

[Criminal Tax Manual](#)

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15.00 COMPROMISES AND CLOSING AGREEMENTS

15.01 STATUTORY LANGUAGE: 26 U.S.C. § 7206(5)

§7206. *Fraud and false statements*

Any person who * * *

(5) Compromises and closing agreements. -- In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully --

(A) Concealment of property. -- Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records. -- Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined ... or imprisoned not more than 3 years, or both, together with the costs of prosecution.¹

15.02 TAX DIVISION POLICY

Section 7206(5) prosecutions are rare because conduct covered by the statute often may be prosecuted using the more general provisions of § 7206(1) or § 7206(2), or § 7212(a). The statute may be used in appropriate cases where a defendant concealed property or withheld or destroyed records in connection with a compromise or closing agreement, regardless of whether the defendant was the taxpayer.

¹ For the felony offenses set forth in section 7206(5), the maximum permissible fine for offenses committed after December 31, 1984, is at least \$250,000 for individuals and \$500,000 for corporations. 18 U.S.C. § 3571. 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. *Id.*

15.03 GENERALLY

As noted above, section 7206(5) prosecutions are very rare. There are only two reported court of appeals cases involving charges of violating section 7206(5), and even those cases involved violations of other sections, including Section 7206(1), along with violations of section 7206(5)(B) (false offers in compromise). *United States v. Zichettello*, 208 F.3d 72, 80 (2d Cir. 2000); *Gentsil v. United States*, 326 F.2d 243, 244 (1st Cir. 1964). In virtually all instances, the availability of the commonly used Section 7206(1) charge will obviate the need for using section 7206(5). *See, e.g., United States v. Cohen*, 544 F.2d 781 (5th Cir. 1977) (a material omission in an "Offer in Compromise" filed with the Internal Revenue Service was prosecuted as a section 7206(1) violation). For principles applicable to both sections 7206(1) and 7206(5), reference should be made to the discussion of section 7206(1) in [Section 12.00](#), *supra*.

15.04 SCOPE OF SECTION 7206(5)

By its terms, section 7206(5) applies to concealment of property or withholding, falsifying, or destroying records in connection with (1) closing agreements (as provided for in Section 7121 of the Internal Revenue Code (Title 26))² and (2) compromises of any civil or criminal case (as provided for in section 7122 of the Internal Revenue Code (Title 26)). *See United States v. Jenkins*, 745 F. Supp. 2d 692 (E.D. VA 2010). If, in connection with such closing agreements or compromises, the taxpayer willfully (A) conceals from an employee of the United States any property belonging to the estate of a taxpayer or other person liable for the tax or (B) withholds, falsifies, or destroys records or makes a false statement as to the estate or financial condition of the taxpayer or other person liable for the tax, then a violation of section 7206(5) has occurred.

In the context of sections 7121 and 7122, the terms "settlement agreement" and "compromise" pertain to monetary settlements of civil tax liability, not plea agreements resolving the criminal aspects of a case. *See United States v. McCue*, 178 F. Supp. 426, 434-35 (D. Conn. 1959) (rejecting defendant's argument that a plea bargain resulting in dismissal of charges constituted a compromise under section 7122, and noting that

²"A closing agreement is a written agreement between an individual and the Commissioner [of the Internal Revenue Service] which [finally] settles or 'closes' the liability of that individual . . . with respect to any Internal Revenue tax for a taxable period." 14 Mertens, *Law of Federal Income Taxation*, Sec. 52.01 (Rev. 2012).

section 7122 compromises require resolution of the **civil** tax liability). In *McCue*, the district court held (178 F. Supp. at 434):

The use of the disjunctive in the phrase ‘to compromise any civil or criminal case’ was intended to take care of circumstances where criminal prosecution has actually been commenced but no formal action has been taken with regard to the civil liabilities and an agreement has been reached covering both the civil and criminal aspects. It is significant that this statute and its predecessors go back more than 91 years and in that long period of time no case appears to have arisen where an attempt was made to agree on a compromise of a criminal case standing alone and unrelated to the disposition of civil liabilities. . . . [T]he purpose of the compromise statute was to facilitate money settlements of tax liability and the settlement of criminal charges are [sic] contemplated only when they are ancillary thereto.

Perhaps one reason criminal cases under this statute are rare is the long-standing policy of the Department not to settle civil tax liability while a criminal case is pending. See *United States Attorneys' Manual* (USAM), Title 6, [Sec. 6-4.360](#). Note that a restitution order generally does not resolve purely civil issues and that, when resolving their cases, prosecutors are required to consider whether restitution is appropriate. See USAM, Title 6, Sec. [6-4.370](#). For more information on restitution, see the discussion in [Section 44.00](#), *infra*.

15.05 WILLFULNESS

The word "willfully" has the same meaning in a section 7206(5) violation as it does in the other criminal tax violations -- a voluntary, intentional violation of a known legal duty. See *Cheek v. United States*, 498 U.S. 192, 200 (1991); *United States v. Bishop*, 412 U.S. 346, 359-60 (1973). See the discussion of willfulness in Sections [8.08](#) and [12.11](#), *supra*.

15.06 VENUE

Venue for a section 7206(5) violation may be laid in any district in which any of the acts prohibited by section 7206(5) occurred. See the discussion of venue in connection with section 7206(1) offenses in [Section 12.13](#), *supra*. See also the general discussion of venue in [Section 6.00](#), *supra*.

15.07 STATUTE OF LIMITATIONS

The statute of limitations for section 7206(5) offenses is three years. 26 U.S.C. § 6531. *See* also the general discussion of the statute of limitations in [Section 7.00](#), *supra*.