

N.C.P.I.—Crim 259.53

[AIDING] [ASSISTING] [PROCURING] [COUNSELING] [ADVISING] IN THE [PREPARATION] [PRESENTATION] [FILING] OF A [FRAUDULENT] [FALSE] TAX DOCUMENT BY A TAX RETURN PREPARER. FELONY.

CRIMINAL VOLUME

REPLACEMENT JUNE 2016

N.C. Gen. Stat. § 105-236 (a)(9a)

259.53 [AIDING] [ASSISTING] [PROCURING] [COUNSELING] [ADVISING] IN THE [PREPARATION] [PRESENTATION] [FILING] OF A [FRAUDULENT] [FALSE] TAX DOCUMENT BY A TAX RETURN PREPARER. FELONY.

The defendant has been charged with willfully¹ [aiding] [assisting] [procuring] [counseling] [advising] the [preparation] [presentation] [filing] of a [fraudulent] [false] tax document.

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

First, that the defendant pursuant to or in connection with the revenue laws willfully [aided] [assisted in] [procured] [counseled] [advised] the [preparation] [presentation] [filing] of a(n) [return] [affidavit] [claim] [(*describe other document*)];

Second, that the defendant knew this document was [fraudulent] [false] as to any material matter, whether or not the [falsity] [fraud] was with the [knowledge] [consent] of the person [authorized] [required] to [present] [[file the [return] [affidavit] [claim] [(*describe other document*)]]];

Third, that the defendant was an income tax return preparer²;

And Fourth, that the amount of all taxes evaded on returns filed in the taxable year (*describe taxable year, e.g. 2015*) was [one hundred thousand dollars (\$100,000) or more] [less than one hundred thousand dollars (\$100,000)]³.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant pursuant to or in connection with the revenue laws willfully [aided] [assisted in] [procured] [counseled] [advised]

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the [preparation] [presentation] [filing] of a(n) [return] [affidavit] [claim]
[(*describe other document*)], that the defendant knew this document was
[fraudulent] [false] as to any material matter, whether or not the [falsity]
[fraud] was with the [knowledge] [consent] of the person [authorized]
[required] to [present] [[file the [return] [affidavit] [claim] [(*describe other
document*)]]], that the defendant was an income tax return preparer, and
that the amount of all taxes evaded on returns filed in the taxable year
(*describe taxable year*) was [one hundred thousand dollars (\$100,000) or
more] [less than one hundred thousand dollars (\$100,000)], 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 more of these things, then it would be your
duty to return a verdict of not guilty.⁴

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 N.C. Gen. Stat. § 105-228.90(b)(4) defines an income tax return preparer as “any person who prepares for compensation, or who employs one or more person to prepare for compensation, any return of tax imposed by or any claim for refund of tax imposed by Article 4 of this Chapter.” For purposes of this definition, the completion of a substantial portion of a return or claim for refund is treated as the preparation of the return or claim for refund.

3 If there is a dispute as to the amount involved, then the jury would first be instructed on the offense involving \$100,000 or more, and then would be instructed on the lesser included offense involving less than \$100,000.

4 If an instruction on the lesser-included offense is required, then this last phrase would be amended to read: “. . . you would not return a verdict of guilty of evading taxes in the amount of one hundred thousand dollars (\$100,000) or more, but would consider whether the defendant is guilty of evading taxes in an amount less than one hundred thousand dollars (\$100,000).”