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# Sniping down Ignorance Claims: The Third Circuit in United States v. Stadtmauer Upholds Willful Blindness Instructions in Criminal Tax Cases

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# SNIPING DOWN IGNORANCE CLAIMS: THE THIRD CIRCUIT IN *UNITED STATES v. STADTMAUER* UPHOLDS WILLFUL BLINDNESS INSTRUCTIONS IN CRIMINAL TAX CASES

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"*You can put a cat in the oven, but that don't make it a biscuit.*"[1]

## I. INTRODUCTION

This pearl of wisdom regarding cats in ovens, spoken in *White Men Can't Jump* by Wesley Snipes, whom the government recently targeted for tax evasion, offers an apt analogy for the concept of knowledge in criminal tax cases.[2] Importantly, an individual's knowledge base includes those facts that the individual knows both with and without absolute certainty.[3] Knowledge in this context can never be an absolute because it includes that which an individual would reasonably be expected to infer based on facts known to the individual.[4]

To illustrate this concept, Snipes's observation about cats and biscuit-making can be insightful.[5] One need not perform any sort of research or have any prior experience to know that by putting a cat into an oven, one will not make a biscuit—only a burnt cat. Accordingly, claiming ignorance after performing such an act would be met with sheer disbelief.[6] One

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1. WHITE MEN CAN'T JUMP (Twentieth Century Fox Film Corp. 1992).

2. *See* United States v. Snipes, 611 F.3d 855, 860 (11th Cir. 2010) (affirming Wesley Snipes's conviction for willful failure to file individual federal income tax returns); *see also Wesley Snipes*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wesley_Snipes (last modified Dec. 20, 2011) (detailing Wesley Snipes's film roles).

3. *See* United States v. Jewell, 532 F.2d 697, 701-04 (9th Cir. 1976) (describing justification for willful blindness instructions, which effectively became known as "Jewell instructions").

4. *See* 1 WAYNE R. LAFAVE, SUBSTANTIVE CRIMINAL LAW § 5.2 (2d ed. 2003) ("[O]ne has knowledge of a given fact when he has the means for obtaining such knowledge, when he has notice of facts which would put one on inquiry as to the existence of that fact, when he has information sufficient to generate a reasonable belief as to that fact, or when the circumstances are such that a reasonable man would believe that such a fact existed.").

5. For a discussion of how the quote—"You can put a cat in the oven, but that don't make it a biscuit"—helps to illustrate the concept of knowledge in criminal tax proceedings, see *infra* notes 6-9 and accompanying text.

6. *See generally Teignmouth Youths Sentenced for Microwave Cat Cruelty*, BBC NEWS, Feb. 9, 2011, http://www.bbc.co.uk/news/uk-england-devon-12406528 (noting harsh consequences for teens who put cat into microwave oven); *see also* GREMLINS

cannot claim ignorance in a situation where common knowledge exists about the consequences of an action.[7] Given the inherent dangers in operating high temperature appliances and the delicate nature of small mammals, one would expect an individual combining these two in any way to proceed with extreme caution.[8] Claims of ignorance cannot serve as a safe harbor for any kind of culpable conduct.[9]

As a comparison, individuals facing potential liability for tax crimes often claim ignorance or misunderstanding of their relevant legal duties.[10] In response, courts have increasingly limited a defendant's ability to establish ignorance of their obligations under the tax code.[11] In the most publicized recent case, Wesley Snipes was himself unsuccessful in establishing such a defense.[12]

Defendants in criminal tax proceedings make assertions of ignorance or misunderstanding primarily because federal tax statutes involve unique considerations that distinguish them from the majority of federal crimes.[13]

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(Warner Bros. Pictures 1984) (depicting outcome of microwaving small monstrous creature).

7. *See* United States v. Stadtmauer, 620 F.3d 238, 253 (3d Cir. 2010) ("No one can avoid responsibility for a crime by deliberately ignoring what is obvious.")

8. *See, e.g.*, *Cat Grooming*, ANIMALHOSPITALS-USA, http://www.animalhospitals-usa.com/cats/cat-grooming.html (last visited Feb. 18, 2011) (instructing individuals, after bathing cat, to dry cat with hair dryer on medium heat setting only and to hold dryer one foot away from cat).

9. *See* United States v. Caminos, 770 F.2d 361, 365 (3d Cir. 1985) (stating that "deliberate ignorance cannot become a safe harbor for culpable conduct").

10. *See, e.g.*, United States v. Snipes, 611 F.3d 855, 862 (11th Cir. 2010) (detailing Snipes's claim of good faith reliance on advice of counsel); *Tenured Law Prof (Former Tax Lawyer) Convicted of Failing to File Tax Returns*, TAXPROF BLOG (Feb. 11, 2011, 9:20 AM), http://taxprof.typepad.com/taxprof_blog/2011/02/tenured-law-prof.html (reporting how tax professor convicted for failing to file state tax returns claimed misunderstanding of tax law).

11. For a discussion of how courts have used willful blindness instructions against defendants' claims of ignorance, see *infra* notes 54-74 and accompanying text.

12. *See Snipes*, 611 F.3d at 862 (affirming defendant Wesley Snipes's conviction despite good faith instruction to jury, which stated that "one who expresses an honestly held opinion or an honestly formed belief is not chargeable with fraudulent intent, even though the opinion is erroneous or the belief is mistaken"). Actor Wesley Snipes is currently serving a three-year sentence for willful failure to file individual federal income tax returns, in violation of 26 U.S.C. § 7203, for three consecutive years. *See id.* at 859 (summarizing Snipes's convictions); *see also* Michael Martinez, *Actor Wesley Snipes Reports to Prison to Begin Sentence*, CNN ENTM'T, Dec. 9, 2010, http://articles.cnn.com/2010-12-09/entertainment/snipes.jail_1_tax-returns-charges-of-tax-fraud-tax-protesters?_s=PM:SHOWBIZ (reporting details of Snipes's conviction).

13. *See* Kathryn Keneally & Charles P. Rettig, *Supreme Court Emphasizes Limits on Criminal Tax Enforcement: The* Boulware *Decision*, J. TAX PRAC. & PROC., Apr.-May 2008, at 19 (noting complex nature of federal tax statutes). Federal tax statutes are "'a system of sanctions which . . . were calculated to induce prompt and forthright fulfillment of every duty under the income tax law and to provide a penalty suitable to every degree of delinquency.'" *Id.* (quoting Spies v. United States, 317 U.S. 492, 497 (1943)).

Congress long ago recognized the complexities of complying with the tax code and established "willfulness" as the requisite mens rea for tax crimes.[14] Subsequent interpretation of willfulness by the courts has set a high standard for conviction: voluntary and intentional violation of a *known* legal duty.[15]

In cases where the record contains sufficient factual support, non-tax fraud case law has concretely recognized the government's entitlement to a willful blindness instruction, also called "conscious avoidance" or "deliberate ignorance."[16] In criminal tax cases, however, much controversy has surrounded the use of willful blindness instructions.[17] The U.S. Supreme Court's decision in *Cheek v. United States*[18] provided a strict interpretation of the willfulness element of tax statutes, casting doubt on the appropriateness of willful blindness to establish willfulness.[19] *Cheek*'s emphasis on a

14. See 26 U.S.C. § 7201 (2006) (criminalizing attempts to evade or defeat taxes that are "willfully" made).

15. *See* Cheek v. United States, 498 U.S. 192, 201 (1991) (adhering to precedent which previously established definition of willfulness in criminal tax proceedings). Tax crimes at all levels, whether felonies or misdemeanors, require proof of "willful" conduct. *See Spies*, 317 U.S. at 497 ("The difference between willful failure to pay a tax when due, which is made a misdemeanor, and willful attempt to defeat and evade one, which is made a felony, is not easy to detect or define. Both must be willful, and willful, as we have said, is a word of many meanings, its construction often being influenced by its context."); *see also Cheek*, 498 U.S. at 201 (relying on precedent established by United States v. Bishop, 412 U.S. 346, 361 (1973), and United States v. Pomponio, 429 U.S. 10 (1976)).

16. *See* Geraldine Szott Moohr, *Tax Evasion as White Collar Fraud*, 9 HOUS. BUS. & TAX L.J. 207, 211 (2009) (noting that in non-tax cases, courts have defined "willfulness" much less strictly than in tax fraud cases). Defendants can avoid conviction with evidence of a good faith belief that they were complying with tax laws. *See id.* (describing defense to government's establishment of willfulness in tax cases); *see also* Alan Leibman, *Willful Blindness Charge Available in Tax Cases to Prove Knowledge of a Legal Duty*, FOX ROTHSCHILD: WHITE COLLAR DEFENSE & COMPLIANCE BLOG (Oct. 5, 2010), http://whitecollarcrime.foxrothschild.com/2010/10/articles/tax-prosecutions/willful-blindness-charge-available-in-tax-cases-to-prove-knowledge-of-a-legal-duty/ (stating that such instructions are appropriate when government lacks direct evidence that defendant acted willfully but can point to circumstantial evidence that defendant turned blind eye to facts which should have made defendant aware of relevant legal duties).

17. *See* Patricia H. Bucy, *Criminal Tax Fraud: The Downfall of Murderers, Madams and Thieves*, 29 ARIZ. ST. L.J. 639, 664 (1997) (remarking on controversy surrounding use of willful blindness instructions in criminal tax cases).

18. 498 U.S. 192 (1991).

19. *See* Mark D. Yochum, Cheek *is Chic. Ignorance of the Law Is an Excuse for Tax Crimes—A Fashion That Does Not Wear Well*, 31 DUQ. L. REV. 249, 271 (1993) (suggesting uncertainty for willful blindness instructions will follow *Cheek*). Professor Yochum postulated that, although the Supreme Court's holding in *Cheek* should not have affected the government's use of willful blindness instructions in criminal tax cases, defendants would attempt to argue that actual knowledge must be directly proven. *See id.* (noting that willful blindness instructions have been useful to infer knowledge of illegality). Settling the debate among the circuit courts, *Cheek* rejected the idea that willfulness must be evaluated according to an objective standard. *See Cheek*, 498 U.S. at 200 (explaining that "the statutory term 'willfully' as used in the federal criminal tax statutes . . . carv[es] out an exception to the tradi-

defendant's subjective state of mind has confounded the lower courts regarding their use of willful blindness instructions.[20]

This Casebrief evaluates the recent softening of *Cheek*'s willfulness standard by circuit court jurisprudence upholding willful blindness instructions, and it underscores the duty implicitly imposed on taxpayers to acknowledge their obligations under the tax code.[21] Part II of this Casebrief discusses the willfulness requirement for criminal tax cases as established long ago and subsequently reiterated in *Cheek*.[22] After an analysis of the circuit courts' treatment of willful blindness instructions, Part II traces the Third Circuit's decisions in criminal tax cases—specifically the court's definition of willfulness and its historical use of willful blindness instructions.[23] Part III discusses the Third Circuit's holding in *United States v. Stadtmauer*,[24] which upheld a willful blindness instruction in a criminal tax fraud case.[25] Part IV analyzes the Third Circuit's take on *Cheek*'s interpretation of willfulness and offers guidance to practitioners in the Third Circuit handling criminal tax cases.[26] Finally, Part V concludes by emphasizing the necessity of willful blindness instructions to limit claims of ignorance where taxpayers have deliberately avoided their obligations under the tax code.[27]

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tional rule. This special treatment of criminal tax offenses is largely due to the complexity of the tax laws.").

20. *See* JOHN A. TOWNSEND ET AL., TAX CRIMES 36-38 (2008) (noting uncertainty regarding willful blindness instructions in criminal tax cases requiring willfulness); Bucy, *supra* note 17, at 663 (describing split in circuits after *Cheek* regarding use of deliberate disregard instruction). The debate surrounding willful blindness instructions involves the notion established by *Cheek* that a defendant who, in subjective good faith, is unaware of a legal duty cannot be guilty of tax fraud. *See Cheek*, 498 U.S. at 202 (noting that government must prove that defendant was aware of legal duty and negate defendant's good faith misunderstanding or ignorance).

21. For a discussion of circuit court jurisprudence regarding willful blindness instructions in criminal tax proceedings, see *infra* notes 54-106 and accompanying text.

22. For a discussion of the evolution of the interpretation of the willfulness standard, see *infra* notes 28-53 and accompanying text.

23. For a discussion of three distinct categories of circuit courts regarding their interpretation of willfulness in regard to the Supreme Court's decision in *Cheek*, see *infra* notes 54-74 and accompanying text.

24. 620 F.3d 238 (3d Cir. 2010).

25. For an analysis of the district court's willful blindness instructions and the constructive evaluation by the Third Circuit, see *infra* notes 75-106 and accompanying text.

26. For an analysis of how the Third Circuit's decision in *Stadtmauer* will affect attorneys practicing in the criminal tax field, see *infra* notes 107-40 and accompanying text.

27. For a discussion of the importance of willful blindness instructions, see *infra* notes 140-41 and accompanying text.

## II. THE EVOLUTION OF THE WILLFULNESS STANDARD IN TAX CRIMES

### A. *The Willfulness Standard: A Taxing History*

The willfulness standard in criminal tax cases has an unsettled history, having endured significant revision since its original interpretation by the Supreme Court.[28] The Court's consistency in defining willfulness has been anything but "an artful tapestry woven with foresight."[29] As initially interpreted by the Court, willfulness required "an act done with a bad purpose" or "with an evil motive."[30] For the next several decades, much confusion surfaced as to how evil intent fit within the willfulness standard.[31] In 1976, the Court finally settled on the existing definition, holding in *United States v. Pomponio*[32] that willfulness requires "a voluntary, intentional violation of a known legal duty."[33]

Though the *Pomponio* definition of willfulness persists as the stated standard, it has not been consistently interpreted by the lower courts.[34] In *Cheek*, the Supreme Court provided further clarification for the willfulness standard in the criminal tax context, requiring the government to prove, on a subjective basis, that a defendant both knew of the legal duty imposed and voluntarily and intentionally violated such duty.[35] The *Cheek* definition aided courts in resolving existing conflicts, but made tax crime convictions more difficult for the government by restricting the determination of willfulness to a subjective evaluation.[36] Following *Cheek*, interpretations

28. *See generally* Yochum, *supra* note 19, at 252 (tracing history of Supreme Court's interpretation of "willfulness").

29. *Id.*

30. *See* United States v. Murdock, 290 U.S. 389, 394-95 (1933) (providing Court's initial definition of "willfulness"), *overruled on other grounds by* Murphy v. Waterfront Comm'n of N.Y. Harbor, 378 U.S. 52 (1964). In *Murdock*, the Supreme Court reasoned that "Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct." *Id.* at 396; *see also* Yochum, *supra* note 19, at 252 (citing complexity of tax code laws as grounds for Congress's intent that "willfully" include more than purposeful conduct).

31. *See* United States v. Bishop, 412 U.S. 346, 361 (1973) (requiring element of evil motive to establish willfulness); Spies v. United States, 317 U.S. 492, 498 (1943) (holding that willfulness includes "some element of evil motive").

32. 429 U.S. 10 (1976).

33. *See id.* at 11 (stating that lower court "incorrectly assumed that the reference to an 'evil motive' in *United States v. Bishop* . . . and prior cases meant something more than the specific intent to violate the law").

34. *See* Cheek v. United States, 498 U.S. 192, 198 (1991) (explaining conflicting interpretations of "willfully" among circuit courts).

35. *See id. at 201* ("[T]he standard for the statutory willfulness requirement is the 'voluntary, intentional violation of a known legal duty.'").

36. *See* Yochum, *supra* note 19, at 253 (noting that "even irrational beliefs held in good faith with respect to the obligations of the Internal Revenue Code vitiated the willfulness requirement of tax crimes"). To establish willfulness, therefore, the government must prove the defendant's actual knowledge of illegality. *See id.* (sug-

by the circuit courts have softened this standard.[37] Most notably, the circuit courts have continually employed the willful blindness doctrine to instruct the jury on the knowledge aspect of willfulness.[38] Such willful blindness instructions have enabled the government to obtain convictions in criminal tax cases where defendants may otherwise have established their claim of ignorance and thus averted criminal liability for their actions.[39]

### B. United States v. Cheek: *Deducting Objective Considerations from Willfulness Determinations*

The requirement of willfulness in criminal tax statutes separates taxpayers who, in good faith, violate their legal obligations under the tax code from taxpayers who deliberately seek to take advantage of the system.[40] Because the tax code is increasing in complexity, both taxpayer compliance and enforcement efforts by the Internal Revenue Service (IRS) are severely impacted.[41] The significant burden of understanding

gesting that evaluating reasonableness of defendant's belief allows government to avoid burden of proof of all elements of crime).

37. *See, e.g.*, United States v. Anthony, 545 F.3d 60, 64-65 (1st Cir. 2008) (holding willful blindness instruction appropriate in tax evasion case); United States v. Dean, 487 F.3d 840, 851 (11th Cir. 2007) (same); United States v. Dykstra, 991 F.2d 450 (8th Cir. 1993) (same). For further discussion of how several circuit courts have lessened the government's burden of proof to establish willfulness, see *infra* notes 54-74 and accompanying text.

38. *See Anthony*, 545 F.3d at 64-65 (holding willful blindness instruction appropriate in tax evasion case); *Dean*, 487 F.3d at 851 (same); *Dykstra*, 991 F.2d at 452 (same).

39. *See* United States v. Jewell, 532 F.2d 697 (9th Cir. 1976) (reasoning that if courts treated willful blindness differently than positive knowledge, criminals could avoid liability simply by turning blind eye to facts that they should have known (citing MODEL PENAL CODE § 2.02(7) (1985))). Avoiding criminal liability, however, does not implicate a defendant's potential civil liability under the Internal Revenue Code. *See* I.R.C. § 6663(a) (2006) ("If any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud.").

40. CAMILLA E. WATSON, TAX PROCEDURE AND TAX FRAUD IN A NUTSHELL 346 (3d ed. 2006) (providing Congress's reasoning for requiring willfulness in criminal tax proceedings). Willfulness serves as a buffer between innocent taxpayers and punishment for tax crime convictions. *See id.* at 346-47 (noting that willfulness "shields from conviction those who make innocent or even negligent errors, or who genuinely misunderstand the law").

41. Press Release, Taxpayer Advocate Serv., National Taxpayer Advocate Delivers Annual Report to Congress; Focuses on Tax Reform, Collection Issues, and Implementation of Health Care Reform (Jan. 5, 2011), *available at* http://www.taxpayeradvocate.irs.gov/Media-Resources/Press-Release (noting burdens imposed on taxpayers by complexity of tax code and challenges IRS faces in enforcement); *see also* United States v. Bishop, 412 U.S. 346, 360-61 (1973) ("In our complex tax system, uncertainty often arises even among taxpayers who earnestly wish to follow the law. . . . 'It is not the purpose of the law to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care.'" (quoting Spies v. United States, 317 U.S. 492, 496 (1943))). *But see* Yochum, *supra* note 19,

one's tax obligations and filing properly completed returns naturally results in tax noncompliance.[42] The Supreme Court long ago recognized the need to protect innocent taxpayers from punishment when such mistakes are made in good faith, and therefore rigorously upheld the requirement that the government prove willfulness in criminal tax cases.[43]

The Supreme Court has continually reiterated that tax convictions require the government to prove a defendant's voluntary and intentional violation of a known legal duty.[44] In *Cheek*, the Court was presented with the question of how courts should more precisely interpret willfulness—specifically, whether willfulness in the criminal tax context should be determined under an objective or a subjective standard.[45] The petitioner in

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at 252 (opining that tax code is no longer "an arcane regulatory device but rather that it is well-understood in its fundamental obligations").

42. *See Spies*, 317 U.S. at 496 (explaining that "the [tax] law is complicated, accounting treatment of various items raises problems of great complexity, and innocent errors are numerous"). The Supreme Court in *Spies* posited that the purpose of criminal tax statutes is not to penalize honest mistakes. *See id.* (providing that complexity of tax code may lead to errors despite individual's exercise of reasonable care).

43. *See generally* United States v. Murdock, 290 U.S. 389 (1933) (holding that defendant who failed to supply information on income tax return due to bona fide misunderstanding could not be guilty of willfully failing to supply such information), *overruled on other grounds by* Murphy v. Waterfront Comm'n of N.Y. Harbor, 378 U.S. 52 (1964). Statutory willfulness, a much higher standard than mere knowledge, requires the "voluntary, intentional violation of a known legal duty." *See* United States v. Pomponio, 429 U.S. 10, 11 (1976) (providing existing definition for willfulness). The Supreme Court in *Pomponio* followed the definition of willfulness that several circuit court decisions had employed when interpreting this issue. *See id.* at 12-13 (noting adherence to standard set by circuit courts).

44. *See* Cheek v. United States, 498 U.S. 192, 201 (1991) ("Taken together, *Bishop* and *Pomponio* conclusively establish that the standard for the statutory willfulness requirement is the 'voluntary, intentional violation of a known legal duty.'"). The Supreme Court further held that "[a] good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable." *Id.* at 192. One consequence of this definition of willfulness is that "an irrational belief sincerely held put before a sympathetic jury results in acquittal." *See* Yochum, *supra* note 19, at 252 (suggesting that willfulness should "refer to the act itself, purposefully not paying tax").

45. *See Cheek*, 498 U.S. at 199 (noting that grant of certiorari was due to disagreement between circuit courts as to interpretation of willfulness). Following a period of discord in the circuit courts, the Supreme Court granted certiorari to hear a Seventh Circuit case. *See id.* at 198-99 (detailing Seventh Circuit's interpretation of willfulness element). In the Seventh Circuit, actual ignorance of the applicable law was not a defense unless such ignorance was objectively reasonable. *See id.* (noting that Seventh Circuit court had determined that neither taxpayer's belief that tax laws are unconstitutional nor that wages are not income would qualify as objectively reasonable). The Seventh Circuit had been implementing this definition of willfulness for over ten years, despite the fact that the other circuits had been interpreting willfulness according to a subjective standard. *See* Yochum, *supra* note 19, at 249-50 (specifying that Seventh Circuit was instructing juries that "only those beliefs of the defendant which were objectively reasonable might be considered as a defense to the willfulness requirement").

*Cheek*, the infamous airline pilot, testified that he honestly and reasonably believed that the tax code was being unconstitutionally enforced, and that he therefore lacked the willful conduct required to be convicted.[46] In its opinion, the Court reasoned that the statutory requirement of willfulness in tax crimes creates an exception to the traditional rule that ignorance of the law is not a defense to liability.[47] The Court ultimately rejected the notion that a claim of good faith belief must be objectively reasonable, ruling instead that willfulness should be determined under a subjective standard.[48] Cheek's defense was consequently evaluated according to his own personal, subjective belief, as opposed to whether his belief was reasonable.[49]

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46. *See Cheek*, 498 U.S. at 195-96 (summarizing petitioner's testimony in which he admitted not filing tax returns but believed federal tax code was unconstitutional).

47. *See id.* at 200, 207 (stating holding of case). The Court ultimately remanded the case for further proceedings. *See id.* at 206 (noting "defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness").

48. *See id.* at 203 (disagreeing with Seventh Circuit's interpretation of willfulness). The Court noted that categorizing a taxpayer's particular belief as objectively reasonable or unreasonable would change the inquiry from factual to legal; therefore, it would no longer be a jury determination. *See id.* (concluding that such change in inquiry would implicate "serious" Sixth Amendment jury trial issues). In so holding, the Court determined that the willfulness standard, which requires "a voluntary, intentional violation of a *known* legal duty," invalidated the government's instructions to the jury to "disregard evidence of Cheek's understanding that . . . he was not a person required to file a return or to pay income taxes." *See id.* at 201, 203-04 (emphasis added) (noting that "the more unreasonable the asserted beliefs or misunderstandings are, the more likely the jury will consider them to be nothing more than simple disagreement with known legal duties imposed by the tax laws and will find that the Government has carried its burden of proving knowledge").

49. *See id.* at 202 (stating that "if Cheek asserted that he truly believed that the Internal Revenue Code did not purport to treat wages as income, and the jury believed him, the Government would not have carried its burden to prove willfulness"). The Court noted that, in order to establish a defendant's subjective belief, juries may consider any admissible evidence to establish the defendant's awareness of his or her legal duties under the tax code. *See id.* (listing evidence that jury may consider to establish Cheek's awareness, including evidence showing he was aware of relevant provisions of tax code). The petitioner in *Cheek* had been charged with (1) willfully failing to file federal income tax returns and (2) willfully attempting to evade income taxes for his failure to file federal income tax returns for several years. *See id.* at 194-95 (providing facts of case). The petitioner was indicted for ten violations of federal tax law, including six counts of willfully failing to file federal income tax returns in violation of 26 U.S.C. § 7203 and three counts of willfully attempting to evade income taxes in violation of 26 U.S.C. § 7201. *See id.* at 194 (outlining charges against Cheek).

Section 7203 provides that:

> [a]ny person required under this title to pay any estimated tax or tax . . . who willfully fails to pay such estimated tax or tax . . . at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution.

To prove that a defendant has actual knowledge of his legal obligations under the tax code, the government must often negate either a defendant's claim of ignorance of the law or a misunderstanding of the legal duties imposed—both of which may establish a defendant's good faith belief that he did not violate any tax code provision.[50] The difficulty in negating such claims stems from the fact that an individual cannot simultaneously be aware that the law imposes a duty and also be ignorant of that duty.[51] A distinction, therefore, arises between two types of individuals: those with actual knowledge of a legal duty and those who, in good faith, are ignorant of that duty, misunderstand it, or believe that it does not exist.[52] Criminal tax liability cannot attach to a person in the latter category, and even a subjective mistake by a defendant, regardless of how objectively unreasonable, negates willfulness in a criminal tax case.[53]

### C. *Accounting for Circuit Court Treatment of Willful Blindness*

Despite the Supreme Court's attempt at clarification in *Cheek*, uncertainty has prevailed on the proper interpretation of the willfulness stan-

26 U.S.C. § 7203 (2006). Section 7201 provides that:

> [a]ny person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S.C. § 7201.

Cheek believed that the tax code was being unconstitutionally enforced with regard to tax on wages, and therefore believed that his actions were lawful. *See Cheek*, 498 U.S. at 196 (providing background of Cheek's belief that federal tax system was unconstitutional). Cheek's belief arose from seminars he attended, where lawyers spoke and purportedly gave professional opinions regarding the constitutionality of the federal tax system. *See id.* (stating how Cheek began to follow advice of group that sponsored seminars). Cheek even produced as evidence a letter in which an attorney explained that that the Sixteenth Amendment did not allow the government to tax wages or salaries. *See id.* (noting level of "indoctrination" that Cheek received from participating in seminars and following advice of group).

50. *See id.* at 202 (concluding that "if Cheek asserted that he truly believed that the Internal Revenue Code did not purport to treat wages as income, and the jury believed him, the Government would not have carried its burden to prove willfulness, however unreasonable a court might deem such a belief").

51. *See id.* at 202-03 (stating that ultimate issue in such cases is whether government proved that defendant was aware of duty).

52. *See id.* at 202 (distinguishing between innocent taxpayers and those who seek to take advantage of complex tax code). In such cases, the issue turns on "whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable" *Id.*

53. *See id.* at 202 (concluding that individuals with good faith ignorance of legal duty or those who misunderstand their duties should not face criminal liability); *see also* United States v. Stadtmauer, 620 F.3d 238, 255 (2010) (reiterating Supreme Court's holding regarding standard for willfulness in *Cheek*).

dard for tax crimes.[54] In particular, because *Cheek* did not specifically address the issue of willful blindness, disagreement has arisen as to whether such instructions are appropriate in these cases.[55] Without direct guidance from the Supreme Court, the circuit courts have split into three distinct groups regarding the use of willful blindness instructions.[56]

The first group consists of courts that have specifically held that the government's use of willful blindness instructions to establish willfulness does not run afoul of *Cheek*.[57] These courts have interpreted *Cheek* as providing that, though an individual's belief that one is complying with the tax laws need not be "objectively reasonable" to constitute a defense, such belief nonetheless must be "held in good faith."[58] A defendant's claim alleging a lack of knowledge of that defendant's tax obligations fails if the defendant's ignorance was a result of deliberate avoidance of materials that would have informed the defendant of the applicable legal duty, as such an avoidance undermines the claim of good faith.[59] Therefore, it follows that willful blindness instructions do not violate the standard for willfulness set forth in *Cheek*.[60]

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54. *See* Bucy, *supra* note 17, at 664 (noting split in circuits regarding use of willful blindness instructions after *Cheek*).

55. *See Stadtmauer*, 620 F.3d at 256 (remarking how *Cheek* did not discuss willful blindness instructions).

56. For a discussion of how circuit courts are divided in their treatment of willful blindness instructions, see *infra* notes 57-74 and accompanying text.

57. *See, e.g.*, United States v. Anthony, 545 F.3d 60, 64-65 (1st Cir. 2008) (holding willful blindness instructions appropriate in criminal tax proceedings and do not violate willfulness standard set in *Cheek*); United States v. Dean, 487 F.3d 840, 851 (11th Cir. 2007) (same); United States v. Dykstra, 991 F.2d 450 (8th Cir. 1993) (same).

58. *See Anthony*, 545 F.3d at 65 (providing requirements for defense based on knowledge requirements in tax cases); *Dean*, 487 F.3d at 851 (same).

59. *See Anthony*, 545 F.3d at 65 (placing significance on element of good faith belief that defendant was not aware of legal duty to pay taxes); *Dean*, 487 F.3d at 851 (finding district court's willful blindness instruction concerning good faith accurately stated law within context of *Cheek*).

60. *See Anthony*, 545 F.3d at 65 (labeling defendant "mistaken" for relying on *Cheek* as grounds for invalidation of willful blindness instruction); *Dean*, 487 F.3d at 851 (concluding willful blindness instructions did not run afoul of *Cheek* and accurately stated law regarding willfulness). Similarly, the Eighth Circuit has continually held that willful blindness instructions are appropriate in criminal tax cases. *See, e.g*, United States v. Marston, 517 F.3d 996 (8th Cir. 2008) (holding district court was required to give willful blindness instruction concerning case of tax evasion); United States v. Willis, 277 F.3d 1026 (8th Cir. 2002) (holding that evidence was sufficient to establish willful blindness instruction and that such instruction was appropriate in tax evasion case). Most notably, the Eighth Circuit drew on language from *Cheek* to reject a defendant's claim that willful blindness instructions violated *Cheek* and labeled the defendant's reliance on *Cheek* to refute the jury instructions "seriously misplaced" in upholding his conviction. *See* United States v. Bussey, 942 F.2d 1241, 1249 (8th Cir. 1991) (applying *Cheek*'s language "'that a good-faith misunderstanding of the law or a good-faith belief that one is not violating the law, if it is to negate willfulness, must be objectively reasonable'" (citation omitted)). The Eighth Circuit thus found that the district court properly submit-

In contrast, the Ninth Circuit stands alone in issuing a decision that determined that a willful blindness instruction was improperly given to the jury.[61] The court drew a sharp line between actual knowledge and deliberate avoidance of knowledge.[62] According to the Ninth Circuit, a willful blindness instruction is appropriate only where a defendant deliberately avoids "confirming the existence of a fact she all but knew."[63]

Finally, the remaining circuits have upheld willful blindness instructions in criminal tax cases, without specifically relying on *Cheek*.[64] Several circuit courts upheld willful blindness instructions prior to *Cheek*, but have not heard similar subsequent cases that take this decision into account.[65] Decisions by these courts held that the instructions issued to the jury properly required the level of intent necessary to establish willfulness.[66] The

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ted a willful blindness instruction to the jury. *See id.* at 1249-50 (rejecting defendant's arguments that willful blindness instructions were improper).

61. *See* United States v. Mapelli, 971 F.2d 284, 285 (9th Cir. 1992) (holding that "deliberate ignorance instruction incorrectly diluted the government's duty to prove knowledge").

62. *See id.* at 287 (noting that evidence pointed to actual knowledge as opposed to willful blindness). The court stressed that willful blindness instructions should be used "sparingly" and should not serve as a routine instruction. *See id.* at 286 (internal quotation marks omitted) (explaining instances in which willful blindness instructions are inappropriate).

63. *See id.* (stating that instruction is not appropriate when evidence could justify that defendant had actual knowledge (citing United States v. Sanchez-Robles, 927 F.2d 1070 (9th Cir. 1991), *overruled on other grounds by* United States v. Heredia, 483 F.3d 913 (9th Cir. 2007))).

64. *See* United States v. Hauert, 40 F.3d 197, 203 (7th Cir. 1994) (upholding district court's use of deliberate avoidance instruction that "'[n]o person can intentionally avoid knowledge by closing his or her eyes to information or facts which would otherwise have been obvious'" (citation omitted)); United States v. Wisenbaker, 14 F.3d 1022, 1027-28 (5th Cir. 1994) (holding deliberate ignorance instruction appropriate because evidence supported "inference of deliberate indifference" to relevant legal duty).

65. *See, e.g.*, United States v. Fingado, 934 F.2d 1163, 1166 (10th Cir. 1991) (holding that evidence supported willful blindness instruction); United States v. Martin, 773 F.2d 579, 584 (4th Cir. 1985) (upholding district court's instructions on willful blindness). The Fourth Circuit in *Martin* held that the jury instructions, which stated that "[t]he element of knowledge . . . may be satisfied by inferences that have been drawn from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him," were appropriate. *Martin*, 773 F.2d at 584 (internal quotation marks omitted).

66. *See, e.g.*, *Fingado*, 934 F.2d at 1166 (finding that jury was properly instructed); *Martin*, 773 F.2d at 584 (noting that "'willful[ness] . . . requires more than a mere showing of careless disregard of the truth.'" (quoting United States v. Eilertson, 707 F.2d 108, 110 (4th Cir. 1983) (internal quotation marks omitted))). In *Martin*, the Fourth Circuit found that a willful blindness instruction was consistent with the standard of willfulness established by the Supreme Court in *Pomponio*. *See Martin*, 773 F.2d at 584 (declining to follow Fifth Circuit precedent, which found that similar instruction equated willful blindness with reckless disregard). Similarly, the Tenth Circuit in *United States v. Fingado* upheld a willful blindness instruction when the evidence supported a finding that the defendant intentionally avoided knowledge. *See Fingado*, 934 F.2d at 1166 (concluding evidence supported finding that defendant was "aware of a high probability that his

rest of the circuits within this group, though not specifically relying on *Cheek*, have approved of a willful blindness instruction that applies to a defendant's knowledge of the law.[67]

### D. *The Third Circuit and Willful Blindness*

Prior to *Stadtmauer*, the Third Circuit's position on willful blindness in criminal tax cases remained uncertain.[68] In *United States v. Retos*,[69] the court seemingly rejected the allowance of deliberate ignorance by holding that the government was required to prove actual knowledge in a tax evasion case.[70] The Third Circuit has long endorsed willful blindness, however, as an appropriate vehicle for establishing the requisite mens rea in non-tax criminal cases, reinforcing the notion that non-tax fraud cases may have different standards for willfulness than tax crimes.[71]

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understanding of the tax laws was erroneous and consciously avoided obtaining actual knowledge of his obligations").

67. *See, e.g.*, United States v. Benson, 79 F. App'x 813, 825 (6th Cir. 2003) (upholding deliberate ignorance instructions in trial for Ponzi scheme involving tax evasion); *Hauert*, 40 F.3d at 203 (upholding district court's use of deliberate avoidance-instruction that "[n]o person can intentionally avoid knowledge by closing his or her eyes to information or facts which would otherwise have been obvious" (internal quotation marks omitted)); *Wisenbaker*, 14 F.3d at 1027-28 (holding deliberate ignorance instruction appropriate because evidence supported "inference of deliberate indifference" to relevant legal duty). In *United States v. Wisenbaker*, the Fifth Circuit similarly held that a willful blindness instruction was appropriate in light of the defense that the defendant believed that he was not responsible for the taxes, due to evidence that the defendant failed to file tax returns even after his accountants informed him of his duty to do so. *See Wisenbaker*, 14 F.3d at 1027-28 (discussing testimony regarding defendant's belief that he was not responsible for relevant taxes). Likewise, the Seventh Circuit in *United States v. Hauert* affirmed the defendant's conviction for tax evasion where the facts "'support[ed] the inference that the defendant was aware of a high probability of the existence of the fact in question [tax liability] and purposefully contrived to avoid learning all of the facts.'" *Hauert*, 40 F.3d at 203 n.7 (quoting United States v. de Francisco-Lopez, 939 F.2d 1405, 1409 (10th Cir. 1991) (internal quotation marks omitted)).

68. *See generally* United States v. Stadtmauer, 620 F.3d 238 (3d Cir. 2010) (establishing standard for willful blindness within Third Circuit).

69. 25 F.3d 1220 (3d Cir. 1994).

70. *See id.* at 1229-30 (stating that "actual knowledge" is required to prove willfulness). The court therefore suggested that a willful blindness instruction is not appropriate in tax cases that require willfulness. *See* Bucy, *supra* note 17, at 662-64 (noting split in circuits regarding willful blindness instructions in tax cases).

71. *See, e.g.*, Pierre v. Att'y Gen., 528 F.3d 180, 190 (3d Cir. 2008) (stating knowledge can be established by willful blindness); United States v. Wasserson, 418 F.3d 225, 237 (3d Cir. 2005) (holding evidence of willful blindness satisfies requisite mens rea of knowledge in case involving unlawful disposal of hazardous waste); United States v. Wert-Ruiz, 228 F.3d 250, 255 (3d Cir. 2000) (noting that "willful blindness instruction is often described as sounding in 'deliberate ignorance'" (citing United States v. One 1973 Rolls Royce, 43 F.3d 794, 807-08 (3d Cir. 1994))); United States v. Caminos, 770 F.2d 361, 365 (3d Cir. 1985) (holding that deliberate ignorance is met when "the defendant himself was subjectively aware of the high probability of the fact in question, and not merely [if] a reasonable man would have been aware of the probability").

The Third Circuit's recent interpretation of *Cheek* relied on its non-tax precedent of allowing the government's use of willful blindness instructions to instruct the jury on willfulness.[72] To adhere to established precedent, a willful blindness instruction issued within the Third Circuit must clarify that a defendant's awareness of the high probability of the fact in question should be a subjective awareness, not merely a reasonable one.[73] Moreover, the Third Circuit has firmly advocated a harsh stance, declaring that "deliberate ignorance cannot become a safe harbor for culpable conduct."[74]

## III. REFUSING TO IGNORE WILLFUL BLINDNESS: THE THIRD CIRCUIT'S DECISION IN *STADTMAUER*

### A. *Factual Background*

The moral of Richard Stadtmauer's story is twofold (as is Wesley Snipes's): first, influential taxpayers in noncompliance with the tax code make prime targets for the IRS, and second, relying on accountants does not absolve liability.[75] The *Stadtmauer* case stems from the investigation of Charles Kushner, a prominent real estate entrepreneur who controlled hundreds of limited partnerships.[76] In 2004, Kushner pled guilty to assisting in the filing of false partnership tax returns and federal campaign con-

72. *See Stadtmauer*, 620 F.3d at 257 (concluding willful blindness instruction adhered to Third Circuit precedent).

73. *See Caminos*, 770 F.2d at 365 (detailing requirements for willful blindness instruction). Furthermore, if evidence sufficiently supports such a charge, "it is not inconsistent for a court to give a charge on both willful blindness and actual knowledge, for if the jury does not find the existence of actual knowledge, it might still find willful blindness." *Wert-Ruiz*, 228 F.3d at 255 (citing United States v. Stewart, 185 F.3d 112, 126 (3d Cir. 1999)).

74. *Wert-Ruiz*, 228 F.3d at 250. In *Wert-Ruiz*, the court reasoned that if the defendant deliberately avoided learning of the illegality of certain funds at issue in a money laundering case, she could not have honestly claimed to lack knowledge. *See id.* at 258 (noting that failure to uphold district court's jury instructions would bring about "harmful results"). A willful blindness instruction in that case, therefore, "served the important purpose of preventing Wert-Ruiz from evading culpability if the jury concluded that due to a willful refusal to connect the dots, Wert-Ruiz actually did not know of the purposes of her money laundering activities." *Id.* (citing United States v. Sharma, 190 F.3d 220, 231 (3d Cir. 1999)).

75. *See* Ray A. Knight & Lee G. Knight, *Criminal Tax Fraud: An Analytical Review*, 57 MO. L. REV. 175, 178 (1992) (stating that IRS "may be more likely to press a case involving a locally prominent taxpayer than a relatively obscure person"); *see also Stadtmauer*, 620 F.3d at 259 (noting Stadtmauer's obligations to ask accountants about information contained in tax returns).

76. *See Stadtmauer*, 620 F.3d at 242 (providing background of case). Charles Kushner is also a prominent political fundraiser and philanthropist in New Jersey, and each of his partnerships managed a single commercial or residential property. *See id.* (noting that Kushner is general partner for most partnerships, and his siblings and their children are general partners of remaining partnerships). The partnerships collectively operated under the name Kushner Companies, which is not a registered entity. *See id.* (giving background information about Kushner's partnerships).

tribution offenses.[77] While investigating Kushner, the Government also indicted several other individuals who were involved in the alleged tax fraud, including Stadtmauer.[78]

Stadtmauer, who was also Kushner's brother-in-law, began to work for the Kushner partnerships in 1985.[79] Stadtmauer worked his way up to his eventual role as Executive Vice President, where his responsibilities included the oversight and management of partnership properties.[80] Stadtmauer also owned a small percentage of numerous Kushner partnerships and co-owned an entity that collected management fees from the partnerships.[81] Every spring, Stadtmauer met annually with the partnerships' Chief Financial Officer and accountant to review and sign tax returns.[82] He did not spend much time reviewing the returns, however, nor did he inquire as to the nature of the partnerships' expenses deducted on the returns.[83]

The Government charged Stadtmauer and others with conspiring to file false or fraudulent tax returns for the 1998–2001 tax years for several of the partnerships.[84] On the tax returns for the years at issue, the Government alleged that the partnerships fraudulently claimed several categories of expenditures as fully deductible business expenses.[85]

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77. *See id.* (summarizing convictions Kushner faced from Government).

78. *See id.* (detailing involvement of other Kushner employees). Several individuals testified against Stadtmauer, including the former Chief Financial Officer, the Chief Operations Officer, and a subsequent Chief Financial Officer. *See id.* (noting that only one of these three individuals was indicted).

79. *See id.* (providing background information about Stadtmauer). Stadtmauer was also a Certified Public Accountant and a law school graduate. *See id.* (describing Stadtmauer's professional background).

80. *See id.* (explaining Stadtmauer's responsibilities within partnerships).

81. *See id.* (describing Stadtmauer's extensive role in operation and management of Kushner's partnerships).

82. *See id.* at 246-47 (noting Stadtmauer's refusal to sign tax returns without accountant's financial statements for partnerships in hand).

83. *See id.* at 259 (cataloging evidence which contributed to Stadtmauer's intimate familiarity with partnerships). The court noted that a possible inference stemming from the fact that Stadtmauer did not ask his accountants about the partnerships' deductions is that Stadtmauer deliberately avoided acknowledging the fraudulent nature of the deductions. *See id.* (analyzing Stadtmauer's lack of inquiry into partnership deductions).

84. *See id.* at 243 (listing partnerships for which Stadtmauer and others allegedly filed false or fraudulent tax returns).

85. *See id.* (detailing alleged conspiracy in which Stadtmauer and others agreed to file false or fraudulent tax returns for management company and eleven other partnerships). The categories of expenditures fraudulently claimed as fully deductible business expenses were: (1) charitable contributions; (2) expenditures incurred by one partnership but paid by a different one, or "non-property" expenses; (3) capital expenditures; and (4) gift and entertainment expenses. *See id.* (noting that these expenses were deducted in full as ordinary business expenses). "The Internal Revenue Code provides that an expenditure is fully deductible as a business expense if it: '(1) was paid or incurred during the taxable year; (2) was for carrying on a trade or business; (3) was an expense; (4) was a necessary expense; and (5) was an ordinary expense.'" *Id.* at 243 n.7 (quoting Neonatology Assocs.,

Stadtmauer was convicted in the U.S. District Court for the District of New Jersey of one count of conspiracy to defraud the United States and nine counts of willfully aiding in the filing of materially false or fraudulent tax returns.[86] On appeal, the Third Circuit's consideration of the case dealt principally with whether the district court erred in giving a willful blindness instruction for Stadtmauer's conviction.[87] The court's review required an evaluation of the Supreme Court's standard for willfulness as established in *Cheek*, and a determination of whether the instruction was consistent with this standard.[88]

To convict Stadtmauer of willfully aiding in the preparation of materially false or fraudulent tax returns, the Government had to prove a voluntary and intentional violation of a known legal duty.[89] The Government relied on several pieces of circumstantial evidence to establish Stadtmauer's knowledge of his legal duties, including: (1) Stadtmauer's intimate familiarity with the partnerships and the methods by which the partnerships maintained their general ledgers; (2) evidence that Stadtmauer had made decisions on the tax treatment of partnership expenses in the past; and (3) other evidence that suggested Stadtmauer's consciousness of guilt.[90] Following a jury trial, Stadtmauer was convicted of conspiracy and nine counts of aiding in willfully filing materially false or

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P.A. v. Comm'r, 299 F.3d 221, 228 (3d Cir. 2002)). Although partnerships themselves do not pay taxes, they are nonetheless required to file income tax returns. *See Stadtmauer*, 620 F.3d at 243 n.8 ( "'[F]or the purpose of computing income and deductions, the partnership is regarded as an independently recognizable entity apart from the aggregate of its partners. It is only once the partnership's income and deductions are ascertained and reported that its existence may be disregarded and the partnership becomes a conduit through which the taxpaying obligation passes to the individual partners.'" (quoting Brannen v. Comm'r, 722 F.2d 695, 703 (11th Cir. 1984)) (internal quotation marks omitted)). For a more complete discussion of the process used by Stadtmauer and other involved employees to fraudulently deduct these expenses on the partnerships' tax returns, see *Stadtmauer*, 620 F.3d at 244-47.

86. *See Stadtmauer*, 620 F.3d at 241 (providing details of defendant's conviction). Stadtmauer was convicted for conspiracy in violation of 18 U.S.C. § 371 and for filing materially false or fraudulent returns in violation of 26 U.S.C. § 7206(2). *See id.* (detailing charges brought against defendant). Section 7206(2) of the Internal Revenue Code makes it a crime to "[w]illfully aid[ ] or assist[ ] in . . . the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return . . . which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return." 26 U.S.C. § 7206(2) (2006).

87. *See Stadtmauer*, 620 F.3d at 241 (noting that defendant raised many challenges to district court on appeal).

88. *See id.* at 241-42 (concluding that decision was in line with sister circuit courts).

89. *See id.* at 247 (citing United States v. Pomponio, 429 U.S. 10, 12 (1976)) (outlining evidence that Government used to establish Stadtmauer's knowledge).

90. *See id.* (cataloging circumstantial evidence Government used to establish willfulness). The court further emphasized that Stadtmauer did not spend sufficient time reviewing the partnerships' tax returns and did not inquire about the

fraudulent tax returns.[91] After receiving a sentence of thirty-eight months in prison, Stadtmauer timely appealed his conviction.[92] Stadtmauer's primary contention on appeal focused on the court's decision to issue a willful blindness instruction.[93]

### B. *The District Court's Willful Blindness Instruction*

The district court instructed the jury that when a "defendant close[s] his eyes to what would otherwise be obvious to the defendant," the knowledge element of willfulness is satisfied.[94] The court specified that the jury must find beyond a reasonable doubt that Stadtmauer (1) "was aware of a high probability that the tax returns at issue were false or fraudulent as to a material matter" and (2) "consciously and deliberately tried to avoid learning about this fact."[95] The instructions also included a provision that the jury could not find the element of knowledge if it found only that Stadtmauer should have known that the tax returns were false or fraudulent, or that a *reasonable person* would have known of a high probability that they were false.[96] Finally, the district court emphasized that it was insufficient that Stadtmauer was "stupid or foolish or may have acted out of inadvertence or accident. A showing of negligence or of a good-faith mistake of law is not . . . sufficient to support a finding of . . . knowledge."[97]

### C. *Returns Gone Wrong: Upholding Stadtmauer's Convictions*

On appeal, Stadtmauer's principal argument rested on the district court's willful blindness instruction to the jury, which he claimed was inconsistent with *Cheek*'s interpretation of willfulness.[98] Stadtmauer asserted

deductions made. *See id.* at 259 (discussing evidence that supported willful blindness instruction).

91. *See id.* at 251 (summarizing jury verdict). For a discussion of Stadtmauer's conspiracy and willful filing of materially false or fraudulent tax return charges, see *supra* notes 76-90 and accompanying text.

92. *See Stadtmauer*, 620 F.3d at 251 (noting that prior to trial, district court also denied defendant's motions for judgment of acquittal and to dismiss indictment).

93. *See id.* at 252 (addressing Stadtmauer's claim that district court incorrectly issued willful blindness instruction).

94. *Id.* at 253.

95. *See id.* at 257 (providing district court's instructions to jury on willful blindness).

96. *See id.* (concluding that district court's instructions adhered to Third Circuit precedent).

97. *Id.*

98. *See id.* at 254 (disagreeing with defendant's argument that willful blindness instruction violates holding in *Cheek*). The defense argued that "[i]t is difficult to imagine how a jury could ever find that a defendant voluntarily and *intentionally* violated a legal duty he was *unaware of*." Reply Brief for Appellant at 35, *Stadtmauer*, 620 F.3d 238 (No. 09-1575). The main argument was that a deliberate ignorance instruction eliminates the Government's burden of proving that the defendant was aware of the duty at issue. *See id.* at 38-39 (detailing defense's arguments).

that willful blindness instructions are "categorically and unequivocally" inappropriate to establish willful conduct as required by criminal tax offenses.[99]

The Third Circuit rejected Stadtmauer's claim that willful blindness instructions violate *Cheek*.[100] On the contrary, the court reasoned that *Cheek* draws a clear distinction between two categories of taxpayers: (1) those with actual knowledge of the legal obligation and (2) those who, in good faith, are ignorant of the obligation, misunderstand it, or believe that it does not exist.[101] Criminal tax liability cannot attach to taxpayers in the second category because, in such cases, the Government has not proven that the defendant was even aware of the relevant legal duty.[102]

The court rejected Stadtmauer's attempt to insulate himself from criminal liability because he deliberately avoided learning of his responsibilities under the law.[103] Instead, the court concluded that *Cheek* did not exempt defendants in criminal tax cases from willful blindness instructions.[104] The Third Circuit relied on language from *Cheek* to conclude that a taxpayer who deliberately avoids learning of his or her legal obligations does not fall in the category of taxpayers who "'earnestly wish to follow the law.'"[105] The Third Circuit, therefore, upheld Stadtmauer's conviction based on his deliberate avoidance of further investigating the facts, which would have made him aware of his legal obligations.[106]

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99. *See Stadtmauer*, 620 F.3d at 254 (stating that criminal tax offenses require Government to prove that defendant had legal duty and that defendant knew of that duty).

100. *See id.* (distinguishing willful blindness of knowledge of facts from knowledge of applicable law).

101. *See id.* at 255 (discussing Supreme Court's decision in *Cheek*).

102. *See id.* (describing distinction between two categories of taxpayers); *see also* Cheek v. United States, 498 U.S. 192, 202 (1991) (stating that ultimate issue is whether Government can prove defendant's awareness of legal duty at issue).

103. *See Stadtmauer*, 620 F.3d at 255 (emphasizing that "'deliberate ignorance and positive knowledge are equally culpable'" (quoting United States v. Jewell, 532 F.2d 697, 700 (9th Cir. 1976))).

104. *See id.* at 256 (noting that *Cheek* contained no willful blindness instruction).

105. *See id.* (quoting *Cheek*, 498 U.S. at 205) (explaining that justification for requiring knowledge of relevant legal duty is to protect innocent taxpayers).

106. *See id.* at 257 (concluding district court's willful blindness instruction correctly stated law). In discussing the evidence that supported a willful blindness instruction, the court emphasized the fact that Stadtmauer spent little time reviewing the partnerships' tax returns and deliberately avoided asking his accountants whether deductions on the tax returns were properly calculated. *See id.* at 259 (analyzing "abundant evidence" of Stadtmauer's intimate familiarity with partnerships and their finances).

## IV. *STADTMAUER*'S LEGITIMACY AND POTENTIAL CONSEQUENCES FOR PROSECUTION OF TAX CRIMES

The Third Circuit's decision in *Stadtmauer* carries strong implications for the criminal tax field.[107] First, the decision concretely establishes the availability of willful blindness instructions within the Third Circuit while further legitimizing circuit courts that have held that such instructions do not run afoul of *Cheek*.[108] Second, *Stadtmauer* aids in clarifying the proper interpretation of willfulness in tax statutes, particularly the distinction between knowledge and good faith claims of ignorance of tax obligations.[109] Finally, the Third Circuit opinion provides insight for practitioners handling cases similar to *Stadtmauer*, specifically in terms of how to frame arguments regarding defendants who claim ignorance.[110]

### A. Stadtmauer*'s Foundation in Circuit Courts and Third Circuit Precedent*

*Stadtmauer* derives legitimacy both from its sister circuits and from Third Circuit precedent.[111] *Stadtmauer* specifically adhered to language from First and Eleventh Circuit decisions holding that a defendant's defense of ignorance will fail if the defendant remained ignorant by deliberately turning a blind eye so as to avoid materials that would have informed the defendant of the applicable legal duties.[112] Accordingly, *Stadtmauer* falls in line with the other circuit courts that have specifically addressed willful blindness within the context of *Cheek*.[113]

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107. For a discussion of *Stadtmauer*'s implications for the criminal tax field, see *infra* notes 108-42 and accompanying text.

108. For a discussion of *Stadtmauer*'s legitimacy both in other circuit court decisions and in Third Circuit precedent, see *infra* notes 114-19 and accompanying text.

109. For a discussion of the willfulness standard in criminal tax cases, including insight regarding the definition of knowledge derived from *Stadtmauer*, see *infra* notes 120-34 and accompanying text.

110. For a discussion of how practitioners handling criminal tax cases should proceed with *Stadtmauer*'s holding in mind, see *infra* notes 133-40 and accompanying text.

111. *See* Jeremy D. Frey & Paul D. Pellegrini, *Willful Blindness Instructions in Criminal Tax Cases: The Third Circuit's* Stadtmauer *Ruling*, CLIENT ALERT (Pepper Hamilton LLP, Philadelphia, PA) Nov. 16, 2010, at 1-2, available at http://www.pepperlaw.com/publications_update.aspx?ArticleKey=1940 (asserting that *Stadtmauer* decision falls in line with First, Eight, and Eleventh Circuit treatment of willful blindness). *See generally* United States v. Anthony, 545 F.3d 60, 64-65 (1st Cir. 2008) (holding willful blindness instructions appropriate in criminal tax proceedings and do not violate willfulness standard set in *Cheek*); United States v. Dean, 487 F.3d 840, 851 (11th Cir. 2007) (holding that deliberate ignorance instruction is appropriate when defendant is subjectively aware of high probability of fact in question); United States v. Dykstra, 991 F.2d 450 (8th Cir. 1993) (same); United States v. Caminos, 770 F.2d 361, 365 (3d Cir. 1985) (same).

112. *See* United States v. Stadtmauer, 620 F.3d 238, 257 (3d Cir. 2010) (emphasizing that one's personal belief that one is complying with tax laws must be held in good faith (citing *Anthony*, 545 F.3d at 65)).

113. *See generally Anthony*, 545 F.3d at 64-65 (holding that willful blindness instructions do not run afoul of *Cheek*); *Dean*, 487 F.3d at 851 (same); *Dykstra*, 991

The Third Circuit also noted that its decision to allow willful blindness instructions in criminal tax cases adheres to circuit precedent.[114] The instructions issued by the district court mirrored the requirement previously established in *United States v. Wert-Ruiz*[115] and *United States v. Caminos*[116] for a willful blindness instruction to stipulate that the defendant must be subjectively, not merely objectively, aware of the high probability of the fact at issue.[117] Additionally, the district court emphasized that either negligence or a good faith mistake are insufficient to establish knowledge.[118] *Stadtmauer* effectively made available willful blindness instructions to federal prosecutors in similar criminal tax proceedings so long as they are in accordance with the requirements detailed above.[119]

### B. *Out of the Oven:* Stadtmauer*'s Impacts Within the Third Circuit*

The Third Circuit in *Stadtmauer* establishes that willful blindness instructions used to determine willfulness in tax crimes do not run afoul of *Cheek*.[120] As such, *Stadtmauer* conclusively broadens the definition of the knowledge aspect of willful conduct, thereby expanding the scope of culpable conduct that fits within this definition.[121] By limiting the ability of an individual facing criminal tax liability to claim ignorance, the Third Circuit has implicitly both imposed a duty on taxpayers to acknowledge

F.2d at 450 (same). For a discussion on the First, Eighth, and Eleventh Circuits' treatment of willful blindness within the context of *Cheek*, see *supra* notes 57-60 and accompanying text.

114. *See Stadtmauer*, 620 F.3d at 257 (stating specifically that instructions used by district court adhered to Third Circuit precedent).

115. 228 F.3d 250, 255 (3d Cir. 2000).

116. 770 F.2d 361, 365 (3d Cir. 1985).

117. *See Stadtmauer*, 620 F.3d at 257 (describing how willful blindness instructions in *Stadtmauer* adhered to requirements set by *Wert-Ruiz* and *Caminos*).

118. *See id.* (noting knowledge could not be found if Stadtmauer simply acted foolishly or out of inadvertence). Subsequent to *Stadtmauer*, the Third Circuit has reiterated that the good faith defense should be "limited to true misunderstandings rather than extended to broad excuses for refusal to pay taxes." United States v. Mostler, 411 F. App'x 521, 524 (3d Cir. 2011) (affirming defendant's conviction for tax evasion).

119. *See Stadtmauer*, 620 F.3d at 273 (upholding district court's conviction of Stadtmauer, as "a willful blindness instruction may, where warranted by the trial evidence in a criminal tax case, properly apply to a defendant's knowledge of his legal duties").

120. *See id.* at 256 (stating that nothing in *Cheek* prevents use of willful blindness instruction in criminal tax cases).

121. *Cf.* United States v. Jewell, 532 F.2d 697, 700 (9th Cir. 1976) (noting justification for willful blindness instruction is that "deliberate ignorance and positive knowledge are equally culpable"). Because deliberate ignorance yields the same liabilities as positive knowledge, a willful blindness instruction will add to the type of conduct that is culpable. *Cf. id.* (providing justification for willful blindness instruction).

their obligations under the tax code and lessened the government's burden in obtaining tax crime convictions.[122]

First, by broadening the type of actions that will fall under the category of willful conduct, *Stadtmauer* implicitly requires taxpayers to acknowledge their legal duties under the tax code and realize the consequences of noncompliance.[123] This obligation stems from the fact that the availability of willful blindness instructions to federal prosecutors allows the jury to consider objective elements of a taxpayer's situation, potentially including whether the taxpayer performed adequate due diligence.[124] This evaluation of a defendant according to an objective standard is due, in part, to the fact that "[t]he more unreasonable the asserted beliefs or misunderstandings are, the more likely the jury will consider them to be nothing more than simple disagreement with known legal duties imposed by the tax laws."[125] Because an unreasonable belief is likely to be met with doubt by a jury, taxpayers in noncompliance must be able to clearly establish a good faith belief that they were not in violation of any tax code provisions.[126]

The Third Circuit reiterated established dicta that "'[t]he substantive justification for [a willful blindness instruction] is that deliberate ignorance and positive knowledge are equally culpable.'"[127] To establish a good faith claim of ignorance or misunderstanding, however, a taxpayer seemingly need only have performed adequate due diligence or, in Stadtmauer's case, inquiry into the deductions on tax returns.[128] Further-

122. *See* Frey & Pellegrini, *supra* note 111 (suggesting that *Stadtmauer* will make it easier for prosecutors to convict).

123. For a discussion of how *Stadtmauer* requires taxpayers to investigate their legal duties under the tax code, see *infra* notes 124-30 and accompanying text.

124. *See* Brenda S. Hustis & John Y. Gotanda, *The Responsible Corporate Officer: Designated Felon or Legal Fiction?*, 25 LOY. U. CHI. L.J. 169, 178-79 (1994) (explaining how knowledge is inferred when certain facts would have caused most people to further investigate but defendant did not); Frey & Pellegrini, *supra* note 111 (discussing case on appeal to Second Circuit involving willful blindness instruction where defendant was convicted for inadequate due diligence).

125. *See* Cheek v. United States, 498 U.S. 192, 203-04 (1992) (rejecting notion that good faith belief must be objectively reasonable). The Court in *Cheek* also suggests that the more unreasonable the defendant's belief, the more likely the jury will find that the Government has carried its burden of proving knowledge. *See id.* at 204 (commenting on effects of unreasonable belief on jury's evaluation of defendant's mental state).

126. *See* United States v. Stadtmauer, 620 F.3d 238, 256 (3d Cir. 2010) (emphasizing that good faith misunderstanding or ignorance requires that such belief be honestly and genuinely held).

127. *Id.* at 255 (quoting United States v. Jewell, 532 F.2d 697, 700 (9th Cir. 1976)). Acting with knowledge, "'therefore, is not necessarily to act only with positive knowledge, but also to act with an awareness of the high probability of the existence of the fact in question.'" *Id.* (quoting *Jewell*, 532 F.2d at 700).

128. *See id.* at 259 (discussing evidence which led to willful blindness instruction). The court relied on evidence that Stadtmauer spent little time reviewing the partnerships' tax returns before signing them, and that he did not ask the partnership accountant about the nature of deductions made, to conclude that the willful

more, in light of opinion that the tax code is no longer the arcane and complex structure that it once was, investigating one's legal responsibilities under the tax code may likewise not be as daunting a task as it may have been in the past.[129] The availability of a willful blindness instruction in criminal tax proceedings, therefore, does not significantly increase the burden on taxpayers to understand the law, but merely requires that taxpayers perform simple inquiry into their legal duties and adjust their conduct to comply with such obligations.[130]

Second, the established availability of willful blindness instructions within the Third Circuit for criminal tax proceedings eases the government's burden in obtaining convictions.[131] In a field of law where direct evidence is extremely difficult to acquire, the willful blindness theory opens one more door through which the government may establish a defendant's knowledge of applicable legal duties under the tax code.[132] The government's access to this instruction on knowledge in cases such as *Stadtmauer*, where the defendant clearly buried his head in the sand to avoid learning about his legal obligations, allows the government to concentrate its evidence-gathering efforts on circumstantial evidence that points to the taxpayer's level of sophistication and past compliance efforts.[133] Because the IRS already targets prominent, more sophisticated

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blindness instruction was properly given. *See id.* (noting that Government need not present direct evidence to establish willful blindness). Where a taxpayer's efforts to learn about the applicable legal obligations, however, are proven to be selective, a willful blindness instruction may still be appropriate. *See* Bucy, *supra* note 17, at 664 (describing situations in which willful blindness instruction may be appropriate).

129. *See* Yochum, *supra* note 19, at 252 (expressing belief that "no longer is the tax statute an arcane regulatory device but rather . . . well-understood in its fundamental obligations"). Professor Yochum posits that if cases involve complex rules, the availability of vagueness challenges should be sufficient to protect innocent taxpayers. *See id.* (proposing statutory modification to reduce confusion associated with tax crimes).

130. *Cf. Stadtmauer*, 620 F.3d at 259 (detailing circumstances of Stadtmauer's position and actions that helped Government to establish willfulness in this case); Hustis & Gotanda, *supra* note 124, at 178-79 (explaining inferences of knowledge in stating: "[k]nowledge of facts that would induce most people to investigate further, but which did not so induce the defendant, allows an inference that the defendant knew the facts that would be uncovered upon investigation and thus consciously avoided discovering those facts").

131. *See* Bucy, *supra* note 17, at 664 (describing how willful blindness instructions are helpful to government); Frey & Pellegrini, *supra* note 111 (stating that willful blindness instructions make it easier for federal prosecutors to convict in criminal tax cases).

132. *See* Sean Basinski & Andrew Forman, *Tax Violations*, 37 AM. CRIM. L. REV. 1003, 1012 (2000) (noting difficulty for government to establish direct proof in tax crimes).

133. *See id.* at 1019 (explaining that in cases where defendants claims knowledge, "fact-finders look to the taxpayer's conduct and past record of compliance, as well as the taxpayer's sophistication and level of knowledge" (footnotes omitted)). The government employs three primary methods of obtaining circumstantial evidence in criminal tax cases: net worth, cash expenditures, and bank

taxpayers in criminal tax prosecutions, a willful blindness instruction may often mean the difference between acquittal and conviction.[134]

### C. *Advice to Practitioners*

The decision in *Stadtmauer* offers noteworthy guidance for practitioners, particularly defense attorneys, handling criminal tax cases within the Third Circuit.[135] First, defense attorneys should seek to limit the government's opportunity to use a willful blindness instruction.[136] A willful blindness instruction is only appropriate when there is sufficient evidence that the defendant actually knew of the fact in question, but refrained from obtaining the final confirmation.[137] Therefore, such instructions should only be given when warranted by sufficient evidence and should be used "sparingly."[138] Practitioners defending individuals faced with criminal tax allegations should therefore always object to any willful blindness instruction in addition to carefully reviewing the language of the government's proposed instruction.[139]

Defense attorneys should be wary of the potential for willful blindness instructions to confuse the jury, as willful blindness may look extremely similar to recklessness or even negligence regarding knowledge of material facts or legal duties.[140] As such, practitioners should ensure that willful blindness instructions make clear that the jury must find that the

deposits. *See id.* at 1013 (describing how government establishes circumstantial evidence in such cases).

134. *See* Knight & Knight, *supra* note 75, at 178 (stating that IRS "may be more likely to press a case involving a locally prominent taxpayer than a relatively obscure person"); Frey & Pellegrini, *supra* note 111 (noting that in *Stadtmauer* willful blindness instruction "could have made all the difference" for conviction).

135. For a discussion providing insights to criminal tax practitioners in the Third Circuit, see *infra* notes 136-42 and accompanying text.

136. *See* Frey & Pelligrini, *supra* note 111 (advocating for defense counsel to seek to exclude evidence "that might support government arguments to the court that a willful blindness instruction to the jury is warranted by the trial evidence").

137. *See* United States v. Reyes, 302 F.3d 48, 54 (2d Cir. 2002) ("'A court can properly find wilful [sic] blindness only where it can almost be said that the defendant actually knew.'" (quoting GLANVILLE WILLIAMS, CRIMINAL LAW: THE GENERAL PART § 57, at 159 (2d ed. 1961))); *see also* Bucy, *supra* note 17, at 664 (noting that defendants deliberately ignore certain facts to be able to deny knowledge if indicted).

138. *See* Bucy, *supra* note 17, at 663 (stipulating that instructions must be warranted by sufficient evidence).

139. *See id.* ("It is inappropriate to give this instruction where the facts support actual knowledge or where the evidence justifies only two possible conclusions: knowledge or no knowledge."). On appeal, the Third Circuit will review a district court's issuance of willful blindness instructions for abuse of discretion and view facts "in the light most favorable to the government." *See* United States v. Wert-Ruiz, 228 F.3d 250, 255 (3d Cir. 2000) (providing standard of review).

140. *See generally* United States v. Stadtmauer, 620 F.3d 238, 254 (3d Cir. 2010) (specifying that willfulness cannot be established by mistake, ignorance, or negligence); *see also* Frey & Pellegrini, *supra* note 111 (remarking on confusion caused by willful blindness instructions).

defendant deliberately ignored the fact at issue, and was not merely negligent in failing to learn of the fact.[141] Finally, defense counsel should seek counter-instructions when appropriate.[142]

## V. CONCLUSION

Because the Third Circuit in *Stadtmauer* firmly endorsed the use of willful blindness instructions in criminal tax proceedings, there exists a broader definition of knowledge and, along with it, a wider scope of taxpayer conduct that is susceptible to criminal liability.[143] As a result of this decision, it will be easier for the government to establish a defendant's willful conduct and, therefore, easier to obtain convictions in cases similar to Stadtmauer's.[144] Taxpayers, on the other hand, will face greater difficulty in claiming good faith ignorance or misunderstanding of the tax code unless their beliefs are reasonable.[145] The Third Circuit's decision in *Stadtmauer* has effectively "sniped down" any opportunities for taxpayers to simply bury their heads in the sand.[146]

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141. *See* Frey & Pelligrini, *supra* note 111 ("[T]he concept of conscious avoidance is that the defendant 'be shown to have decided not to learn the key fact, not merely to have failed to learn it through negligence.'" (quoting United States v. Rodriguez, 983 F.2d 455, 458 (2d Cir. 1993))).

142. *See id.* (providing advice for defense attorneys involved in criminal tax proceedings).

143. For further discussion of the broadened definition of knowledge established in *Stadtmauer* and its impact on culpable conduct, see *supra* notes 111-19 and accompanying text.

144. For a discussion of the government's eased burden of establishing willfulness within the criminal tax context, see *surpa* notes 131-34 and accompanying text.

145. For a discussion of the increased difficulty for taxpayers to establish claims of ignorance in the criminal tax context, see *supra* notes 123-30 and accompanying text.

146. For a discussion of the Third Circuit's decision upholding the district court's willful blindness instructions, see *supra* notes 75-106 and accompanying text.