

N.C.P.I.—Crim 259.50
ATTEMPT TO [EVADE] [DEFEAT] TAX. FELONY
CRIMINAL VOLUME
REPLACEMENT JUNE 2016
N.C. Gen. Stat. § 105-236 (a)(7).

259.50 ATTEMPT TO [EVADE] [DEFEAT] TAX. FELONY.

The defendant has been charged with attempting to [evade] [defeat] a tax payment.

For you to find the defendant guilty of this offense the State must prove two things beyond a reasonable doubt:

First, that the defendant had a North Carolina tax liability for the calendar year (*describe calendar year, e.g., 2015*). The State is not required to prove the exact amount the defendant owes or that all of the tax due was evaded. It is sufficient that the state prove that some amount of tax was defeated or evaded.

And Second, that the defendant willfully¹ [attempted]² [[aided and abetted a person]]³ to [evade] [defeat] a tax payment.⁴

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant had a North Carolina tax liability for the calendar year (*describe calendar year*) and willfully [attempted] [[aided and abetted a person]] to [evade] [defeat] a tax payment, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or both of these things, then it would be your duty to return a verdict of not guilty.

1 To act willfully in this context is "a voluntary, intentional violation of a known legal duty." See *Cheek v. United States*, 498 U.S. 192, 200, 111 S. Ct. 604, 610, 112 L. Ed. 2d 617, 629 (1991).

2 See N.C.P.I.-Crim. 201.10 for the general attempt instruction.

3 See N.C.P.I.-Crim. 202.20 for the aiding and abetting instruction.

4 If there is evidence that the defendant believed in "good faith" that no tax was owed, this may negate the required *mens rea* of willfulness, and therefore provide an

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affirmative defense. The trial court shall provide an instruction on “good faith” belief if such an instruction is supported by the evidence. See *State v. Davis*, 96 N.C. App. 545, 554, 386 S.E.2d 743, 748 (1989) (finding that the trial court is required to inform the jury that, while a good-faith misunderstanding of the law may negate willfulness, a good-faith disagreement with the law does not) (citing *U.S. v. Kraeger*, 711 F.2d 7 (2nd Cir. 1983).