

[Criminal Tax Manual](#)

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## **25.00 TAX MONEY LAUNDERING - 18 U.S.C. § 1956(a)(1)(A)(ii)**

The Tax Division must authorize all criminal charges for which the conduct at issue arises under the internal revenue laws, regardless of the criminal statutes invoked. See 28 C.F.R. § 0.70(b). This includes money laundering charges where the sole or a principal purpose of the financial transaction is a violation of the tax laws, including tax evasion or the making of false statements to the IRS.

Other authorization requirements for money laundering may apply as described in the *United States Attorneys' Manual* [§ 9-105.300](#).

This chapter is concerned with the tax-specific provisions of 18 U.S.C. § 1956. The Asset Forfeiture and Money Laundering Section of the Criminal Division has a number of resources available on its intranet site, <http://dojnet.doj.gov/criminal/afoml/default.htm>, including an online version of the comprehensive reference guide *Federal Money Laundering Cases* (April 2007). Information about money laundering in general may also be found in [Chapter 9-105](#) of the *United States Attorneys' Manual*, and in Sections [2101-2186](#) of the *Criminal Resource Manual*.

### ***25.01 TAX DIVISION POLICY***

The Tax Division must approve any and all criminal charges that a United States Attorney intends to bring against a defendant in connection with conduct arising under the internal revenue laws, regardless of which criminal statutes the United States Attorney proposes to use in charging the defendant. Conduct arising under the internal revenue laws includes a defendant's submission of documents or information to the IRS. [USAM § 6-4.210](#).

Prosecution for money laundering offenses requires Tax Division authorization when (1) the indictment also contains charges for which Tax Division authorization is required, including allegations of a tax fraud (e.g., *Klein*) conspiracy, or (2) the intent to engage in conduct constituting a violation of 26 U.S.C. § 7201 or 26 U.S.C. § 7206 is the sole or principal purpose of the financial transaction which is the subject of the money laundering count. [USAM § 9-105.750](#).

The Tax Division will not authorize such charges where the effect would merely be to convert routine tax prosecutions into money laundering prosecutions, as the statute was not intended to provide a substitute for traditional Title 18 and Title 26 charges related to tax evasion, filing of false returns, or tax fraud conspiracy. Appropriate tax-related Title 18 and Title 26 charges should be utilized when the evidence so warrants. However, the Tax Division will approve money laundering charges when warranted by the circumstances. See [Tax Division Directive Number 128](#).

Tax Division authorization is not required when (1) the principal purpose of the financial transaction was to accomplish some other covered purpose, such as carrying on a specified unlawful activity like drug trafficking; (2) the circumstances do not warrant the filing of substantive tax or tax fraud conspiracy charges; and (3) the existence of a secondary tax evasion or false return motivation for the transaction is one that is readily apparent from the nature of the money laundering transaction itself. [USAM § 9-105.750](#).

***25.02 STATUTORY LANGUAGE: 18 U.S.C. § 1956(a)(1)(A)***

This statute provides in part:

**§ 1956. Laundering of monetary instruments**

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity --

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986;

...

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

18 U.S.C. § 1956(a)(1)(A).

## 25.03 ELEMENTS OF MONEY LAUNDERING

### 25.03[1] Section 1956(a)(1)(A)(i)

Tax crimes are not included in the list of "specified unlawful activities" in 18 U.S.C. § 1956(c)(7). But "specified unlawful activity" does include mail fraud. See 18 U.S.C. 1956(a)(7)(A) (term includes any act or activity constituting an offense listed in section 1961(1)); 18 U.S.C. 1961(1) (mail fraud included as listed offense). The Tax Division will authorize mail fraud charges, and money laundering charges predicated upon mail fraud offenses, in unusual circumstances. See [Tax Division Directive 128](#).

In 2008, the Supreme Court in *United States v. Santos*, interpreted whether the term "proceeds" as used in some of the money-laundering statutes meant "receipts" or "profits." *United States v. Santos*, 553 U.S. 507 (2008) (plurality opinion). The Court observed that the term "profits" requires which requires more proof than receipts. *Id.* at 520. The Court noted that when a term is undefined, it is given its ordinary meaning. *Id.* at 511. The Court then determined that "proceeds" had not acquired a common meaning in the provisions of the Federal Criminal Code. *Id.* Consequently, the Court found that "proceeds" should be interpreted to mean "profits." In *United States v. Yusuf*, 536 F.3d 178 (3d Cir. 2008), the Third Circuit held that unpaid Virgin Islands Gross Receipts Taxes, which were unlawfully disguised and retained by means of the filing of false Virgin Islands Gross Receipts Tax Returns through the U.S. mail, are "proceeds" of mail fraud for purposes of stating a money laundering offense. The tax at issue in *Yusuf* was not income tax, but a non-federal tax calculated as a straight percentage of sales, which helped satisfy the limited circumstances under which the Tax Division will authorize such charges. In addition to holding that the retained taxes were the proceeds of mail fraud, the Third Circuit further held that the retained taxes amounted to "profits," thus satisfying *United States v. Santos*. *Yusuf* created a conflict with *United States v. Khanani*, 502 F.3d 1281, 1296-97 (11th Cir. 2007), in which the Eleventh Circuit held that the definition of "proceeds" is limited to "something which is obtained in exchange for the sale of something else," and thus does not include retained taxes.

Following the Court's holding in *Santos*, Congress amended the money-laundering statute to provide a definition of "proceeds." The Fraud Enforcement and Regulatory Act of 2009, Pub. L. No. 111-21, & 2(f)(1), 123 Stat. 1617, 1618 (2009). As amended, the statute defines "proceeds" broadly as "any property derived from or

obtained or retained, directly or indirectly through some form of unlawful activity, including the gross receipts of such activity.” 18 U.S.C. § 1956(c)(9). Nonetheless, there is still considerable discussion of the definition of “proceeds” regarding various money-laundering schemes. *See. e.g., United States v. Hosseini*, 679 F.3d 544 (7th Cir. 2012). For a discussion of various courts’ interpretation of *Santos*, see *People v. Gutman*, 59 N.E.2d 621 (Ill.2010). It is recommended that prosecutors research the law on the issue of “proceeds” in their own jurisdictions prior to indictment.

### **25.03[2] Section 1956(a)(1)(A)(ii)**

To establish a violation of 18 U.S.C. § 1956(a)(1)(A)(ii), the government must prove the following beyond a reasonable doubt: (1) the defendant conducted or attempted to conduct a financial transaction; (2) the defendant knew the property involved in the transaction represented the proceeds of some unlawful activity; (3) the property did, in fact, represent the proceeds of a specified illegal activity, as defined in 18 U.S.C. § 1956(c)(7); and (4) the defendant intended to engage in conduct constituting a violation of 26 U.S.C. § 7201 (tax evasion) or 26 U.S.C. § 7206 (false statement).

For more information about the first three elements, please consult the United States Attorneys' Manual and the Asset Forfeiture and Money Laundering Section.

### **25.03[2][a] Intent to Evade Tax or Commit Tax Fraud**

To establish a violation under 18 U.S.C. § 1956(a)(1)(A)(ii), the prosecution must prove that the defendant took part in a financial transaction with the intent to engage in conduct that would constitute a violation of 26 U.S.C. § 7201 or 7206. The tax involved need not be that of the defendant and may be any type of tax, including, but not limited to, income tax, employment tax, estate tax, excise tax, and gift tax.

Section 7201 criminalizes tax evasion; that is, any willful attempt, by any means, to evade or defeat the proper assessment or payment of any tax. For a discussion of tax evasion, see [Chapter 8](#) of this Manual.

Section 7206 criminalizes various kinds of false statements to the Internal Revenue Service. The section may be violated in many ways, including, but not limited to, (1) willfully making or subscribing a false return or other document under penalties of perjury; (2) willfully aiding or assisting in the preparation or presentation of a false

return, affidavit, claim, or document; (3) falsely or fraudulently executing, signing, procuring, or conniving at the false execution of any bond, permit, entry, or other document required under the Internal Revenue Code or regulations promulgated thereunder; (4) removing or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, or upon which levy is authorized by 26 U.S.C. § 6331, with the intent to evade or defeat the assessment or collection of any tax imposed under Title 26; or (5) concealing property or falsifying information in connection with any offer in compromise. For further information about Section 7206, see Sections [12.00](#), [13.00](#), [14.00](#), and [15.00](#) of this Manual, *supra*.

The language of Section 1956 requires only that the defendant intend to engage in conduct that constitutes a violation of Section 7201 or Section 7206. However, because both statutes require that the defendant acted willfully, conduct is not truly violative of either statute unless the defendant is aware of the duty the tax laws impose and voluntarily and intentionally violates that duty. *Cheek v. United States*, 498 U.S. 192, 201 (1991); *United States v. Zanghi*, 189 F.3d 71, 77-78 (1st Cir. 1999).

Proof, related to a financial transaction, of a completed violation under Section 7201 or Section 7206 could be relied upon to prove that the defendant acted with the required intent. But the language of Section 1956(a)(1)(A)(ii) does not seem to require proof of a completed offense under either § 7201 or § 7206(1) for a successful prosecution. Instead, it is enough to show that the defendant's objective was to engage in conduct that constituted a violation of either section.

In some cases, there may be direct proof that the defendant acted with the necessary intent, such as the defendant's statements that the financial transaction was intended to avoid paying taxes or to hide income from the IRS. In the absence of such an express statement, however, care must be taken in selecting the acts relied upon to prove that the defendant acted with the requisite intent. Concealment of the existence or source of assets through money laundering may be undertaken for any number of reasons unrelated to the tax laws, such as a desire to hide an illegal business from the government.

Thus, proof that the defendant's actions *in fact* concealed sources of income or the ownership of assets might not be enough by itself to show an intent to act in violation of either Section 7201 or Section 7206. The government must offer evidence that the

defendant *intended* to evade taxes. Cf. *Ingram v. United States*, 360 U.S. 672, 679 (1959); *United States v. Pritchett*, 908 F.2d 816, 821 (11th Cir. 1990) ("When efforts at concealment are reasonably explainable in terms other than a motivation to evade taxes, the government must offer independent proof that those who participated in the concealment intended to assist the taxpayer in evading taxes"); *United States v. Krasovich*, 819 F.2d 253, 256 (9th Cir. 1987) (same).

In short, there must be some proof that the defendant was aware that the transaction was intended in some way to violate the tax laws. In some cases, such proof may involve evidence beyond the nature of the financial transaction itself. In other cases, the form of the money laundering transaction may provide proof that the transaction was undertaken for the purpose of tax evasion or tax fraud, such as where taxable funds are laundered and returned through a series of transactions to the taxpayer in a nontaxable form, such as a purported loan or gift.

In *United States v. Zanghi*, 189 F.3d 71 (1st Cir. 1999), the First Circuit upheld Zanghi's 1956(a)(1)(A)(ii) money laundering convictions, rejecting the defendant's contention that the sufficiency of the evidence should be measured in accordance with a patently erroneous jury instruction requiring the jury to find that Zanghi's sole intent in making financial transactions with proceeds of securities fraud was tax evasion. 189 F.3d at 79-80. The court pointed out that tax evasion need only be a principal motive, since "[s]ole or exclusive intent to evade taxes is not required under § 7201." *Id.* at 78. The court held that Section 1956 does not impose a scienter requirement greater than that imposed by Sections 7201 or 7206. *Id.* at 78-79. Evidence sufficient to establish willfulness for purposes of Sections 7201 and 7206 should be sufficient to establish the requisite intent for Section 1956.

The *Zanghi* court concluded that there was sufficient evidence that Zanghi acted with a sufficient tax evasion motive to meet the willfulness standard of Section 7201. 189 F.3d at 80-81. The defendant paid no personal income tax for 1991 and 1992 and paid only minimal amounts in 1990; his unreported income for the three years totaled over \$1 million, and he reported none of the funds he withdrew from certain accounts in 1990 through 1992 as personal income; and when his accountant informed him of a substantial tax liability for 1992, defendant declared: "no taxes, no taxes. I can't pay any taxes." 189 F.3d at 81. The defendant also labeled checks at issue as loan repayments. *Id.* at 80. The court determined that a reasonable jury could find that Zanghi intended to engage in

conduct constituting a violation of 26 U.S.C. § 7201 and that the evidence thus sufficed to support Zanghi's convictions under 18 U.S.C. § 1956(a)(1)(A)(ii). *Id.* at 81.

#### **25.04 SENTENCING**

A conviction under this subsection may bring a maximum prison sentence of 20 years and/or a fine of up to \$500,000, or twice the amount involved in the transaction, whichever is greater. The Guideline applicable to offenses under 18 U.S.C. § 1956(a)(1)(A)(ii) is USSG §2S1.1. *See* USSG App. A. *See* [Chapter 43](#), *infra*, for a further discussion of sentencing in criminal tax offenses. ]

#### **25.05 VENUE**

Venue is proper in the district in which the offense was committed or in any district in which an act in furtherance of the crime was committed. 18 U.S.C. § 3237(a); Fed. R. Crim. P. 18.

In *United States v. Cabrales*, 524 U.S. 1, 5-6 (1998), the Supreme Court held that venue in a money laundering case was not established in Missouri even though the funds were generated by a cocaine distribution operation in Missouri, because the money laundering alleged in the case had taken place entirely in Florida. While the Court acknowledged that, in some instances, money laundering could be a continuing offense for venue purposes, where the funds were transported from one district to another, it found that it was not a continuing offense where the transactions began, continued, and were completed in Florida. *See Cabrales*, 524 U.S. at 8.

For a general discussion of venue, *see* [Section 6.00](#), *supra*.

#### **25.06 STATUTE OF LIMITATIONS**

Under 18 U.S.C. § 3282, the statute of limitations for violations of section 1956(a)(1)(A)(ii) is five years. For a general discussion of the statute of limitations, *see* [Section 7.00](#), *supra*.