

Practice

By Charles P. Rettig and Kathryn Keneally

Currency Reporting Requirements: Everyone into the Pool!

Tax and money laundering violations are closely related and often involve similar activities. Since laundered funds are rarely reported on tax returns, money laundering is an integral part of many tax evasion investigations. The enactment of the Currency and Foreign Transactions Reporting Act, better known as the Bank Secrecy Act (BSA) in 1970 authorized the Secretary of the Treasury to issue regulations requiring financial institutions to maintain records and file reports on certain financial transactions. The Treasury's Financial Crimes Enforcement Network (FinCEN) was initially established to provide a government-wide, multi-source intelligence and analytical network to support the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes. Subsequently, its mission was broadened to include regulatory responsibilities. FinCEN currently oversees and implements policies designed to prevent and detect money laundering while using counter-money laundering laws (such as the BSA) to enforce reporting and record-keeping requirements by banks and other financial institutions.

Currency Reporting Requirements

There are different reporting requirements for different types of transactions and for both financial and nonfinancial institutions. Most reports are filed electronically and coordinated at the IRS Detroit Computing Center in Michigan (although many can be hand-delivered to a local IRS office) where they are entered into the Currency and Banking Retrieval System (CBRS) creating an electronic roadmap for investigations of financial crimes and illegal activities, including tax evasion, embezzlement and money



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laundering. Reports are to be entered into the CBRS within 30 days following their receipt and much of this data can be accessed by federal, state and local law enforcement agencies (subject to disclosure restrictions) for at least 10 years thereafter. Various currency reporting forms and their reporting requirements are discussed below.

Report of Cash Payments over \$10,000 Received in a Trade or Business—IRS Form 8300

The Form 8300 must be filed by each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions. A related transaction is any transaction conducted within a 24-hour period or if the recipient knows or has reason to know that each transaction is one of a series of connected transactions. If more than one cash payment is received for a single or related transaction within a 12-month period, Form 8300 must be filed within 15 days of the date payment is received causing total cash received to exceed \$10,000. "Cash" includes U.S. and foreign currency together with cashiers checks, traveler's checks, money orders and bank drafts that the recipient knows or has reason to know is being used in an attempt to avoid reporting of the transaction under either Code Sec. 6050I and 31 USC §5331. Form 8300 is not required to be filed if the entire transaction occurs outside the United States, if the currency is not received in the course of the person's trade or business, or if received by an institution or casino otherwise required to file either FinCEN Forms 103 or 104. Form 8300 must be filed within 15 days after the date the cash is received at IRS Detroit Computing Center, P.O. Box 32621, Detroit, MI 48232.

Currency Transaction Report (CTR)—FinCEN Form 104 (Formerly IRS Form 4789)

The CTR must be filed by financial institutions engaging in a currency transaction in excess of \$10,000. Transactions (*i.e.*, deposits and withdrawals) do not offset each other. Each financial institution other than casinos, which must instead file FinCEN Form 103 (CTRC) must file Form 104 (CTR) with respect to any deposit, withdrawal,

exchange of currency or other payment or transfer, by, through or to the financial institution which involves a currency transaction of more than \$10,000. Multiple transactions must be treated as a single transaction if made by or on behalf of a single person and if they result in either currency received or disbursed (without offset) by the financial institution totaling more than \$10,000 during any single business day. The term "currency" includes coins and paper money of the United States or any other country. The term "transaction in currency" refers to the physical transfer of currency other than through a transfer of funds by means of a bank check, draft, wire transfer or other written order. The CTR must be filed, within 15 days after the transaction, with the IRS Detroit Computing Center, Attn: CTR, P.O. Box 33604, Detroit, MI 48232-5604. The failure to file a CTR, failure to supply information or filing a false or fraudulent CTR is subject to various civil and criminal penalties set forth in 31 USC §§5321, 5322 and 5234.

Suspicious Activity Report (SAR)—Treasury Form TD F-90.22.47

Financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks are required to file an SAR where they know, suspect or have reason to suspect insider abuse involving any amount (where the institution was used to facilitate a criminal transaction), violations aggregating \$5,000 or more where a suspect can be identified, violations aggregating \$25,000 or more regardless of a potential suspect, or transactions aggregating \$5,000 or more that involve potential money laundering or any violation of the Bank Secrecy Act. SARs must also be filed when transactions are structured as part of a plan to violate federal laws and financial reporting requirements (*e.g.*, classic structuring transactions). There were 522,655 SARs filed in 2005 while 279,703 were filed in the first six months of 2006 with "mortgage loan fraud," "false statement" and "consumer loan fraud" the most prevalent reasons for the filings. The SAR must be filed no later than 30 days after initial detection with the IRS Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232-0980.

Report of International Transportation of Currency or Monetary Instruments—FinCEN Form 105 (Formerly Customs Form 4797) if Funds Are Accompanied by an Individual; FinCEN Form 106 if Funds Are Mailed, Shipped or Received

Each person who physically transports, mails or ships, or causes to be physically transported, mailed, shipped or received currency or other monetary instruments in an aggregate amount exceeding \$10,000 on any one occasion from the United States to any place outside the United States, or into the United States from any place outside the United States must file FinCEN Form 105 (CMIR) or FinCEN Form 106. A transfer of funds through normal banking procedures not involving the physical transportation of currency or monetary instruments is not required to be reported. The term “monetary instruments” includes coin or currency; traveler’s checks in any form, negotiable instruments (checks and notes) in bearer form, endorsed without restriction, made out to a fictitious payee or otherwise in a form where title passes upon delivery; signed incomplete instruments where the payee is omitted; and bearer stock or securities. Recipients of mailed currency must file the report within 15 days with the Customs Officer in charge at any port of entry or with the Commissioner of Customs, Attn: Currency Transportation Reports, Washington, D.C. 20229; shippers must file the report with the Commissioner of Customs on or before the date of mailing or shipping; travelers must file the report at the time of entry to or departure from the limited status with the Customs Officer in charge. Civil and criminal penalties, including the possible seizure and forfeiture of the funds involved are set forth in 31 USC §5321 and 31 CFR 103.57; 31 USC 5322 and 31 CFR 103.59; 31 USC §5317 and 31 CFR 103.58; and 31 USC §5322.

Report of Foreign Bank and Financial Accounts (FBAR)—Treasury Form TD F-90.22.1

The FBAR must be filed by each U.S. person (citizens or residents of the U.S. and domestic corporations, partnerships, estates and trusts) who has a financial

interest in or signature authority, or other authority over any financial accounts, including bank securities, or other types of financial accounts in a foreign country, if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year. A “financial interest” includes legal or beneficial interests held for such person or others (including non-U.S. persons), joint interests held with others, interests held as the agent, nominee or attorney or in some other capacity on behalf of a U.S. person, and indirect interests held through a corporation, partnership or trust where such person holds at least a 50-percent interest in the assets or income of such entity. The FBAR must be filed by June 30 of the next calendar year with the Department of Treasury, P.O. Box 32621, Detroit, MI 48232-0621.

Suspicious Activity Report Casino (SARC)—FinCEN Form 102 (Previously TD F-90-22.49)

SARCs must be filed with respect to transactions or attempted transactions conducted or attempted by, at, or through a casino, involving or aggregating at least \$5,000 in funds or other assets where the casino/card club knows, suspects or has reason to suspect that the transactions or a pattern of similar transactions involve funds potentially derived from illegal activities. SARCs must also be filed when transactions are part of a plan to violate federal laws and transaction reporting requirements (e.g., classic structuring transactions). The SARC must be filed no later than 30 days after initial detection with the Detroit Computing Center, P.O. Box 32621, Detroit, MI 48232-5980.

Currency Transaction Report Casino (CTRC)—FinCEN Form 103 and FinCEN Form 103-N for Nevada Casinos (Previously IRS Forms 8362 and 8852)

The CTRC must be filed by a casino to report currency transactions aggregating in excess of \$10,000 in a gaming day within 15 days after the transaction. Each casino must file FinCEN Form 103 (FinCEN Form 103-N for Nevada Casinos) with the IRS Detroit Computing Center for each deposit, withdrawal, exchange of currency or gambling tokens or chips, or other payment or transfer, by, through or to such casino which involves aggregate transactions in currency of

more than \$10,000. The CTRC must be filed, within 15 days after the transaction, with the IRS Detroit Computing Center, Attn: CTRC, P.O. Box 32621, Detroit, MI 48232. Civil and/or criminal penalties may be assessed for the failure to file a CTRC or supply information or for filing a false or fraudulent CTRC are set forth in USC §§5321, 5322 and 5324.

Registration of Money Services Business (RMSB)—FinCEN Form 107 (Previously Treasury Form TD F-90.22.55)

Each “money services business”(MSB), except one that is a money services business solely because it serves as an agent of another money services business, must register with the Treasury by filing Form 107. Generally, a MSB includes currency dealers, check cashers who cash checks for a customer exceeding \$1,000 in a single day, issuers or sellers of travelers checks or money orders, and money transmitters. See 31 CFR 103.11(n) and (uu) for further definitions of an MSB. Form 107 must be filed within 180 days after the business is established and the registration must be renewed every two years. Form 107 is filed with IRS Detroit Computing Center, Attn: Money Services Business Registration, P.O. Box 33116, Detroit, MI 48232-0116.

Suspicious Activity Report by MSB (SARM)—FinCEN Form 109 (Previously Treasury Form TD F-90.22.56)

Form 109 must be e-filed within 30 days after initial detection by a MSB of transactions or attempted transactions conducted or attempted by, at, or through a MSB, involving or aggregating funds or other assets of at least \$2,000 in funds or other assets where the MSB knows, suspects or has reason to suspect that the transactions or a pattern of similar transactions involve funds potentially derived from illegal activities. Form 109 must also be filed when transactions are part of a plan to violate federal laws and transaction reporting requirements (structuring) or when the transaction has no business or apparent lawful purpose and the MSB knows of no reasonable explanation for the transaction following an examination of the available facts. When transactions are identified from a review of records of money orders or travelers checks that have been sold or processed, an issuer of money orders or traveler’s checks is required to report a transaction or a pattern of similar transactions that involves or aggregates funds

or other assets of at least \$5,000. There were 383,567 SARMs filed in 2005 while 270,718 were filed in the first six months of 2006. The Form 109 should be e-filed through the BSA E-Filing System but may be mailed to the Enterprise Computing Center—Detroit, Attn: SAR-MSB, P.O. Box 33117, Detroit, MI 48232-5980.

Suspicious Activity Report by the Securities & Futures Industries (SAR-SF)—FinCEN Form 101

SAR-SF must be filed with respect to transactions or attempted transactions conducted by, at, or through a broker-dealer, involving aggregates funds or other assets of at least \$5,000 where the broker-dealer knows, suspects, or has reason to suspect that the transaction involves funds potentially derived from illegal activities or intended or conducted in order to hide or disguise funds or assets derived from some illegal activity. SAR-SF must be filed when transactions are designed, whether through structuring or other means, to evade filing requirements. They must also be filed when the transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction following an examination of the available facts. SAR-SF must also be filed when the transaction involves the use of the broker-dealer to facilitate criminal activity. The SAR-SF must be filed no later than 30 days after initial detection with the Detroit Computing Center, Attn: SAR-SF P.O. Box 33980, Detroit, MI 48232.

Designation of Exempt Person Treasury FinCEN Form 110 (Previously Treasury Form TD F-90.22.53)

Form 110 is used by bank or other depository institution to designate an eligible customer as an exempt person from currency transaction reporting rules (mostly regular business customers with routine needs for currency). Form 110 should be filed no later than 30 days after the first transaction to be exempted and must be renewed every two years. The Form 110 should be e-filed through the BSA E-Filing System but may be mailed to the IRS Detroit Computing Center, P.O. Box 33112, Detroit, MI 48232-0112.

Many different industries are required to file currency related reports with the government. FinCEN provides considerable information regarding the reporting re-

quirements at www.fincen.gov and forms are available at www.msb.gov and at www.irs.gov.

Show Me the Money!

Taxpayers (and those who ought to be taxpayers) seem to continually underestimate the desire, ability and resourcefulness of the government. The events of September 11, 2001, have enhanced the government's already strong desire to ensure the reporting of monetary transactions within the United States. As a result of their electronic matching programs, the government can better

identify those attempting to evade their information reporting requirements. With Congress now demanding a reduction in the Tax Gap, hunting for those who ignore reporting of currency-related transactions is becoming a trophy sport among various government agencies!

Increased, expedited electronic information sharing between the federal, state and foreign governments should have a significant impact on reducing the Tax Gap. For those who choose not to comply, the potentially significant civil and criminal sanctions should not be ignored. Prisons and cemeteries are full of people who underestimated their opposition. Feel lucky?

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