

**Reporting of Currency/Monetary Instrument Transactions and Structuring
Investigations**

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An enforcement priority of both the IRS and the Department of Justice which continues to see a lot of activity is compliance with the currency and monetary instrument reporting rules under the Bank Secrecy Act and structuring conduct to avoid them. With respect to that area, you should be aware that the government has a strong desire to ensure the reporting of monetary transactions. Significant resources continue to be deployed in hunting for those who ignore, or try to avoid reporting of currency related transactions. In every State jurisdiction (in New Jersey an IRS criminal investigation division field office in Springfield) groups of IRS special agents have been set up to review on a bi-monthly basis currency reporting forms such as SARS – suspicious activity reports and CTRS – currency transaction reports filed by financial institutions in their geographical areas. The IRS has decided to devote those resources because these forms have proven to be a gold mine for IRS agents in creating tax evasion investigations, civil forfeiture cases and IRS civil tax audits.

There are different reporting requirements for different types of transactions and for both financial and non-financial institutions and there are potentially civil and criminal sanctions which should not be ignored.

The more commonly encountered currency reporting forms are: Currency Transaction Reports – CTRS; Suspicious Activity Reports – SARS; IRS Form 8300 for the reporting of cash payments over \$10,000 received in a trade or business; and CMIRS/FinCEN Form 105 (March 2011) – Report of International Transportation of Currency or Monetary Instruments – which applies to persons who transport or are about to transport monetary instruments, including cash and travelers checks of more than \$10,000 out of, or into the U.S.

As to SARS (FinCEN Form 111), 31 U.S.C. §5318 requires that every bank and broker dealer are required to file an SAR if a customer has conducted a transaction with it

in the aggregate of at least \$5,000 and it believes that any of the following situations apply: it involves funds derived from illegal activities; is designed to evade the Bank Secrecy Act reporting requirements; has no business or apparent lawful purpose; or involves the use of a business to facilitate criminal activity. Banks and broker dealers are prohibited from telling a customer that an SAR has been filed.

31 U.S.C. § 5313 requires that banks, broker dealers and check cashiers file CTRS – FinCEN 112 if a deposit or withdrawal transaction in currency is over \$10,000. Currency includes coins, paper money, travelers checks, personal and business checks, and third party checks. It does not include a transfer of funds by a bank check, bank draft or wire transfer. Certain transactions are exempt such as transactions between banks and ordinary retail businesses.

Under 31 U.S.C. § 5331 and IRC § 6050I, anyone engaged in a trade or business (including accountants and attorneys) must file an IRS Form 8300 if they receive over \$10,000 (in cash, bank checks, money orders or travelers checks) in a single transaction or in two or more related transactions. The Form 8300 must be filed within 15 days after the currency is received in a reportable transaction.

As to CMIRS – Reports of International Transportation of Currency or Monetary Instruments (FinCEN Form 105), when cash in excess of \$10,000 is physically removed from or brought into the United States, the United States Treasury requires such transaction be recorded on FinCEN Form 105. 31 U.S.C. § 5316. This requirement applies whether the funds are removed by person or mail, however, the form need not be filed for a “transfer of funds through normal banking procedures, which does not involve the physical transportation of currency or monetary instruments.” Thus, Form 105 is required only for the physical transportation of funds into or out of the country. Specifically, a recipient of currency must file Form 105 within 15 days of the receipt of funds with the Customs officer in charge at any port of entry or departure, or with the Commissioner of Customs in Washington, D.C. If the funds are mailed, Form 105 must be filed on or before the date of entry to the U.S.

Failure to file Form 105 also carries potentially hefty civil and criminal penalties. A fine of up to \$500,000 and imprisonment of up to 10 years may result from failure to file a report or filing a false or fraudulent report. Further, the monetary instrument or currency itself may be subject to seizure and forfeiture.

Civil and Criminal penalties can apply for intentional failure to file CTRS and SARS. Under 31 U.S.C. § 5324(d)(1) criminal fines not more than \$250,000 and/or

imprisonment of not more than five years may also be imposed. Under 31 U.S.C. § 5321(a)(4) a civil penalty of up to the amount of currency involved in the transaction is imposed on anyone who causes or attempts to cause a bank to fail to file a CTR. In addition, under 31 U.S.C. § 5324(d)(1) criminal fines not more than \$250,000 and/or imprisonment of not more than five years may also be imposed.

Failure to file a Form 8300 can result in civil penalties under IRC § 6721 ranging from \$50 per form (up to a maximum of \$250,000 per calendar year) up to a willful failure to file Form 8300 civil penalty of not more than the greater of the amount (not to exceed \$100,000) involved in the transaction, or \$25,000. In addition, a willful failure to file a 8300 form can constitute a felony punishable by a maximum of five years in prison or a fine of \$25,000 under IRC § 7203 – or a criminal fine of up to \$250,000 under 31 U.S.C. §5322.

Structuring Investigations

A key point to understand about CTRS and Forms 8300 is that structuring of transactions to avoid filing these forms – breaking down a single source of currency exceeding \$10,000 into smaller sums below \$10,000 or conducting a series of transactions below \$10,000 on one or more days is prohibited and can result in being charged with a felony under 31 U.S.C. § 5324 and/or having the money involved seized and forfeited to the IRS, or the Department of Justice.

In that regard, in a criminal proceeding under 31 U.S.C. § 5324, as well as a civil forfeiture type proceeding, the government need only prove that the defendant knew of the reporting requirement and knowingly structured a currency transaction to evade the reporting requirement. The government no longer has to prove that the defendant knew that structuring was illegal. Furthermore, circumstantial evidence (ex. repeated transactions involving \$9,500) is sufficient to establish the intent to evade reporting required for cash transactions exceeding \$10,000. Mere evidence of a consistent pattern of deposits under the reporting requirement where the defendant knew of the reporting requirement could lead to a criminal conviction, and/or a civil forfeiture result.

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