LAW.COM

New York Law Journal

TAX LITIGATION ISSUES

Evading Payment: Section 7201's Other Half

By Jeremy H. Temkin
November 17, 2026

Section 7201 of the Internal Revenue Code defines two separate offenses of tax evasion. The first, and more commonly charged, is evading the assessment of taxes, such as by hiding income or claiming false deductions.

But §7201 can also be violated by evading the payment of taxes that were either reflected on the return filed by the taxpayer or assessed by the IRS. Both evasion of assessment and evasion of payment require the government to prove that the defendant: (1) owed additional taxes, (2) engaged in an affirmative act of evasion, and (3) acted willfully.

Evasion of payment has taken on added prominence in recent years. In 2023, the IRS announced an initiative, funded in part by the Inflation Reduction Act, to pursue high-income, high-wealth taxpayers with substantial unpaid liabilities. And the recently concluded prosecution of Thomas C. Goldstein, the Supreme Court advocate and co-founder of SCOTUSblog, is a high-profile example of evasion of payment charges being brought against taxpayers who prioritize extravagant personal expenses over their tax obligations.


Jeremy Temkin

However, simply owing money to the IRS is not a felony. What distinguishes evasion of payment from the misdemeanor of willful failure to pay, 26 U.S.C. §7203, is the requirement that the government prove an affirmative act of evasion.

This column discusses the Third Circuit's recent decision in *United States v. Aumiller,* 180 F.4th 505 (3d Cir. 2026), and other cases that illustrate the types of conduct the government has relied on in felony evasion of payment prosecutions.

United States v. Aumiller

Brandon Aumiller, the owner of an insurance agency, owed approximately $82,000 in personal income taxes for 2007 and 2009 through 2011, and another $25,000 in employment taxes for his business for the fourth quarter of 2013 and the first two quarters of 2014.

In late 2016 and early 2017, in response to the IRS's efforts to collect these undisputed liabilities, Aumiller completed and submitted the IRS's collection information statements for individuals and businesses (Forms 433-A and 433-B) under penalty of perjury.

On Dec. 8, 2022, a grand jury in the Middle District of Pennsylvania returned an indictment charging Aumiller with two counts of evasion of payment under §7201. As alleged in the indictment, Aumiller (1) omitted personal and business bank accounts on the collection information statements that he submitted to the IRS; (2) concealed assets by using a bank account in his son's name; and (3) structured real estate transactions to conceal his ownership of property.

Aumiller moved to dismiss the indictment as time-barred, relying on *United States v. McGill,* 964 F.2d 222 (3d Cir. 1992), for the proposition that failing to report a bank account on an IRS form is not an affirmative act of evasion but merely a passive failure to disclose that does not support a felony charge.

In an August 2023 opinion, Judge Christopher C. Conner denied Aumiller's motion, concluding that the viability of his statute of limitations argument depended on the trial evidence and that the contentions regarding Aumiller's use of nominees were sufficient to allege at least one affirmative act within the limitations period.

Following a four-day trial, a jury convicted Aumiller on both counts of tax evasion, and Judge Conner sentenced him to 24 months' imprisonment. Aumiller appealed his convictions, arguing again that omitting bank accounts from the collection information statements did not constitute an affirmative act of evasion.

On July 1, 2026, the Third Circuit affirmed. The court started by citing *McGill* for the proposition that "[a]n affirmative act is anything done to mislead the [g]overnment or conceal funds to avoid payment of an admitted and accurate deficiency." It then noted that "[a]ffirmative acts include 'concealment of assets or covering up sources of income' as well as 'any conduct, the likely effect of which would be to mislead or to conceal.'" Citing *Spies v. United States*, 317 U.S. 492, 499 (1943).

Relying on the Fifth Circuit's observation in *United States v. Crandell*, 72 F.4th 110, 114 (5th Cir. 2023), that understating assets would permit a taxpayer to "string the IRS along for his entire lifetime," the court joined the Fifth, Sixth, and Ninth Circuits in holding "that the filing of a form that intentionally omitted assets from it constitutes an affirmative act of evasion." Citing *Crandell*, 72 F.4th at 114; *United States v. Pieron,* 2022 WL 3867562, at *2 (6th Cir. Aug. 30, 2022) (omitting Mercedes vehicles titled to the defendant's businesses from two separate collection information statements, and providing an FBAR understating the maximum balance of a Swiss account constituted affirmative acts of evasion); *United States v. Memmott,* 667 F. App'x 206, 207 (9th Cir. 2016) (unpublished) (omitting funds misappropriated from investors on Form 433-A and falsely denying ownership of real estate constituted affirmative acts of evasion).

In a footnote, the Third Circuit distinguished *McGill,* which concluded that the defendant's

use of one account partially in his name and a second account in his spouse's name did not qualify as an affirmative act of evasion, "unless a taxpayer is in the situation of giving voluntary admissions during an investigation or a forced response to a subpoena."

The *Aumiller* court explained that the distinction between the two cases is the circumstances of the nondisclosure.

In *McGill*, an IRS agent testified that he did not believe the defendant had concealed information about his sources of income on documents submitted in connection with an offer in compromise and acknowledged that he had not asked the defendant where he banked.

Thus, while the defendant in *McGill* did nothing to conceal his accounts, *Aumiller* "affirmatively omitted" the accounts in question when he provided the collection information statements, signed under penalty of perjury, in response to the IRS's attempts to collect his outstanding tax liabilities.

Plus Factors Elevating Non-Payment to a Felony

Aumiller exemplifies the government's reliance on false collection information statements to satisfy the affirmative act of evasion element in non-payment cases. Other cases have turned on the use of nominees, alter egos, attorney trust accounts, and cash, as well as taking steps to drain levied accounts.

Nominees and Alter Egos

In *United States v. Trupin*, 119 F. App'x 323 (2d Cir. 2005), the Second Circuit affirmed the evasion of payment and false statement convictions of a self-described "master of the corporate veil."

On appeal, *Trupin* argued that the government cannot sustain an evasion of payment charge where a taxpayer "uses and conceals assets held in trust for another person" absent a determination that the trust is "a sham under state property law."

The court rejected this argument, concluding that "federal courts have routinely disregarded trusts designed to obscure economic realities without considering state determinations of property ownership" and that "where an alter ego trust exists, this Circuit need not defer to a state determination of property rights before attributing assets of that trust to a debtor taxpayer."

The court had little difficulty rejecting *Trupin's* additional argument that "the state of the law at the time of his conduct was sufficiently unclear to support a conclusion that he acted willfully to disregard the law."

Rather, it found sufficient evidence of willfulness in *Trupin* having his daughter serve as a nominee to purchase a Canadian home, a sailboat, and a sport utility vehicle; directing the proceeds from the sale of his 63-room Long Island mansion, which was held through a trust, to his former lawyer's escrow account rather than the nominal seller's account; and repeatedly using surrogates to pay his bills.

Recent cases similarly involve the use of nominees as evidence supporting evasion of payment charges.

For example, in *United States v. Boswell,* 109 F.4th 368, 375 (5th Cir. 2024), the Fifth Circuit

affirmed a conviction, noting that the defendant had used companies nominally owned by his sister and teenage son to pay his living expenses, titled his house in the name of a nominee, and admitted to the U.S. Trustee in connection with his bankruptcy proceedings that he put a company in his sister's name because he had heard "horror stories" of "the IRS just seizing everything."

Attorney Trust Accounts and Cash

Attorney trust accounts have also featured in recent cases. In *United States v. Green,* 47 F.4th 279, 292 (5th Cir. 2022), from 2007 through at least 2017, the defendant and his wife deposited more than $857,000 into a lawyer's client trust accounts and arranged for the lawyer to pay their expenses and credit card bills from those accounts.

The defendant also converted at least $1 million of income into gold coins, used some of the gold coins to buy a house, and later transferred the house to a trust controlled by a relative.

On appeal, the taxpayer argued that the government failed to prove the existence of a tax deficiency because the IRS had not formally assessed or determined that he had tax due and owing.

The Fifth Circuit concluded that a tax shown as due on a return filed by the defendant but left unpaid is sufficient to establish a deficiency and no formal assessment is required under §7201.

Draining Levied Accounts

Finally, in *United States v. Zaklama*, 2024 WL 4755378 (D.N.J. Nov. 12, 2024), after the IRS levied her bank account in May 2016, *Zaklama* allegedly began making cash deposits and immediately withdrawing the deposited funds through cashier's checks. While the deposits and withdrawals were relatively small, they had the effect of leaving the IRS unable to recover funds from the levied account.

The defendant moved to dismiss the indictment for failure to adequately allege an affirmative act of evasion. The district court rejected the defendant's argument and held that a jury could find that "using cashier's checks and draining an account's balance" were affirmative acts of evasion.

Conclusion

Merely owing money to the IRS is not a crime, let alone a felony. It is, however, likely that the recent focus on collecting past due taxes from wealthy taxpayers will lead the IRS and the DOJ to pursue evasion of payment cases.

Practitioners representing taxpayers in collection proceedings and ensuing investigations and prosecutions should be aware of the wide range of conduct the government may rely on to establish the element of an affirmative act of evasion.

Jeremy H. Temkin *is a principal in Morvillo Abramowitz Grand Iason & Anello P.C.* **Emily Smit**, *an associate of the firm, assisted in the preparation of this article.*

Reprinted with permission from the November 17, 2026 edition of the NEW YORK LAW JOURNAL © 2026 ALM Global Properties, LLC trading as Centellic. All rights reserved. Further duplication without permission is prohibited, contact 877-256-2472 or asset-and-logo-licensing@alm.com. # NYLJ-1117-2026-74278