

[Criminal Tax Manual](#)

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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) . . . 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 . . . or imprisoned not more than 3 years, or both, together with the costs of prosecution.¹

14.02 TAX DIVISION POLICY

Section 7206(4) prosecutions are rarely brought because, in the usual criminal income tax case, the violation is covered by § 7201 (evasion), § 7206(1) (false return), or § 7212(a) (obstruction). However, § 7206(4) may be useful in appropriate circumstances, for example, to prosecute a defendant who removes or conceals assets subject to levy, because it does not require proof of a tax due and owing or proof of any filed document.

14.03 GENERALLY

Section 7206(4) and its predecessor, Section 3321(a) of the Internal Revenue Code of 1939,² have been used from an early date in cases involving the sale of untaxed liquor. *See, e.g., United States v. Champion*, 387 F.2d 561, 562-63 (4th Cir. 1967); *United States v. Davis*, 369 F.2d 775, 779-80 (4th Cir. 1966); *United States v. Goss*,

¹ For the felony offenses set forth in section 7206(4), the maximum permissible fine 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.*

² Section 3321(a) (I.R.C. 1939) provided: "Every person who 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, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine of not more than \$5,000 or be imprisoned for not more than 3 years, or both."

353 F.2d 671, 672 (4th Cir. 1965); *Hyché v. United States*, 286 F.2d 248, 248-49 (5th Cir. 1961) (*per curiam*); *Ingram v. United States*, 241 F.2d 708, 709 (5th Cir. 1957) (*per curiam*); *Price v. United States*, 150 F.2d 283, 285 (5th Cir. 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 amended what is now Section 7206(4) as part of its recodification of the Internal Revenue Code in 1954. As amended, Section 7206(4) addresses not only concealment of goods or commodities, but also conduct committed in order to avoid a levy. See *United States v. Swarthout*, 420 F.2d 831, 835 (6th Cir. 1970) (citing H.R. Rep. No. 83-1337 (1954), as reprinted in 1954 U.S.C.C.A.N. 4573).

14.04 ELEMENTS OF OFFENSE

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

1. The defendant removed, deposited, or concealed, or was concerned in removing, depositing, or concealing
2. goods or commodities for which, or in respect of which, a tax is or shall be imposed, or any property upon which levy is authorized by 26 U.S.C. § 6331,
3. with intent to evade or defeat the assessment or collection of any tax imposed by Title 26.

14.05 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 26 U.S.C. § 6331. 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). The concept of concealment under the statute is not limited to a physical concealment of the property. See *United States v. Bregman*, 306 F.2d 653 (3d Cir. 1962).

In *Bregman*, the one-count indictment charged:

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

Bregman, 306 F.2d at 654. The defendant 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. Rejecting the defendant’s argument, the court of appeals concluded that “[w]hen 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 (quoting *United States v. Schireson*, 116 F.2d 881, 884 (3d Cir. 1941)). The court therefore concluded:

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 the acts are charged conjunctively. *United States v. Davis*, 369 F.2d 775, 779 (4th Cir. 1966); *Hyche v. United States*, 286 F.2d 248, 249 (5th Cir. 1961); *Price v. United States*, 150 F.2d 283, 285 (5th Cir. 1945).

14.06 TAX IMPOSED OR LEVY AUTHORIZED

Care should be exercised in drafting indictments charging violations of section 7206(4). If 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,” it should be noted that 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. *See United States v. Swarthout*, 420 F.2d 831, 833-34 (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. 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) (reversing conviction based on finding that government should have charged defendant with violating offense prong of conspiracy statute with reference to 26 U.S.C. § 7206(4), rather than with violating general defraud prong).³

14.07 WILLFULNESS

Section 7206(4) does not by its terms require proof of willfulness. The statute does, however, require intent to evade or defeat the assessment or collection of any tax imposed by the Internal Revenue Code. 26 U.S.C. § 7206(4). The same type of evidence used to establish an affirmative act of evasion in an attempted evasion prosecution may be used to prove such intent. See the discussion of affirmative acts in [Section 8.06](#), *supra*.

14.08 VENUE

The Sixth Amendment to the Constitution provides that trials shall be in the "State and district wherein the crime shall have been committed" U.S. Const. amend VI; Fed. R. Crim. P. 18. If a statute does not indicate what Congress considers to be the place

³ *Minarik* has not fared well over time. The Sixth Circuit has limited it, *see United States v. Khalife*, 106 F.3d 1300, 1303-06 (6th Cir. 1996); *United States v. Kraig*, 99 F.3d 1361, 1366-68 (6th Cir. 1996); *United States v. Sturman*, 951 F.2d 1466, 1473 (6th Cir. 1991); *United States v. Mohney*, 949 F.2d 899, 902-03 (6th Cir. 1991); and other circuits have shown no inclination to follow it, *see, e.g., United States v. Goulding*, 26 F.3d 656, 663 (7th Cir. 1994); *United States v. Arch Trading Co.*, 987 F.2d 1087, 1092 (4th Cir. 1993); *United States v. Harnas*, 974 F.2d 1262, 1267 (11th Cir. 1992).

“wherein the crime shall have been committed,” “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 a Section 7206(4) prosecution, 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*.

14.09 STATUTE OF LIMITATIONS

Under 26 U.S.C. § 6531, the statute of limitations for tax offenses is three years, unless an offense falls within an exception making the period six years. There is no exception specifically referring to Section 7206(4). However, Section 6531(1) makes the limitations period six years “for offenses involving the defrauding or attempting to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner.” It has been held that this provision applies to an offense involving fraud, even if the statute defining the offense does not use the word “fraud.” See *United States v. Workinger*, 90 F.3d 1409, 1413-14 (9th Cir. 1996). Concealment of property with intent to evade taxes, in violation of Section 7206(4), could be characterized as fraud. Therefore, it is arguable that the limitations period for such an offense is six years rather than three years. But the safest approach is to proceed on the assumption that the limitations period is three years for all offenses under Section 7206(4). For a general overview of statute of limitations issues, see [Chapter 7.00](#), *supra*.