

Background: The failure to collect or truthfully account for the tax must be willful, as must the failure to pay. Where no effort is made to defraud the employee, the offense is a form of tax evasion, and is treated as such in the guidelines.

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 232); November 1, 1991 (amendment 409); November 1, 2001 (amendment 617); November 1, 2016 (amendment 804).
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§2T1.7. Failing to Deposit Collected Taxes in Trust Account as Required After Notice

(a) Base Offense Level (Apply the greater):

- (1) 4; or
- (2) 5 less than the level from §2T4.1 (Tax Table) corresponding to the amount not deposited.

Commentary

Statutory Provisions: 26 U.S.C. §§ 7215, 7512(b).

Application Notes:

1. If funds are deposited and withdrawn without being paid to the Internal Revenue Service, they should be treated as never having been deposited.
2. It is recommended that the fine be based on the total amount of funds not deposited.

Background: This offense is a misdemeanor that does not require any intent to evade taxes, nor even that taxes have not been paid. The more serious offense is 26 U.S.C. § 7202 (*see* §2T1.6).

This offense should be relatively easy to detect and fines may be feasible. Accordingly, the offense level has been set considerably lower than for tax evasion, although some effort has been made to tie the offense level to the level of taxes that were not deposited.

<i>Historical Note</i>	Effective November 1, 1987.
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§2T1.8. Offenses Relating to Withholding Statements

(a) Base Offense Level: 4

Commentary

Statutory Provisions: 26 U.S.C. §§ 7204, 7205.