**ANNOTATIONS AND COMMENTS**

“Good-faith” is a defense whenever the defendant’s good-faith is inconsistent with a finding that the defendant acted with the mental state required by the definition of the offense charged. Good-faith exculpates when it necessarily negates the required mental state for the offense. Of course, whether good-faith would negate the mental state element depends on how that element is defined with respect to the offense charged and the evidence presented at trial in support of the defendant’s good-faith defense. Because good-faith relates to an element of the offense, the defendant does not have the burden of persuasion, although the defendant may have the burden of production.

Perhaps because of *Cheek v. United States*, 498 U.S. 192 (1991), where the Supreme Court held that the defendant could not be convicted if the jury found that he honestly believed the tax laws did not make his conduct criminal, even if that belief was unreasonable, this defense is often thought of in connection with tax offenses.

The defense has also been used commonly in the context of fraud type offenses, such as mail fraud, securities fraud, bankruptcy fraud, bank fraud and the like, as well as false statement crimes.

This instruction should be used, where appropriate, only in cases where “intent” is an element. It is not to be used where it is required only that the defendant acted “knowingly.”

*See United States v. Eisenstein*, 731 F.2d 1540, 1544 (11th Cir. 1984).

*See also United States v. Condon*, 132 F.3d 653 (11th Cir. 1998) (describing the circumstances in which a good-faith reliance upon advice of counsel instruction is appropriate).

*See also United States v. Petrie*, 302 F.3d 1280 (11th Cir. 2002) (the instruction may be applied to the charges of conspiracy to launder money if there is an evidentiary predicate for the defense).