

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 17-40024-01-KES

vs.

**FINAL  
INSTRUCTIONS  
TO THE JURY**

JACQUES EVIGLO,  
d/b/a Global Income Tax Services,

Defendant.

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VERDICT FORM

FINAL INSTRUCTION NO. 1 – INTRODUCTION

Members of the jury, the written instructions I gave you at the beginning of the trial and the oral instructions I gave you during the trial remain in effect. I now give you some additional instructions.

The instructions I am about to give you, as well as the preliminary instructions given to you at the beginning of the trial, are in writing and will be available to you in the jury room. *All* instructions, whenever given and whether in writing or not, must be followed. This is true even though some of the instructions I gave you at the beginning of the trial are not repeated here.

FINAL INSTRUCTION NO. 2 - IMPEACHMENT

In Preliminary Instruction No. 6, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 3 – MAKING A FALSE CLAIM AGAINST THE UNITED STATES

For you to find Jacques Eviglo, doing business as Global Income Tax Services, guilty of the offenses charged in **Counts One through Twenty-Five in the Superseding Indictment**, the government must prove the following four essential elements beyond a reasonable doubt:

**One, that Eviglo made or presented to the Internal Revenue Service a claim against the United States Department of Treasury;**

A “claim” includes the submission of a prepared federal income tax return to the Internal Revenue Service.

**Two, that the claim was false, fictitious, or fraudulent;**

A claim is “false” or “fictitious” if any part of it is untrue when made, and then known to be untrue by the person making it or causing it to be made. A claim is “fraudulent” if any part of it is known to be untrue, and made or caused to be made with the intent to deceive the governmental agency to which submitted.

**Three, that Eviglo knew the claim was false, fictitious, or fraudulent;**

If you find that Eviglo acted in “good faith” as described in Final Instruction No. 5, this is a complete defense to the crime of making a false claim against the United States.

**And four, that the false, fictitious, or fraudulent matter was material to the Internal Revenue Service.**

A claim is “material” if it has a natural tendency to influence, or is capable of influencing, the Internal Revenue Service. But whether a claim is “material” does not depend on whether the Internal Revenue Service was actually deceived.

Each such claim constitutes a separate offense. The actions charged are set forth as follows:

Count	Date Received by IRS	Taxpayer	Tax Year	False Claim/ Amount of Loss to Government
1	02/21/2015	1 and 2, whose identities are known to the Grand Jury	2014	\$1,080
2	02/26/2015	3 and 4, whose identities are known to the Grand Jury	2014	\$2,498
3	03/14/2015	5 and 6, whose identities are known to the Grand Jury	2014	\$2,241
4	02/21/2016	7 and 8, whose identities are known to the Grand Jury	2015	\$6,435
5	02/25/2016	9 and 10, whose identities are known to the Grand Jury	2015	\$4,999
6	02/26/2016	11 and 12, whose identities are known to the Grand Jury	2015	\$4,661
7	02/27/2016	1 and 2, whose identities are known to the Grand Jury	2015	\$5,026
8	03/10/2016	5 and 6, whose identities are known to the Grand Jury	2015	\$1,946
9	03/13/2016	13 and 14, whose identities are known to the Grand Jury	2015	\$3,338
10	03/14/2016	3 and 4, whose identities are known to the Grand Jury	2015	\$4,080
11	2/28/2015	15 and 16, whose identities are known to the Grand Jury	2014	\$1,743
12	2/8/2016	17, whose identity is known to the Grand Jury	2015	\$868
13	2/8/2016	18, whose identity is known to the Grand Jury	2015	\$5,920
14	2/13/2016	19 and 20, whose identities are known to the Grand Jury	2015	\$3,005
15	2/23/2015	21 and 22, whose identities are known to the Grand Jury	2014	\$4,316
16	3/12/2016	21, whose identity is known to the Grand Jury	2015	\$3,623

Count	Date Received by IRS	Taxpayer	Tax Year	False Claim/ Amount of Loss to Government
17	3/12/2016	22, whose identity is known to the Grand Jury	2015	\$3,767
18	3/7/2017	23 and 24, whose identities are known to the Grand Jury	2016	\$4,621
19	3/7/2017	25, whose identity is known to the Grand Jury	2016	\$2,570
20	2/27/2017	26, whose identity is known to the Grand Jury	2016	\$2,075
21	2/7/2017	27, whose identity is known to the Grand Jury	2016	\$3,067
22	2/7/2017	28, whose identity is known to the Grand Jury	2016	\$3,541
23	3/3/2016	29, whose identity is known to the Grand Jury	2015	\$2,333
24	3/6/2017	29, whose identity is known to the Grand Jury	2016	\$2,848
25	2/27/2017	30, whose identity is known to the Grand Jury	2016	\$4,060

If the government has proved all four of these elements beyond a reasonable doubt for a count, then you must find Eviglo guilty of that count as charged in the Superseding Indictment. If the government has not proved all four of these elements beyond a reasonable doubt for a count, then you must find Eviglo not guilty of that count as charged in the Superseding Indictment. Keep in mind that each count in Counts One through Twenty-Five of the Superseding Indictment charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

FINAL INSTRUCTION NO. 4 – WIRE FRAUD

For you to find Jacques Eviglo, doing business as Global Income Tax Services, guilty of the offenses charged in **Counts Twenty-Six through Thirty in the Superseding Indictment**, the government must prove the following three essential elements beyond a reasonable doubt:

**One, that Eviglo voluntarily and intentionally devised, made up, or participated in a scheme to defraud, or devised or participated in a scheme to obtain money from another by means of material false representations or promises, which scheme is described as follows:**

Eviglo prepared his clients' federal tax returns, several of which claimed large, false deductions of the Schedule A, which were used to lower the federal tax liability on the returns. The clients did not provide Eviglo with the information that he reported on their Schedule A's.

Eviglo filed his clients' federal tax returns electronically.

Eviglo utilized a third party company as an intermediary to receive and disburse his clients' federal tax refund payments instead of having the payments directly deposited into his clients' bank accounts.

The clients' refund payments were paid to accounts generated by the third party company. Unbeknownst to his clients, Eviglo deducted additional "fees" from those refund payments. Eviglo transferred those additional "fees" to a Global Tax checking account that he controlled. Eviglo used those funds for his own purposes and to his own benefit. The remaining portion of the refund payment was paid to the client by check or a direct deposit to a personal bank account.

**Two, that Eviglo did so with the intent to defraud;**

If you find that Eviglo acted in “good faith” as described in Final Instruction No. 5, this is a complete defense to the crime of wire fraud.

***And three, that Eviglo used, or caused to be used, an interstate wire communication, that is, the electronic filing of a federal income tax return, in furtherance of, or in an attempt to carry out, some essential step in the scheme.***

The phrase “scheme to defraud” includes any plan or course of action intended to deceive or cheat another out of money or property by employing material falsehoods, concealing material facts, or omitting material facts. It also means the obtaining of money or property from another by means of material false representations or promises. A scheme to defraud need not be fraudulent on its face but must include some sort of fraudulent misrepresentation or promise reasonably calculated to deceive a reasonable person.

A statement or representation is “false” when it is untrue when made or effectively conceals or omits a material fact.

A fact, falsehood, representation, or promise is “material” if it has a natural tendency to influence, or is capable of influencing, the decision of a reasonable person in deciding whether to engage or not to engage in a particular transaction. But whether a fact, falsehood, representation, or promise is “material” does not depend on whether the person was actually deceived.

To act with “intent to defraud” means to act knowingly and with the intent to deceive someone for the purpose of causing some financial loss to another or bringing about some financial gain to oneself or another to the detriment of a third party. With respect to false statements, Eviglo must have known the statement was untrue when made or have made the statement with reckless indifference to its truth or falsity.

Each separate use of an interstate wire communication in furtherance of the scheme to defraud constitutes a separate offense. The actions charged are set forth as follows:

Count	Date of Wire Transmission	Taxpayer	Description of Interstate Wire Transmission
26	2/26/15	3 and 4, whose identities are known to the Grand Jury	Electronic filing of a 2014 federal income tax return, from Sioux Falls, SD to the IRS Service Center in Austin, TX.
27	2/21/16	7 and 8, whose identities are known to the Grand Jury	Electronic filing of a 2015 federal income tax return, from Sioux Falls, SD to the IRS Service Center in Austin, TX.
28	2/25/16	9 and 10, whose identities are known to the Grand Jury	Electronic filing of a 2015 federal income tax return, from Sioux Falls, SD to the IRS Service Center in Austin, TX.
29	2/27/17	30, whose identity is known to the Grand Jury	Electronic filing of a 2016 federal income tax return, from Sioux Falls, SD to the IRS Service Center in Austin, TX.
30	3/7/17	23 and 24, whose identities are known to the Grand Jury	Electronic filing of a 2016 federal income tax return, from Sioux Falls, SD to the IRS Service Center in Austin, TX.

It is not necessary that the use of the electronic filing of a federal income tax return by the participants themselves be contemplated or that Eviglo actually electronically filed a federal income tax return or specifically intended that the electronic filing of a federal income tax return be used. It is sufficient if the electronic filing of a federal income tax return was in fact used

to carry out the scheme and the use of the electronic filing of a federal income tax return by someone was reasonably foreseeable.

It is not necessary that the government prove all of the details alleged in the Superseding Indictment concerning the precise nature and purpose of the scheme, that the electronic filing of a federal income tax return was itself false or fraudulent, that the alleged scheme actually succeeded in defrauding anyone, or that the electronic filing of a federal income tax return was intended as the specific or exclusive means of accomplishing the alleged fraud.

It is not necessary that the government prove that the electronic filing of a federal income tax return was an essential part of the scheme. An electronic filing of a federal tax return may be routine or sent for a legitimate purpose so long as it assists in carrying out the fraud.

If the government has proved all three of these elements beyond a reasonable doubt for a count, then you must find Eviglo guilty of that count as charged in the Superseding Indictment. If the government has not proved all three of these elements beyond a reasonable doubt for a count, then you must find Eviglo not guilty of that count as charged in the Superseding Indictment. Keep in mind that each count in Counts Twenty-Six through Thirty of the Superseding Indictment charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

FINAL INSTRUCTION NO. 5 – GOOD FAITH

One of the issues in this case is whether Eviglo acted in “good faith.” “Good faith” is a complete defense to the crimes of “making a false claim against the United States” and “wire fraud” if Eviglo did not knowingly make false, fictitious, or fraudulent claims to the United States, which is an element of Counts One through Twenty-Five, or if Eviglo did not act with the intent to defraud, which is an element of Counts Twenty-Six through Thirty. The essence of the good-faith defense is that one who acts with honest intentions cannot be convicted of a crime requiring fraudulent intent.

Good faith includes, among other things, an opinion or belief that is honestly held, even if the opinion is in error or the belief is mistaken. But even though a defendant honestly held a certain opinion or belief, a defendant does not act in good faith if he also knowingly made false or fraudulent representations or promises, or otherwise acted with the intent to defraud or deceive another. Proof of fraudulent intent requires more than proof that Eviglo only made a mistake in judgment or management, or was careless.

The government has the burden of proving beyond a reasonable doubt that Eviglo knowingly made false, fictitious, or fraudulent claims to the United States for Counts One through Twenty-Five, and that Eviglo acted with the intent to defraud for Counts Twenty-Six through Thirty. Evidence that Eviglo acted in good faith may be considered by you, together with all the other

evidence, in determining whether or not Eviglo knowingly made false, fictitious, or fraudulent claims against the United States or acted with the intent to defraud.

FINAL INSTRUCTION NO. 6 – AMOUNT OF MONEY

The Superseding Indictment alleges that an approximate amount of money was involved in certain aspects of the offenses. It is not necessary for the government to prove the exact or precise amount of money alleged in the Superseding Indictment.

FINAL INSTRUCTION NO. 7 – PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charges, or the fact that he is here in court.
- This presumption remains with the defendant throughout the trial.
- This presumption is enough, alone, for you to find the defendant not guilty, unless the prosecution proves, beyond a reasonable doubt, all of the elements of an offense charged against him.

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence.
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify.
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict.
- This burden means that you must find the defendant not guilty of an offense charged against him, unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense.

FINAL INSTRUCTION NO. 8 – REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence.
- A reasonable doubt may arise from the prosecution's lack of evidence.

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all the evidence in the case before making a decision.
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it in the most important of your own affairs.

The prosecution's burden is heavy, but it does not require proof beyond all possible doubt.

FINAL INSTRUCTION NO. 9 – DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. Before you make that judgment, you must consult with one another and try to reach agreement if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty, say so.
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty, say so.
- Do not give up your honest beliefs just because others think differently or because you simply want to be finished with the case.
- On the other hand, do not hesitate to re-examine your own views and to change your opinion if you are convinced that it is wrong.
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views.
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence.
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence, reason, your common sense, and these Instructions.

- You must consider all of the evidence bearing on each element before you.
- Take all the time that you feel is necessary.

Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case.

FINAL INSTRUCTION NO. 10 – DUTY DURING DELIBERATIONS

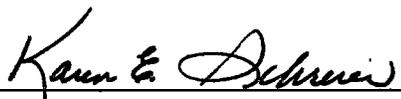
You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Base your verdict solely on the evidence, reason, your common sense, and these Instructions. Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex.
- Complete the Verdict Form. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise

the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

Dated August 28, 2018.

  
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Karen E. Schreier  
United States District Judge