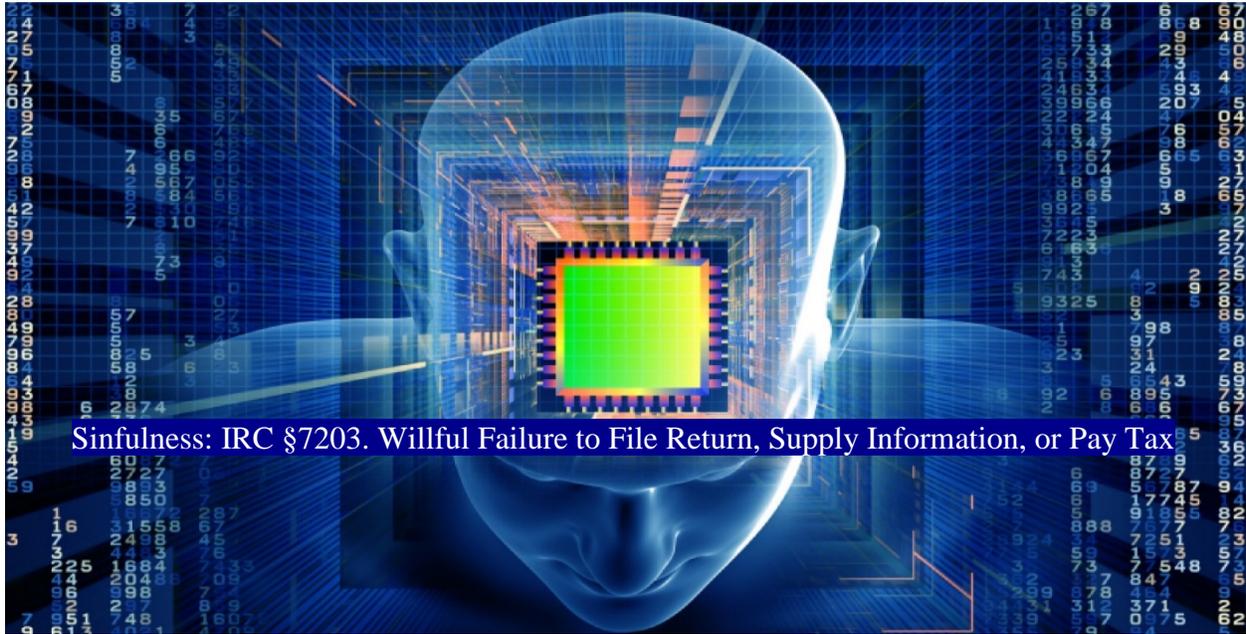
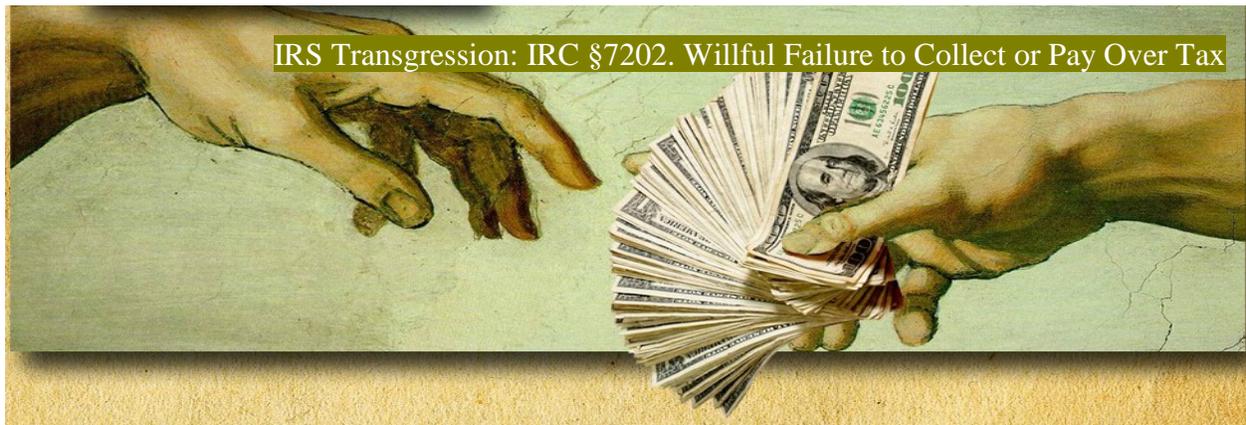


[Intellectual Tithing]

Intellectual Tithing & Offerings for a Religion of Reality



Sinfulness: IRC §7203. Willful Failure to File Return, Supply Information, or Pay Tax



IRS Transgression: IRC §7202. Willful Failure to Collect or Pay Over Tax



26 U.S. Code § 6011 - General requirement of return, statement, or list

"..shall make a return or statement according to the forms and regulations prescribed..."

For the Advancement in a Religion of **Submission**

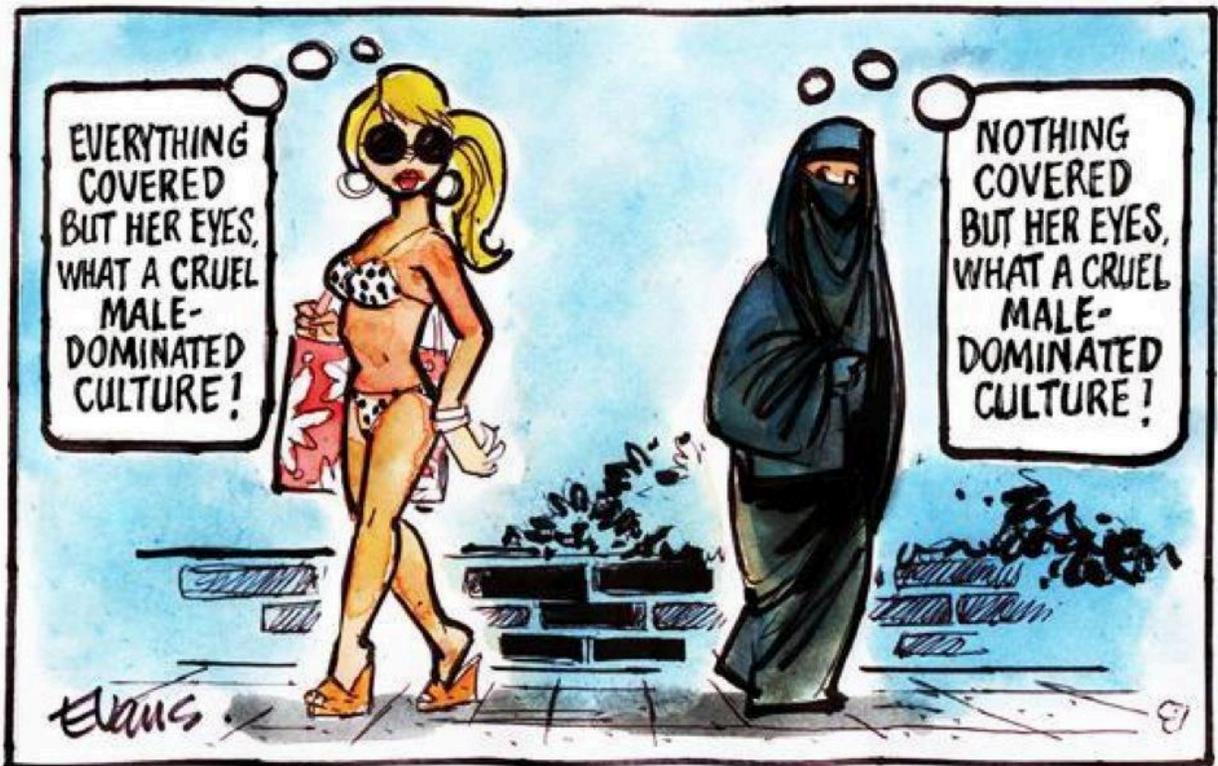
26 U.S. Code §6011 advances *Intellectual Tithing & Offerings* for persons who believe in, practice or makes a [proper return to the IRS and their path of life, beliefs and practices] "[proper return]"

A Quintessential Right of Intellectual Tithing:

CHOICE



Our choices define us &/or defeat us as a Race



Our choices often define how we see others & ourselves

[Intellectual Tithing]

Plaintiff [believes] [intellectual tithing is the giving of new and useful information to the IRS' Tree of Knowledge of good beliefs and evil practices] (“[Intellectual Tithing]”)



26 U.S. Code § 7806 - Construction of title

(a) Cross references

The cross references in this title to other portions of the title, or other provisions of law, where the word “see” is used, are made only for convenience, and shall be given no legal effect.

(b) Arrangement and classification

No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law. (Emphasis added)

Source

(Aug. 16, 1954, ch. 736, 68A Stat. 917.)

References in Text

This Act, referred to in subsec. (b), is act Aug. 16, 1954

Plaintiff [believes] 26 U.S. Code § 7806 - Construction of title is law respecting an establishment of religion or the endorsement thereof; specifically where the word “see” is used in cross reference, are made only for convenience, and shall be given no legal effect.

Intellectual Tithing & Offerings

For the Advancement in a Religion of **Submission**

Manifesting...

An active religion of reality existing as [Organized Religion of THEIRS] (“[Taxology]”)

<< Previous [TITLE 26](#) / [Subtitle F](#) / [CHAPTER 76](#) / [Subchapter A](#) / [§ 7410](#) [Next](#) >>

26 USC 7410: Cross references

Text contains those laws in effect on July 4, 2016

From Title 26-INTERNAL REVENUE CODE
Subtitle F-Procedure and Administration
CHAPTER 76- JUDICIAL PROCEEDINGS
Subchapter A-Civil Actions by the United States

§7410. Cross references

- (1) For provisions for collecting taxes in general, **see chapter 64.**
- (2) For venue in a civil action for the collection of any tax, **see section 1396 of Title 28** of the United States Code.
- (3) For venue of a proceeding for the recovery of any fine, penalty, or forfeiture, **see section 1395 of Title 28** of the United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 875 , §7407; renumbered §7408, Pub. L. 94–455, title XII, §1203(g), Oct. 4, 1976, 90 Stat. 1693 ; renumbered §7409, Pub. L. 97–248, title III, §321(a), Sept. 3, 1982, 96 Stat. 612 ; renumbered §7410, Pub. L. 100–203, title X, §10713(a)(1), Dec. 22, 1987, 101 Stat. 1330–468 .)

[http://uscode.house.gov/view.xhtml?req=\(title:26 section:7410 edition:prelim\) OR \(granuleid:USC-prelim-title26-section7410\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:26 section:7410 edition:prelim) OR (granuleid:USC-prelim-title26-section7410)&f=treesort&edition=prelim&num=0&jumpTo=true)

Title 28 > Part IV > Chapter 87 > § 1396

28 U.S. Code § 1396 - Internal revenue taxes

Any civil action for the collection of internal revenue taxes may be brought in the district where the liability for such tax accrues, in the district of the taxpayer’s residence, or in the district where the return was filed.

(June 25, 1948, ch. 646, 62 Stat. 936.)

“...are made only for convenience, and shall be given no legal effect.”

28 U.S. Code § 1395 - Fine, penalty or forfeiture

§ 1395.

Fine, penalty or forfeiture

(a)

A civil proceeding for the recovery of a pecuniary fine, penalty or forfeiture may be prosecuted in the district where it accrues or the defendant is found.

(b)

A civil proceeding for the forfeiture of property may be prosecuted in any district where such property is found.

(c)

A civil proceeding for the forfeiture of property seized outside any judicial district may be prosecuted in any district into which the property is brought.

(d)

A proceeding in admiralty for the enforcement of fines, penalties and forfeitures against a vessel may be brought in any district in which the vessel is arrested.

(e)

Any proceeding for the forfeiture of a vessel or cargo entering a port of entry closed by the President in pursuance of law, or of goods and chattels coming from a State or section declared by proclamation of the President to be in insurrection, or of any vessel or vehicle conveying persons or property to or from such State or section or belonging in whole or in part to a resident thereof, may be prosecuted in any district into which the property is taken and in which the proceeding is instituted.

(June 25, 1948, ch. 646, 62 Stat. 936.)

“...are made only for convenience, and shall be given no legal effect.”

26 U.S. Code CHAPTER 64

Subchapter A: General Provisions

From Title 26—INTERNAL REVENUE CODE

Subtitle F—Procedure and Administration

CHAPTER 64—COLLECTION

Subchapter A—General Provisions

Sec.

6301. Collection authority

6302. Mode or time of collection.

6303. Notice and demand for tax.

6304. Fair tax collection practices.

6305. Collection of certain liability.

6306. Qualified tax collection contracts.

6307. Special compliance personnel program account.

“...are made only for convenience, and shall be given no legal effect.”

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES (sections 7201 to 7345)

Subchapter A—Crimes (sections 7201 to 7241)

Subchapter B—Other Offenses (sections 7261 to 7275)

Subchapter C—Forfeitures (sections 7301 to 7328)

Subchapter D—Miscellaneous Penalty and Forfeiture Provisions (sections 7341 to 7345)

26 USC 7203: Willful failure to file return, supply information, or pay tax

Text contains those laws in effect on August 13, 2016

Title 26-INTERNAL REVENUE CODE

Subtitle F-Procedure and Administration

CHAPTER 75-CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter A-Crimes

PART I-GENERAL PROVISIONS

§7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, 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. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

(Aug. 16, 1954, ch. 736, 68A Stat. 851 ; Pub. L. 90-364, title I, §103(e)(5), June 28, 1968, 82 Stat. 264 ; Pub. L. 97-248, title III, §§327, 329(b), Sept. 3, 1982, 96 Stat. 617 , 618; Pub. L. 98-369, div. A, title IV, §412(b)(9), July 18, 1984, 98 Stat. 792 ; Pub. L. 100-690, title VII, §7601(a)(2)(B), Nov. 18, 1988, 102 Stat. 4504 ; Pub. L. 101-647, title XXXIII, §3303(a), Nov. 29, 1990, 104 Stat. 4918 .)

AMENDMENTS

1990-Pub. L. 101-647 substituted "substituting 'felony' for 'misdemeanor' and" for "substituting".

1988-Pub. L. 100-690 inserted at end "In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting '5 years' for '1 year'."

1984-Pub. L. 98-369 struck out "(other than a return required under the authority of section 6015)" after "to make a return".

1982-Pub. L. 97-248, §329(b), substituted "\$25,000 (\$100,000 in the case of a corporation)" for "\$10,000".

Pub. L. 97-248, §327, inserted last sentence providing that, in the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

1968-Pub. L. 90-364 struck out reference to section 6016.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-647, title XXXIII, §3303(c), Nov. 29, 1990, 104 Stat. 4918, provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions, and failures to act, occurring after the date of the enactment of this Act [Nov. 29, 1990]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 applicable to actions after Nov. 18, 1988, see section 7601(a)(3) of Pub. L. 100-690, set out as a note under section 6050I of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 329(b) of Pub. L. 97-248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97-248, set out as a note under section 7201 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, see section 103(f) of Pub. L. 90-364, set out as a note under section 243 of this title.

[http://uscode.house.gov/view.xhtml?req=\(title:26 section:7203 edition:prelim\) OR \(granuleid:USC-prelim-title26-section7203\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:26 section:7203 edition:prelim) OR (granuleid:USC-prelim-title26-section7203)&f=treesort&edition=prelim&num=0&jumpTo=true)

[<< Previous](#) [TITLE 26 / Subtitle F / CHAPTER 75 / Subchapter A / PART I / § 7202](#) [Next >>](#)

26 USC 7202: Willful failure to collect or pay over tax

Text contains those laws in effect on August 13, 2016

From Title 26-INTERNAL REVENUE CODE

Subtitle F-Procedure and Administration

CHAPTER 75-CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter A-Crimes

PART I-GENERAL PROVISIONS

§7202. Willful failure to collect or pay over tax

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

(Aug. 16, 1954, ch. 736, 68A Stat. 851 .)

[http://uscode.house.gov/view.xhtml?req=\(title:26 section:7202 edition:prelim\) OR \(granuleid:USC-prelim-title26-section7202\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:26 section:7202 edition:prelim) OR (granuleid:USC-prelim-title26-section7202)&f=treesort&edition=prelim&num=0&jumpTo=true)



Part 9. Criminal Investigation

Chapter 1. Criminal Investigation Mission and Strategies

Section 3. Criminal Statutory Provisions and Common Law

9.1.3 Criminal Statutory Provisions and Common Law

- [9.1.3.1 Overview](#)
- [9.1.3.2 Definitions of Law](#)
- [9.1.3.3 Title 26 - Criminal Offenses Under the Internal Revenue Code](#)
- [9.1.3.4 Title 18 - Criminal Penalties Applicable to Fraud and Miscellaneous Investigations](#)

9.1.3.1 (05-15-2008)

Overview

1. Federal crimes are statutory crimes. Statutory law refers to laws enacted and established by a legislative body. Federal prosecution is limited to the areas prescribed by Federal statute.
2. Various aspects of the law are defined in this section.
3. The section also provides:
 - Links to the complete text of the more frequently used penal sections of the United States Code (USC), Title 26 and Title 18 and some elements that need to be established to sustain prosecution.
 - Links to the complete text of the penal statutes of the USC, Title 31, that are within the jurisdiction of IRS.
 - Links to the complete text of the statutes governing the statute of limitations for criminal prosecution for both Title 26, Title 18 and Title 31 prosecutions.
 - Information relating to criminal fines and penalties.
4. This section does not include the text of the civil and criminal forfeiture statutes within CI jurisdiction (see IRM 9.7, Asset Seizure and Forfeiture concerning those topics). See Exhibit

9.1.3-1 which provides a list of those statutes within the jurisdiction of CI, including the forfeiture statutes.

9.1.3.2 (07-29-1998)
Definitions of Law

1. Laws are rules of conduct which are prescribed or formally recognized as binding and are enforced by the governing power.

9.1.3.2.1 (07-29-1998)
Statutory Law

1. Statutory law refers to laws enacted and established by a legislative body. All Federal crimes are statutory, but common law is frequently used for defining words used in the statutes. For example, statutes provide penalties for attempted evasion of income tax, but they do not define the terms "attempt" and "evasion."

9.1.3.2.2 (05-15-2008)
Common Law

1. The common law is the body of law that develops and derives through judicial decisions, rather than from legislative enactments.

9.1.3.2.3 (07-29-1998)
Substantive Law

1. Substantive law creates, defines, and regulates rights, duties, responsibilities, and obligations, whereas adjective or remedial law provides rules for enforcing rights or obtaining redress for their invasion.

9.1.3.2.4 (07-29-1998)
Adjective Law

1. Adjective law provides rules of procedure or practice concerning proceedings before, during, and after trial, and rules of evidence relating to the admission of evidence at trial and the testing of the credibility and competency of witnesses.

9.1.3.2.5 (05-15-2008)
Criminal Law

1. Criminal law is the branch of law that defines crimes and provides punishment. A crime is an offense against a state or the United States and is generally not punished through a private action.
2. Criminal sanctions, generally involving imprisonment and fines, are covered in Chapter 75 of the USC. In addition, some of the criminal sanctions in Title 18, and Title 31 of the USC, also apply to Title 26 matters.

9.1.3.2.5.1 (05-15-2008)
Authorized Sentences

1. Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute shall be sentenced in accordance with 18 USC §3551, Authorized Sentences.
2. Title 18 USC §3551 repealed 18 USC §1, Definition of Crimes.

9.1.3.2.5.2 (05-15-2008)

Parties to Criminal Offenses

1. See subsection 9.1.3.4.1 and subsection 9.1.3.4.2 pertaining to 18 USC §2, Principals and 18 USC §3, Accessory After the Fact.

9.1.3.2.6 (05-15-2008)

Civil Law

1. Civil law is the body of law concerning civil or private rights and remedies, as contrasted with criminal law.
2. Civil sanctions for tax offenses, which are generally assessed as additions to the tax imposed and are also referred to as ad valorem penalties, are covered in Chapter 68 of the Internal Revenue Code (IRC). Examples of civil penalties include:
 - A. delinquency penalty (not exceeding 25 percent) for failure to file a timely return or to pay tax (26 USC §6651)
 - B. accuracy-related penalty, a 20 percent penalty for negligence or disregard of rules or regulations (26 USC §6662)
 - C. fraud penalty, a 75 percent penalty on the portion of an underpayment that is due to fraud (26 USC §6663)
3. For more information concerning civil issues that may affect a criminal investigation or prosecution, see IRM 9.5.13, Civil Considerations; IRM 9.5.14, Civil Activity at the Close of the Subject Criminal Investigation; and Chapter 9.6, Trial and Court Related Activities. Chapter 9.6 includes IRM 9.6.2, Plea Agreements and Sentencing Process; IRM 9.6.3, Pre-Trial Procedures; and IRM 9.6.4, Trial.

9.1.3.2.7 (05-15-2008)

Statutes of Limitations

1. Statutes of limitations are Federal and state statutes setting maximum time periods during which certain actions can be brought or rights enforced.
2. See subsection 9.1.3.6 for a discussion of the statute of limitations on criminal prosecution in general and with respect to specific offenses.

9.1.3.3 (05-15-2008)

Title 26 - Criminal Offenses Under the Internal Revenue Code

1. Tax crimes are defined in Chapter 75 of the Internal Revenue Code (IRC) of 1986, entitled Crimes, Other Offenses, and Forfeitures. In addition, an offense under 26 USC §6050I may be subject to criminal sanctions. Unless otherwise indicated, the following penal sections of the IRC apply to all taxes imposed by Title 26. The subsections that follow provide links to the

statute and in some instances the elements of the offense and common law interpretations.

9.1.3.3.1 (05-15-2008)

26 USC §6050I - Structuring Transactions to Evade Cash Reporting

1. Title 26 USC §6050I requires trades and businesses to file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business when in receipt of more than \$10,000 in cash from one transaction or two or more related transactions.
2. Title 26 USC §6050I(f) prohibits structuring transactions to evade these reporting requirements.
3. For more information concerning the penalties associated with a violation of 26 USC §6050I, see subsection 9.1.3.3.4.
4. As of January 1, 2002, pursuant to the provisions of the USA Patriot Act, Form 8300 has a dual filing requirement under both Titles 26 and 31 (see 31 USC §5331). Therefore, care must be taken to ensure that disclosure of Forms 8300 and information extracted from these forms is made under the appropriate guidelines. For further information, see IRM 9.3.1, Disclosure.

9.1.3.3.2 (05-15-2008)

26 USC §7201 – Attempt to Evade or Defeat Tax

1. Title 26 USC §7201 prohibits willfully attempting in any manner to evade or defeat any tax or the payment thereof.
2. Under 26 USC §7201, a violation of the statute is punishable by a maximum fine of \$100,000 (\$500,000 in the case of a corporation), or imprisonment of not more than five years, or both, together with the costs of prosecution. However, the criminal fine provisions under 18 USC §3571 increase the maximum permissible fines for a violation of 26 USC §7201 to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

9.1.3.3.2.1 (05-15-2008)

26 USC §7201 – Avoidance Distinguished from Evasion

1. Avoidance of taxes is not a criminal offense. Any attempt to reduce, avoid, minimize, or alleviate taxes by legitimate means is permissible. The distinction between avoidance and evasion is fine, yet definite. One who avoids tax does not conceal or misrepresent. He/she shapes events to reduce or eliminate tax liability and, upon the happening of the events, makes a complete disclosure. Evasion, on the other hand, involves deceit, subterfuge, camouflage, concealment, some attempt to color or obscure events or to make things seem other than they are. For example, the creation of a bona fide partnership to reduce the tax liability of a business by dividing the income among several individual partners is tax avoidance. However, the facts of a particular investigation may show that an alleged partnership was not, in fact, established and that one or more of the alleged partners secretly returned his/her share of the profits to the real owner of the business, who, in turn, did not report this income. This would be an instance of attempted evasion.

9.1.3.3.2.2 (05-15-2008)
26 USC §7201 - Elements of the Offense

1. Whether the offense at issue involves the evasion or defeat of the assessment of a tax or of its payment, the elements of 26 USC §7201 are the same. However, the courts have interpreted the terms differently in some instances. These differences are noted in the explanations below. The elements of the offense are:
 - A. an additional tax due and owing
 - B. an affirmative attempt in any manner to evade or defeat any tax, or the payment thereof
 - C. willfulness
2. The following paragraphs provide additional details concerning each element of the offense.

9.1.3.3.2.2.1 (05-15-2008)
26 USC §7201 – Additional Tax Due and Owing

1. The government must establish that at the time the offense was committed the defendant owed more tax than he/she reported. However, the government is not required to prove the precise amount of tax evaded. Rather, the government may satisfy its obligation by showing that the amount of tax evaded was substantial. "Substantial" is a relative term and need not be measured in terms of gross and net income or by any particular percentage of the tax shown to be due and payable.

Note:

Where there is an evasion or attempted evasion of the payment of tax, courts have interpreted the element of additional tax due and owing somewhat differently. In such cases, the amount of tax due and owing need not be an amount in excess of the total tax reported. Instead, it could be an amount of tax that was shown on the return but was not paid.

2. Carryback losses are technically no legal impediment to prosecution for years in which they eliminate a tax liability. However, the probability of conviction could be lessened where it is shown that a tax deficiency does not exist by operation of law.
3. Likewise, the acceptance by government agents of a waiver agreement (Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) does not bar prosecution. However, experience has demonstrated that attempts to pursue both the criminal and the civil aspects of an investigation concurrently may jeopardize the successful completion of the criminal investigation. As a result, Policy Statement 4-26 (formally P-4-84, Balancing Civil and Criminal Aspects) provides, among other things, that the consequences of civil enforcement actions on matters involved in a criminal investigation and prosecution investigation should be carefully weighed.

9.1.3.3.2.2.2 (05-15-2008)
26 USC §7201 – Attempt to Evade or Defeat Any Tax or Payment Thereof

1. The substance of the offense under 26 USC §7201 is the term "attempt in any manner". The statute does not define attempt, nor does it limit or define the means or methods by which the attempt to evade or defeat any tax may be accomplished.
2. Courts have held, however, that the term "attempt" implies some affirmative act or the commission of some overt act. This affirmative act need not be the filing of a false or fraudulent return, although most cases in this area do involve the filing of such a return. Courts have also held that a false statement made to Treasury agents for the purpose of concealing unreported income is an attempt to evade or defeat a tax.
3. The willful omission of a duty or the willful failure to perform a duty imposed by statute does not per se constitute an attempt to evade or defeat a tax. However, a willful omission or failure (such as a willful failure to make and file a return) when coupled with affirmative acts or conduct from which an attempt may be inferred would constitute an attempt. The Supreme Court in *Spies v. United States* provided examples of conduct that may imply "the attempt to evade or defeat any tax", such as:
 - A. keeping a double set of books
 - B. making false entries, alterations, invoices, or documents
 - C. destroying books or records
 - D. concealing assets or covering up sources of income
 - E. handling one's affairs to avoid making records usual in transactions of the kind
 - F. any conduct, the likely effect of which would be to mislead or to conceal
4. The term "attempt" does not mean that one whose efforts are unsuccessful cannot be convicted under 26 USC §7201. The crime is complete when the attempt is made and nothing is added to its criminality by success or consummation, as would be the case with respect to attempted murder. It has been held that attempts cover both successful and unsuccessful endeavors or efforts. As the courts have stated, the real character of the offense lies, not in the failure to file a return or in the filing of a false return, but rather in the attempt to evade any tax.
5. It is well settled that a separate offense may be committed with respect to each year. Therefore, an attempt for one year is a separate offense from an attempt for a different year.
6. There may also be more than one violation in one year resulting from the same acts, such as the willful attempt to evade the payment of tax and the willful attempt to evade tax. Likewise, there may be a willful attempt to evade tax and a willful failure to file a return for the same year.
7. The mere failure or willful failure to pay a tax does not constitute an attempt to evade or defeat the payment of that tax. The above discussion of the need for an affirmative action or the commission of some overt act applies equally to this offense. Examples of actions that might constitute the attempted evasion of the payment of tax include:
 - A. concealing assets
 - B. reporting income through others
 - C. misappropriating, converting, and diverting corporate assets
 - D. filing late returns
 - E. failing to withhold taxes as required by law
 - F. filing false declarations of estimated taxes
 - G. filing false tentative corporate returns
8. Courts have held that disbursement of available funds to creditors other than the government, or to corporate stockholders

is not in itself an attempt to evade or defeat the payment of taxes.

9.1.3.3.2.2.3 (05-15-2008)
26 USC §7201 – Willfulness

1. To satisfy the third element of 26 USC §7201, the attempt to evade or defeat a tax or the payment thereof must be willful. Willfulness is defined as the voluntary, intentional violation of a known legal duty. Mere understatement of income and the filing of an incorrect return does not in itself constitute a willful attempt to evade tax. Absent an admission or confession, willfulness is rarely subject to direct proof and generally must be inferred from the facts and circumstances. Willfulness may be inferred from any conduct, the likely effect of which would be to mislead or conceal, such as that exemplified in Spies.
2. This definition of willfulness applies to all Title 26 offenses where willfulness is an element, unless stated otherwise.

9.1.3.3.3 (05-15-2008)
26 USC §7202 – Willful Failure to Collect or Pay Over Tax

1. A willful failure to collect or pay over tax is a criminal offense under 26 USC §7202.
2. Under 26 USC §7202, a violation of the statute is punishable by a maximum fine of \$10,000 or imprisonment of not more than five years, or both, together with the costs of prosecution. However, the criminal fine provisions under 18 USC §3571 increase the maximum permissible fines for a violation of 26 USC §7202 to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.
3. Violations under this section usually involve employers who fail to truthfully account for and pay over employment taxes, including Social Security taxes, Federal unemployment tax, and income tax withheld from employee wages. This type of offense is distinct from the failure to file returns, which is covered by 26 USC §7203 and the filing of false and fraudulent returns, which is covered by 26 USC §7206(1).

9.1.3.3.3.1 (05-15-2008)
26 USC §7202 - Elements of the Offense

1. The elements of the offense under 26 USC §7202 are:
 - A. a duty to collect, truthfully account for, and pay over the tax
 - B. a failure to collect and/or truthfully account for and pay over the tax
 - C. willfulness (see subsection 9.1.3.3.2.2.3)
2. The following paragraphs provide additional details concerning each element of the offense.

9.1.3.3.3.1.1 (05-15-2008)
26 USC §7202 – Duty to Collect, Account for, and Pay Taxes

1. The duty to truthfully account for and pay over any tax is considered to be an inseparable dual obligation. Failure to pay, even though an accounting is made in the return filed, leaves the duty as a whole unfulfilled.
2. However, considerable difficulty has been encountered in determining the person charged with the duty of collecting, accounting for and paying over taxes, especially in investigations involving small corporations where the precise duties of the officers are not clearly defined or consistently carried out. For example, in one investigation, it was determined that although the president of the corporation was the dominating force in the management of the firm, there were other officers who signed some returns and engaged in financial activities on behalf of the corporation. As a result, it was unclear whether the president was the officer under a duty to perform the required acts and the indictment was ultimately dismissed. Another case held that the term "person" includes a chief executive officer of a corporation who possesses the authority to determine how corporate funds should be expended. Accordingly, it is imperative to ascertain the various activities and responsibilities of all officers of a corporation before recommending prosecution against any one of them as the "person" referenced in 26 USC §7202 and defined in 26 USC §7343.

9.1.3.3.1.2 (05-15-2008)
26 USC § 7202 – Willfulness

1. Willfulness under 26 USC §7202 is the same as for all Title 26 offenses (i.e., the voluntary, intentional violation of a known legal duty). Evil motive or bad purpose is not needed to establish willfulness. For example, a successful prosecution under this section was based upon the following facts: The subject filed timely employment tax returns but habitually failed to pay the amount of tax shown to be due thereon. He willingly signed agreements for partial payments, made the first payment, and then ignored further requests for payments. When his bank accounts were levied upon, he closed the accounts and made arrangements with his customers to receive future payments in cash. All his assets were then transferred to the names of others. His only defense was that he used the money withheld from his/her employees to meet current operating expenses. An analysis of his bank accounts and records of personal expenditures showed that, contrary to his contentions, a profit was realized from the business in all years and funds were available to pay the taxes shown on the returns.

9.1.3.3.1.3 (05-15-2008)
26 USC §7202 – Statute of Limitations

1. The position of the Department of Justice (DOJ), Tax Division, is that the statute of limitations for violations of 26 USC §7202 is six years, as provided in 26 USC §6531(4).

Note:

Two Federal district courts have concluded that the statute of limitations is three years.

9.1.3.3.4 (05-15-2008)

26 USC §7203 - Willful Failure to File Return, Supply Information, or Pay Tax

1. Generally, a willful failure to file a return, supply information, or pay tax is a misdemeanor under 26 USC §7203. However, in the case of a willful violation of any provision of section 6050I, the violation is a felony.
2. Although they are covered by the same statute, any one of the following violations is considered a separate offense:
 - A. a willful failure to make any type of required return
 - B. a willful failure to pay any estimated tax or tax
 - C. a willful failure to keep records
 - D. a willful failure to supply information
3. With respect to misdemeanors under 26 USC §7203, the provision imposes a maximum fine of \$25,000 (\$100,000 for a corporation), or imprisonment of not more than one year, or both, together with the costs of prosecution. With respect to felonies involving willful violations of 26 USC §6050I, the statute imposes a fine and/or imprisonment of not more than five years.
 - A. However, 18 USC §3571 increases the maximum permissible fine for misdemeanor offenses under 26 USC §7203 to not more than \$100,000 for individuals and not more than \$200,000 for corporations.
 - B. Under 18 USC § 3571, felony offenses under 26 USC §7203 involving willful violations of 26 USC §6050I are punishable by a maximum fine of not more than \$250,000 for individuals and \$500,000 for corporations.
 - C. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

Note:

Title 26 USC §7203 does not apply to a person who fails to pay estimated tax if there is no addition to tax under section 6654 or 6655 with respect to such failure.

9.1.3.3.4.1 (05-15-2008)

26 USC §7203 - Elements of the Offense

1. The elements of the offense under 26 USC §7203 are:
 - A. a legal duty to file an income tax return, supply information, maintain records, or pay a tax for the taxable year charged
 - B. a failure to fulfill this legal duty
 - C. willfulness (see subsection 9.1.3.3.2.2.3)
2. The following paragraphs provide additional details concerning each element of the offense.

9.1.3.3.4.1.1 (05-15-2008)

26 USC §7203 - Legal Duty to File Return, Supply Information, Maintain Records, or Pay a Tax

1. In general, persons liable under 26 USC §7203 include those defined in 26 USC §7343 as follows:

" The term 'person' includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs. "

2. The requirements for making and filing a return are set forth in Chapter 61 of the Code. In corporate investigations, it may be difficult to determine which officer is responsible for filing the corporate returns. The issue of who has the legal duty to file is a question of fact to be determined by competent evidence. Such evidence may include proof of signing past Federal or state returns, or a statement in the corporate bylaws or minutes of directors' meetings.
3. The general requirement or duty to keep records is provided by 26 USC §6001. However, the types of records kept by various individuals are not alike, and neither the statute nor the regulations defines minimum standards for specific transactions or types of businesses. For example, evidence that a return was prepared from third-party records (banks, brokers, employers) may obviate the necessity for an individual to keep records.

9.1.3.3.4.1.2 (05-15-2008)

26 USC §7203 - Failure to File a Timely Return

1. In order to show that a return was not filed timely, the government must establish the due date of the return as provided by statute or regulations and a failure to file the return within such time. The time within which a return must be filed has been held to be the date set out in the USC or under regulations prescribed by the Secretary, as extended (if applicable) by the Secretary or the Secretary's delegate. The date when a return is due under the USC or regulations varies, depending upon the type of tax involved or the type of return required to be filed. Thus, individual income tax returns, self-employment tax returns, and partnership returns made on the basis of the calendar year must be filed on or before the 15th day of April following the close of the calendar year; or, if made on a fiscal year basis, such returns must be filed on the 15th day of the fourth month following the close of the fiscal year (26 USC §6072(a)). Corporate returns for calendar years are due on the 15th day of March; or, if on a fiscal year basis, such returns are due on the 15th day of the third month following the close of the fiscal year (26 USC §6072(b)). Title 26 USC §6075 provides the deadlines for filing estate and gift tax returns, and 26 USC §6071 and the regulations promulgated thereunder provide the deadlines for filing excise tax returns and other returns required under the particular type of tax involved.
2. The Treasury regulations under 26 USC 6050I provide that Form 8300 is required to be filed by the 15th day after the date the cash was received. If that date falls on a Saturday, Sunday or legal holiday, the form is required to be filed the next business day. In addition, the statute itself provides that the individual/entity filing the form must provide a written statement to each person required to be named on the Form 8300 on or before January 31 of the year following the calendar year for which the return was required to be made.
3. In addition to proving the due date of the return, the government must establish that the person did not file the return by that date. Usually, this is accomplished by providing evidence that the

subject did not file a return in the area of his/her legal residence or principal place of business or IRS Campus.

9.1.3.3.4.1.3 (05-15-2008)
26 USC §7203 - Willfulness

1. Willfulness means the voluntary, intentional, violation of a known legal duty.
2. The government must establish that the failure to file the return was willful. However, as distinguished from willfulness in a tax evasion investigation, the government need not prove a tax evasion motive. In this context, "willful" means voluntary, purposeful, deliberate, and intentional, as distinguished from accidental, inadvertent, or negligent.

9.1.3.3.4.1.3.1 (05-15-2008)
26 USC §7203 - Willful Failure to Pay Tax

1. Although an additional tax due is not an essential element of the offense, willfulness is difficult to establish without proof of a substantial tax liability.
2. When charging willful failure to pay tax, repeated failure to pay taxes, coupled with large expenditures for luxuries when taxes were owing, may be evidence of willfulness within the meaning of the statute.

9.1.3.3.4.1.3.2 (05-15-2008)
26 USC §7203 - Willful Failure to Keep Records

1. Willfulness will also be inferred if a concealment motive is part of the failure to keep records. However, an important factor in the probability of conviction in these investigations may be a substantial deficiency attributable to the failure to keep records.

9.1.3.3.4.1.3.3 (05-15-2008)
26 USC §7203 - Willful Failure to Supply Information

1. The willfulness required to be shown when charging willful failure to supply information is the deliberate and intentional withholding of required information. For example, the deliberate and intentional failure to furnish a schedule of the partnership assets and liabilities as required on the partnership return was held to be willful. Disclosure of such information revealed considerable cash on hand.

9.1.3.3.4.1.4 (05-15-2008)
26 USC §7203 - Statute of Limitations

1. Under 26 USC §6531(4), the statute of limitations for willful failure to file returns (other than information returns) or to pay tax is six years. A three-year statute of limitations applies to willful failure to file information returns such as partnership returns, and to willful failure to keep records or supply information. The statute of limitations for willful failure to file a Form 8300 is three years.

9.1.3.3.5 (05-15-2008)

26 USC §7204 - Fraudulent Statement or Failure to Make Statement to Employees

1. Title 26 USC §7204 prohibits the willful furnishing of a withholding statement under 26 USC §6051 (i.e., Forms W-2 and W-3) that is false or fraudulent. The statute also makes it a crime willfully to fail to furnish such a statement.
2. Under 26 USC §7204, violations of the statute are punishable by a maximum fine of \$1,000 or imprisonment of not more than one year, or both. However, 18 USC §3571 increases the maximum fine to not more than \$100,000 for individuals or \$200,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

9.1.3.3.5.1 (05-15-2008)

26 USC §7204 - Elements of the Offense

1. The elements of the offense under 26 USC §7204 are:
 - A. a legal duty to deduct employment tax or to withhold income tax (see 26 USC §3102(a) and 26 USC §3402(a))
 - B. a legal duty to timely furnish to the employee a written statement showing specified information concerning the deductions (see 26 USC §6051)
 - C. furnishing a false or fraudulent statement to an employee, or failing to furnish the required statement to an employee at the required time and in the required manner
 - D. willfulness, (see subsection 9.1.3.3.2.2.3)
2. A successful prosecution under this section was based upon the following facts:
 - A. In order to attract and retain workers, an individual devised a scheme whereby actual weekly wages paid were recorded on regular weekly payroll sheets, the sum total of which was deducted by the company for income tax purposes.
 - B. Individual payroll sheets were maintained for most of the employees, but the amounts of gross wages shown on the sheets were understated to accommodate the employees so that they would not have to report their entire wages for income tax purposes. The tax withheld from the wages was based upon the understated figure. In some instances, individual payroll sheets were not maintained for employees.
 - C. At the end of the year, the employees whose names were shown on individual payroll sheets were furnished with false withholding statements (Forms W-2,) based upon the false payroll sheets. The employees whose names did not appear on payroll sheets did not receive withholding statements.
 - D. The furnishing of false and fraudulent statements to some employees and the failure to furnish withholding statements to other employees constituted separate violations under this section.

9.1.3.3.6 (05-15-2008)

26 USC §7205 - Fraudulent Withholding Exemption Certificate or Failure to Supply Information

1. Title 26 USC §7205 prohibits the willful supplying of false or fraudulent information to an employer on a withholding exemption certificate (Form W-4), as well as the willful failure to supply information that would require an increase in withholding.
2. Under 26 USC §7205, a violation of the statute is punishable by a maximum fine of \$1,000 or imprisonment of not more than one year, or both. However, the criminal fine provisions under 18 USC §3571 increase the maximum permissible fines for a violation of 26 USC §7205 to not more than \$100,000 for individuals and \$200,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

9.1.3.3.6.1 (05-15-2008)

26 USC §7205(a) (Withholding on Wages) – Elements of the Offense

1. The elements of the offense under 26 USC §7205(a) are:
 - A. the defendant had a legal duty to supply an employer with a signed Form W-4 relating to the number of withholding exemptions claimed (see 26 USC §3402(f)(2))
 - B. the defendant furnished the employer with a signed Form W-4, or failed to supply the employer with a signed Form W-4
 - C. if supplied, the information provided was false or fraudulent
 - D. willfulness (see subsection 9.1.3.3.2.2.3)
2. The employee is required to notify his/her employer within 10 days of a change in his/her withholding exemption status which requires an increase in tax to be withheld. There is no penalty for failing to supply information which would require a decrease in tax to be withheld, and a certificate is not considered false or fraudulent if it contains information showing fewer exemptions than the employee is entitled to claim.

9.1.3.3.6.2 (05-15-2008)

26 USC §7205(b) (Backup Withholding on Interest and Dividends) – Elements of the Offense

1. This criminal provision applies to interest and dividend income. Generally, interest and dividend income is not subject to the withholding tax. However, the USC provides a system of backup withholding which applies. When one of the following is true:
 - the payee fails to provide a taxpayer identification number (TIN)
 - the IRS notifies the payor that the payee's TIN is incorrect
 - the IRS notifies the payor that the payee is underreporting interest and dividends; or
 - the payee fails to certify to the payor, when opening a new account after 1983, that he/she is not subject to backup withholding

2. The elements of the offense under 26 USC §7205(b) are:
 - A. the payee had a legal duty under 26 USC §3406(d) to certify to the payor that the payee was not subject to backup withholding on interest and dividends
 - B. the payee furnished a false certification of such information
 - C. willfulness (see subsection 9.1.3.3.2.2.3)

9.1.3.3.6.2.1 (05-15-2008)

26 USC §7205 - Statute of Limitations

1. A three year statute of limitations applies (26 USC §6531), and the offense is a misdemeanor.
2. For offenses that involve furnishing false or fraudulent information, the statute of limitations runs from the date the document is filed.
3. It is unclear whether willful failure to supply information to an employer is a continuing offense for purposes of determining when the statute of limitations begins to run, in which case the limitations period would begin when the last act of the offense had occurred. The safe practice is to assume that it is not a continuing offense, and that the statute of limitations runs from the date the information was required to be supplied. However, if all other facts indicate that prosecution should be recommended for this offense, the continuing offense theory may be argued.

9.1.3.3.7 (05-15-2008)

26 USC §7206 - Fraud and False Statements

1. The offenses proscribed by 26 USC §7206 include:
 - A. willfully making a false declaration under penalties of perjury
 - B. willfully assisting in the preparation of a false tax document
 - C. executing fraudulent bonds, permits and entries
 - D. removing or concealing taxable goods with intent to defraud
 - E. willfully concealing property or withholding/falsifying documents in connection with any compromise or closing agreement
2. Under 26 USC §7206, a violation of the statute is punishable by a maximum fine of \$100,000 (\$500,000 in the case of a corporation), or imprisonment of not more than three years, or both, together with the costs of prosecution. However, the criminal fine provisions under 18 USC §3571 increase the maximum permissible fines for a violation of 26 USC §7206 to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

9.1.3.3.7.1 (05-15-2008)

26 USC §7206(1) (False or Fraudulent Return, Statement, or Other Document Made Under Penalty of Perjury) – Elements of the Offense

1. In general, a person who willfully makes and subscribes, under penalty of perjury, any return, statement, or other document, which he/she does not believe to be true and correct as to every material matter, has committed a criminal offense under 26 USC §7206(1).
2. The elements of this offense are:
 - A. the making and signing of a return, statement or other document containing a written declaration that it was signed under the penalties of perjury
 - B. the inclusion in the document of information that was false as to a material matter
 - C. the defendant's lack of belief that the document was true and correct as to every material matter
 - D. willfulness (see subsection 9.1.3.3.2.2.3)
3. This code section may apply regardless of whether the defendant's purpose was to evade or defeat the payment of taxes. For example, prosecution for this offense may be appropriate when the government is able to prove the falsity of a partnership return, even if the government is not able to prove a resulting tax deficiency.
4. A matter is material if:
 - A. it must be reported for a correct computation of tax
 - B. it tends to influence or is capable of influencing the ability of the Service to audit or verify the accuracy of the return or a related return

It is not necessary that the false statement actually affect the Service or that the Service actually rely on the statement.

5. Although the offense is complete upon signing the statement or document, prosecutions under this section should involve only false returns or statements presented to or filed with the IRS. This sanction is appropriate when it is possible to prove the falsity of a return but it is difficult to establish a tax deficiency, or when the falsification results in a relatively small amount of tax evaded when compared to the total tax liability.
6. If an individual files a false and fraudulent return, it is possible for him/her to incur criminal liability both for attempting to defeat and evade the payment of tax and for making a false and fraudulent statement under penalty of perjury.

9.1.3.3.7.2 (05-15-2008)

26 USC §7206(2) (Aid or Assistance in Preparation or Presentation of False or Fraudulent Return, Affidavit, Claim or Other) – Elements of the Offense

1. The elements of the offense under 26 USC §7206(2) are:
 - A. the defendant aided or assisted in, or procured, counseled, or advised the preparation or presentation of a return or other document in connection with a matter arising under the internal revenue laws;
 - B. the return or other document was false as to a material matter (see subsection 9.1.3.3.7.1); and
 - C. willfulness (see subsection 9.1.3.3.2.2.3)
2. Actual preparation of the false return is not necessary to sustain a conviction. Therefore, this subsection applies not only to return preparers but also to anyone who participates in the fraud. For example, it may apply to corporate officers, preparers of corporate tax forms other than returns, tax shelter promoters and others who provide legal advice knowing the advice will be used for tax return preparation.

3. Although the offense generally is predicated on the filing of a tax return or other document, courts have reached different conclusions as to whether filing is a required element of the offense.

Note:

The Ninth Circuit has held that an offense was not committed under 26 USC §7206(2) unless the document containing the false statement was filed with the IRS.

4. In situations where a defendant willfully provided information or a document to an intermediary who was required by law to file an information return with or to transmit the document to the IRS, courts have held that the offense under 26 USC §7206(2) was complete when the defendant presented the information or document to the intermediary.
5. Aiding or assisting in the preparation of a false return and subscribing to a false return are two separate offenses. A defendant could therefore be prosecuted under both 26 USC §7206(1) and 26 USC §7206(2) for the same false return.
6. To establish the element of willfulness, the government must prove that the defendant acted with the purpose and objective of violating the internal revenue laws. However, a defendant may have willfully and knowingly prepared false and fraudulent income tax returns for another, even if the fraud involved was without the knowledge or consent of the person required to make the return. By contrast, if the person required to make the return was aware of the fraud, the defendant is entitled to have the court caution the jury to weigh accomplice testimony carefully.
7. In all race track payoff investigations, 26 USC §7206(2) should be used either as the primary statutory provision or as a supplement to 18 USC §1001. Title 26 USC §7206(2) should be charged when prosecuting either the "ten percenter" (i.e., a person who cashes the winning ticket in place of the true winner, in exchange for a percentage of the winnings) or the true winner.

9.1.3.3.7.3 (05-15-2008)

26 USC §7206(4) (Removal or Concealment with Intent to Defraud) – Elements of the Offense

1. The elements of the offense under 26 USC §7206(4) are:
 - A. a tax is or shall be imposed on any goods or commodities, or levy is authorized upon any property
 - B. the defendant removed, deposited or concealed, or was concerned in removing, depositing or concealing, such goods, commodities or property
 - C. the defendant did so with intent to evade or defeat the assessment or collection of any tax
2. Concealment under 26 USC §7206(4) includes not only secreting the item at issue or hiding it away, but also preventing its discovery or withholding knowledge of it. Thus, it is not necessary for the government to prove a physical removal, concealment or transfer from one place to another. An offense under 26 USC §7206(4) may be established by showing that book entries falsified the transfer of property rights.

9.1.3.3.7.3.1 (05-15-2008)

26 USC §7206(4) – Statute of Limitations

1. The statute of limitations for removal or concealment with intent to defraud is three years (26 USC §6531).

9.1.3.3.8 (05-15-2008)

26 USC §7207 - Fraudulent Returns, Statements, or Other Documents

1. Title 26 USC §7207 prohibits the willful and knowing delivery or disclosure to the IRS of a false or fraudulent document (regardless of whether it is signed under penalties of perjury).
2. The elements of this offense are:
 - A. the defendant delivered to any officer or employee of the IRS a list, return, account, statement or other document
 - B. the return, statement, or other document was false or fraudulent as to any material matter
 - C. willfulness (see subsection 9.1.3.3.2.2.3)
3. Title 26 USC §7207 is generally reserved for investigations arising out of the presentation of false or altered documents by individuals in response to requests for substantiation of claimed deductions during the course of an examination, when the computed tax deficiencies are considered de minimus in relation to the circumstances of the investigation, and the means and methods used in committing the offense are commensurate with charging a misdemeanor rather than a felony.

9.1.3.3.9 (05-15-2008)

26 USC §7208 - Offenses Relating to Stamps

1. This offense relates primarily to counterfeiting or fraudulently mutilating, removing, or reusing tax stamps. It occurs most in the excise tax area. See 26 USC §7208 for specific details.

9.1.3.3.10 (05-15-2008)

26 USC §7209 - Unauthorized Use or Sale of Stamps

1. This offense relates primarily to the unauthorized use or sale of tax stamps. See 26 USC §7209 for specific details.

9.1.3.3.11 (05-15-2008)

26 USC §7210 - Failure to Obey Summons

1. Failure to obey an IRS summons is a criminal offense under 26 USC §7210.

9.1.3.3.12 (05-15-2008)

26 USC §7211 - False Statements to Purchasers or Lessees Relating to Tax

1. Title 26 USC §7211 prohibits making a false statement concerning taxes to a purchaser or lessee.

9.1.3.3.13 (05-15-2008)

26 USC §7212 - Attempts to Interfere With Administration of Internal Revenue Laws

1. In general, 26 USC §7212 prohibits attempts to interfere with the administration of the Internal Revenue laws.

2. Title 26 USC §7212(a) establishes two general categories of prohibited conduct: (i) corruptly or forcibly endeavoring to impede any officer or employee from acting in an official capacity; and (ii) corruptly or forcibly obstructing or impeding (or endeavoring to obstruct or impede) the due administration of the Internal Revenue Code. The second category of conduct prohibited by 26 USC §7212(a) is described in what is known as the " omnibus clause." Title 26 USC §7212(b) prohibits the forcible rescue (or the attempt to forcibly rescue) property that has been seized under the Internal Revenue Code.
3. Pursuant to the statute, the two types of offenses established by 26 USC §7212(a) are punishable by a maximum fine of \$5,000 or imprisonment of not more than 3 years, or both, except that if the offense is committed only by threats of force the punishment is a maximum fine of not more than \$3,000 and imprisonment of not more than one year. The statute also provides that the offense established by 26 USC §7212(b) is punishable by a fine of not more than \$500, or not more than double the value of the property rescued (whichever is greater), or imprisonment of not more than 2 years. However, the criminal fine provisions under 18 USC §3571 increase the maximum permissible fines for these offenses to not more than \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.
4. Prosecutions under the first clause of 26 USC §7212(a) typically involve acts or threats of force against an individual IRS employee acting in an official capacity. Such prosecutions do not require authorization from the Department of Justice, Tax Division, and are directly referred to the US Attorney's Office (see Tax Division Directive No. 129; IRM 9.5.12).
5. However, the omnibus clause makes clear that force or the threat of force is not an element of the offense under 26 USC §7212(a). Rather, the statute may apply to an individual who "corruptly" endeavors to impede the administration of the tax laws. The term "corruptly " generally implies an intent to obtain an improper advantage, but there is no requirement that the evidence establish such an intent.
6. Examples of conduct to which the omnibus clause may apply include, but are not limited to, providing false information, destroying evidence, attempting to influence a witness to give false testimony, and harassing an IRS employee. A 26 USC §7212(a) charge may also be authorized in appropriate circumstances to prosecute a person who, prior to any audit or investigation, engaged in large-scale obstructive conduct involving the tax liability of third parties. Examples include, but are not limited to, assisting in preparing or filing a large number of fraudulent returns or other tax forms, or engaging in other corrupt conduct designed to obstruct the IRS from carrying out its lawful functions.
7. In cases where the obstructive conduct is in furtherance of a preexisting criminal scheme, Tax Division Directive No. 129 (superseding Directive No. 77) authorizes prosecutors to charge 26 USC §7212(a) in addition to charging the underlying tax crime. Prosecutions under the omnibus provision of 26 USC §7212(a) require tax division authorization.
8. The statute of limitations for violations of 26 USC §7212(a) is 6 years.

9.1.3.3.13.1 (05-15-2008)

26 USC §7212(b) (Forcible Rescue) – Elements of the Offense

1. The elements of the offense under 26 USC §7212(b) are:
 - A. property was legally seized under Title 26
 - B. the defendant knew the property had been seized
 - C. the defendant forcibly and willfully retook the property
2. To be "forcible", the rescue of property need not entail physical violence. Threatening language or intimidating conduct may be sufficient. The term "threats of force" as used in this subsection includes threats of bodily harm to an officer or employee of the United States or to a member of his/her family. It has been held that a forcible rescue under 26 USC §7212(b) includes the use of force against property, such as the breaking of a bank window, the removal of the IRS seal on a safe deposit box, or the removal of the box and its contents from the bank.
3. A defendant may be charged under 26 USC §7212(b) for forcibly retaking property that the government seized from a third party. To support a conviction under 26 USC §7212(b), the property must have been seized by an official with authority under the tax code to make the seizure. Disputes concerning other aspects of the legality of the seizure do not constitute a defense to the crime. Thus, it is no defense that the person retaking the property claims to be the real owner and that the property was seized by mistake.

Note:

Title 18 USC §2233 also prohibits the forcible rescue of property and gives the IRS concurrent jurisdiction with the Federal Bureau of Investigation (FBI) over such crimes. Current practice dictates that determination of whether an alleged forcible rescue is to be investigated by CI or the FBI depends on whether the property was taken before or after it was adjudicated government property. The elements of 18 USC §2233 are provided below, in the section describing Title 18 statutes.

9.1.3.3.14 (05-15-2008)

26 USC §7215 - Offenses with Respect to Collected Taxes

1. Failure to comply with any provision of 26 USC §7512(b), which requires employers and others, upon notice, to collect employment taxes and deposit the withheld taxes in a special bank account held in trust for the United States, is a criminal offense under 26 USC §7215(a). Title 26 USC §7215(b) provides exceptions to the penalty if there was reasonable doubt as to whether the law required collection of tax, or if the failure to comply was due to circumstances beyond the control of the person required to collect the tax. For purposes of this statute, a lack of funds existing immediately after the payment of wages (whether or not created by the payment of such wages) is not considered "circumstances beyond the control" of a person.

9.1.3.3.14.1 (05-15-2008)

26 USC §7215 - Elements of the Offense

1. The elements of the offense under 26 USC §7215 are:

- A. The defendant was a person required to collect, account for, and pay over employment taxes.
- B. The defendant was provided with the statutory notice prescribed by 26 USC §7512(a).
- C. The defendant failed to comply with the collection requirements.
- D. There was no reasonable doubt as to whether the law required collection of tax, and the failure was not due to circumstances beyond the defendant's control (see IRM 9.5.3, Criminal Investigation Strategies).

9.1.3.3.15 (05-15-2008)

Other Criminal Statutes in the United States Code Within the Jurisdiction of CI

1. See Exhibit 9.1.3-1, Title 18, 26, and 31 Statutes within the Jurisdiction of Criminal Investigation, for the other criminal statutes contained within the USC. See the USC for specific details concerning these offenses.
2. See also Exhibit 9.1.3-2, Statutes Applicable when Charged in Conjunction with a Tax Money Laundering or Currency Violation for which CI has Jurisdiction.

9.1.3.4 (05-15-2008)

Title 18 - Criminal Penalties Applicable to Fraud and Miscellaneous Investigations

1. The following sections of Title 18 are criminal offenses within the jurisdiction of CI.
2. Note that 18 USC §1028, which concerns identity theft, is discussed in IRM 9.5.3.

9.1.3.4.1 (05-15-2008)

18 USC §2 - Principals

1. Title 18 USC §2 is known as the "accomplice statute " and generally provides that a person may be convicted of a crime even if he/she did not personally perform every act constituting the crime. More specifically, 18 USC §2(a) provides that the following persons are punishable as principals: (i) a person who commits an offense against the United States; and (ii) a person who aids, abets, counsels, commands, induces or procures the commission of an offense against the United States. Title 18 USC §2(b) (frequently referred to as "causing") provides that a person is also punishable as a principal if that person willfully causes an act to be done which if directly performed by him or another would be an offense against the United States.

Note:

Aiding and abetting is not an independent crime. Some underlying criminal offense must be proven in order for liability to attach under 18 USC §2.

2. So long as the government can show that an underlying offense was committed by a principal and that the principal was aided and abetted by the defendant, the defendant may be convicted under this statute even if the principal has not been indicted, convicted or even identified. Moreover, the fact that the principal may have been acquitted of the underlying offense

does not bar prosecution of the aider and abettor for the same offense.

3. The elements of the offense under 18 USC §2 are:
 - A. the defendant associated with the criminal venture
 - B. the defendant knowingly participated in the venture
 - C. the defendant sought by his or her actions to make the venture succeed
4. Association with the criminal venture has been interpreted to mean the defendant shared the criminal intent of the principal. In prosecutions under 18 USC §2(a), the government must show that:
 - A. the principal had the requisite criminal intent to commit the underlying offense; and
 - B. the aider and abettor had the same requisite intent. Under 18 USC §2(b), the government need only show that the one causing the commission of the prohibited act had the requisite criminal intent to commit the underlying offense. The intent of the principal is irrelevant.
5. In order to aid and abet, a person must do more than merely be present at the scene of a crime and have knowledge of its commission. The element of participation requires the government to show some active participation or encouragement, or some affirmative act designed to further the crime.
6. A corporation may be convicted for the criminal acts of its agents, under the theory of respondent superior, but criminal liability may be imposed on the corporation only where its agents are acting within the scope of their employment. However, the officers themselves may also be criminally liable for these same acts.

9.1.3.4.2 (05-15-2008)

18 USC §3 - Accessory After the Fact

1. Under 18 USC §3, a person who, knowing that a crime has been committed, assists the offender in order to hinder or prevent his apprehension, trial or punishment is an accessory after the fact.

Note:

This statute may be invoked by CI only when it relates to some other tax, money laundering or currency violation over which CI has jurisdiction.

9.1.3.4.3 (05-15-2008)

18 USC §4 - Misprision of Felony

1. Under 18 USC §4, a person who, with knowledge of the actual commission of a felony, conceals this knowledge from a person in civil or military authority is guilty of misprision of felony.

Note:

This statute may be invoked by CI only when it relates to some other tax, money laundering or currency violation over which CI has jurisdiction.

9.1.3.4.4 (05-15-2008)

18 USC §111 - Assaulting, Resisting, or Impeding Certain Officers or Employees

1. Title 18 USC §111 prohibits forcibly assaulting, resisting or impeding a current or former Federal officer or employee while engaged in or on account of the performance of official duties.
2. This statute is broader than 26 USC §7212, which addresses attempts to interfere with administration of Internal Revenue laws and is set forth in the previous section.
3. Although relevant to the work of CI, 18 USC §111 is primarily enforced by the Treasury Inspector General for Tax Administration (TIGTA) (see IRM 9.5.11, Other Investigations).

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https://www.irs.gov/irm/part9/irm_09-001-003.html