, the defendant in this case, has been charged with the crime of theft by failure to make required disposition of funds received or held.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant obtained [property from anyone] [personal services from an employee];

(2) the [property was] [services were] obtained [upon an agreement] [subject to a known legal obligation] to make specified payment or other disposition to a third person;

(3) the defendant exercised control over the [property] [services] as defendant's own;

(4) the defendant failed to make the required payment or disposition; and

(5) the value of the [property] [services] was $25,000 or more.

[It is not a defense that it may be impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition.]

[If you find that the defendant was a fiduciary, officer, or employee of a government or financial institution, then you may, but do not have to, infer that:

(1) the defendant exercised control over the [property][services] as the defendant’s own if [the defendant failed to pay or account upon lawful demand] [an audit revealed a shortage or falsification of accounts]; and

(2) the defendant knew the defendant’s relevant legal obligations.]

# USE NOTE

The following terms are defined in other instructions:

"financial institution" – 11.46.990

"knowingly" – 11.81.900(a)

"obtain" – 11.46.990

"property" – 11.81.900(b)

"services" - 11.81.900(b)

For determination of value, see AS 11.46.980.

The invalidity of impossibility to identify funds as a defense under AS 11.46.210(b) may be a question of law about which the jury need not be informed.

Source note: The last paragraph of this instruction is based on Alaska Evid. R. 303(a) and (b).