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14.00 *REMOVAL OR CONCEALMENT WITH INTENT TO DEFRAUD*

14.01 *STATUTORY LANGUAGE: 26 U.S.C. § 7206(4)*

§7206. ***Fraud and false statements***

Any person who --

(4) Removal or concealment with intent to defraud. -- Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title * * * shall 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 three years, or both, together with the costs of prosecution.

* As to offenses committed after December 31, 1984, the Criminal Fine Enforcement Act of 1984 (P.L. 98-596) enacted 18 U.S.C. § 3623 **1** which increased the maximum permissible fines for both misdemeanors and felonies. For the felony offenses set forth in section 7206(4), the maximum permissible fine for offenses committed after December 31, 1984, is increased to at least $250,000 for individuals and $500,000 for corporations. Alternatively, if the offense has resulted in pecuniary gain to the defendant or pecuniary loss to another person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

14.02 *GENERALLY*

Section 7206(4) prosecutions are rarely brought because in the usual criminal income tax case the violation is covered by section 7201 (evasion) or section 7206(1) (subscribing to a false return) of the Internal Revenue Code (Title 26). However, it is available as a prosecutorial tool, and there are some factual situations that lend themselves to a section 7206(4) prosecution.

Section 7206(4) and its predecessor **2** have been used from an early date in cases involving the sale of untaxed liquor. *E.g.*, ***United States v. Champion***, 387 F.2d 561 (4th Cir. 1967); ***United States v. Davis***, 369 F.2d 775 (4th Cir. 1966), *cert. denied*, 386 U.S. 909 (1967); ***United States v. Goss***, 353 F.2d 671 (4th Cir. 1965); ***Hyche v. United States***, 286 F.2d 248 (5th Cir. 1961); ***Ingram***

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1 Changed to 18 U.S.C. § 3571, commencing November 1, 1986.

2 Internal Revenue Code of 1939, Sec. 3321(a) (26 U.S.C. 1952 ed.).

v. United States, 241 F.2d 708 (5th Cir.), *cert. denied*, 353 U.S. 984 (1957); ***Price v. United States***, 150 F.2d 283 (5th Cir.), *cert. denied*, 326 U.S. 789 (1945). Cases involving the sale of untaxed liquor are beyond the scope of this manual, but some of those cases are helpful in interpreting the statute.

Congress expanded the scope of the offense by amending section 7206(4) of the 1954 Internal Revenue Code to include not only concealment of goods or commodities, but also, conduct committed in order to avoid levies. ***United States v. Swarthout***, 420 F.2d 831, 835 (6th Cir. 1970) (citing H.R. Rep. No. 1337 in 3 U.S.C. Cong. & Ad. News, p. 4573 (1954)).

14.03 *ELEMENTS OF OFFENSE*

To establish a section 7206(4) offense, the following elements must be proved beyond a reasonable doubt:

1. Removes, deposits, or conceals or is concerned in removing, depositing, or concealing;
2. Goods or commodities where a tax is or shall be imposed, or any property upon which levy is authorized by section 6331 (Title 26);
3. Intent to evade or defeat the assessment or collection of any tax imposed by Title 26.

14.04 *REMOVES, DEPOSITS, OR CONCEALS*

Section 7206(4) applies to any person who removes, deposits, or conceals certain goods, commodities or property upon which a tax is or shall be imposed, or upon which a levy is authorized. By its own terms, the statute is not limited to persons who directly conceal goods, commodities, or property, but extends to any person "concerned in" those acts. 26 U.S.C. § 7206(4). As such, the concept of "conceals" is not limited to a physical concealment of the property. ***United States v. Bregman***, 306 F.2d 653 (3d Cir. 1962), *cert. denied*, 372 U.S. 906 (1963).

In ***Bregman***, the one-count indictment charged the defendants as follows:

> That on or about October 30, 1954, at Philadelphia, in the Eastern District of Pennsylvania, Rudolph R. Bregman and Milton H.L.

> Schwartz, with intent to evade and defeat the collection of taxes assessed against Rudolph Motor Service, Inc., did knowingly and unlawfully remove and conceal eighteen (18) Strick Trailers, property of Rudolph Motor Service, Inc., upon which a levy was authorized by Section 6331 of the Internal Revenue Code of 1954 . . . .

Bregman, 306 F.2d at 654. Defendant Bregman argued that there was a variance between the indictment and the proof because the indictment charged the concealment of 18 trailers and "the government's proof only established a false entry with respect to possession of the trailers." ***Bregman***, 306 F.2d at 655. The court rejected the defendant's argument:

> When Bregman falsified Rudolph's corporate records to show that the trailers had been "repossessed" the effect of that falsification was to "conceal" Rudolph's possession of the trailers.

Bregman, 306 F.2d at 655. According to the court, the applicable principle is that the word "conceal" does not merely mean to secrete or hide away. It also means "to prevent the discovery of or to withhold knowledge of." ***Bregman***, 306 F.2d at 656. Therefore, the court concluded that:

> The government's proof that Bregman falsified the records pertaining to the trailers -- property of Rudolph -- to show that they had been "repossessed" was foursquare with the charge of "concealment" in the indictment and not by any stretch of the imagination at variance with it.

Bregman, 306 F.2d at 656.

Proof of any one of the prohibited acts -- "removing, depositing or concealing" -- is sufficient for conviction, even if they are charged conjunctively. ***United States v. Davis***, 369 F.2d 775, 779 (4th Cir. 1966), *cert. denied*, 386 U.S. 909 (1967); ***Hyche v. United States***, 286 F.2d 248, 249 (5th Cir. 1961); ***Price v. United States***, 150 F.2d 283, 285 (5th Cir.), *cert. denied*, 326 U.S. 789 (1945).

14.05 *TAX IMPOSED OR LEVY AUTHORIZED*

Care should be exercised in drafting indictments charging violations of section 7206(4). Where the defendant is charged with removing, depositing, or concealing goods or commodities for or in respect whereof any tax is or shall be imposed, the prohibited acts may be based on actions

committed prior to the time the tax is due. However, if the charge is based upon the commission of the prohibited actions with "regard to property upon which levy is authorized," at least one court has held that such actions must have occurred after a tax has been assessed and the taxpayer has refused to pay after notice and demand for payment. ***United States v. Swarthout***, 420 F.2d 831, 833 (6th Cir. 1970).

Concealment of assets *prior* to assessment or levy may be charged under section 7201. By including concealment of assets among the prohibited conduct in section 7206(4), Congress did not intend to provide the exclusive criminal remedy for such conduct. ***United States v. Hook***, 781 F.2d 1166, 1170 (6th Cir.), *cert. denied*, 479 U.S. 882 (1986). The government is not foreclosed from charging those who conceal assets, either before or after assessment or levy, under the general evasion statute. ***Hook***, 781 F.2d at 1170; *but see* ***United States v. Minarik***, 875 F.2d 1186, 1195 (6th Cir. 1989) (Sixth Circuit reversed conviction, finding that government should have charged defendant with violating offense prong of conspiracy statute with reference to section 7206(4), rather than with violating general defraud prong). **3**

14.06 ***WILLFULNESS***

The word "willfully" is not used in section 7206(4). Rather, the statute uses the phrase "with the intent to evade or defeat." 26 U.S.C. § 7206(4). Thus, it is not enough to show a voluntary, intentional violation of a known legal duty. Instead, it must be shown that the defendant's purpose was to evade or defeat the assessment or collection of a tax. Nevertheless, the same type of evidence used to establish willfulness in an attempted evasion prosecution often may be used to prove an intent to evade or defeat tax. Reference should accordingly be made to the discussion of willfulness in Sections 8.06 and 12.09, *supra*.

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3 ***Minarik*** has not fared well over time. The Sixth Circuit has limited it, *see* ***United States v. Sturman***, 951 F.2d 1466, 1473 (6th Cir. 1991), *cert. denied*, 112 S. Ct. 2964 (1992); ***United States v. Mohney***, 949 F.2d 899, 902-03 (6th Cir. 1991), and other circuits have shown no inclination to follow it, ***United States v. Arch Trading Co.***, 987 F.2d 1087, 1092 (4th Cir. 1993); ***United States v. Harmas***, 974 F.2d 1262, 1267 (11th Cir. 1992).

14.07 *VENUE*

The Sixth Amendment to the Constitution provides that trials shall be in the "State and district wherein the crime shall have been committed * * * ." *See* Fed. R. Crim. P. Rule 18. If a statute does not indicate where Congress considers the place of committing a crime to be, "the locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it." ***United States v. Anderson***, 328 U.S. 699, 703 (1946). In section 7206(4) prosecutions, venue is proper in the judicial district in which the act of concealment took place. Venue also may be laid where the return was filed if the charge is an attempt to evade and defeat the assessment of a tax. *See* discussion of venue in Section 6.00, *supra*.

14.08 *STATUTE OF LIMITATIONS*

The statute of limitations for section 7206(4) offenses is three years. 26 U.S.C. § 6531. For a discussion as to the measurement of the statute of limitations, *see* Section 7.00, *supra*.