Criminal Tax Manual
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25.00 TAX MONEY LAUNDERING

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The focus of this chapter is limited to tax-related money laundering involving 26 U.S.C. § 6050I -- Returns Relating to Cash Received in a Trade or Business -- and 18 U.S.C. § 1956(a)(1)(A)(ii) -- Laundering of Monetary Instruments. The Asset Forfeiture and Money Laundering Section of the Criminal Division has published a comprehensive reference guide on money laundering entitled *Federal Money Laundering Cases* (January 1999).

In addition, prosecutors interested in obtaining further information on money laundering in general, and authorization and consultation requirements in particular, should consult the *United States Attorneys' Manual* (USAM), Sections 9-105.000, 9-105.300 and 9-105.750 (September 1997). Attention is also directed to Tax Division Directive No. 99, dated March 30, 1993, (a copy of which is included in Section 3 of this Manual). Tax Division authorization is required before a money laundering charge may be brought where the specified unlawful activity is based on a violation arising under the internal revenue laws.

25.01 26 U.S.C. § 6050I -- RETURNS RELATING TO CASH RECEIVED IN TRADE OR BUSINESS (FORMS 8300)

25.01[1] Statutory Language: 26 U.S.C. § 6050I

Section 6050I. RETURNS RELATING TO CASH RECEIVED IN TRADE OR BUSINESS

(a) Cash Receipts of More Than $10,000.--Any person--

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary [of the Treasury] may by regulations prescribe.

(b) Form and Manner of Returns.--A return is described in this subsection if such return--

(1) is in such form as the Secretary may prescribe,

(2) contains

(A) the name, address, and TIN (taxpayer identification number) of the person from whom the cash was received,

(B) the amount of cash received,

(C) the date and nature of the transaction, and

(D) such other information as the Secretary may prescribe.

(c) Exceptions.--

(1) Cash received by financial institutions.--Subsection (a) shall not apply to--

(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States.--Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash Includes Foreign Currency and Certain Monetary Instruments.--For purposes of this section, the term "cash" includes--

(1) foreign currency, and

(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be Furnished to Persons With Respect to Whom Information is Required.--Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing--

(1) the name, and address, and phone number of the person required to make such return, and

(2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring Transactions to Evade Reporting Requirements Prohibited.--

(1) **In general.**--No person shall for the purpose of evading the return requirements of this section--

(A) cause or attempt to cause a trade or business to fail to file a return required under this section,

(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

(2) **Penalties.**--A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

25.01[2] **Treasury Regulations: 26 C.F.R.**

As referred to in 26 U.S.C. § 6050I, the Secretary of the Treasury has promulgated Treasury Regulations to implement the statute, as it is not self-executing. The regulations can be found at 26 C.F.R. § 6050I-1 and 26 C.F.R. § 6050I-2, respectively.

The final regulations, filed in September of 1986, cover reporting requirements for the receipt of cash payments generally, as well as circumstances when cash is received for the account of another, by agents, or in the form of multiple payments. For amounts received prior to February 3, 1992, "cash" is defined by these regulations as "the coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued." For amounts received after February 3, 1992, the term "cash" also means (in addition to the language above) : "A cashiers' check (by whatever name called, including 'treasurer's check' and 'bank check'), bank draft, traveler's check, or money order having a face amount of not more than $10,000." Treas. Reg. § 1.6050I-1(c)(1) (26 C.F.R.) (hereinafter "26 C.F.R. §"). In addition, "trade or business" (26 C.F.R. § 1.6050I-1(c)(6)), "transaction" (26 C.F.R. § 1.6050I-1(c)(7)(i)), "related transactions" (including a specific example involving a criminal attorney being paid in a criminal case) (26 C.F.R. § 1.6050I-1(c)(7)(ii)), and "recipient" (26 C.F.R. § 1.6050I-1(c)(8)) are defined in the regulations.

Exceptions to the reporting requirements are also included and cover cash received by certain financial institutions (as set out in the statute itself), as well as additional exceptions for casinos under various specified circumstances, cash receipts outside the course of a trade or business, and transactions that occur entirely outside the United States, Puerto Rico, or any U.S. possession or territory. [FN1]

The regulations also prescribe the time, manner, and form of reporting. Form 8300, the reporting document required to be completed by a payee in order to comply with section 6050I, must be filed with the Internal Revenue Service within 15 days of the receipt of payment or within 15 days of the payment which causes the aggregate amount to exceed $10,000. (26 C.F.R. §1.6050I-1(e)(1).)

Further, a payee required to file a Form 8300 with the Service must also furnish a notice ("statements") to the payer named therein. The statement must be provided to the payer on or before January 31 of the calendar year following the year in which the cash is received. (26 C.F.R. § 1.6050I-1(f).)

Payments Received After December 31, 1989:

The temporary regulations (26 C.F.R. §1.6050I-1T), enacted in July of 1990, pertain to cash payments received after December 31, 1989. They require persons obligated to make reports under the final regulations (above) to make additional reports each time subsequent cash payments are received within a one-year period for the same transaction or related transactions resulting in an

aggregate amount over $10,000. Previously, an additional report was only required when a single subsequent payment exceeded $10,000. The temporary regulations also set forth the time period within which such a report must be made.

To the extent that they are not inconsistent with these temporary regulations, the final regulations remain applicable to cash payments received after 1989.

Payments Received On or After February 3, 1992:

As noted above, all payments received on or after February 3, 1992, are governed by final regulations which came into effect on that date. Under these regulations, the definition of "cash" for purposes of section 6050I is significantly broadened in particular instances to include cashier's checks, bank drafts, traveler's checks, and money orders, so long as they have face values of not more than $10,000. (26 C.F.R. § 1.6050I-1(c)(1)(ii).)

These specified monetary instruments are to be treated as cash only in retail sales of consumer durables, collectibles, in travel or entertainment activity, or in any transactions in which the recipient knows that the instrument is being used to avoid the reporting requirements of section 6050I. (26 C.F.R. §1,6050I-1(c)(1)(ii)(B).) The regulations also provide exceptions to treating the monetary instruments as cash when they are received in certain installment sales, certain down payment plans, or when documentation shows the instruments to be the proceeds of a bank loan. However, certain specified conditions must be met and examples are given.

25.01[3] **Attorney Fee Reporting**

Attorneys are not excepted from the reporting requirements of section 6050I. Neither the statutory exceptions nor the Treasury Regulations defining them provide any such exclusion. To the contrary, 26 C.F.R. 1.6050I-1(c)(3)(iii), example (2), illustrates, through the use of a hypothetical situation, a transaction in which the lawyer's obligation to file a Form 8300 would arise. In the hypothetical, an attorney represents a client in a criminal case, and ultimately, receives an aggregate fee of $12,000, which the client pays in cash. The regulations specifically state, at the end of example (2), that this "receipt of cash must be reported under this section."

Because the Treasury Regulations were promulgated pursuant to an express delegation of statutory authority, they are "legislative regulations" and are, therefore, entitled to considerable weight in the courts, and unless inconsistent with the statute, have the "force and effect of law." *Maryland Casualty Co. v. United States*, 251 U.S. 342, 349 (1920); *Allstate Insurance Co. v. United States*, 329 F.2d 346, 349 (7th Cir. 1964). *See also United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 24 (1982).

In response to incomplete Forms 8300 filed by law firms, the Internal Revenue Service has served summonses on numerous firms since early 1990, seeking the information necessary to complete the forms. The Supreme Court has specifically held that, because Congress has delegated the power to promulgate all needful rules and regulations for the enforcement of the Internal Revenue Code, the regulatory interpretations of the Code will be deferred to so long as they are reasonable. Treasury regulations and interpretations which have endured without substantial change, and which apply to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law. *Cottage Sav. Ass'n v. Commissioner*, 499 U.S. 554, 560-561, (1991); *Jeppsen v. Commissioner*, 128 F.3d 1410, 1417 (10th Cir. 1997). *See Maryland Casualty Co.*, 251 U.S. at 349 (A regulation by a department of government has the force and effect of law if it is not in conflict with an express statutory provision.); *Allstate Insurance Co.*, 329 F.2d at 349. *See also Vogel Fertilizer Co.*, 455 U.S. at 24.

Despite their duty to file under section 6050I and the pertinent Treasury Regulations, some attorneys have either filed incomplete Form 8300 or ignored the reporting requirement altogether. These attorneys claim that the mandated disclosures violate the attorney-client privilege, the First Amendment, the

Fourth Amendment, the Fifth Amendment, and the attorney-client relationship guaranteed by the Sixth Amendment. The Department of Justice has concluded, however, that there is no legal or policy reason to justify an exemption for attorneys from the reporting requirements. In response to incomplete Forms 8300 filed by law firms, the Internal Revenue Service has served numerous summonses on law firms since early 1990, seeking the information necessary to complete the forms. Attorneys in some circuits have made the argument that this type of summons constitutes a John Doe Summons because the IRS's purpose is to obtain information about an unknown third party and should be required to follow the necessary procedures to obtain such a summons.

John Doe Summons

The IRS is empowered to serve a summons on any person from whom it seeks information believed necessary to ascertain that person's tax liability. 26 U.S.C. § 7602(a). If, however, the IRS seeks information regarding the potential tax liability of an unnamed taxpayer, it may not summarily issue a summons, but must follow the procedures laid out in 26 U.S.C. § 7609. If the unnamed taxpayer is known to the IRS, it must provide him or her with notice and opportunity to intervene pursuant to 26 U.S.C. § 7609(a) and (b). Where the IRS does not know the identity of the taxpayer under investigation, it must obtain judicial approval pursuant to § 7609(f) prior to issuing a summons. A summons issued pursuant to § 7609(f) is known as a "John Doe summons." To create a *prima facie* case for validating the summons, the IRS must show that the investigation has a legitimate purpose, that the inquiry is relevant to that purpose, that the information sought is not already in the possession of the IRS, and that it followed all requisite administrative steps. *United States v. Blackman*, 72 F.3d 1418, 142 (9th Cir. 1995).

Law firms in several circuits have challenged summonses requesting the Form 8300 information on the grounds that the IRS was required to obtain prior judicial approval pursuant to § 7609(f). Courts tend to look at the motive behind the request to determine whether the IRS is requesting the information to investigate the law firm, or whether the IRS is requesting the information to investigate unknown third parties. The circuits which have addressed this issue have been split on whether or not to require a John Doe summons, but the courts look at the facts surrounding the investigation to make a determination.

A district court in the First Circuit noted that omission of the identity of the client on Forms 8300 was immaterial to the law firm's tax liability and, therefore, the contention that the IRS was investigating the law firm was not credible. As a result, procedures for obtaining a John Doe summons were required. *United States v. Gertner*, 873 F. Supp. 729, 734 (D.Mass. 1995). In the Sixth Circuit, the court found that where the IRS had no bona fide interest in the law firm's tax liability, but rather was interested in the identity of the payer, the summons was to be treated as a John Doe summons. If the IRS cannot demonstrate bona fide interest in investigating the tax liability of the party summoned, it must comply with § 7609(f). *United States v. Ritchie*, 15 F.3d 599, 599-600 (6th Cir. 1994).

The Ninth Circuit did not require a John Doe summons in *United States v. Blackman,* 72 F.3d 1418, 1423 (9th Cir. 1995), despite the respondent's argument that the IRS was not really seeking information about his clients, and was not seriously investigating him or his law firm at all. The respondent contended that the information sought by the IRS did not have any relevance to any legitimate investigation of him or the firm, and urged the court to find that the IRS was required to follow John Doe procedures. The Ninth Circuit noted that in *Tiffany Fine Arts v. United States*, 469 U.S. 310, 316-317, (1985), the Supreme Court held that, even where the IRS admits it has a "dual motive" (where the investigation is aimed at unnamed as well as named persons), a John Doe summons is not required so long as the trial court determines as a matter of fact that the IRS's investigation of the named party is legitimate. Based on the holding in *Tiffany*, the court of appeals affirmed the district court's decision and held that the investigation of the firm was legitimate and, thus, did not require a John Doe summons. *Blackman*, 72 F.3d at 1422-1423.

The courts have held that, except in a case of special circumstance (discussed below), client identity and payment of fees are not privileged information. *Gertner*, 873 F.Supp. at 734. *United States v.*

Goldberger, 935 F.2d 501, 505 (2d Cir. 1991) (Absent special circumstances, the identification in Form 8300 of respondents' clients who make substantial cash fee payments is not a disclosure of privileged information.); *In re Grand Jury Matter*, 926 F.2d 348, 351 (4th Cir. 1991); *Ritchie*, 15 F.3d at 602; *United States v. Sindel*, 53 F.3d 874, 876 (8th Cir. 1995) (attorney-client privilege protecting confidential disclosures ordinarily does not apply to client identity and fee information); *Blackman*, 72 F.3d at 1424 (absent extraordinary circumstances); *In re Grand Jury Subpoenas (Anderson)*, 906 F.2d 1485, 1488 (10th Cir. 1990); *United States v. Leventhal*, 961 F.2d 936, 940 (11th Cir. 1992).

An attorney in the Sixth Circuit made the argument that attorneys should not be forced to comply with section 6050I because consultation with counsel cannot constitutionally be used to establish a reasonable basis for believing that a client has failed to comply with internal revenue laws. The Sixth Circuit rejected this argument and noted that the suspect act is paying over $10,000 in cash for anything--in this case legal services. The IRS's investigation has nothing to do with the client's choice of attorney; it has everything to do with how the client paid for the services of his attorney. There is no reason to grant law firms a potential monopoly on money laundering simply because their services are personal and confidential; other businesses must divulge the identity of their cash-paying clients in keeping with lawful revenue regulations and law firms should not be an exception to this rule. *Ritchie*, 15 F.3d at 601.

Some circuits have recognized exceptions to the general rule that client identity and fee information are not privileged. The three general exceptions to this rule include the legal advice exception, the last link exception, and the confidential communications exception. Prosecutors should be aware that not all circuits recognize these exceptions and that each circuit varies on what circumstances justify a need for departure from the general rule.

Several circuits have created an exception to the general rule that client identity and fee information are not protected by the attorney-client privilege where there is a strong possibility that disclosure would implicate the client in the very criminal activity for which legal advice was sought. The First Circuit granted an exception where the defendant was charged in a narcotics case, stating that there was a strong possibility that disclosure of a large unexplained cash income could certainly be incriminating evidence in the pending prosecution. This court also noted that this exception is very narrow and strongly fact driven. *Gertner*, 873 F.Supp. at 735. This exception was also recognized in *Sindel*, 53 F.3d at 876; *Baird v. Koerner*, 279 F.2d 623 (9th Cir. 1960); *In re Grand Jury Subpoenas (Anderson)*, 906 F.2d at 1488. This exception was specifically rejected in *Lefcourt v. United States*, 125 F.3d 79, 87 (2d Cir. 1997).

Several circuits have also recognized an exception where the disclosure of the client's identity by his attorney would have supplied the last link in an existing chain of incriminating evidence likely to lead to the client's indictment. This exception does not apply where the client who may be implicated is not currently the subject of an ongoing investigation. This exception has been recognized in *Gertner*, 873 F.Supp. at 735 ; *Sindel*, 53 F.3d at 876; *Blackman*, 72 F.3d at 1424; *In re Grand Jury Subpoenas (Anderson)*, 906 F.2d at 1488-1489; *United States v. Leventhal*, 961 F.2d at 40 (This exception extends the protection of the attorney-client privilege to non-privileged information, thereby protecting other attorney-client communications that are privileged, where the incriminating nature of the privileged communications has created in the client a reasonable expectation that the information would be kept confidential.). The Sixth Circuit explicitly rejected the last link exception in *In re Grand Jury Investigation*, 723 F.2d 447 (6th Cir. 1983).

The last exception the courts have recognized is an exception for confidential communications. This exception protects client identity and fee information if, by revealing this information , the attorney would necessarily disclose confidential communications. This exception has been recognized in *Gertner*, 873 F.Supp. at 735; *Sindel*, 53 F.3d at 876; *Blackman*, 72 F.3d at 1424. Therefore, although generally speaking, a clients' identity and source of payments for legal fees is not privileged, under certain circumstances, where a disclosure of these facts would be tantamount to a

disclosure of a confidential communication, this exception will apply.

On the issue of penalties for non compliance, the Second Circuit sanctioned a law firm that had refused to comply with a summons for Form 8300 information, based on its belief that the request violated the attorney-client privilege. The appellate court noted that client identity and fee information are, absent special circumstances, not privileged, and that possible or even likely client incrimination does not amount to a special circumstance. The court concluded that the failure to disclose was willful and an intentional disregard of the law firm's obligation. Accordingly, the court affirmed the district court's refusal to order the refund of a $25,000 penalty assessed by the IRS against the law firm for failing to disclose client identity on a Form 8300.

An attorney in the Eighth Circuit argued that completion of Form 8300 constitutes 'compelled speech' which violates both his own and his clients' First Amendment rights. *Sindel*, 53 F.3d at 878. The court stated that First Amendment protection against compelled speech has been found only in the context of governmental compulsion to disseminate a particular political or ideological message. The IRS summons requires the attorney only to provide the government with information which his clients have given him voluntarily, not to disseminate publicly a message with which he disagrees. Therefore, the First Amendment protection against compelled speech does not prevent enforcement of the summons.

An attorney in the Second Circuit argued that the summons violated rights provided by the Fourth Amendment. This argument was rejected by the court in *United States v. Goldberger*, 935 F.2d 501, 503 (2d Cir. 1991).

Law firms have also made the argument that compelling an attorney to provide evidence against his client violates the client's Fifth Amendment right against self-incrimination. This argument has also been rejected by many of the circuits on the basis that the privilege against self-incrimination is a personal privilege, and the client is not the one being compelled. *Couch v. United States,* 409 U.S. 322, 328 (1973); *Goldberger*, 935 F.2d at 503; *Ritchie*, 15 F.3d at 602; *Sindel*, 53 F.3d at 877 (8th Cir. 1995); *Blackman*, 72 F.3d at 1426.

In *Goldberger & Dubin*, 935 F.2d at 505, the court also stated that, even when the technical requirements of the attorney-client privilege have been satisfied, it should still yield in the face of section 6050I, a federal statute, which implicitly precludes application of the privilege.

Professional responsibility rules and bar association ethical opinions which require that an attorney maintain client confidences or which purport to compel an attorney to withhold information sought under section 6050I do not override the clear mandate of a statute enacted by Congress. In *Caplin & Drysdale, Chartered v. United States,* 491 U.S. 617 (1989), the Court stated that: "[t]he fact that a federal statutory scheme . . . is at odds with model disciplinary rules or state disciplinary codes hardly renders the federal statute invalid." 491 U.S. at 632, n.10. And, most professional responsibility codes allow or require an attorney to disclose client confidences when such disclosure is required by law. *See, e.g.*, Model Code of Professional Responsibility DR 4-101(C)(2), DR 7-102(A)(3) (1981).

Several arguments have been made with respect to the Sixth Amendment. The first is that "it interferes with the ability to citizens to retain counsel." This argument has been rejected by a number of circuits. The Second Circuit has noted that section 6050I does not preclude would-be clients from using their own funds to hire whomever they choose. To avoid disclosure under section 6050I, they need only pay counsel in some manner other than cash. *Goldberger*, 935 F.2d at 504. This argument was also rejected by *Ritchie*, 15 F.3d at 601; *Sindel*, 53 F.3d at 877 (A client is not prevented from communicating with an attorney at will merely because the attorney must report large cash transactions.).

Another argument made is that the reporting requirement "discourages free and open communication between client and attorney." This argument has been rejected in *Ritchie*, 15 F.3d at 601, and *Sindel*, 53 F.3d at 877. Law firms also argue that "it could destroy the attorney-client relationship through disqualifications of counsel who is later called to testify as to the form of payment." Both *Ritchie*, 15 F.3d at 601, and *Sindel*, 53

F.3d at 877, also rejected this argument. The Tenth Circuit has also held that there is no right to counsel prior to indictment or after all appeals have been exhausted and that a subpoena served on counsel during representation of a client whose case is currently on appeal should be quashed only upon a showing that the subpoena would create actual conflict between the attorney and client. *In re Grand Jury Subpoenas (Anderson)*, 906 F.2d at 1488-1489.

In addition, the strong governmental interest served by section 6050I in permitting taxation of otherwise hidden income and in tracing funds related to criminal activities may override any Sixth Amendment interest in keeping client identity and fee information confidential. *Cf. Caplin & Drysdale, Chartered*, 491 U.S. at 631 (strong government interest in recovering forgettable assets overrides defendant's Sixth Amendment interest in using the assets to pay for his legal defense).

25.01[4] **Criminal Prosecution: Failing to File Correct Forms; Structuring to Evade Reporting**

Criminal charges with regard to section 6050I may be brought against persons who willfully violate either the duty to file correct Forms 8300 or the statute's prohibitions against structuring transactions to evade reporting requirements. However, a failure to furnish a correct statement to a payer named in a Form 8300, as required by section 6050I(e), brings civil penalties only.

As originally enacted, section 6050I did not contain any prohibition against structuring. Effective November 18, 1988, section 6050I(f), as enacted in the Anti-Drug Abuse Act of 1988, expressly prohibits the structuring of transactions for the purpose of evading the statute's reporting requirements. It also makes explicit prohibitions against causing or attempting to cause a trade or business to fail to file a Form 8300, and against causing or attempting to cause a trade or business to file an incorrect Form 8300. Originally captioned "Actions by Payers," the subsection was given its present caption ("Structuring Transactions to Evade Reporting Requirements Prohibited") on November 5, 1990, to ensure that both payers and payees are subject to the anti-structuring language. [FN2]

25.01[4][a] **Duty To File Correct Forms 8300 -- WILLFULNESS**

Since Forms 8300 are required under the Internal Revenue Code, willful failures to file and willful filings of incorrect forms are criminal tax offenses within Title 26. Specifically, typical prosecutions will be for failure to file Forms 8300 or for filing or aiding the filing of false Forms 8300, punishable under 26 U.S.C. §§ 7203, 7206(1) and 7206(2), respectively. Similarly, prosecutions for structuring will also be brought pursuant to these statutes as Section 6050I(f)(2) states that "[a] person violating this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section." [FN3] Prosecutions for violations of section 6050I will involve the same elements as traditional tax violations using these statutes. Therefore, reference should be made to the appropriate discussions in Sections 10.00, 12.00, and 13.00 of this Manual.

A section 7201 tax evasion prosecution is not available for violations of section 6050I, since there is no tax involved in Form 8300 reporting. However, the filing of a false Form 8300 or structuring activities either with respect to nonfiling or false filing of Forms 8300 could constitute affirmative acts for purposes of a traditional tax evasion prosecution involving, for the client, individual income taxes on Form 1040.

Successful prosecutions under sections 7203, 7206(1), or 7206(2) require a showing of "willfulness." Willfulness in the criminal tax statutes is defined as "a voluntary, intentional violation of a known legal duty." *United States v. Bishop*, 412 U.S. 346, 360 (1973). Willfulness is absent when the violation occurs because of a good faith misunderstanding of the law or a good faith belief that one is not violating the law, even if the belief or misunderstanding is not objectively reasonable. *Cheek v. United States*, 498 U.S. 192 (1991).

Because violations of section 6050I are prosecuted under the criminal tax statutes and because willfulness under those statutes requires a showing that the defendant knew of the legal duty he is charged with violating, there has never been much doubt that to establish a willful failure to file a Form 8300 or the willful filing of a false Form 8300, the government was required to prove that the defendant knew of the filing requirement. Until recently, however, there has been some doubt whether the government was required to show in a prosecution for structuring to avoid the Form 8300 filing requirements (26 U.S.C. § 6050I(f)), that the defendant knew structuring was prohibited. The language of section 6050I(f) is virtually identical to the language of the anti-structuring provision in Title 31 (31 U.S.C. § 5324) and a number of courts had held that in a Title 31 structuring case the prosecution need only prove that the defendant knew of the reporting requirements and acted to avoid the requirements. Knowledge that structuring was illegal was held to be unnecessary. *United States v. Pinner*, 979 F.2d 156 (9th Cir. 1992); *United States v. Beaumont*, 972 F.2d 91 (5th Cir. 1992); *United States v. Gibbons*, 968 F.2d 639 (8th Cir. 1992); *United States v. Coming*, 968 F.2d 232 (2d Cir.); *United States v. Rogers*, 962 F.2d 342 (4th Cir. 1992). *See also United States v. Holland*, 914 F.2d 1125 (9th Cir. 1990).

In *Ratzlaf v. United States*, 510 U.S. 135 (1994), however, the Supreme Court rejected these cases and held that, to establish a willful violation of the anti-structuring provision in Title 31, the government was required to prove that the defendant acted with knowledge that his conduct was unlawful. In other words, the government must prove that the defendant knew that structuring was illegal.

Given the similarity in language between the two anti-structuring provisions and the general requirement in tax cases that the government prove that the defendant was aware of the legal duty he is charged with having violated, it will be difficult to argue, following *Ratzlaff*, that the government is not required to prove that a defendant charged with violating section 6050I(f) knew that structuring was prohibited. The sort of proof which can be used to establish the element of knowledge is the same sort of proof which has traditionally been used in tax cases. Thus, knowledge may be shown by such evidence as a prior history of filing Forms 8300, testimony of a cooperating insider, admissions made to undercover operatives, or proof of affirmative efforts to structure receipts around the filing requirement.

25.01[5] **Sentencing**

With respect to prosecutions under 26 U.S.C. § 7203 for willfully failing to file Forms 8300, the maximum permissible prison term for such offenses was changed from one year to five years by the Anti-Drug Abuse Act of 1988, effective November 18 of that year. A willful failure to file Form 8300 is a felony offense, no longer a misdemeanor, pursuant to the Crime Control Act of 1990.

Violations of 26 U.S.C. § 7206 involving Forms 8300 are unaffected by the Anti-Drug Abuse Act and are still felonies punishable by up to three years' imprisonment. A conviction under 26 U.S.C. § 7206(1) or (2) for a filing completed after November 1, 1987, but before November 1, 1993, is sentenced under section 2T1.3 or section 2T1.4 of the Federal Sentencing Guidelines, respectively. A conviction under 26 U.S.C. § 7203 for failing to file a Form 8300 after November 1, 1987, however, is not sentenced under Part T ("Offenses Involving Taxation"). Rather, section 2T1.2(c)(1) expressly provides that the defendant is to be sentenced under section 2S1.3 ("Failure to Report Monetary Transactions") of the guidelines. [FN4]

For offenses committed after November 1, 1993, amendments to the Sentencing Guidelines provide that for violations based upon 26 U.S.C. § 6050I, prosecuted under either 26 U.S.C. §§ 7203 or 7206, sentence is to be imposed pursuant to new section 2S1.3. This section is entitled "Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instruments Report; Knowingly Filing False Reports."

Prosecutors should also be aware that both sections 7203 and 7206 provide

for mandatory costs of prosecution.

25.01[6] **Venue**

Appropriate venue considerations will depend upon the statute (section 7203 or section 7206) pursuant to which the prosecution is brought. Reference should be made to the discussion of venue in the sections of this manual (Sections 10.00, 12.00, and 13.00, *supra*) addressing the pertinent offenses. Also, *see* Section 6.00, *supra*, for a general discussion of venue.

25.01[7] **Statute of Limitations**

For prosecutions under 26 U.S.C. § 7203 for willful failure to file a Form 8300, the statute of limitations is *three* years and begins to run from the date the form was due to be filed. With respect to prosecutions under 26 U.S.C. § 7206 for filing a false Form 8300 or aiding such filing, the statute of limitations is six years and runs from the date the false form was filed.

Reference should be made to the statute of limitations for tax offenses, 26 U.S.C. § 6531. For a general discussion of the statute of limitations, *see* Section 7.00, *supra*.

25.01[8] **Policy and Procedure**

Tax Division Directive No. 87-61, effective February 27, 1987, delegates the authority of the Assistant Attorney General of the Tax Division to authorize prosecutions of section 6050I offenses under 26 U.S.C. §§ 7203 and 7206. Under the limited delegation, the Service may refer such prosecution recommendations to United States Attorneys directly, so long as a copy of the referral is simultaneously sent to the Tax Division. This direct referral procedure obviates the usual requirement of Tax Division review in many cases. Instead, under the Directive, such prosecutions may be authorized by the Assistant Attorney General of the Criminal Division, his or her Deputies, or his or her Section Chiefs; a United States Attorney; a permanently appointed First Assistant United States Attorney; or a Chief of criminal functions within a United States Attorney's Office.

There are, however, exceptions to the direct referral process. The Tax Division continues to review all contemplated section 6050I prosecutions which are coupled with other tax offenses (*e.g.*, a *Klein* conspiracy charge, which cannot be indicted without Division approval). Moreover, the delegation of authority does not include section 6050I prosecutions to be brought against: accountants; physicians; attorneys (acting in their professional representative capacity) or their employees; casinos or their employees; financial institutions or their employees; local, state, federal or foreign public officials or political candidates; members of the judiciary; religious leaders; representatives of the electronic or printed news media; labor union officials; and, publicly-held corporations and/or their officers.

The Directive notes that, notwithstanding the delegation, the designated official has the discretion to seek Tax Division authorization of any proposed prosecution within the scope of the delegation or to request the advice of the Tax Division with respect to any such proposed prosecution.

The delegation of authority does not extend to any case in which a violation of section 6050I is the basis, in whole or in part, for a charge under any statute other than 26 U.S.C. § 7203 or § 7206.

25.01[8][a] **Tax Return Disclosure**

Forms 8300 are subject to the provisions of 26 U.S.C. § 6103, which sets forth a general rule of confidentiality for all returns and return information. Section 6103(h) allows disclosure of returns or return information to certain federal officers and employees (including employees of the Departments of Treasury and Justice) for purposes of tax administration. Section 6103(i)(1)

provides for disclosure of returns and return information pursuant to *ex parte* order for use in criminal investigations not relating to tax administration. Section 6103(e)(15) specifically provides that, upon written request, the Secretary of the Treasury may disclose to officers or employees of any federal agency, any agency of a state or local government, or any agency of the government of a foreign country, information contained on returns filed under section 6050I. Disclosures made under this provision are made on the same basis, and subject to the same conditions, as apply to disclosure of information contained on reports filed under 31 U.S.C. 5313 (Currency Transaction Reports). No disclosure under this provision may be made for the purposes of the administration of any tax law. Prosecutors involved in Form 8300 prosecutions or other criminal tax cases should keep the requirements of section 6103 in mind and adhere to its provisions.

For additional general information concerning section 6103 and the disclosure of tax information, *see* section 42.00, a new section in this edition of the *Criminal Tax Manual*.

25.02 **18 U.S.C. § 1956(a)(1)(A)(ii) -- LAUNDERING OF MONETARY INSTRUMENTS**

25.02[1] **Statutory Language: 18 U.S.C. § 1956(a)(1)(A)(ii)** [FN5]

This statute provides, in pertinent 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)(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 monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. * * * *

25.02[2] **Generally**

Sections 1956 and 1957 of Title 18 are the federal money laundering statutes created by the Anti-Drug Abuse Act of 1986. Their provisions describe four criminal offenses which may arise from participation in certain transactions involving the proceeds of specified unlawful activities. Specifically, the money laundering offenses are divided into the following categories: financial transactions, transportation, financial institutions, and monetary transactions. Section 1956(a)(1)(A)(ii), the subsection which is of particular relevance to tax crimes and which is addressed in this Section of the Manual, is a financial transaction offense. It was not included, however, in the statute until the passage of the Anti-Drug Abuse Act of 1988 and did not become effective until November 18, 1988.

25.02[3] **Elements**

To establish a violation of 18 U.S.C. § 1956(a)(1)(A)(ii), the following elements must be proved beyond a reasonable doubt:

1. defendant conducted or attempted to conduct a financial transaction;

2. defendant knew that the property involved in the transaction

represented the proceeds of some form of unlawful activity;

3. the property did, in fact, represent the proceeds of "specified unlawful activity;" and,

4. defendant took part in the transaction with the intent to engage in conduct constituting a violation of 26 U.S.C. § 7201 or 26 U.S.C. § 7206.

The government must make an independent showing of participation, knowledge, and intent for each defendant tried as a party to the money laundering transaction. *United States v. Cota*, 953 F.2d 753, 755 (2d Cir. 1992).

25.02[4] **Conduct Financial Transaction**

Section 1956 defines "financial transaction" very broadly. The term "transaction" is defined in section 1956(c)(3) to include a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition of property. When involving a financial institution, "transaction" covers nearly all common banking transactions and includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution. The placing of money in a safe deposit box was originally not a transaction within the meaning of the statute. *United States v. Bell*, 936 F.2d 337, 342 (7th Cir. 1991) (court opined that the list of banking transactions provided in the statute reveals Congress' intent to limit the meaning of "transaction" to activities where the bank actually retains control over the funds). However, effective October 28, 1992, this was legislatively overruled by section 1527 of the Anti-Money Laundering Act which amended section 1956(c)(3) to include the use of a safe deposit box in the definition of financial transaction. If the case involves a safe deposit box prior to October 28, 1992, in a circuit other than the Seventh, it is still worth pursuing, since the legislative history of the amendment suggests that it is only codifying what was already the law.

In order to qualify as a "financial transaction" within the purview of the statute, the transaction must affect interstate or foreign commerce and involve either (1) the movement of funds by wire or other means or (2) one or more monetary instruments, or (3) the transfer of title to any real property, vehicle, vessel, or aircraft. Alternatively, the transaction must involve the use of a financial institution which is engaged in, or whose activities affect, interstate or foreign commerce. 18 U.S.C. § 1956(c)(4). The term "financial institution" includes any such entity meeting the broad definition set forth in 31 U.S.C. § 5312(a)(2). 18 U.S.C. § 1956(c)(6).

Unlike 26 U.S.C. § 6050I, which only applies to transactions involving more than $10,000, there is no threshold amount of money which must be involved in the financial transaction to constitute a violation of section 1956.

For the purposes of this statute, the term "monetary instruments" means the coin or currency of the United States or other country, travelers' checks, personal checks, bank checks, money orders, or, lastly, investment securities or negotiable instruments which are in bearer form or such form that title to them passes upon delivery. 18 U.S.C. § 1956(c)(5).

The term "conducts" includes initiating, concluding, or participating in initiating or concluding a transaction. 18 U.S.C. § 1956(c)(2). Moreover, the offense explicitly includes *attempts* at "conducting" such transactions, as well as completed offenses.

The requirement that the transaction have some effect on commerce is for jurisdictional purposes and is derived from the Hobbs Act (18 U.S.C. § 1951). It is intended to embrace the full exercise of Congress' powers under the Commerce Clause of the United States Constitution. A minimal or potential effect on commerce should be sufficient to satisfy the standard. *But see United States v. Aramony*, 88 F. 3d 1369, 1386 (4th Cir. 1996).

25.02[5] **Knowledge**

The defendant must have known that the property involved in the transaction or attempted transaction represented, in whole or in part, the proceeds of some form of activity which constitutes a felony under state, federal, or foreign law. It is not necessary to show that the defendant knew the proceeds were derived from a particular federal, state, or foreign offense, just that the property was the proceeds of some unlawful conduct. Nor is it necessary, if the defendant did, in fact, believe that the proceeds were the result of a particular unlawful activity, that that activity be a "specified unlawful activity" (discussed *infra*) within the meaning of the statute. 18 U.S.C. § 1956(c)(1).

For offenses committed before November 29, 1990, the knowledge requirement may only be satisfied if the defendant knew that the proceeds were derived from an activity constituting a felony under state or federal law. The statute was not amended to include knowledge of activity violative of foreign law until that year. *See* Crime Control Act of 1990, Pub. L. No. 101-647, section 106, 104 Stat. 4789, 4791 (1990).

Also, prior to November 29, 1990, the term "state" was not expressly defined in the statute. On that date, however, section 1956(c)(8) became effective and defined the term to include "a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

The statute's legislative history makes clear that the knowledge requirement of the statute includes "willful blindness." Several circuits have expresssly adopted the doctrine in some form. As stated by the Seventh Circuit: "To support a conviction [under 18 U.S.C. § 1956], the prosecution must demonstrate that the defendant had either actual knowledge of the tainted source of funds, or consciously avoided obtaining actual knowledge, because '[i]t is well settled that wilful [sic] blindness or conscious avoidance is the legal equivalent to knowledge."' *United States v. Rodriguez*, 53 F.3d 1439, 1447 (7th Cir. 1996) *United States v. Antzoulatos*, 962 F.2d 720, 724 (7th Cir. 1992). The Third Circuit concurs: "[t]he element of knowledge may be satisfied by inferences drawn from proof that a defendant may have deliberately closed his or her eyes to what otherwise had been obvious to him or her." *United States v. Anderskow*, 88 F.3d 245, 252 (3d Cir. 1996).

Ultimately, two elements are necessary to warrant a separate jury instruction for willful blindness in a money laundering prosecution: (1) the defendant must have claimed a lack of actual knowledge; and (2) the evidence presented by the government must support an inference that the defendant engaged in a course of deliberate ignorance. *See United States v. Gabriele*, 63 F.3d 61, 66 (1st Cir. 1995); *see also United States v. Gonzales*, 90 F.3d 1363, 1371 (8th cir. 1996).

However, prosecutors should be aware that certain circuits apply the doctrine of willful blindness more narrowly. What constitutes willful blindness in one jurisdiction may not in another. Thus, the "evidence sufficient to support an inference of deliberate ignorance" standard may be a significant burden to overcome. *See, e.g., United States v. Campbell*, 777 F.Supp. 1259, 1266 (W.D.N.C. 1991), *aff'd in part, rev'd in part*, *977 F.2d 854 (4th Cir. 1992)* (standard for willful blindness is not whether the defendant "could've, should've, or would've known," but whether defendant *did* know the transaction involved illegal proceeds). The scant case law concerning the application of the willful blindness standard to section 1956 prosecutions, however, leaves judicial acceptance of the doctrine in this context uncertain. In one of the few cases dealing with the issue, a federal district judge interpreted the willful blindness doctrine narrowly and overturned the conviction of a real estate agent charged with the violation of two federal money laundering laws, including 18 U.S.C. § 1956(a)(1)(B)(i). *United States v. Campbell*, 777 F. Supp. at 1267.

In *Campbell*, the defendant sold a home to a drug dealer and filed a false statement with the Department of Housing and Urban Development, understating the house's selling price by $60,000 (the under-the-table amount paid in cash by the drug dealer). The government relied on a theory of willful blindness to satisfy section 1956's knowledge requirement. The prosecution presented evidence of the defendant's awareness of the drug dealer's flamboyant lifestyle and expensive tastes to prove her deliberate ignorance, but did not

offer evidence that the realtor actually knew her client's illicit occupation.

25.02[6] **Proceeds of Specified Unlawful Activity**

The actual source of the funds or property involved in the transaction or attempted transaction must have been, in fact, one or more of the statute's "specified unlawful activities," enumerated in section 1956(c)(7). The list is comprised of both state and federal offenses which either generate substantial economic proceeds or require substantial funds to commit. The list includes all federal offenses which are currently RICO predicates (other than Title 31 violations), all federal and foreign felony drug offenses, and an assortment of bribery, white collar, environmental, export control, and espionage crimes. (The list of specified unlawful activities has expanded each year. It is, therefore, recommended that the government attorney check the operative statute for the specific years involved).

Tax crimes, however, in and of themselves, are not among the crimes listed in the statute as "specified unlawful activity." S.Rep. No. 433, 99th Cong. 2d Session, 11-12 (1986). Nor can the omission of tax crimes as "specified unlawful activity" be overcome by charging an Internal Revenue violation under some other provision of the United States Code which is included in the list of "specified unlawful activity." *United States v. Smith*, No. 92-1612 (5th Cir. Aug. 11, 1993) (unpublished opinion). *See also* Tax Division Directive No. 99 (March 30, 1993).

The source of the funds may be established through either direct or circumstantial evidence. *See United States v. Blackman*, 904 F.2d 1250, 1257 (8th Cir. 1990). The prosecution does not have to trace the proceeds back to a particular criminal event (*e.g.*, to a particular drug sale) to show their illicit origin; however, the government cannot rely solely on proof that the defendant has no legitimate source of income. Rather, the evidence must show, beyond a reasonable doubt, that the funds were derived, in whole or in part, from a specified unlawful activity. *Id*. at 1257.

The funds involved in the transaction need not be composed entirely of proceeds from one or more specified unlawful activities. The intermingling of either legitimate income or the proceeds of unlawful enterprises not specified in the statute with the proceeds of a statutorily specified crime does not prevent a financial transaction involving these funds from satisfying this element of the money laundering offense. *United States v. Jackson*, 935 F.2d 832, 839-40 (7th Cir. 1991).

25.02[7] **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 the financial transaction with the intent to engage in conduct which would constitute a violation of 26 U.S.C. § 7201 or § 7206. The tax involved need not be that of the defendant. The legislative history shows that the prohibitions also apply to a person who intends to aid another in violating the tax laws. 134 Cong. Rec. S17367 (daily ed. Nov. 10, 1988).

Conduct constituting a violation of section 7201 involves attempted tax evasion (willful attempt in any manner to evade or defeat any tax or payment thereof). *See*, *e.g.*, *Spies v. United States*, 317 U.S. 492, 498-99 (1943). Section 1956 does not contain any limitation on the type of tax covered or the type of document submitted. Thus, one could act with the intent to evade income tax, excise tax, estate tax, gift tax, or any other kind of tax. For a more complete discussion of section 7201 offenses, refer to Section 8.00, *supra*.

Conduct that will constitute a violation of section 7206 is manifold. The section may be violated through various activities including: (1) willfully making or subscribing a false return or 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 the false execution of any bond, permit, entry, or other document required under the Internal Revenue Code or Regulations;

(4) removal or concealment of 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 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 additional discussion of conduct violative of section 7206, *see* Sections 12.00, 13.00, 14.00, and 15.00, *supra*.

Although the language of section 1956 requires that the defendant simply intend to engage in conduct which constitutes a violation of sections 7201 and/or section 7206, conduct is not truly violative of either section 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 (1991).

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

Clearly, proof that the defendant acted with the necessary intent will be easiest where the defendant has stated that the purpose of the financial transaction was to avoid paying taxes or to hide income from the Internal Revenue Service. In the absence of 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 may be undertaken for any number of reasons unrelated to noncompliance with the tax laws, *e.g.*, to hide an illegal business from the government, to perpetuate a fraud on business creditors or third persons, or to conceal assets in a divorce proceeding.

Thus, proof that the defendant's actions 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. *See Ingram v. United States*, 360 U.S. 672 (1959) (holding that defendants' participation in conducting and attempting to conceal lottery operations was insufficient to convict them of conspiring with others to evade and defeat the payment of the federal taxes imposed on lottery operations, where they were merely employees who were not liable for the payment of such taxes and were not shown to have knowledge that the taxes had not been paid); *United States v. Pritchett*, 908 F.2d 816, 821 (11th Cir. 1990) *aff'd in part, rev'd in part* (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 evade taxes); *United States v. Krasovich*, 819 F.2d 253 (9th Cir. 1987) (holding that proof of defendant's purchase of a truck with funds provided by another and titling of the truck in his name were insufficient to show that he conspired to impede the IRS with regard to the other's taxes); *United States v. Tarnopol*, 561 F.2d 466 (3rd Cir. 1977) (holding that proof that numerous sales *were* omitted from the books of two corporations was insufficient by itself to sustain conviction for conspiring to impede the IRS in regard to the taxes of the two corporations or the controlling stockholder of the two corporations), *rev'd on other grounds sub.nom*, *Griffin v. United States*, 502 U.S. 46, 56-7 (1991).

In short, there must be some proof that the defendant was aware that the transaction related in some way to an intended violation of section 7201 or section 7206. In some cases, proof may have to be found outside the financial transaction itself. In other cases, the form of money laundering transaction alone may provide proof that the transaction was undertaken for the purpose of tax evasion or tax fraud, *e.g.*, 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. *See Pritchett*,908F.2d at 821-22.

In *United States v. Zanghi*, 189 F.3d 71, 79-80 (1st Cir.1999), *cert. denied*, 528 U.S. 1097 (2000), the First Circuit upheld Zanghi's 1956(a)(1)(A)(ii) money laundering convictions despite concluding that the trial court's jury instructions incorrectly required the jury

to find that Zanghi's sole intent in making financial transactions with proceeds of securities fraud was tax evasion. The First Circuit also determined that there was more than sufficient evidence for the jury to conclude that Zanghi conducted the withdrawals at issue with sufficient tax evasive motive to meet the willfulness standard of § 7201. Defendant paid no personal income tax for 1991 and 1992 and minimal amounts in 1990. His unreported income for the three years totaled over $1,000,000, and he reported none of the funds he withdrew from the accounts in 1990 through 1992 as personal income. When his accountant informed him of a substantial tax liability for 1992, defendant declared: "no taxes, no taxes. I can't pay any taxes." Defendant also labeled the checks at issue as loan repayments. *Zanghi*, 189 F.3d at 81. The court determined that a reasonable jury could have easily found beyond a reasonable doubt these facts were evidence of Zanghi's intent to engage in conduct constituting a violation of 26 U.S.C. Section 7201 and, thus, sufficed to support Zanghi's convictions under 18 U.S.C. Section 1956(a)(1)(A)(ii).

25.02[8] **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.

Offenses committed after November 1, 1987, are sentenced under section 2S1.1 of the Federal Sentencing Guidelines. In addition to a base offense level of 23, section 2S1.1 provides an increase of three in the offense level if the defendant knew the proceeds involved in the transaction derived from narcotics trafficking. It also provides a one to thirteen level increase depending on whether and by how much the amount of money involved in the transaction exceeded $100,000.

25.02[9] **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, 4-5 (1998), the Supreme Court affirmed the Eighth Circuit's dismissal of counts involving 18 U.S.C. 1956 a(1)(B)(ii) and 1957 money laundering offenses on the basis of improper venue. The lower court had held that Missouri was not a proper venue for the money laundering charges.** ***See United States*** *v.* ***Cabrales*****, 109 F.3d 471, as amended, 115 F.3d 621 (8th Cir. 1997). Although the funds had been generated by a Missouri cocaine distribution ring, the laundering alleged in the case had taken place entirely in Florida. Also, the defendant was not alleged to have transported funds from Missouri to Florida; nor was the defendant charged (in the counts before the Supreme Court) with participation in the Missouri cocaine distribution ring which generated the funds. Therefore, while the Court acknowledged that, in some instances, money laundering could be a continuing offense for venue purposes, it found that that was not the case here where the defendant was charged with transactions which continued and were completed in Florida.** ***See Cabrales*****, 524 U.S. at 8.**

For a general discussion of venue, ***see*** **Section 6.00,** ***supra*****.**

25.02[10] 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*****.**

25.02[11] Policy and Procedure

Sections 9-105.300 and 9-105.750 of the *United States Attorneys' Manual* address the review and prosecution of section 1956(a)(1)(A)(ii) cases. Section 9-105.750 explains that the subsection exists to facilitate prosecution of money launderers, not to displace the appropriate use of traditional Title 18 and Title 26 charges in criminal tax cases. Prosecutors are to continue to bring charges under these Titles when the evidence so warrants.

Tax Division authorization is required before indictments under this subsection may be sought, if the indictment will also include charges for which Tax Division authorization is ordinarily required or if intent to engage in conduct constituting a violation of 26 U.S.C. §§ 7201 or 7206 is the sole or principal purpose of the financial transaction which constitutes the subject of the money laundering count. *See* USAM, sections 9-105.300 and Tax Division Directive No. 99, dated March 30, 1993.

In limiting the necessity of Tax Division authorization to the two circumstances set forth above, it is assumed that, in situations where such authorization is not required, the following facts exist: (1) the principal purpose of the financial transaction was to accomplish some other (non-tax related) covered purpose, such as carrying on some specified unlawful activity; (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.

Finally, prosecutors should bear in mind the Memorandum of Understanding (revised August, 1990) between the Departments of Justice and the Treasury and the Postal Service regarding authority to investigate money laundering violations. This Memorandum gives the Internal Revenue Service investigative jurisdiction over all violations of sections 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or the Bank Secrecy Act.

FN 1. In *United States v. White*, 237 F.3d 170, 173 (2d Cir. 2001), the Second Circuit affirmed convictions for willfully failing to file Forms 8300 against Mohawk Indians conducting business within the Mohawk Indian Reservation, holding that the portion of such reservations located within the territiorial boundaries of the United States are not exempt from Section 6050I's reporting requirement by the "foreign transaction exception" of Section 1.6050I-1(d)(4).

FN 2. Although the anti-structuring subsection was not included in the statute until 1988, prosecutions for such activity may have been permissible before its enactment. Referring to the amendment that added section 6050I(f), Congress declared in section 7601(a)(4) of Pub.L. 100-690 that "[n]o inference shall be drawn from the amendment . . . on the application of the Internal Revenue Code of 1986 without regard to such amendment." Thus, the addition of the subsection may simply have made explicit prohibitions already implicit in the 1984 statute.

FN 3. Activities listed in Section 6050I(f)(1) might also be prosecuted as violations of that subsection because those activities are specifically prohibited therein. *See United States v. McLamb*, 985 F. 2d 1284,1287 (4th Cir., 1983).

FN 4. The United States Sentencing Commission has enacted and sent to Congress substantial revisions to the money laundering sentencing guidelines, effective November 1, 2001, absent prior Congressional action to the contrary. Beginning November 1, 2001, the money laundering guidelines are being consolidated into one guideline that applies to convictions under 18 U.S.C. § 1956 or § 1957. The amendment to the money laundering guidelines ties offense levels for money laundering more closely to the underlying conduct that was the source of the criminally derived funds.

FN 5. As noted earlier, the Asset Forfeiture and Money Laundering Section of the Criminal Division has published a comprehensive reference guide, entitled *Federal Money Laundering Cases* (January 1999).