**22.7 Forcible or Attempted Rescue of Seized Property**

**(26 U.S.C. § 7212(b))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [forcibly rescuing] [attempting to rescue forcibly] seized property in violation of Section 7212(b) 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, [*specify property*] was seized as authorized by the Internal Revenue Code;

Second, the defendant knew that the property had been seized as authorized by the Internal Revenue Code; and

Third, the defendant [forcibly retook] [caused to be retaken forcibly] [attempted to retake forcibly] the property without the consent of the United States.

“Forcibly” is not limited to force against persons but includes any force that enables the defendant to retake the seized property.

[A defendant “attempts to retake” seized property when that defendant does something that is a substantial step toward retaking the property.

A “substantial step” is conduct that strongly corroborated the defendant’s intent to commit the crime. To constitute a substantial step, the defendant’s act or actions must unequivocally demonstrate that the crime will take place unless interrupted by independent circumstances. Mere preparation is not a substantial step toward the commission of attempting to rescue seized property.

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime.]

**Comment**

In attempt cases, “[t]o constitute a substantial step, a defendant’s actions must cross the line between preparation and attempt by unequivocally demonstrating that the crime will take place unless interrupted by independent circumstances.” *United States v. Goetzke*, 494 F.3d 1231, 1237 (9th Cir. 2007) (per curiam) (quoting *United States v. Nelson*, 66 F.3d 1036, 1042 (9th Cir. 1995)).

The “strongly corroborated” language in this instruction comes from *United States v. Snell*, 627 F.2d 186, 187 (9th Cir. 1980) (per curiam)(“A conviction for attempt requires proof of culpable intent and conduct constituting a substantial step toward commission of the crime that strongly corroborates that intent.”); and *United States v. Darby*, 857 F.2d 623, 625 (9th Cir. 1988) (same).

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime. *United States v. Hofus*, 598 F.3d 1171, 1176 (9th Cir. 2010).

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