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IRS Criminal Investigation Division Announces New Policy on Structuring Cases

The IRS has recently issued a new policy relating to civil forfeiture in structuring cases. Structuring is the practice of executing financial transactions in a pattern calculated to avoid the creation of certain records or reports. Pursuant to 31 CFR §103.22, financial institutions are required to report each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than $10,000. When an individual or business deposits or withdraws more than $10,000 in currency through a financial institution, the institution files a currency transaction report (CTR). CTRs are used by the government as a way to verify income and to catch individuals engaged in illegal transactions and money laundering.

To avoid the generation of CTRs, some taxpayers intentionally make cash deposits of less than $10,000. When financial institutions see such deposits they will often file a suspicious activity report (SAR). A SAR notifies the government of the suspicious activity which is occurring in a given financial account, and the government will use this information to initiate investigations into the reported structuring. In many structuring cases, the taxpayer does not become aware of the government's investigation into their structuring of funds until the government seizes all of the funds from their financial account.

Generally when funds are seized individuals will obtain an attorney who will make contact with the Assistant United States Attorney (AUSA) assigned to their case. The AUSA has a large amount of deference in structuring cases. They can: (1) return the funds; (2) proceed with a civil forfeiture of the structured amount; or (3) proceed with criminal charges. Prior to making a determination on how to proceed, an AUSA will generally look to see if the funds were "legally sourced" (i.e. from a legitimate business as opposed to from an illegal source). If the funds are from a legal source, the government's next step is to ensure that all of the funds were properly reported on the taxpayer's tax return.

In cases where the money is legally sourced and properly reported, the government can still pursue the taxpayer civilly or criminally if the government feels that the person intentionally structured funds to avoid currency transaction reporting requirements. Thus, one can be charged with structuring even if all of the funds were from a legal source and all of the funds were properly reported.

Recently there has been a lot of publicity regarding the government's seizure of funds in so called "legal source" cases. Responding to public pressure and criticism, the Internal Revenue Service released to The New York Times the agency's new position on structuring cases. The new policy, released on October 25, 2014, provides that "I.R.S.-C.I. will no longer pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture and the case has been approved at the director of field operations level". Such a result ensures that individuals, who structured deposits with no purpose of evading the law, will not be forced to forfeit structured funds to the government.

- Jonathan Amitrano

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