

# Practice

*By Charles P. Rettig*

## Form 8300: Reporting Domestic Currency Transactions

The IRS Small Business/Self-Employed (SB/SE) Division maintains an anti-money laundering (AML) territory manager in each of its 16 Areas, together with 33 AML compliance groups and approximately 350 full-time examiners. IRS Criminal Investigation's Suspicious Activity Report (SAR) reviews teams in each of their 35 field offices, focusing on detecting money laundering activities as well as legal and illegal source tax schemes. There are at least 100 special agents around the country fully devoted to the detection and prevention of money-laundering activities. 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 schemes.

Money laundering generally involves the placement of funds where cash is converted to monetary instruments and deposited into multiple accounts in various financial institutions. These funds are typically layered through a series of financial transactions in an attempt to obscure their origin. Thereafter, the funds are often used to acquire legitimate assets and businesses funding future activities. These separate stages of the money laundering process are connected by the "paper trail" generated by the financial transactions. Money launderers intentionally avoid the reporting and record keeping requirements in an effort to avoid creating the paper trail. It is believed that at least \$3 trillion may be laundered annually worldwide. The ability to launder money enables those disguising the source of funds to promote, conceal and finance their activities and to enjoy their profits without obviously unwanted government interference.

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



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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. FinCEN also provides intelligence and analytical support to other law enforcement authorities. FinCEN concentrates on combining information reported under the BSA with other government and public information, which is then disclosed in the form of intelligence reports to the law enforcement community. These reports assist ongoing investigations and help plan future money laundering investigative strategies.

There are different reporting requirements for different types of transactions and for both financial and non-financial 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 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.

## **Form 8300 (Rev. July 2012)— Report of Cash Payments Over \$10,000 Received in a Trade or Business**

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. Transactions that require Form 8300 include, but are not limited to, the sale of goods, services or real or intangible property; rental of goods or real or personal property; cash exchanged for other cash; establishment, maintenance of or contribution to a trust or escrow account; conversion of cash to a negotiable instrument such as a check or a bond; negotiable instrument purchases; reimbursement

of expenses; making or repaying a loan; or the exchange of cash for other cash. The IRS routinely conducts compliance checks of various cash intensive businesses (check cashers, jewelry stores, diamond merchants, bail bondsmen, *etc.*) in an effort to determine filing

compliance. These compliance checks often provide solid leads to taxpayers failing to comply with the reporting of their income and other tax obligations.

A person must file Form 8300 to report cash paid to it if the cash payment is over \$10,000; received as one lump sum of over \$10,000, two or more related payments that total in excess of \$10,000, or payments received as part of a single transaction (or two or more related transactions) that cause the total cash received within a 12-month period to total more than \$10,000; received in the course of trade or business; or received from the same payer (or agent), and received in a single transaction or in two or more related transactions. A transaction is the underlying event resulting in the transfer of cash. A related transaction includes transactions between a buyer, or agent of the buyer, and a seller that occur within a 24-hour period. If the same payer makes two or more transactions totaling more than \$10,000 in a 24-hour period, the business must treat the transactions as one transaction and report the payments. A 24-hour period is 24 hours, not necessarily a calendar day or banking day. In addition, transactions more than 24 hours apart are related if the recipient of the cash 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. If the Form 8300 due date (the 15th or last

**Those who choose not to comply face potentially significant civil and criminal sanctions that should not be ignored. Now is the time to advise clients of their reporting obligations.**

day the form can timely be filed) falls on a Saturday, Sunday or legal holiday, it is delayed until the next day that is not a Saturday, Sunday or legal holiday.

## “Cash” Defined

For purposes of Form 8300, “cash” includes U.S. and foreign currency together with cashier’s 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. Cash also includes certain monetary instruments—a cashier’s check, bank draft, traveler’s check or money order—if it has a face amount of \$10,000

or less and the business receives it in a “designated reporting transaction” as defined in Reg. §1.6050I-1(c)(iii) (generally, a retail sale of a consumer durable, a collectible, a travel or entertainment activity) or any transaction in which the recipient knows the payer is trying to avoid the reporting of the transaction on Form 8300. A “designated reporting transaction” is generally the retail sale of any of a consumer durable, such as an automobile or boat. Property is generally a consumer durable if it is tangible personal property (not real or intangible property) that is generally suited for personal use; is expected to last at least one year under ordinary use, and has a sale price of more than \$10,000 (exclusive of sales related tax obligations); is a collectible (such as a work of art, rug, antique, metal, gem, stamp or coin); or is an item of travel and entertainment (if the total sales price of all items for the same trip or entertainment event is more than \$10,000).

Cash does not include personal checks drawn on the account of the writer. Cash does not include a cashier’s check, bank draft, traveler’s check or money order with a face value of more than \$10,000. When a customer uses currency of more than \$10,000 to purchase a monetary instrument, the financial institution issuing the cashier’s check, bank draft, traveler’s check or money order is required to report the transaction by filing FinCEN Form 104, Currency Transaction Report. Cash does not include a cashier’s check, bank draft, traveler’s check or money order that is received in payment on a promissory note or an installment sales contract (including a lease that is considered a

sale for federal tax purposes). However, this exception applies only if the business uses similar notes or contracts in other sales to ultimate customers in the ordinary course of its trade or business and the total payments for the sale that the business receives on or before the 60th day after the sale are 50 percent or less of the purchase price.

Cash does not include a cashier’s check, bank draft, traveler’s check or money order that is received in payment for a consumer durable or collectible, and all three of the following statements are correct: the

**Penalties will always be less severe,  
if any, for those who timely,  
voluntarily and completely come  
into compliance.**

business receives it under a payment plan requiring one or more down payments and payment of the rest of the purchase price by the date of sale, the business receives it more than 60 days before the

date of the sale, and the business uses payment plans with the same or substantially similar terms when selling to ultimate customers in the ordinary course of its trade or business.

## Taxpayer Identification Number (TIN)

Form 8300 must contain the correct TIN of the person or persons from whom the cash was received. If the transaction is conducted on the behalf of another person or persons, TIN of such other person must be provided. If TIN is unknown, it must be requested to avoid potential penalties. There are three types of TINs. The TIN for an individual, including a sole proprietor, is the individual’s social security number (SSN). The TIN for a nonresident alien individual who needs a TIN but is not eligible to get an SSN is an IRS individual taxpayer identification number (ITIN). An ITIN has nine digits, similar to an SSN. The TIN for other persons, including corporations, partnerships and estates, is the employer identification number (EIN).

The TIN of a person who is a nonresident alien individual or a foreign organization is not required if that person or foreign organization does not have income effectively connected with the conduct of a U.S. trade or business; does not have an office or place of business, or a fiscal or paying agent in the United States; does not file a federal tax return; does not furnish a withholding certificate described in Reg. §1.1441-1(e)(2) or (3) or §1.1441-5(c)(2)(iv) or (3)(iii) to the extent required under Reg. §1.1441-1(e)(4)(vii);



does not have to furnish a TIN on any return, statement or other document as required by the income tax regulations under Code Sec. 97 or 1445; or in the case of a nonresident alien individual, the individual has not chosen to file a joint federal income tax return with a spouse who is a U.S. citizen or resident.

If the person providing the cash refuses to provide the TIN, the business should inform the person required to provide the TIN that he or she is subject to a penalty imposed by the IRS under Code Sec. 6723 if he or she fails to furnish his or her TIN; maintain contemporaneous records showing the solicitation was properly made and provide such contemporaneous records to the IRS upon request; and accompany the incomplete filed form by a statement explaining why the TIN is not included. If a TIN is not received as a result of the initial solicitation (at the time of the transaction), the first annual solicitation must be made on or before December 31 of the year in which the account was opened (transaction occurred) or January 31 of the following year for accounts opened in the preceding December following the same procedures. If unable to obtain the Taxpayer Identification Number of a customer making a cash payment of over \$10,000, Form 8300 should be filed regardless. However a filer may be able to avoid penalties when the customer refuses to provide a TIN by showing that its failure to file is reasonable under circumstances more fully described in Reg. §301.6724-1(e). At a minimum the business should request the TIN at the time of the transaction.

## **Foreign Transactions**

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Form 8300 need not be filed if the entire transaction (including the receipt of cash) takes place outside of the United States, the District of Columbia, Puerto Rico or a possession or territory of the United States. However, Form 8300 must be filed if any part of the transaction (including the receipt of cash) occurs in Puerto Rico or a possession or territory of the United States. Similarly, Form 8300 is not required 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.

## **Filing and Written Statement to Be Provided**

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Form 8300 must be filed within 15 days after the date the cash is received at the IRS Detroit Computing

Center, P.O. Box 32621, Detroit, MI 48232. E-filing is free and is a quick and secure way for individuals to file their Form 8300s. Filers will receive an electronic acknowledgment of each submission. A filer can confirm that a filed Form 8300 was received by the IRS by sending the form via certified mail with return receipt requested or calling the Detroit Computing Center at (800) 800-2877. If a customer (the buyer) about whom the Form 8300 was filed wants a copy of the form, he or she must contact the filer.

A person must file Form 8300 within 15 days after the date the cash was received. After a business files Form 8300, it must start a new count of cash payments received from that buyer. If a business receives more than \$10,000 in additional cash payments from that buyer within a 12-month period, it must file another Form 8300 within 15 days of the payment that causes the additional payments to total more than \$10,000. If a business must file Form 8300 and the same customer makes additional payments within the 15 days before the business must file Form 8300, the business can report all the payments on one form. If there are subsequent payments that are made with respect to a single transaction (or two or more related transactions), the person should file Form 8300 when the total amount paid exceeds \$10,000. Each time the payments aggregate in excess of \$10,000 another Form 8300 must be filed within 15 days of the payment that causes the additional payments to total more than \$10,000. A business should keep a copy of every Form 8300 it files and the required statement it sent to customers for at least five years from the date filed. During FY 2011 (the period ending September 30, 2011), approximately 194,366 Forms 8300 were filed.

On September 19, 2012, FinCEN announced that businesses are now able to electronically file their Form 8300 using the Bank Secrecy Act (BSA) Electronic Filing (e-Filing) System. E-filing is free and is a quick and secure way for individuals to file their Form 8300s. Filers will receive an electronic acknowledgment of each submission. Form 8300 can be filed electronically or by mailing the form to the IRS at: Detroit Computing Center, P.O. Box 32621, Detroit, MI 48232.

In addition to filing Form 8300 with the IRS, the business must furnish to each person whose name is required to be included in the Form 8300 a single annual written statement by January 31 of the year following the transaction. There is no particular form for the statement but it must include the name, address, contact person and telephone number of the business filing the Form 8300, the aggregate amount of all reportable cash the

business was required to report to the IRS from the person receiving the statement and that the business provided this information to the IRS. The statement may only be furnished during January of the following year, not at the time of the reported transaction. Furthermore the statement must be a single statement aggregating the value of the prior year transactions.

A copy of the Form 8300 may be given to the customer as the written statement if the business filed only one Form 8300 for the identified person during that calendar year at issue. Because the single Form 8300 contains the name, address, contact telephone number of the filer, the aggregate amount of reportable cash received (since there is only one transaction, or series of related transactions, the one form represents the entire aggregate transactions) and informs the notice that the payment(s) are being reported to the IRS, the Form 8300 would be acceptable as written notification. However, if during the calendar year, the filer has transactions with the customer which were included on more than one Form 8300, furnishing copies to the notice of multiple Forms 8300 does not meet the notice requirement because it is not a “single” statement. In this situation, the Form 8300 filer should provide a single written statement for all of the transactions. Although using a copy of the Form 8300 as a statement may be convenient, it may not be advisable because of the sensitive information contained on the form; for example, Employer Identification Number or Social Security Number.

## **Suspicious Transactions**

There may be situations in which the business is suspicious about a transaction. A transaction is suspicious if it appears that a person is trying to prevent a business from filing Form 8300, if it appears that a person is trying to cause a business to file a false or incomplete Form 8300 or if there is a sign of possible illegal activity. The business should report suspicious activity by checking the “suspicious transaction” box (box 1b) on the top line of Form 8300. Businesses are also encouraged to call the IRS Criminal Investigation Division Hotline at 800-800-2877 or the local IRS Criminal Investigation unit. If a business suspects that a transaction is related to terrorist activity, the business should call the Financial Institutions Hotline at 866-556-3974. A business may voluntarily file a Form 8300 in those situations in which the transaction is \$10,000 or less and suspicious. If a business filed a Form 8300 on an individual and checked the suspicious transaction box and a Form 8300 was

not otherwise required, the business does not have to inform the individual by January 31 about the fact that it filed Form 8300 because reporting of the suspicious transaction in this instance is voluntary. A business is only required to provide a statement to individuals if the filing of Form 8300 is required. A business is prohibited from informing the buyer that the suspicious transaction box was checked.

## **Potential Penalties and Sanctions**

Meeting the proper filing and furnishing requirements is very important, since there are potential civil and criminal penalties for failure to file Form 8300. Penalties for violation of the Form 8300 filing and furnishing requirements of Code Sec. 6050I have been increased by the Small Business Jobs and Credit Act of 2010, which amended Code Secs. 6721 and 6722. The amendments apply with respect to Forms 8300 required to be filed and related notices required to be furnished on or after January 1, 2011.

### **Failure to File**

Code Sec. 6721(a)(1), providing the penalty for failure to file a timely and correct Form 8300, is amended to raise the penalty from \$50 to \$100. The aggregate annual limitation (ceiling) has been raised in the case of businesses with gross receipts exceeding \$5 million from \$250,000 to \$1,500,000. For businesses with gross receipts not exceeding \$5 million, the aggregate annual limitation has been raised from \$100,000 to \$500,000. Code Sec. 6721(b)(1), which applies when the failure is corrected on or before 30 days after the required filing date, is amended to raise the penalty from \$15 to \$30. The aggregate annual limitation has been raised in the case of businesses with gross receipts exceeding \$5 million from \$75,000 to \$250,000. For businesses which correct the violation on or before 30 days after the required filing date and also have annual gross receipts not exceeding \$5 million, the aggregate annual limitation is raised from \$25,000 to \$75,000.

### **Failure to File Intentional Disregard**

Code Sec. 6721(e)(2)(C), the intentional disregard penalty for failure to file a timely and correct Form 8300, provides a penalty of the greater of \$25,000 or the amount of cash received in such transaction not to exceed \$100,000. There is no aggregate annual limitation (ceiling) for intentional disregard of Form 8300.

## Failure to Furnish

The “Failure to Furnish” penalty, Code Sec. 6722(a) (1), has been raised from \$50 to \$100 per violation. The aggregate annual limitation has been raised from \$100,000 to \$1,500,000. In the case of a business having gross receipts not more than \$5 million, the aggregate annual limitation is \$500,000. If the violation is corrected on or before 30 days after the required furnishing date, Code Sec. 6722(b)(1), the penalty has been reduced from \$50 to \$30 and the aggregate annual limitation has been increased from \$100,000 to \$250,000. In the case of a business which corrects the failure on or before 30 days and has gross receipts not more than \$5 million, the aggregate annual limitation is \$200,000.

## Failure to Furnish Intentional Disregard

Code Sec. 6722(e), intentional disregard of furnishing requirements, increased the penalty from the greater of \$100 or 10 percent of the aggregate amount of the items required to be reported correctly to the greater of \$250 per failure or 10 percent of the aggregate amount of the items required to be reported correctly, with no annual aggregate limitation.

An adjustment to the penalties for inflation will be made every five years following 2012. A person may be subject to criminal penalties for the willful failure to file Form 8300; willfully filing a false or fraudulent Form 8300; stopping or trying to stop a Form 8300 from being filed; or setting up, helping to set up or structuring a transaction in a way that would make it seem unnecessary to file Form 8300 (*i.e.*, breaking up a large cash transaction into small cash transactions). Any person required to file Form 8300 who willfully fails to file, fails to file timely or fails to include complete and correct information is subject to criminal sanctions as a felony under Code Sec. 7203. Sanctions include a fine up to \$25,000 (\$100,000 in the case of a corporation) and/or imprisonment up to five years, plus the costs of prosecution. Any person who willfully files a Form 8300, which is false with regard to a material matter, may be fined up to \$250,000 (\$500,000 in the case of a corporation) and/or imprisoned up to three years, plus the costs of prosecution pursuant to Code Sec. 7206(1) and 18 USC §3571.

## Form 8300 Assistance

Help in completing Form 8300 (PDF) is available Monday–Friday, 8 a.m. to 4:30 p.m. Eastern time,

at 866-270-0733 (toll-free inside the United States). The form is available online at IRS.gov and Financial Crimes Enforcement Network website or by telephone at 800-829-3676. Questions regarding Form 8300 can be sent to 8300QUESTIONS@irs.gov. Publication 1544, Reporting Cash Payments of Over \$10,000 (Received in a Trade or Business), explains key issues and terms related to Form 8300. Publication 1544 can be downloaded in English or Spanish. For technical questions or assistance on electronically filing Form 8300, please contact the BSA e-Filing Help Desk at 866-346-9478 or via email at BSAEFilingHelp@fincen.gov.

## Other Similar Currency and Financial Reporting Requirements

For decades, unreported funds have been laundered through various financial institutions. There would generally be no paper trail within the financial institution other than bank account records, if the money was deposited. Further, there was historically no requirement for banks to report most currency transactions. The BSA authorized the Secretary of the Treasury to issue regulations requiring financial institutions to maintain records and file reports on certain financial transactions. With the enactment of the BSA came the later introduction of the Currency Transaction Report (CTR), Report of International Transportation of Currency or Monetary Instruments (CMIR) and Report of Foreign Bank and Financial Accounts (FBAR, Form TD F 90-22.1). As a result of the BSA, currency transactions began to have a family tree—with all the branches firmly and clearly attached.

Thousands of financial institutions are currently subject to BSA reporting and record keeping requirements, including depository institutions (*e.g.*, banks, credit unions and thrifts); brokers or dealers in securities; money services businesses (*e.g.*, money transmitters; issuers, redeemers and sellers of money orders and travelers’ checks; check cashier’s and currency exchanges); and casinos and card clubs.

Each year billions of unreported funds are laundered through banks and nonbanking financial institutions, such as money servicing businesses, in an effort to make the money appear legitimate or to evade taxes. The IRS’s Anti-Money Laundering team coordinates its efforts with all affected govern-



mental agencies to identify, detect and deter money laundering in furtherance of tax evasion, a criminal enterprise, terrorism or other unlawful activity.

An effective tool for documenting financial crime has been information obtained from banks and other non-banking financial institutions. The family tree of currency transactions began to spread its roots beyond the BSA (1970) with the Anti-Drug Abuse Act of 1986 (which had substantive amendments to Title 31) and the USA Patriot Act in 2001. These Acts require banks and other financial institutions to become even more involved in solving financial crimes by filing various reports with the government including CTRs and SARs. The IRS conducts ongoing outreach efforts with the banking industry and non-banking financial institutions to ensure awareness with the money laundering statutes. The IRS has created relationships across the financial sector, and with other federal and state authorities to combat abusive tax schemes, terrorist financing and money laundering. Various other currency reporting forms and their reporting requirements include:

- *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. During FY 2011, approximately 14,826,316 CTRs were filed.
- *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, non-bank 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 (in which 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). 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. During FY 2011, approximately 1,446,273 SARs were filed.
- *Report of International Transportation of Currency or Monetary Instruments.* FinCEN Form 105 (Formerly Customs Form 4797) if funds are ac-

accompanied by an individual or if funds are mailed, shipped or received. Each person who physically transports, mails, 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). 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 United States 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. During FY 2011, approximately 618,134 FBARs were filed (up from 276,386 in 2009).
- *Suspicious Activity Report Casino and Card Clubs (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 (previously IRS Forms 8362).* 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 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, an MSB includes currency dealers, check cashers who cash checks for a customer exceeding \$1,000 in a single day, issuers or sellers of traveler's checks or money orders and money transmitters.<sup>1</sup> 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. During FY 2011, approximately 20,315 Forms 107 were filed.

- *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 an MSB of transactions or attempted transactions conducted or attempted by, at or through an 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 traveler's 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. 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. 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.

## **Reporting Suspected Tax Fraud**

Reports of suspected tax fraud can be made by phone, mail or at a local IRS walk-in office. Contact can occur by phone to the IRS toll free at 1-800-829-0433. International callers may call their U.S. Embassy or call 215-516-2000 (not a toll-free number). Contact can occur by mail to the IRS Service Center where tax returns are filed. Informants are not required to provide their identity and their identity can be kept confidential. Informants may also be entitled to a reward.<sup>2</sup> For those living outside the United States, the IRS has full-time permanent staff in seven U.S. embassies and consulates.

## **Voluntary Compliance Counts!**

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 and numerous others demanding a reduction in the Tax Gap, searching for those who ignore reporting of currency-related transactions has become a high priority among various government agencies. Those who choose

not to comply face potentially significant civil and criminal sanctions that should not be ignored. Now is the time to advise clients of their reporting obligations. Penalties will always be less severe, if any, for those who timely, voluntarily and completely come into compliance.

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**ENDNOTES**

- <sup>1</sup> See 31 CFR 103.11(n) and (uu) for further definitions of an MSB.
- <sup>2</sup> See IRS Publication 733.

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