**22.5 Filing False Tax Return (Misdemeanor)**

**(26 U.S.C. § 7207)**

 The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with filing a false tax return in violation of Section 7207 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 [delivered] [disclosed] a tax return knowing that it contained [false] [fraudulent] information as to any material matter; and

 Second, the defendant acted willfully.

 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* Comment to Instruction 22.1 (Attempt to Evade or Defeat Income Tax).

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

 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).