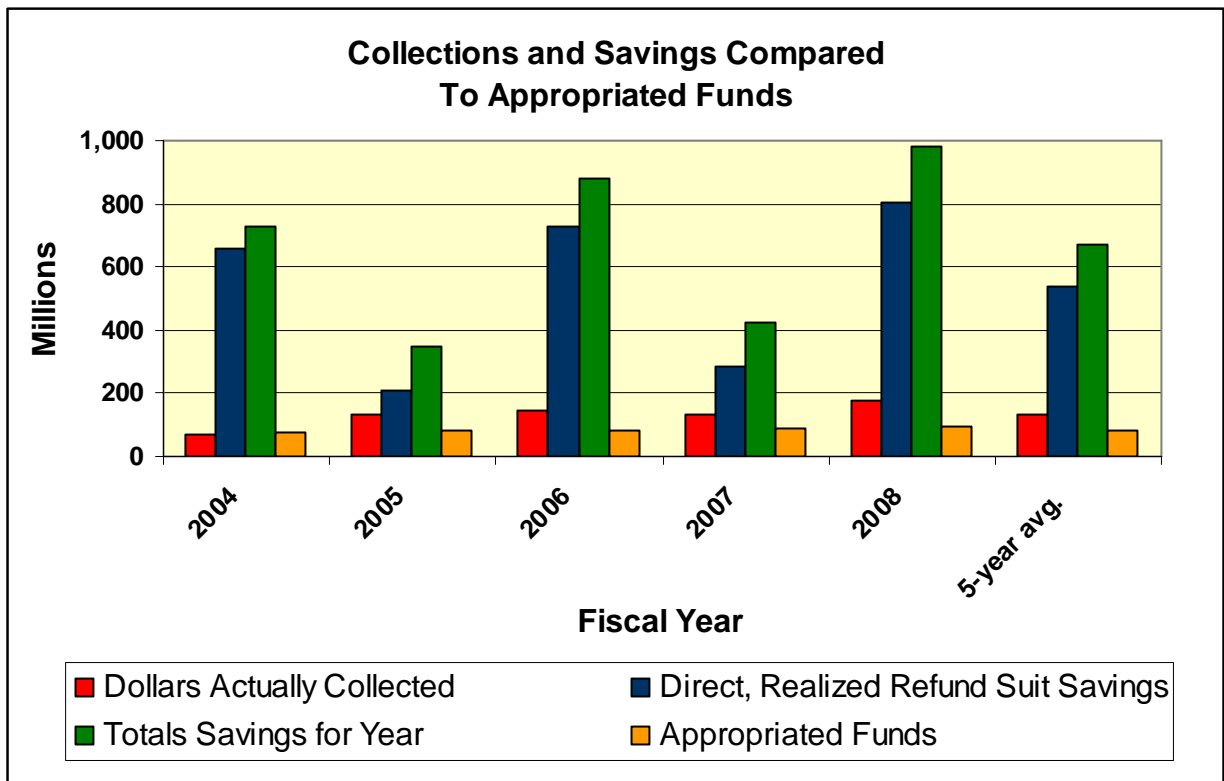
During FY 2008, the Division developed new internal procedures for criminal contempt, so that enjoined promoters and preparers who flouted orders to stop their illegal behavior would be dealt with swiftly.

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

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*.

### **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 while boosting 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, 2008, the Division was defending tax refund cases worth over \$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 is not able to develop case law supporting the Government’s position on this issue, the Federal Treasury will have to pay billions of dollars in refunds, and will cease to collect billions more in future years. Since December 1, 2006, the United States has prevailed at the

<sup>10</sup> See IRS 2008 statistics, [www.irs.gov/taxstats/article/0,,id=168593.00.html](http://www.irs.gov/taxstats/article/0,,id=168593.00.html), Table 27.

trial court level in three separate medical-residents cases, including *Memorial Sloane-Kettering Cancer Center*, which is currently pending before the Court of Appeals for the Second Circuit. More cases are pending at trial and at the administrative level (with the IRS). The United States has lost a statutory-construction argument in four courts of appeal, resulting in the need for extensive discovery and, ultimately, trial on the factual question whether medical residents are students.

### **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.

During FY 2008, the Appellate Section won (in whole or in part) over 97% of the taxpayer appeals. Among the important Appellate victories was the decision in *United States v. Clintwood Elkhorn Mining Co.* (S.Ct.) holding that coal companies seeking refunds of unconstitutional coal excise taxes were subject to three-year statute of limitations. In *BB&T v. United States* (4th Circuit), the court affirmed the favorable district court judgment in the first appellate test of Lease In/Lease Out (LILO) tax shelters. *BB&T* illustrates the Tax Division's continuing success in having courts uphold the IRS's disallowance of tax benefits from sham transactions.

### **b) CRIMINAL PROSECUTIONS AND APPEALS**

The Tax Division authorizes, and either conducts or supervises, all prosecutions arising under the federal tax laws. The Division's two-pronged mission is to prosecute criminal tax violations and to 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. In addition to their substantial litigation caseloads and review work, 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.

Criminal workload has increased primarily due to an increasing number of complex cases. For FY 2008, the average workload of each Division prosecutor, which consists of evaluating and litigating cases, was 2,097 hours. This is well in excess of the 1,776 hour workload baseline discussed earlier. The number of criminal indictments obtained by Tax Division criminal trial attorneys has increased significantly over the past four years. During FY 2008, Division criminal attorneys obtained indictments in 152 cases. In contrast, Division attorneys obtained 76, 91, and 73 indictments in FY 2005, FY 2006, and FY 2007, respectively.



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 securities fraud, bankruptcy fraud, healthcare fraud, organized crime, public corruption, and narcotics trafficking. 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 terrorism-related and Organized Crime and Drug Enforcement Task Force (OCDETF) 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.) When these cases involve difficult issues of tax law or complex methods of proof, United States Attorneys' Offices often call upon the special skills that Tax Division prosecutors bring to the Justice Department's goal of combating financial fraud and reducing 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/or prosecuted cases involving tax crimes committed by individuals from all walks of life, including corporate executives, business owners, attorneys, doctors, dentists, movie actors, and others.

For example, in February 2008, in *United States v. Neil Stierhoff* (D. RI), the defendant, who operated an electronics testing business, was sentenced to 46 months in prison. The defendant was convicted of four counts of tax evasion for years 1999 through 2002. During that time he received over \$2.3 million in receipts and failed to file any tax returns. Stierhoff used nominee names and bank accounts, post office boxes, and relied extensively on cash transactions during the prosecution years.

Division attorneys are scheduled to begin an income tax evasion trial in July 2009 in *United States v. Joseph A. Francis* (C.D. CA). The 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.

## **Combating Offshore Tax Schemes**

The Tax Division continues to play a lead role in investigations and prosecutions involving the use of foreign tax havens. 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 often difficult to detect and prosecute, so the IRS has allocated resources to target taxpayers who engage in offshore activity for the purpose of underreporting income. Income tax evaders and other criminals use banks located in 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.

In February 2009, in *United States v. UBS AG* (S.D. FL), UBS AG, Switzerland's largest bank, entered into a deferred prosecution agreement, admitting guilt on charges of conspiring to defraud the United States by impeding the IRS. As part of the agreement, UBS, based on an order by the Swiss Financial Markets Supervisory Authority, agreed to immediately provide the United States with the identities of, and account information for, certain United States customers of UBS's cross-border business. Under the agreement, UBS also will expeditiously exit the business of providing banking services to United States customers with undeclared accounts and will pay \$780 million in fines, penalties, interest, and restitution.

The Division has also obtained the return of indictments and convictions of individuals associated with offshore schemes. For example, in June, 2008, in *United States v. Bradley Birkenfeld, et. al.*, (S.D. FL), Birkenfeld, a former UBS banker, pleaded guilty to conspiring with an American billionaire real estate developer, Swiss bankers, and his co-defendant, Mario Staggi, to help the developer evade paying \$7.2 million in taxes by assisting in concealing \$200 million of assets in Switzerland and Liechtenstein. In his plea Birkenfeld admitted that between 2001 and 2006, while employed as a director in the private banking division of Swiss bank UBS, he routinely traveled to and had contacts within the United States to help wealthy Americans conceal their ownership in assets held offshore and evade paying taxes on the income generated from those assets. In November, 2008, in *United States v. Raoul Weil* (S.D. FL), an indictment was returned charging Weil with conspiracy to defraud the United States and the IRS. Weil was allegedly the senior UBS executive in charge of the wealth management business and private banking, who supervised unlawful cross-border activities carried out by bankers and their managers that helped wealthy Americans conceal their income and assets from the IRS. In January 2009, the District Court declared Weil to be a fugitive.

## **Prosecuting Abusive Promotions**

The Division is actively engaged in prosecuting the promotion or use of fraudulent tax shelters and other schemes to evade taxes and hide assets. The number of taxpayers who use these bogus schemes to improperly reduce, or totally evade, their federal income tax liabilities has increased significantly in recent years. Some schemes involve the use of domestic or foreign trusts to evade taxes. Promoters of these schemes often use the internet to aggressively market these trusts to the public, and rely upon 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 legitimate creditors, including the IRS), these promoters are in fact assisting taxpayers to fraudulently assign income and conceal ownership of income-producing assets in order to evade paying their taxes.

In *United States v. David Struckman, et al.*, (W.D. WA) three founders and two principals of the Institute of Global Prosperity (IGP) were prosecuted for the fraudulent sale of "wealth building" products, which encouraged clients to place assets into purported foreign and common law "trusts" while still maintaining control over the assets. IGP generated gross receipts of over \$45 million from the sale of these products from its inception in the fall of 1996 to May 2002. In July 2008, Struckman was sentenced to 70 months imprisonment and ordered to pay \$2.9 million in restitution. In May 2008, in *United States v. Michael A. Vallone, et al.* (N.D. IL), a jury convicted six defendants of a \$60 million tax fraud conspiracy for participating in a scheme to market and sell sham domestic and foreign trusts through "The Aegis Company" to wealthy taxpayer clients. The Chicago-based investigation has resulted in nationwide convictions of more than 30 defendants, with charges pending against approximately 30 other defendants around the country. In October 2008, Vallone was sentenced to more than 18 years in prison.

### **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, in August 2008, in *United States v. Dennis B. Evanson, et al.* (D. UT), Evanson, an attorney, was sentenced to 120 months in prison and three accountant co-defendants were also sentenced to prison for their \$20 million tax fraud scheme. After a trial in February 2008, Evanson was convicted of conspiracy to commit mail and wire fraud, tax evasion, and other tax crimes. Evanson and his co-defendants conspired to conceal portions of their customers' income from the IRS and to create false deductions for the purpose of reducing the income taxes paid by their customers.

### **National Tax Defier Initiative**

To reaffirm and reinvigorate the Tax Division's commitment to investigate, pursue, and, where appropriate, prosecute those who take action to defy and deny the fundamental validity of the tax laws, in April, 2008, the Tax Division launched the National Tax Defier Initiative.

One of the goals of the initiative is increased coordination between and within IRS and the Division to allow new or recycled tax defier schemes and argument to be quickly identified so that a global, coordinated strategy can be developed. For example soon after the announcement of Tax Defier, a working group of DOJ, IRS, and Treasury Inspector General for Tax Administration (TIGTA) representatives was convened to develop a response to a perceived increase in the use of false IRS Form 1099 as a harassment tool against state and federal government employees.

In February 2008, in *United States v. Sherry Peel Jackson* (N.D. GA), a former revenue agent with the IRS, was sentenced to 48 months of imprisonment. Jackson was convicted by a jury in October 2007 of four counts of willful failure to file income tax returns for the years 2000 through 2003. Jackson claimed that the United States courts had no legal jurisdiction over her and that her conviction was null and void for various reasons. Jackson also filed with the court voluminous pleadings in which she claimed that she was not a "person" subject to the federal income tax.

## War on Terrorism

Tax Division attorneys play an important role in the fight against international terrorism. Prosecution of defendants who utilize the tax laws of the United States in order to help fund terrorism, such as through the use of non-governmental entities to fund terrorism, has become an important priority of the Criminal Enforcement Sections. In FY 2008, the Tax Division hired a Senior Litigation Counsel to manage matters associated with counter-terrorism and terrorist-financing and to lead teams of attorneys in investigating, developing, and prosecuting criminal tax cases with a nexus to counter-terrorism and terrorism financing.

For example, trial is currently scheduled for November 2009 in *United States v. Islamic American Relief Agency, et al.* (W.D. MO). The indictment charges 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.

## Corporate Fraud and other Financial Crimes

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.

Prosecutions of the promoters of fraudulent tax schemes include cases involving accountants and attorneys at national firms. In September 2008, in *United States v. Peter Cinquegrani* (S.D. NY), Cinquegrani pled guilty to a three-count information charging him with conspiracy to commit tax fraud, aiding and abetting tax evasion, and aiding in the submission of false and fraudulent documents to the IRS in connection with a fraudulent tax shelter called PICO, which was marketed by Big-Four accounting firm Ernst & Young to wealthy clients. Cinquegrani, an attorney formerly employed by Arnold & Porter, authored opinion letters for PICO for fees ranging between \$50,000 and \$100,000, depending on the size of the client's PICO transaction. In February 2009, in *United States v. Michael Kerekes* (S.D. NY), an accounting firm attorney pled guilty to tax fraud related to tax shelters claiming over \$1 billion in fraudulent losses. Kerekes, who worked as an attorney at accounting firm BDO Seidman, pled guilty to conspiracy to defraud the United States and tax evasion. Kerekes admitted to conspiring with certain tax shelter promoters in connection with tax shelter transactions involving clients of the accounting firm and the law firm Jenkins & Gilchrist (J&G). In total, the fraudulent tax shelter transactions implemented by Kerekes, his accounting firm, J&G, and the financial institution that assisted them, caused clients to report over \$1 billion in false and fraudulent tax losses, resulting in the evasion of over \$200 million of taxes due to the IRS. Kerekes also pleaded guilty to tax evasion in connection with a multimillion-dollar tax shelter transaction of a client of the accounting firm, at whose IRS audit Kerekes gave false and misleading testimony.

## **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.

In September 2008, in *United States v. Jack Abramoff* (D. DC), a federal judge sentenced a high-profile lobbyist to four years in prison. Abramoff pleaded guilty to non-tax conspiracy and income tax evasion, in connection with an illegal multi-million dollar lobbying scheme. Working jointly with the Criminal Division's Public Integrity and Fraud Sections, Tax Division prosecutors conducted grand jury investigations that resulted in guilty pleas by a congressman, prominent federal government officials and other lobbyists.

## **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 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 making an assessment of the civil tax liability and then taking steps to collect it.

## **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 the Bahamas, Canada, the Cayman Islands, China, Costa Rica, Cyprus, Hong Kong, Jordan, the Netherlands, Panama, and South Korea. Of particular note, Division attorneys have entered into a deferred prosecution agreement with UBS AG, Switzerland's largest bank, discussed above, under which the Division has been given the names of a very large number of tax evaders who have maintained secret bank accounts in Switzerland. Moreover, the Division is pressing for the enforcement of an IRS "John Doe" summons served on UBS, which may yield the names of additional tax evaders.

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 has participated in consultations both with France and Canada in an effort to improve the exchange of information under our income tax treaties with those countries. The Division also has hosted visiting delegations from Pakistan and from Mexico interested in learning more about our federal criminal tax

enforcement program and has worked closely with the Embassy of Ecuador to develop a class on the investigation of tax crimes. The Division continues to work to increase cooperation between the United States and countries in Latin America and the Caribbean by providing instructors for the International Law Enforcement Academy in El Salvador.

The Division continues to help the IRS and the Treasury Department develop a new model Tax Information Exchange Agreement (TIEA) and continues to help Treasury negotiate and implement TIEAs and tax treaties with various foreign governments. This past year the Division participated in negotiating a new income tax treaty with Malta and a new TIEA with Liechtenstein, as well as in discussions with both Guatemala and Columbia about international agreements with those countries. Other negotiations are ongoing.

### **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 employs many of the recommended techniques.

**2. Performance Tables**

**PERFORMANCE AND RESOURCES TABLE**

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

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

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

WORKLOAD/RESOURCES		Final Target		Actual		Projected		Changes		Requested (Total)	
Workload:		FY 2008		FY 2008		FY 2009 Enacted		Current Services Adjustments and FY 2010 Program Changes		FY 2010 Request	
<b>CRIMINAL</b>	1. Number of Cases received from the IRS and USAO for authorization and review	1,226		1,020		1,226		0		1,226	
<b>CIVIL</b>	<b>Average Number of Significant Litigation Activities per Attorney-Work Year</b>										
	1. Average Number of Briefs, Written Pleadings, etc.	96		109		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	200		208		200		0		200	
Total Costs and FTE's *		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
(Brackets indicate reimbursement amount for OCDETF - not included in shown total)		573	\$92,781	573	\$92,781	573	\$101,016	9	\$4,861	582	\$105,877
		[5]	[\$222]	[5]	[\$222]	[5]	[\$327]	[0]	[\$1,952]	[5]	[0]
TYPE/Strategic Objective	PERFORMANCE/RESOURCES	FY 2008		FY 2008		FY 2009 Enacted		Current Services Adjustments and FY 2010 Program Changes		FY 2010 Request	
<b>Program Activity</b>	<b>CRIMINAL PROSECUTION &amp; APPEALS - Total Costs &amp; FTE</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Output	1. Number of Investigations Authorized	149	\$24,123	149	\$24,123	160	\$26,264	7	\$2,182	167	\$27,528
Output	2. Number of Prosecutions Authorized		n/a		693		n/a		n/a		n/a
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division		n/a		1,283		n/a		n/a		n/a
			95%		95%		95%		0%		95%
<b>Program Activity</b>	<b>CIVIL LITIGATION &amp; APPEALS - Total Costs &amp; FTE</b>	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Outcome	1. Civil Cases Successfully Litigated in the Trial Courts	424	\$63,401	424	\$68,658	413	\$74,752	2	\$727	415	\$78,349
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals		90%		90%		90%		0%		90%
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals		85%		97%		85%		0%		85%
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions) **		60%		68%		60%		0%		60%
			n/a		\$981		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 ***		115.29		123.89		116.29				117.29

Data Definition Validation, Verification, and Limitations

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

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

## PERFORMANCE MEASURE TABLE

Decision unit: GENERAL TAX MATTERS											
	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	Actual	Target	Actual	Target
Program Activity	<b>CRIMINAL PROSECUTION &amp; APPEALS</b>										
Output	1. Number of Investigations Authorized	489	628	655	568	628	664	757	n/a	693	n/a
Output	2. Number of Prosecutions Authorized	877	967	1,130	1,381	1,274	1,180	1,284	n/a	1,283	n/a
Outcome	3. Success Rate for Criminal Tax Cases Handled by the Division	98%	99%	96%	95%	98%	97%	100%	95%	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%	96%	90%	95%	90%
Outcome	2. Civil Cases Successfully Litigated - Taxpayer Appeals	89%	97%	93%	97%	95%	97%	99%	85%	97%	85%
Outcome	3. Civil Cases Successfully Litigated - Government and Cross Appeals	68%	72%	67%	78%	60%	78%	56%	60%	68%	60%
Outcome	4. Tax Dollars Collected and Retained by Court Action and Settlement (\$ in millions)	\$815.2	\$1,335.5	\$866.2	\$728.0	\$1,500.0	\$878.1	\$424.0	n/a	\$981.0	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	116.68	115.29	123.89	116.29

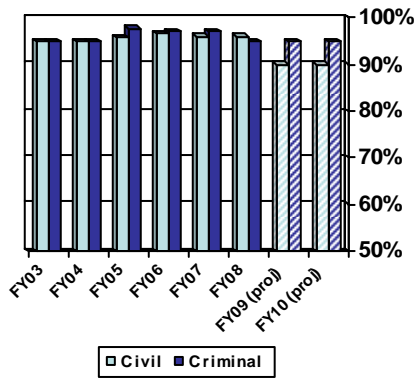
\*Efficiency measure not required prior to FY04.



### 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.

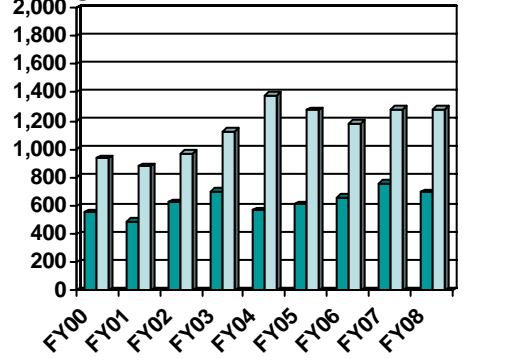
**Performance Measure 1:** Percentage of Cases Favorably Resolved

**FY 2008 Target:** 90% for Civil Trial and 95% for Criminal.

**FY 2008 Actual:** 96% for Civil Trial and 95% for Criminal.

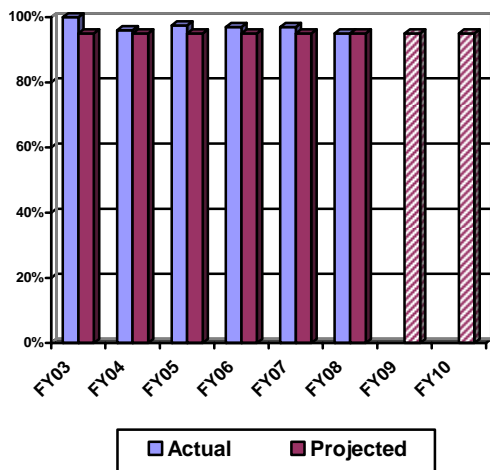
**Discussion:** The outcome measure for this decision unit is favorable resolution of all cases. The Department of Justice Strategic Plan sets Department-wide goals for the litigating components: 90% of criminal cases favorably resolved Department-wide and 80% of civil cases favorably resolved. As illustrated in the chart “Cases Favorably Resolved (TAX),” the Tax Division has exceeded the Department’s goal for the last several years. In FY 2008, favorable outcomes were achieved in 96% of all civil and 95% of all criminal cases litigated by the Tax Division, including non-tax cases. To meet the targets for this measure, the Tax Division requires \$105,877 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.

**Investigation and Prosecution Referrals Authorized**



■ Investigations Authorized □ Prosecutions Authorized

**Success Rate for Criminal Tax Cases**



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

**FY 2008 Target:** N/A

**FY 2008 Actual:** 693 Investigations  
1,283 Prosecutions

**Discussion:** The Tax Division also measures the number of authorized investigation and prosecution referrals in criminal cases. In FY 2008, the Division authorized 693 grand jury investigations and 1,283 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 2009 or FY 2010 performance goal for authorized investigations and prosecutions.

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

**FY 2008 Target:** 95%

**FY 2008 Actual:** 95%

**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 2008, the Division's conviction rate was 95% in tax cases.

For FY 2009, FY 2010, and FY 2011, 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.

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

**FY 2008 Target:** Trial Courts – 90%  
 Taxpayer Appeals – 85%  
 Government and Cross Appeals – 60%

**FY 2008 Actual:** Trial Courts – 95%  
 Taxpayer Appeals – 97%  
 Government and Cross Appeals – 68%

**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.

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**

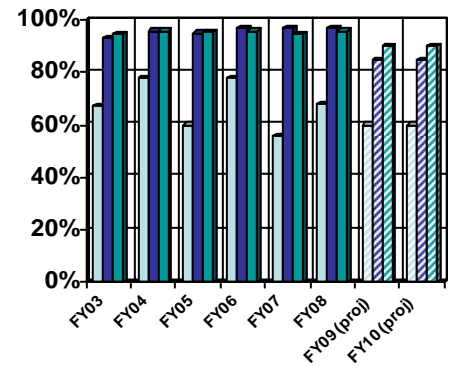
**FY 2008 Target:** N/A

**FY 2008 Actual:** \$981 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 2008, the Division collected \$178 million and retained \$803 million.

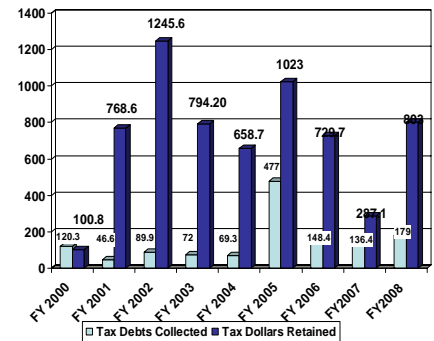
In addition to this measurable impact, the Division’s litigation affects the revenue at issue in many cases being handled administratively by the IRS, and determines tax liabilities of litigants for many tax years not in suit. Its litigation successes also foster overall compliance with the tax laws. 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 (\$ 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 the FY 2010 Goals:**

With the resources requested for FY 2010, the Division will concentrate on curtailing the activity of promoters, enablers, tax defiers, 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 2008 and FY 2009, a large portion of which is dedicated to the IRS strategic plan goal, "Enhance Enforcement of the Tax Law". 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-defier 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-defier 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 defiers 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.

**Item Name:**                      **Operation National Tax Defier**

Budget Decision Unit:        Tax Division

Strategic Goal & Objective: 2. 7 - Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction

Organizational Program:     Tax Division

Information Technology:    Yes                      No   x  

Program Increase:            Positions – **18** FTE – **9** Dollars - **\$2,909**

**Description**

The Tax Division is requesting thirteen attorneys and five support staff to implement “Operation National Tax Defier,” which will provide additional resources for increased and more effective tax law enforcement against tax defiers. Operation National Tax Defier will permit the Division to fully fund the National Tax Defier Initiative, announced on April 8, 2008, which reaffirmed the Tax Division’s commitment to investigate and, where appropriate, prosecute those who take action to defy the tax laws.

Tax defiers, like other tax fraudsters, fail to report and pay the tax they owe. A distinguishing feature of tax defiers is their attempt to cloak their malfeasance and greed in constitutionally-tinged rhetoric that nevertheless rejects the validity of our nation’s tax laws. Some common tax-defier arguments are:

- Wages, tips, and other compensation received for personal services are not income;
- Compelled compliance with the federal income tax laws is a form of involuntary servitude in violation of the Thirteenth Amendment;
- The federal income tax is unconstitutional because the Sixteenth Amendment was not properly ratified;
- Only income earned by non-resident aliens, U.S. citizens earning income abroad, and foreign corporations is taxable.

Tax defiers act on these frivolous arguments by bringing fraudulent claims, filing frivolous returns, and engaging in bogus schemes. Their conduct harms the United States by improperly reducing tax revenues, unnecessarily consuming administrative and judicial resources, falsely encouraging others to emulate their unlawful behavior, and undermining public confidence in the fairness of the tax system.

The Tax Division uses its resources judiciously by targeting prominent tax defiers – ringleaders or influential followers – for civil enforcement and criminal prosecution. Since January, 2001, the Tax Division has used both civil and criminal enforcement tools against tax defiers, with great success. Criminal prosecutors in the Division and in the United States Attorneys Offices have obtained guilty verdicts or guilty pleas in more than 200 tax defier cases, including high-profile tax defiers like Irwin Schiff and Wesley Snipes. The Division has also sought and obtained civil injunctions barring more than 90 tax-defier promoters and return preparers from continuing to peddle their baseless arguments encouraging other taxpayers to violate the tax laws.

Despite these many successes, more remains to be done. Since Assistant U.S. Attorneys carry an extensive litigation docket, tax-defier criminal cases – which present unique challenges – too often languish at the bottom of the stack of files. On the civil side, a growing number of enjoined defendants violate the injunctions against them, but a lack of resources has hindered efforts to investigate and pursue all deserving contempt-of-court cases. Meanwhile, tax defiers, aided by the power of the internet, have turned what were once paper-based local or regional enterprises into click-and-download nationwide operations.

## **Justification**

Division attorneys spent over 62,000 hours on tax defier cases in FY 2008 – an increase of 26% over FY 2007. This level of attorney hours expended on tax-defier cases is expected to continue. The Division’s new criminal tax defier cases mushroomed from 73 cases in FY 2007 to 131 cases in FY 2008, a 179% increase. As of 12/31/08, the Division received 30 new criminal cases, which is higher than the prior ten years for the same period. Historically, the number of new cases referred during the first quarter of the fiscal year is lower than the remaining three quarters. Additionally, the Division had 474 criminal tax defier cases pending as of 12/31/08, an increase of 7% over the number of pending cases for the prior year.

Tax-defier cases are notoriously resource intensive. Tax defiers typically do not plead guilty or settle with the government; a significant number of criminal tax defier cases go to trial. Moreover, because tax defiers customarily engage in a strategy of filing numerous baseless motions, the number of hours that must be devoted to these cases far exceeds the hours devoted to an average case. It is not unusual for a criminal tax-defier case to consume well over 2000 hours, or the equivalent of more than one attorney working full time for over a year.<sup>11</sup> For example, the Tax Division has already expended 6,699 hours -- the equivalent of almost four attorneys working full time for one year -- in *United States v. Wesley Trent Snipes, et al.* (M.D. Fla.).

The goals of Operation National Tax Defier are to

- handle the expected continuing increase in tax-defier cases
- improve the quality of prosecutions and other litigation against tax defiers
- promote greater deterrence by educating and alerting the public to the falsity of tax-defier claims and the Government’s efforts at combating the problem

To carry out these goals, the Division needs a cadre of experienced litigators who are familiar with tax-defier schemes. These litigators will develop improved training and resource materials, and will also be available to provide hands-on litigation assistance in the most complex tax-defier prosecutions, as requested by the United States Attorneys Offices. Specifically, this team would leverage the Tax Division’s existing strengths and build on existing relationships with its two key partners, the IRS and the US Attorneys Offices, to

- develop and conduct an annual multi-day training institute for prosecutors and Internal Revenue Service investigators on prosecuting a tax-defier case
- develop and conduct joint training for prosecutors and civil attorneys on parallel civil-criminal issues that develop in tax-defier cases
- develop and conduct training for civil attorneys that would allow them to handle criminal contempt cases against tax defiers with greater dispatch

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<sup>11</sup> According to OMB, a full-time schedule is 1,776 work hours (excluding federal holidays, leave, training, and other non-productive hours). See OMB Circular A-76 (revised) (May 29, 2003)

- develop and maintain a tax-defier litigation database containing model pleadings, briefs, and motions
- have team members available, on a rotating basis and as requested by the United States Attorneys Offices, to provide litigation assistance in complex tax-defier prosecutions, which may involve high-profile defendants or multiple jurisdictions or agencies
- function as a resource and rapid-response unit for prosecutors, IRS investigators, and civil litigators faced with tax-defier litigation issues
- expand and maintain a high-quality internet presence, which would alert the public to the existence of tax-defier schemes, publicize the consequences of involvement in these schemes, and provide contact information.

### **Impact on Performance**

By strengthening and expanding coordination among the Tax Division, IRS and US Attorneys offices, Operation National Tax Defier will ensure that both criminal and civil enforcement tools against tax defiers are fully considered and more effectively employed. Moreover, an expanded and improved Government internet presence will magnify the deterrent impact of successful prosecutions by increasing the public's awareness of enforcement actions being taken against tax defiers. Failure by the Tax Division to aggressively prosecute tax defiers would result in the continued proliferation of these schemes. Schemes used by tax defier are not limited to schemes against the Federal tax system. For example, tax defiers have used fictitious financial instruments in attempts to purchase automobiles or pay-off mortgages. Finally, failure to receive the request will result in the Division's inability to continue to attain established performance measures due to lack of resources to handle the increasing workload.

The overarching outcome measure for the Department's litigating components is Percentage of Cases Favorably Resolved. The Tax Division's success rate for tax-defier cases has exceeded 98% in the last four years. Failure to receive the requested funding will jeopardize the Division's ability to continue to attain the targets for this outcome measure, in light of the anticipated increased workload.



**Funding**  
(Dollars in Thousands)

Base Funding

FY 2008 Enacted				FY 2009 Requirements				FY 2010 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
0	0	0	0	0	0	0	0	0	0	0	0

Personnel Increase Cost Summary

Type of Position	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2010 Request (\$000)	FY 2011 Net Annualization (change from 2009) (\$000)
Attorney	\$188	13	\$2,444	\$2,525
Litigation Assistant	\$76	2	\$152	\$157
Paralegal	\$65	3	\$246	\$254
Total Personnel		18	\$2,842	\$2,936

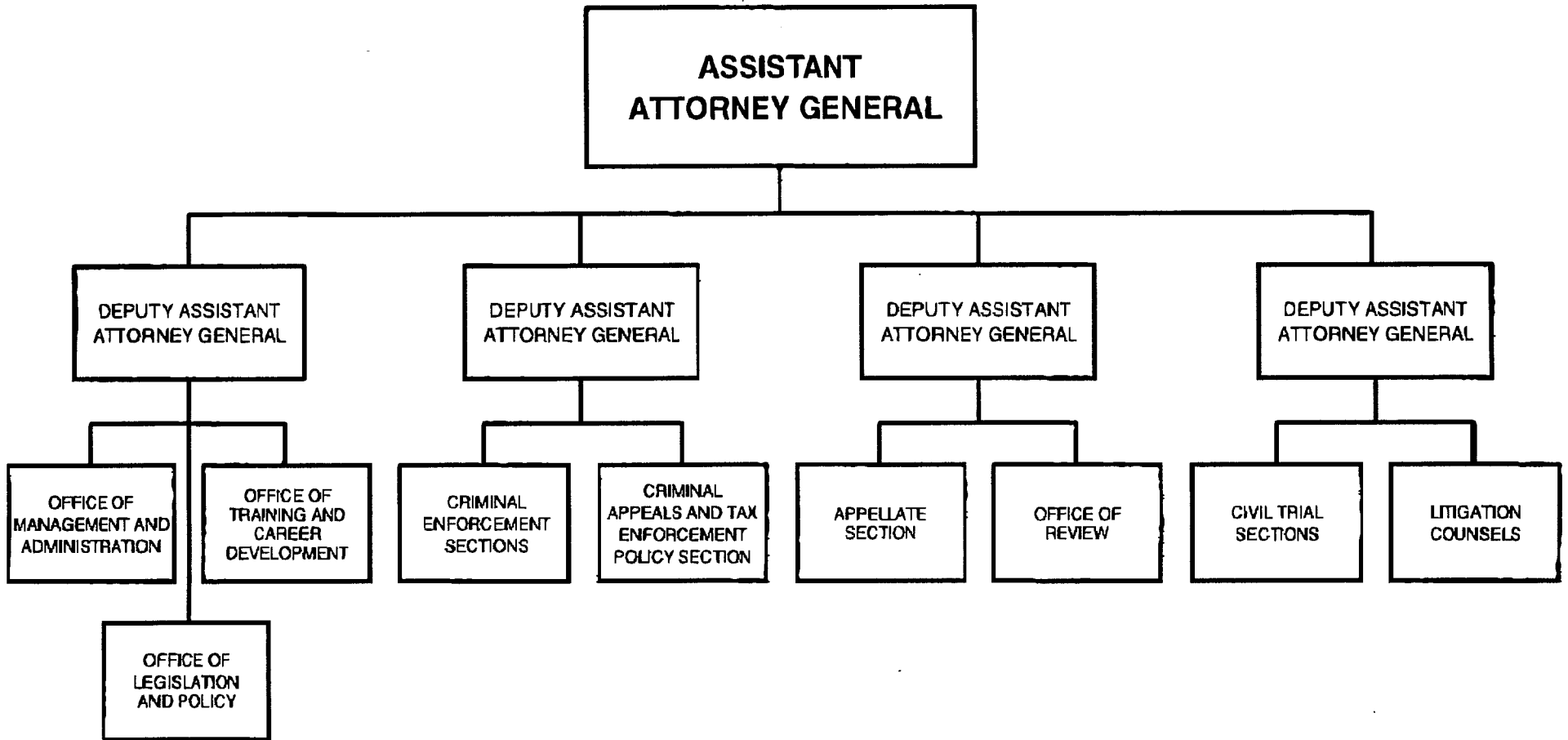
Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2010 Request (\$000)	FY 2011 Net Annualization (Change from 2009) (\$000)
			\$67	\$54
Total Non- Personnel			\$67	\$54

Total Request for this Item

	Pos	Agt/Atty	FTE	Personnel (\$000)	Non- Personnel (\$000)	Total (\$000)
Current Services	621		578	\$76,196	\$26,772	\$102,968
Increases	18	13	9	\$2,842	\$67	\$2,909
Grand Total	639		587	\$79,038	\$26,839	\$105,877

# TAX DIVISION



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 2010 Request		
	Perm. Pos.	FTE	Amount
<b>2008 Enacted (direct only)</b>	634	573	92,781
<b>Total 2008</b>	634	573	92,781
<b>2009 Enacted (direct only)</b>	621	573	101,016
<b>Total 2009 Enacted</b>	<b>621</b>	<b>573</b>	<b>101,016</b>
Technical Adjustments			
Restoration of 2009 Prior Year Unobligated Balance Rescission			
Adjustments to Base			
Increases:			
2010 pay raise (2.0%)			986
2009 pay raise annualization (3.9%)			622
Annualization of 2009 positions (FTE)			0
Annualization of 2009 positions (dollars)			0
Annualization of 2008 positions (dollars)			0
Retirement			55
Health Insurance Premiums			28
Employees Compensation Fund			(1)
Rental payments to GSA			223
Moving/Lease Expirations			0
DHS Security			12
Postage			3
Security Investigations			0
Printing and Reproduction			1
Working Capital Fund			23
Subtotal Increases	0	0	1,952
Decreases:			
Non-recrural of 2009 Supplemental			
Non-recrurals [list all]			
Subtotal Decreases	0	0	0
Total Adjustments to Base	0	0	1,952
Total Adjustments to Base and Technical Adjustments	0	0	1,952
<b>2010 Current Services</b>	<b>621</b>	<b>573</b>	<b>102,968</b>
Program Changes			
Increases [list all]			
Operation National Tax Defier	18	9	2,909
Subtotal Increases	18	9	2,909
Offsets			
Subtotal Offsets	0	0	0
Total Program Changes	18	9	2,909
<b>2010 Total Request</b>	<b>639</b>	<b>582</b>	<b>\$105,877</b>
2009 - 2010 Total Change	18	9	4,861

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

	2008 Appropriation Enacted w/Rescissions and Supplementals			2009 Enacted			2010 Adjustments to Base and Technical Adjustments			2010 Current Services			2010 Increases			2010 Offsets			2010 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
<b>Estimates by budget activity</b>																					
General Tax Matters	634	573	92,781	621	573	101,016				621	573	102,968	18	9	2,909				639	582	105,877
<b>Total</b>	<b>634</b>	<b>573</b>	<b>\$92,781</b>	<b>621</b>	<b>573</b>	<b>\$101,016</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>621</b>	<b>573</b>	<b>\$102,968</b>	<b>18</b>	<b>9</b>	<b>\$2,909</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>639</b>	<b>582</b>	<b>\$105,877</b>
Reimbursable FTE		5			5			0			5			0			0				5
Total FTE		578			578			0			578			9			0				587
Other FTE:																					
Total Comp. FTE		578			578			0			578			9			0				587

**C: Program Increases/Offsets By Decision Unit**

**FY 2010 Program Increases/Offsets By Decision Unit**

Tax Division

(Dollars in Thousands)

Program Increases	Location of Description by Decision Unit	General Tax Matters				Total Increases
		Pos.	Agt./Atty.	FTE	Amount	
Operation National Tax Defier	General Tax Matters	18	13	9	2,909	2,909
<b>Total Program Increases</b>		<b>18</b>	<b>13</b>	<b>9</b>	<b>\$2,909</b>	<b>\$2,909</b>

**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	2008 Appropriation Enacted w/Rescissions and Supplementals		2009 Enacted		2010 Current Services		2010				2010 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 FTE	Amount \$000s	Direct FTE	Amount \$000s		
<b>Goal 2: Prevent Crime, Enforce Federal Laws and Represent the Rights and Interests of the American People</b>												
2.7 Vigorously enforce and represent the interests of the United States in all matters over which the Department has jurisdiction	578	92,781	578	101,016	578	102,968	9	2,909	0	0	587	105,877
<b>Subtotal, Goal 2</b>	<b>578</b>	<b>92,781</b>	<b>578</b>	<b>101,016</b>	<b>578</b>	<b>102,968</b>	<b>9</b>	<b>2,909</b>	<b>0</b>	<b>0</b>	<b>587</b>	<b>105,877</b>
<b>GRAND TOTAL</b>	<b>578</b>	<b>\$92,781</b>	<b>578</b>	<b>\$101,016</b>	<b>578</b>	<b>\$102,968</b>	<b>9</b>	<b>\$2,909</b>	<b>0</b>	<b>\$0</b>	<b>587</b>	<b>\$105,877</b>

## **E. Justification for Base Adjustments**

### **Justification for Base Adjustments**

#### **Tax Division**

(dollars in thousands)

#### Increases

2010 pay raise. This request provides for a proposed 2.0 percent pay raise to be effective in January of 2010 (This percentage is likely to change as the budget formulation process progresses.) This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$986, represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$739 for pay and \$247 for benefits).

Annualization of 2009 pay raise. This pay annualization represents first quarter amounts (October through December) of the 2009 pay increase of 3.9 percent included in the 2009 President's Budget. The amount requested \$622, represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$467 for pay and \$155 for benefits).

Annualization of additional positions approved in 2008 and 2009. This provides for the annualization of 58 additional positions appropriated in 2008 and no additional positions requested in the 2009 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 2008 increases, this request includes an increase of \$0 for full-year payroll costs associated with these additional positions. For 2009, 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.

	2008 Increases (\$000)	Annualization Required for 2010 (\$000)	2009 Increases (\$000)	Annualization Required for 2010 (\$000)
Annual salary rate of 58 new positions	4,498			
Less lapse (50 %)	2,249			
Net Compensation	2249		0	0
Associated employee benefits	665			
Travel	130			
Transportation of Things	35			
Communications/Utilities	45			
Other Contractual Services:				
25.2 Other Services	101			
25.3 Purchase of Goods and Services from Government Accts.	65			
Supplies and Materials	10			
Equipment	35			
<b>TOTAL COSTS SUBJECT TO ANNUALIZATION</b>	<b>3,335</b>	<b>0</b>	<b>0</b>	<b>0</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 3 percent per year. The requested increase of \$55 is necessary to meet our increased retirement obligations as a result of this conversion.

Employees Compensation Fund: The \$1 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.

Health Insurance: Effective January 2008, this component's contribution to Federal employees' health insurance premiums increased by one percent. Applied against the 2009 estimate of \$3,376, the additional amount required is \$28.



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 \$223 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 2010 for each building currently occupied by Department of Justice components, as well as the costs of new space to be occupied. GSA provided data on the rate increases.

DHS Security Charges. The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$12 is required to meet our commitment to DHS, and cost estimates were developed by DHS.

Postage: Effective May 11, 2009, the Postage Service implemented a rate increase of 4.8 percent. This percentage was applied to the 2010 estimate of \$139 to arrive at an increase of \$3.

Security Investigations: The \$0 increase reflects payments to the Office of Personnel Management for security reinvestigations for employees requiring security clearances.

Government Printing Office (GPO): GOP provides an estimated rate increase of 4%. This percentage was applied to the FY 2009 estimate of \$74 to arrive at an increase of \$1.

WCF Rate Increases. Components in the DC metropolitan area use and rely on the Department's Working Capital Fund (WCF) for support services including telecommunications services, computer services, finance services, as well as internet services. The WCF continues to invest in the infrastructure supporting the telecommunications services, computer services, internet services. Concurrently, several security initiatives are being implemented and additional resources are being directed to financial management in an effort to maintain a clean audit status. Funding of \$23 is required for this account.

**F: Crosswalk of 2008 Availability**

**Crosswalk of 2008 Availability**

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Decision Unit	FY 2008 Enacted Without Rescissions			Rescissions			Supplementals			Reprogrammings / Transfers			Carryover/ Recoveries			2008 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
General Tax Matters	634	573	92,781											3,275	634	573	96,056	
<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>\$0</b>	<b>0</b>	<b>0</b>	<b>\$0</b>	<b>0</b>	<b>0</b>	<b>\$3,275</b>	<b>634</b>	<b>573</b>	<b>\$96,056</b>
Reimbursable FTE		5															5	
Total FTE		578			0			0			0			0			578	
Total Compensable FTE		578			0			0			0			0			578	

Unobligated Balances. Funds were carried over from FY 2007 from ALS. The Tax Division brought forward \$3,203,000 from funds provided in 2007 for AI  
 Reallocation - \$1,000 to Litigation Support Cente  
 Recoveries - \$71,000 from GLA no-year account

**G: Crosswalk of 2009 Availability**

**Crosswalk of 2009 Availability**

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Decision Unit	FY 2009 Enacted			Rescissions			Supplementals			Reprogrammings / Transfers			Carryover/ Recoveries			2009 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
General Tax Matters	621	573	101,016										2,729		621	573	103,745	
<b>TOTAL</b>	<b>621</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>0</b>	<b>0</b>	<b>0</b>	<b>2,729</b>	<b>0</b>	<b>621</b>	<b>573</b>	<b>\$103,745</b>	
Reimbursable FTE		5															5	
Total FTE		578			0			0			0			0			578	
Total Compensable FTE		578			0			0			0			0			578	

Unobligated Balances. Funds were carried over from FY 2008 from ALS. The Tax Division brought forward \$2,728,665 from funds provided in 2008 for ALS.

**H: Summary of Reimbursable Resources**

**Summary of Reimbursable Resources**

Tax Division  
 Salaries and Expenses  
 (Dollars in Thousands)

Collections by Source	2008 Enacted			2009 Planned			2010 Request			Increase/Decrease		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Organized Crime & Drug Enforcement	7	5	511	5	5	327	5	5	0	0	0	(327)
Debt Collection (3% Fund)	0	0	2,004	0	0	2,408	0	0	0	0	0	(2,408)
<b>Budgetary Resources:</b>	<b>7</b>	<b>5</b>	<b>\$2,515</b>	<b>5</b>	<b>5</b>	<b>\$2,735</b>	<b>5</b>	<b>5</b>	<b>\$0</b>	<b>0</b>	<b>0</b>	<b>(\$2,735)</b>

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

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

Category	2008 Enacted w/Rescissions and Supplementals		2009 Enacted		2010 Request					
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	ATBs	Program Increases	Program Decreases	Total Pr. Changes	Total Authorized	Total Reimbursable
Personnel Management (200-299)	8	....	8	....		....	....	0	8	
Clerical and Office Services (300-399)	112	1	108	....		....	....	0	108	
Accounting and Budget (500-599)	9	....	9	....		....	....	0	9	
Attorneys (905)	369	5	364	5		13	....	13	377	5
Paralegals / Other Law (900-998)	124	1	120	....		5	....	5	125	
Library (1400-1499)	1	....	1	....				0	1	
Information Technology Mgmt (2210)	11	....	11	....				0	11	
<b>Total</b>	<b>634</b>	<b>7</b>	<b>621</b>	<b>5</b>	<b>0</b>	<b>18</b>	<b>0</b>	<b>18</b>	<b>639</b>	<b>5</b>
Headquarters (Washington, D.C.)	604	6	593	4	....	17	....	17	610	4
U.S. Field	30	1	28	1	....	1	....	1	29	1
Foreign Field	....	....	....	....		....	....	0	0	0
<b>Total</b>	<b>634</b>	<b>7</b>	<b>621</b>	<b>5</b>	<b>0</b>	<b>18</b>	<b>0</b>	<b>18</b>	<b>639</b>	<b>5</b>

# J: Financial Analysis of Program Changes

## Financial Analysis of Program Changes

Tax Division

Salaries and Expenses

(Dollars in Thousands)

	General Tax		Program Changes	
	Inc. 1			
	Pos.	Amount	Pos.	Amount
<b>Grades:</b>				
GS-14	13	2,444	13	2,444
GS-9	3	246	3	246
GS-8	2	152	2	152
Total positions & annual amount	18	2,842	18	2,842
Lapse (-)	(9)	(1,421)	(9)	(1,421)
Total FTE & personnel compensation	9	1,421	9	1,421
Personnel benefits		67	0	67
<b>Total, 2010 program changes requested</b>	<b>9</b>	<b>\$1,488</b>	<b>9</b>	<b>\$1,488</b>

**K: Summary of Requirements by Grade**

**Summary of Requirements by Grade**

Tax Division  
Salaries and Expenses

Grades and Salary Ranges	w/Rescissions and Supplementals		2009 Enacted		2010 Request		Increase/Decrease	
	Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
Executive Level I, \$161,200.....	1		1		1		....	
Executive Level II, \$145,100.....							....	
Executive Level III, \$133,700.....							....	
Executive Level IV, \$125,700.....							....	
SES, \$111,676 - \$168,000	27		27		27		0	
GS-15, \$110,363 - 143,471	270		260		260		0	
GS-14, \$93,822 - 121,967	97		85		98		13	
GS-13, \$79,397 - 103,220	42		43		43		0	
GS-12, \$66,767 - 86,801	26		26		26		0	
GS-11, \$55,706 - 72,421	40		38		38		0	
GS-10, 50,703 - 65,912	12		12		12		0	
GS-9, \$46,041 - 59,852	36		40		43		3	
GS-8, 41,686 - 54,194	39		41		43		2	
GS-7, \$37,640 - 48,933	23		27		27		0	
GS-6, \$33,872 - 44,032	3		3		3		0	
GS-5, \$30,386 - 39,501	6		6		6		0	
GS-4, \$27,159 - 35,303	5		5		5		0	
GS-3, \$24,194 - 31,451	4		4		4		0	
GS-2, \$22,174 - 27,901	3		3		3		0	
<b>Total, appropriated positions</b>	<b>634</b>		<b>621</b>		<b>639</b>		<b>18</b>	
<b>Average SES Salary</b>		<b>168,199.00</b>		<b>\$173,413</b>		<b>\$177,228</b>		
<b>Average GS Salary</b>		<b>115,498.00</b>		<b>\$119,078</b>		<b>\$121,698</b>		
<b>Average GS Grade</b>		<b>12.46</b>		<b>13.06</b>		<b>12.58</b>		

## L: Summary of Requirements by Object Class

### Summary of Requirements by Object Class

Tax Division  
Salaries and Expenses  
(Dollars in Thousands)

Object Classes	2008 Actuals		2009 Enacted		2010 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Direct FTE & personnel compensation	466	54,147	505	57,694	514	61,242	9	3,548
11.3 Other than full-time permanent	64	1,121	68	1,332	68	1,541	0	209
11.5 Total, Other personnel compensation		0		0		0	0	0
<i>Overtime</i>							0	0
<i>Other Compensation</i>							0	0
11.8 Special personal services payments							0	0
<b>Total</b>	530	55,268	573	59,026	582	62,783	9	3,757
Other Object Classes:								
12.0 Personnel benefits		13,316		14,405		15,433		1,028
21.0 Travel and transportation of persons		3,765		4,100		4,300		200
22.0 Transportation of things		901		919		919		0
23.1 GSA rent		12,010		13,929		14,105		176
23.2 Moving/Lease Expirations/Contract Parking		296		303		350		47
23.3 Comm., util., & other misc. charges		990		1,208		1,234		26
24.0 Printing and reproduction		110		72		73		1
25.1 Advisory and assistance services		434		0		0		0
25.2 Other services		5,800		5,851		3,461		(2,390)
25.3 Purchases of goods & services from Government accounts (Antennas, DHS Sec. Etc..)		1,071		2,728		2,015		(713)
25.4 Operation and maintenance of facilities		11		0		0		0
26.0 Supplies and materials		680		700		786		86
31.0 Equipment		298		303		317		14
<b>Total obligations</b>		<b>\$93,094</b>		<b>\$103,745</b>		<b>\$105,877</b>		<b>\$2,132</b>
Unobligated balance, start of year		3,204		2,729		0		
Unobligated balance, end of year		2,729						
Recoveries of prior year obligations		71						
Reallocation		1						
Unobligated balance, expiring		232						
<b>Total DIRECT requirements</b>		<b>92,781</b>		<b>101,016</b>		<b>105,877</b>		
Reimbursable FTE:	5		5		5		0	
Full-time permanent	530		578		587		9	0
23.1 GSA rent (Reimbursable)		43		41		0		(41)