

TABLE OF CONTENTS

15.00 COMPROMISES AND CLOSING AGREEMENTS

15.01 STATUTORY LANGUAGE: 26 U.S.C. § 7206(5).....	15-1
15.02 GENERALLY	15-1
15.03 SCOPE OF SECTION 7206(5).....	15-2
15.04 WILLFULNESS	15-2
15.05 VENUE.....	15-3
15.06 STATUTE OF LIMITATIONS	15-3

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* not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 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. § 3623¹ which increased the maximum permissible fines for both misdemeanors and felonies. For the felony offenses set forth in section 7206(5), 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.

15.02 *GENERALLY*

Section 7206(5) prosecutions are very rare. Only one reported case has been located charging a section 7206(5) violation, *Gentsil v. United States*, 326 F.2d 243 (1st Cir.), *cert. denied*, 377 U.S. 916 (1964). And even *Gentsil* involved a prosecution for violations of section 7206(1), as well as section 7206(5)(B) (false offers in compromise). In the usual situation, the availability of the commonly used section 7206(1) charge will, in virtually all instances, obviate the need for using section 7206(5). See *United States v. Cohen*, 544 F.2d 781 (5th Cir.), *cert. denied*, 431 U.S. 914 (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 section 7206(5), reference should be made to the discussion of section 7206(1) in Section 12.00, *supra*.

15.03 *SCOPE OF SECTION 7206(5)*

By its terms, section 7206(5) applies to: (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).¹

If either situation is present, then a violation occurs if 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.

¹ Regarding criminal liability, a "compromise" within the meaning of the statute is not a settlement of the criminal case alone, unrelated to civil liability. *United States v. McCue*, 178 F. Supp. 426,434 (D. Conn. 1959). In other words, a "compromise" is not simply a plea agreement. Rather, a "compromise" encompasses settlement of the civil liability. The purpose of the statute is to facilitate the money settlement of tax liabilities. *Id.* Nevertheless, it is the long-standing policy of the Department not to settle civil tax liability while the criminal case is pending. See *United States Attorneys' Manual* (USAM), Title 6, Sec. 6.200.

15.04 *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. *Cheek v. United States*, 498 U.S. 192 (1991); *United States v. Bishop*, 412 U.S. 346, 359-60 (1973). See the discussion of willfulness in Sections 8.06 and 12.09, *supra*.

15.05 *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) occur. See the discussion of venue in connection with section 7206(1) offenses in Section 12.11, *supra*. See also the general discussion of venue in Section 6.00, *supra*.

15.06 *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*.

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1. Changed to 18 U.S.C. § 3571, commencing November 1, 1986.
 2. "A closing agreement is a written agreement between an individual and the Commissioner [the Commissioner of the Internal Revenue Service] which [finally] settles . . . 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. 1986).