**22.4 Aiding or Advising False Income Tax Return**

**(26 U.S.C. § 7206(2))**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [aiding] [assisting] [advising] [procuring] [counseling] the preparation of a false income tax return in violation of Section 7206(2) of Title 26 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

 First, the defendant [[aided] [assisted] [advised] [procured] [counseled]] [*specify person*(*s*)] in the [preparation] [presentation] of an income tax return that was [false] [fraudulent];

 Second, the income tax return was [false] [fraudulent] as to any material matter necessary to a determination of whether income tax was owed; and

 Third, the defendant acted willfully.

 The government is not required to prove that the taxpayer knew that the return was false.

 A matter is material if it had a natural tendency to influence, or was capable of influencing, the decisions or activities of the Internal Revenue Service.

**Comment**

 *See* Instruction 22.6 (Willfully—Defined) as to the meaning of “willfully” in the context of prosecutions for violations of Title 26.

 “Under § 7206(2), the government must prove that ‘(1) the defendant aided, assisted, or otherwise caused the preparation and presentation of a return; (2) that the return was fraudulent or false as to a material matter; and (3) the act of the defendant was willful.”’ *United States v. Smith*,424 F.3d 992, 1009 (9th Cir. 2005) (quoting *United States v. Salerno,* 902 F.2d 1429, 1432 (9th Cir. 1990)).

 False information is material if it had a natural tendency to influence, or was capable of influencing or affecting, the ability of the IRS to audit or verify the accuracy of the tax return or a related return. *See United States v. Gaudin*, 515 U.S. 506, 509 (1995) (explaining material statement has “natural tendency to influence, or [be] capable of influencing, the decision of the decision making body to which it was addressed”) (quoting *Kungys v. United States,* 485 U.S. 759, 770 (1988)); *see also United States v. Peterson*, 538 F.3d 1064, 1067 (9th Cir. 2008) (suggesting district courts should use materiality language approved in *Gaudin*). A false statement “need not have actually influenced the agency, and the agency need not rely on the information in fact for it to be material.” *United States v. Matsumaru*, 244 F.3d 1092, 1101 (9th Cir. 2001) (quoting *United States v. Serv. Deli Inc*., 151 F.3d 938, 941 (9th Cir. 1998)).