

**5012 FILING A FALSE OR FRAUDULENT RETURN — § 71.83(2)(b)****Statutory Definition of the Crime**

Filing a false or fraudulent income tax return, as defined in § 71.83(2)(b) of the Wisconsin Statutes, is committed by a person who files<sup>1</sup> a false<sup>2</sup> income tax return with intent to evade<sup>3</sup> payment of any tax required to be paid by the law.<sup>4</sup>

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

**Elements of the Crime That the State Must Prove**

1. The defendant filed an income tax return.
2. The return filed by the defendant was false.

False means that one or more statements in the tax return were materially untrue. The state alleges that \_\_\_\_\_.<sup>5</sup>

3. The defendant filed a false income tax return with intent to evade payment of income taxes.

The term "intent to evade payment of income taxes" means that the defendant had the mental purpose to evade<sup>6</sup> the payment of income taxes which were due.

**Deciding About Intent**

You cannot look into a person's mind to find intent. Intent must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent.

### **Jury's Decision**

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

### **COMMENT**

Wis JI-Criminal 5012 was originally published in 1983 and revised in 1991. This revision was approved by the Committee in October 2009 and involved adoption of a new format and nonsubstantive changes to the text.

This instruction is drafted for the felony offense of filing a false or fraudulent income tax return as defined in § 71.83(2)(b)1. See the text of the statute below.

Wis JI-Criminal 5010 is drafted for the misdemeanor offense of failing to file a return under § 71.83(1)(b).

Section 71.83(2)(b)1. reads as follows:

(b) Felony 1. 'False Income Tax Return; Fraud.' Any person, other than a corporation or limited liability company, who renders a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter is guilty of a Class H felony and may be assessed the cost of prosecution. . . .

The statutory statement of the offense is substantially paraphrased in the first paragraph of the instruction. See notes 1 through 4, below.

1. Although § 71.83(2)(b)1. uses "renders" a return, the Committee concluded it was more clear to use "files" rather than "renders." The words have the same meaning in this context and "files" ought to be substantially less confusing to the jury.

2. The Committee concluded it was less confusing and more accurate to use "false" rather than the statutory phrase "false or fraudulent." The return must contain false statements; if it did not, it could not be "fraudulent." A false return made with intent to evade payment of taxes is a "fraudulent" return.

3. Section 71.83(2)(b)1. uses "intent to evade or defeat" while the instruction uses only "evade." The meaning of "defeat" and the sufficiency of the evidence to show "intent to defeat" is discussed in the context of civil tax "doomage" penalties in State v. Van Suster, 154 Wis.2d 595, 453 N.W.2d 889 (1990). Also see McKinnon v. Dept. of Taxation, 261 Wis. 564, 53 N.W.2d 169 (1952).

4. The Committee believes the phrase "any tax required to be paid by the law" is the equivalent of "any assessment required by this chapter" used in § 71.83(2)(b)1.

5. Here specify the way in which the return was alleged to be false. The most common problem will be showing less gross income than was actually received. Other problems could include claiming excessive deductions, claiming tax credits to which the person was not entitled, etc.

6. See note 3, supra.