

[Criminal Tax Manual](#)

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6.00 VENUE

6.01 OVERVIEW

6.01[1] Generally

For a general discussion of venue, including constitutional and statutory provisions, waiver, and burden of proof, please refer to the [United States Attorney's Manual, Title 9 \(Criminal Resource Manual\) at 231](#).

6.01[2] Policy Considerations

It is the policy of the Department of Justice generally to attempt to establish venue for a criminal tax prosecution in the judicial district of the taxpayer's residence or principal place of business, because prosecution in that judicial district usually has the most significant deterrent effect.

6.02 VENUE IN TAX PROSECUTIONS

6.02[1] 26 U.S.C. § 7201: Tax Evasion

Tax evasion is a “continuing offense” within the meaning of 18 U.S.C. § 3237(a). *United States v. Root*, 585 F.3d 145, 156 (3d Cir. 2009); *United States v. Marchant*, 774 F.2d 888, 891 (8th Cir. 1985); *United States v. Slutsky*, 487 F.2d 832, 839 (2d Cir. 1973). Therefore, venue is proper in a Section 7201 prosecution in any district in which any act in furtherance of the crime was committed, including the district in which a return was prepared, signed, mailed or filed. *Marchant*, 774 F.2d at 891; *Slutsky*, 487 F.2d at 839. In cases in which no return was filed, venue is proper in any district in which an affirmative act of evasion took place. *Marchant*, 774 F.2d at 891; *United States v. Goodyear*, 649 F.2d 226, 228 (4th Cir. 1981); *Slutsky*, 487 F.2d at 839.

Prosecutors should be aware of 18 U.S.C. § 3237(b), which provides that, if venue is based solely on a mailing to the IRS, a defendant charged under Section 7201 has the right to remove the case to the district in which the defendant resided at the time the offense was committed. [Section 6.03\[1\]](#), *infra*. For a more detailed discussion of venue in Section 7201 cases, see [Section 8.09](#), *infra*.

6.02[2] 26 U.S.C. § 7203: Failure to File

Failure to file a tax return is a crime of omission. Venue for a crime of omission lies in any district in which the duty could have been performed; that is, the district in which the defendant was required to file. *United States v. Clines*, 958 F.2d 578, 583 (4th Cir. 1992); *United States v. Garman*, 748 F.2d 218, 219-221 (4th Cir. 1984); *United States v. Rice*, 659 F.2d 524, 526 (5th Cir. 1981); *United States v. Quimby*, 636 F.2d 86, 89-90 (5th Cir. 1981); *United States v. Commerford*, 64 F.2d 28, 32-33 (2d Cir. 1933).

Generally, individual tax returns are to be filed in the internal revenue district in which the taxpayer resides or has his or her principal place of business, or at the IRS Service Center serving that district. 26 U.S.C. § 6091(b)(1).¹ The instruction booklet for the tax form and year at issue typically lists the applicable Service Center.² If the Internal Revenue Code does not provide for the place of filing, the Secretary of the Treasury may, by regulation, prescribe a place for filing. 26 U.S.C. § 6091(a). As a practical matter, venue in an ordinary case involving failure to file an individual tax return is proper in the district in which the appropriate IRS Service Center is located or in the district in which the defendant resides or has his or her principal place of business.

Prosecutors should be aware of 18 U.S.C. § 3237(b), which provides that a defendant charged under Section 7203 has the right to remove the case to the district in which the defendant resided at the time the offense was committed. See [Section 6.03\[1\]](#), *infra*. For a more detailed discussion of venue in Section 7203 cases, see [Section 10.05\[7\]](#), *infra*.

6.02[3] 26 U.S.C. § 7206(1): Filing a False Tax Return

The crime of willfully making or subscribing a false tax return is a “continuing offense” within the meaning of 18 U.S.C. § 3237(a). See *United States v. Shyres*, 898 F.2d 647, 657 (8th Cir. 1990); *United States v. Slutsky*, 487 F.2d 832, 839 (2d Cir. 1973). Thus, venue is proper in a section 7206(1) prosecution in any district in which the false return was prepared and signed, as well as the district in which it was received and filed. *Shyres*, 898 F.2d at 657; *United States v. Rooney*, 866 F.2d 28, 31 (2d Cir. 1989); *United States v. Marrinson*, 832 F.2d 1465, 1475 (7th Cir. 1987); *Slutsky*, 487 F.2d at 839;

¹ The venue rules applicable to corporate and estate tax returns are similar. See 26 U.S.C. § 6091(b)(2) & (3).

² For exceptions to this rule, see the discussion on venue at [Section 10.05\[7\]](#).

United States v. Lawhon, 499 F.2d 352, 355 (5th Cir. 1974). Venue is also proper in the district in which the return preparer received information from the taxpayer, even if the taxpayer signed and filed the return in another district. *Rooney*, 866 F.2d at 31.

Notwithstanding the above rules, prosecutors should be aware of 18 U.S.C. § 3237(b), which provides that, if venue is based solely on a mailing to the IRS, a defendant charged under Section 7206(1) has the right to remove the case to the district in which the defendant resided at the time the offense was committed. 18 U.S.C. § 3237(b) (1988). See [Section 6.03\[1\]](#), *infra*. For a more detailed discussion of venue in section 7206(1) cases, see [Section 12.13](#), *infra*.

6.02[4] 26 U.S.C. § 7206(2): Aiding the Preparation of a False Return

The crime of willfully aiding and assisting in the preparation of a false tax return is a “continuing offense” within the meaning of 18 U.S.C. § 3237(a). *United States v. Hirschfeld*, 964 F.2d 318, 321 (4th Cir. 1992). Venue is therefore proper in a Section 7206(2) prosecution in any district in which the false return was prepared and signed, even if the return was filed in another district. Venue is also proper in the district in which the false return was filed, as well as in any district in which any act of aiding and assisting took place. *Hirschfeld*, 964 F.2d at 321; *United States v. Bryan*, 896 F.2d 68, 72 (5th Cir. 1990).

Notwithstanding the above rules, prosecutors should be aware of 18 U.S.C. § 3237(b), which provides that, if venue is based solely on a mailing to the IRS, a defendant charged under Section 7206(2) has the right to remove the case to the district in which the defendant resided at the time the offense was committed. See [Section 6.03\[1\]](#), *infra*. For a more detailed discussion of venue in section 7206(2) cases, see [Section 13.09](#), *infra*.

6.03 REMOVAL TO DISTRICT OF RESIDENCE

6.03[1] Section 3237(b)

Section 3237(a) of Title 18 allows the government some discretion in establishing venue for continuing offenses, defined as any offenses “begun in one district and completed in another, or committed in more than one district.” However, that discretion is circumscribed by 18 U.S.C. § 3237(b), which, for certain enumerated income tax

violations, gives the defendant the option to transfer venue to the district in which he or she resided at the time the offense was committed. Section 3237(b) provides:

Notwithstanding subsection (a), *where an offense is described in section 7203 of the Internal Revenue Code, or where venue for prosecution of an offense described in section 7201 or 7206(1), (2), or (5) . . . is based solely on a mailing to the Internal Revenue Service, and prosecution is begun in a judicial district other than the judicial district in which the defendant resides*, he may upon motion filed in the district in which the prosecution is begun, elect to be tried in the district in which he was residing at the time the alleged offense was committed: *Provided*, That the motion is filed within twenty days after arraignment of the defendant upon indictment or information.

18 U.S.C. § 3237(b) (emphasis added). Thus, under 18 U.S.C. § 3237(b), a prosecution under 26 U.S.C. § 7201, 7203, or 7206(1), (2) or (5) may be subject to an election by the defendant to be tried in the district in which he or she was residing at the time the alleged offense was committed, provided a motion is filed within twenty days of arraignment.

A defendant may invoke subsection (b) if the venue for offenses under Section 7201 or 7206(1), (2) or (5) is based “solely on a mailing to the Internal Revenue Service” and if the indictment is returned in a district other than the district in which the defendant resides. If the indictment charges other acts that establish venue in the district in which the indictment is returned, the defendant is not entitled to a change of venue. *United States v. Humphreys*, 982 F.2d 254, 260 (8th Cir. 1992); *United States v. Melvan*, 676 F. Supp. 997, 1001-02 (C.D. Cal. 1987). The mailing requirement under 18 U.S.C. § 3237(b) does not apply to prosecutions for failure to file under Section 7203.

Prosecutors should be aware that when Section 3237(b) provides a basis for transferring fewer than all counts, a court may consider it to be in the interests of justice to transfer all counts concerning the particular defendant to the transferee district. A district court is not required, however, to transfer those charges concerning the particular defendant that are not covered by Section 3237(b). Similarly, a court might use a defendant’s Section 3237(b) motion to transfer fewer than all counts, as justification to grant a defendant’s Rule 21(b) motion on the remaining charges.

6.03[2] Rule 21(b)

Rule 21(b) of the Federal Rules of Criminal Procedure provides an alternate basis for a change of venue. *United States v. Benjamin*, 623 F. Supp. 1204, 1211 (D.D.C. 1985). The rule provides:

Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties, any victim, and witnesses and in the interest of justice.

Fed. R. Crim. P. 21(b).

Factors that have been considered with regard to a transfer decision include (1) location of the defendant, (2) location of possible witnesses, (3) location of events likely to be in issue, (4) location of documents and records likely to be involved, (5) potential for disruption of defendant's business, (6) expense to the parties, (7) location of counsel, (8) relative accessibility of the place of trial, (9) docket condition of each district, and (10) special considerations unique to the case. See *Platt v. Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 243-44 (1964) (noting that district court considered these factors in deciding whether to transfer case and that parties and court of appeals agreed that first nine were appropriate).

In exercising the discretion afforded the government to place venue in a particular district, prosecutors should be cognizant of the factors enumerated above and the possibility of transfer under Rule 21(b). The Rule is discussed in the [United States Attorney's Manual, Title 9 \(Criminal Resource Manual\) at 530](#).