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TAX LITIGATION ISSUES

Venue for Tax Crimes

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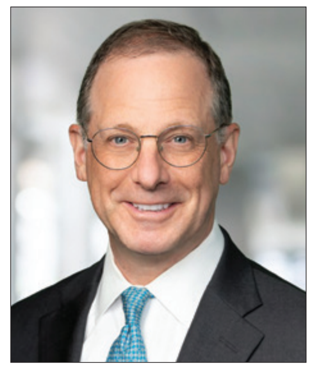
The U.S. Constitution addresses the issue of venue twice: Article III, section 2, clause 3 provides that "[t]he trial of all crimes... shall be held in the state where the said crimes shall have been committed" while the Sixth Amendment protects "the right to a speedy and public trial" in "the State and district wherein the crime shall have been committed."

The Supreme Court has directed that, unless a statute includes a specific venue provision or specifies how to determine where the offense was committed, the "locus delicti [of the charged offense] must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Rodriguez-Moreno,* 526 U.S. 275, 279 (1999) (internal quotations omitted).

This past June, in *Abouammo v. United States*, 146 S. Ct. 1571 (2026), the Supreme Court held that a defendant charged with knowingly falsifying a document with the intent to obstruct a federal investigation must be tried in the district where the falsification occurred, not where the investigation was located. The unanimous opinion, authored by Justice Kagan, made clear that venue must be determined without reference to either a statute's mens rea requirement or the "contemplated effects" of the prohibited conduct (unless an effect is an element of the offense).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Tax crimes rarely confine themselves to a single district: a taxpayer may reside in one district, use a preparer in another, and their returns may be processed in an IRS service center in a third. As a result, courts have found that certain violations of the Internal Revenue Code are "continuing offenses" under 18 U.S.C. §3237(a), and therefore can be charged in "any district in which such offense was begun, continued, or completed."

This column discusses two recent criminal tax cases—*United States v. Chollet,* 178 F.4th 834 (4th Cir. 2026), and *United States v. O'Donoghue,* No. 24-566, 2026 WL 2110788 (D.D.C. July 22, 2026) – that illustrate how venue is addressed in cases charging violations of various provisions in Title 26 and suggest that *Abouammo* may have little effect in criminal tax cases.

Abouammo's Conduct Element Rule

Ahmad Abouammo, a former Twitter employee, was interviewed at his Seattle home by two San Francisco-based FBI agents for allegedly providing confidential information to a high-level Saudi official. During the interview, Abouammo created a fake invoice on his computer and emailed it to one of the agents. After returning to San

Francisco, the agents discovered that the invoice had been fabricated (in Seattle) moments before it was sent.

Abouammo was charged in the Northern District of California with having falsified a record in violation of 18 U.S.C. §1519. He unsuccessfully moved to dismiss for improper venue and was convicted at trial. On appeal, the Ninth Circuit affirmed his conviction, reasoning that section 1519's intent requirement made the "contemplated effects" of the falsification part of the offense's "essential conduct," permitting trial "where the investigation" the defendant "intended to stymie [was] ongoing or contemplated."

The Supreme Court reversed. Justice Kagan explained that, in assessing the appropriate venue for a prosecution, courts must determine the location of the offense's "essential conduct elements" and ascertain where those acts occurred. Because the only prohibited act at issue in Abouammo was the falsification of the invoice, the Court held that the offense occurred in Seattle, "where the falsification happened."

The court explained that the statute "does not require that falsifying a document have any impact at all on an investigation." Therefore, the crime was complete the moment the document was falsified, and neither actual nor contemplated effects could establish venue. The court acknowledged that its holding was "'discrete' and narrow," and clarified that its "conduct elements" test is not intended to replace Congressionally created venue rules for particular offenses.

Section 7206(2)

26 U.S.C. §7206(2) criminalizes "[w]illfully aid[ing] or assist[ing] in, or procur[ing], counsel[ing], or advis[ing] the preparation or presentation" of a false or fraudulent tax return. Courts have held that section 7206(2) is a continuing offense under section 3237(a), giving the government the ability to bring a prosecution in multiple districts.

For example, in *United States v. Bryan*, 896 F.2d 68 (5th Cir. 1990), the defendant was charged with violations of section 7206(2) based on his involvement in the promotion and sale of fraudulent tax shelters. The defendant was charged in Northern District of Texas even though his conduct—providing false documents and information that facilitated the preparation of the false returns—occurred outside the district.

On appeal, the Fifth Circuit rejected the defendant's venue challenge, focusing on the fact that the returns were prepared in the Northern District of Texas. The court explained that pursuant to section 3237(a), "venue properly lies where a false statement is prepared and signed, even though received and filed elsewhere." *Bryan*, 896 at 72 (citing *United States v. Slutsky,* 487 F.2d 832, 839 (2d Cir. 1973)).

In *United States v. Chollet*, 178 F.4th 834 (4th Cir. 2026), Michael Kohn and his daughter Catherine Chollet were tax attorneys in St. Louis. Along with David Simmons, a North Carolina-based insurance broker, Kohn and Chollet implemented a fraudulent "Gain Elimination Plan" that fabricated business-expense deductions through sham limited partnerships. Over 11 years, the scheme resulted in numerous clients evading more than $22 million in income taxes. Three of the clients whose returns were implicated in the prosecution lived and worked in the Western District of North Carolina.

Kohn and Chollet were charged in the Western District of North Carolina with over a dozen counts of willfully "aid[ing] or assist[ing] in … the preparation or presentation of a false return, in violation of section 7206(2). Following their convictions, they argued that venue had been improper because all of their actions, including the preparation and submission of the returns at issue, occurred in their office in St. Louis, Missouri, and there was no evidence that they had sent the returns to a service center in the Western District of North Carolina.

Two days before the Supreme Court decided *Abouammo*, the Fourth Circuit affirmed the convictions. The court found that section 7206(2) "makes it a crime to willfully (1) *aid* or (2) *assist* in or (3) *procure*, (4) *counsel*, or (5) *advise* the preparation or presentation of a false tax return" and that "any such conduct constitutes a continuation of the offense and forms a basis for establishing venue." *Chollet*, 178 F.4th at 843 (citing *United States v. Hirschfeld,* 964 F.2d 318, 321 (4th Cir. 1992)).

The court rejected the defendants' argument that they needed to be physically present in the Western District of North Carolina when "aiding" or "assisting." Even though Kohn and Chollet were in Missouri when they prepared and filed the returns, the court found that they had provided advice to clients in the Western District of North Carolina, both directly and through Simmons, who was "instrumental in implementing the scheme" and "actively assisted in procuring and transmitting information from the clients."

Finally, the court noted that the evidence at trial established that Kohn and Chollet had sent their clients emails and documents necessary to execute the scheme, including draft tax returns, and had registered some of the sham limited partnerships in North Carolina.

Following the Supreme Court's decision in Abouammo, Kohn and Chollet filed petitions for rehearing. In her petition, Chollet argued that, under *Abouammo*, venue could only lie where she physically performed the proscribed acts, "not where the taxpayers lived, not where the IRS processed the returns, and not where effects of the alleged false returns were felt."

She contended that since no witness testified that she aided or assisted in preparing any of the relevant returns "from within the Western District of North Carolina" venue could not lie there. The Fourth Circuit denied rehearing without issuing a substantive opinion.

It appears that the application of the continuing offense statute, together with the fact that section 7206(2) includes multiple conduct verbs, makes it unlikely that *Abouammo* will change the venue analysis in prosecutions under that statute.

Section 7206(1)

26 U.S.C. §7206(1) makes it a crime to "[w]illfully make[] and subscribe[]" a false return. Courts have held that the statute defines a continuing offense and that "venue lies in the district in which a return was prepared and signed even if it was filed and received elsewhere." *United States v. Rooney,* 866 F.2d 28, 30-32 (2d Cir. 1989) (citing *United States v. Slutsky,* 487 F.2d 832, 838-39 (2d Cir. 1973), cert. denied, 416 U.S. 937 (1974); see also *United States v. Shyres*, 898 F.2d 647 (8th Cir. 1990). This does not mean that venue cannot be predicated on the location of the service center.

In *United States v. O'Donoghue*, 2026 WL 2110788 (D.D.C. July 22, 2026), Graham O'Donoghue, a U.S. citizen living abroad allegedly underreported hundreds of thousands of dollars of income from 2012 through 2015 by providing false information to a foreign-based tax preparer who filed O'Donoghue's returns with the IRS service center in Austin, Texas.

O'Donoghue was indicted in the District of Columbia and charged with four counts of tax evasion under 26 U.S.C. §7201, four counts of subscribing to false returns under 26 U.S.C. §7206(1), and one count of having made false statements during an interview with agents investigating the tax offenses in violation of 18 U.S.C. §1001.

He moved to dismiss the tax charges for lack of venue, arguing that filing, an essential conduct element for the false-subscription charges, occurred in Austin, Texas, where the return was filed. In response, the government argued that venue for the section 7206(1) charges was proper in the District of Columbia under the "high seas" statute, 18 U.S.C. §3238, which provides that when a crime is committed entirely outside any state, the defendant may be indicted in the district of his last known address.

Judge Colleen Kollar-Kotelly of the United States District Court for the District of Columbia granted O'Donoghue's motion, holding that even though the statute's text only refers to "mak[ing] and subscrib[ing]" a return, "'making' a return requires something more than 'preparing' a return, and that something more is the filing of the return."

Having concluded that filing is an essential conduct element of section 7206(1), Judge Kollar-Kotelly found that the filing of the returns at the IRS service center in Austin meant that venue could properly lie in the Western District of Texas, which rendered the "high seas" statute inapplicable.

Section 7201

Finally, tax evasion under 26 U.S.C. §7201 has long been held to be a continuing offense such that venue will be proper "in any district where an affirmative act constituting an 'attempt to evade' was begun, continued, or completed." *United States v. Strawberry,* 892 F.Supp. 519, 521 (2d Cir. 1995) (citing *Slutsky*, 487 F.2d at 839); see also *United States v. Marchant*, 774 F.2d 888, 890-91 (8th Cir. 1985) (finding that section 3237(a) permits prosecution under 7201 "in the district where the return was prepared, signed, mailed, or filed"), cert. denied, 475 U.S. 1012 (1986).

In addition to moving to dismiss the counts charging violations of section 7206(1), O'Donoghue also moved to dismiss the tax evasion charges brought under section 7201, arguing that he did not commit any affirmative acts of evasion in the District of Columbia. The government responded that venue could be based on allegedly false statements that O'Donoghue made about his taxable income to law enforcement agents in D.C. during a February 2023 interview, over six years after he filed the tax returns in question.

The court rejected the government's argument, finding that O'Donoghue was charged with willfully attempting to evade or defeat the assessment of a tax, which concerns efforts to prevent the IRS from determining tax liability. Drawing on *Grunewald v. United States,* 353 U.S. 391 (1957), the court observed a "vital distinction" between "acts of concealment done in furtherance of the main criminal objectives" and "acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime."

The government's attempt to characterize post-completion cover-up conduct as part of the original evasion "overlooks the distinction between conduct meant to conceal the commission of a completed crime and conduct meant to further the commission of a crime still in progress." The court determined that a connection to the District of Columbia was not enough to support venue; the connection had to be to actual conduct constituting the offense.

Conclusion

Abouammo reinforced the overarching principle that venue turns on the conduct elements of the charged offense. For some offenses, the "conduct constituting the offense" may consist of a single act that occurred in a single location. Most criminal tax cases, however, involve a series of acts that give rise to venue in more than one district.

Indeed, given the prevalence of remote communication and electronic data sharing, it is increasingly common that taxpayers in one jurisdiction will engage a tax professional in another, meaning that both taxpayers and return preparers can be subject to prosecution in districts where the other resides. Although Chollet's attempt to invoke Abouammo failed and O'Donoghue's venue arguments turned on the unique facts of that case, both cases reflect the potential for robust advocacy in challenging the government's chosen venue.

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