IRS Issues Notice Reminding Businesses of the Obligation to Report "Cash" Transactions Over $10,000

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Businesses whose customers purchase over $10,000 worth of goods and services in cash must report these transactions to the Internal Revenue Service. The authors of this article discuss the reporting requirements, and remind businesses that failure to comply can result in civil and criminal penalties.

The Internal Revenue Service ("IRS") recently issued a notice reminding businesses of the obligation to file Forms 8300.[1] The Form 8300, Report of Cash Payment over $10,000, requires the recipient to report certain information about the business transaction when the customer pays with more than $10,000 in cash.[2] Among other things, the Form 8300 requires information about the name, address, and Social Security number of the individual providing the cash as well as the name and employer identification number of the company engaged in the transaction. The IRS has issued regulations and provided other guidance that further delineates what type of transactions are subject to this reporting requirement. In some cases, the reporting requirements can be complicated and ambiguous.

Who Must File a Form 8300?

The Form 8300 filing requirement applies to a "person" who is engaged in a trade or business. The term "person" is broadly defined to apply to any individual or business (*e.g.*, partnership, trust, or corporation), including businesses that engage in:

- Escrow arrangement contributions;
- Providing legal service (*i.e.*, attorneys);
- Collecting pre-existing debt payments;
- Reimbursement of expenses;
- Making or repaying a loan;
- Sale of real property;
- Rental of real or personal property; or
- Exchange of cash for other cash.

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The Form 8300 filing requirement does not apply to individuals who engage in transactions that are *not* part of a trade or business. For example, an individual, who sells his personal automobile and receives cash for it, is *not* engaged in the business of selling cars and hence not subject to a Form 8300 filing requirement.

What Constitutes a Reportable Transaction?

All cash transactions over $10,000 must be reported. A transaction exceeds $10,000 if it:

- Is paid in one lump sum of more than $10,000;
- Consists of installment payments that cause the total cash received within one year of the initial payment to total more than $10,000; or
- Consists of previously unreported payments that, in conjunction with the current payment, cause the total cash received within a 12-month period to total more than $10,000 as part of a series of related transactions.

The IRS has issued several private letter rulings that further explain when multiple transactions are considered one transaction for purposes of this reporting requirement.

What Constitutes "Cash?"

Cash includes the coins and currency of the United States and any foreign country. Cash may also include cashier's checks, bank drafts, traveler's checks, and money orders with a face value of $10,000 or less, if the business receives the instrument from the sale of:

- A consumer durable, such as an automobile, boat, or property other than land or buildings that is suitable for personal use and can reasonably be expected to last at least one year;
- A collectible, such as a work of art, rug, antique, metal, gem, stamp, or coin; or
- Travel or entertainment, if the total sale price of all items sold for the same trip or entertainment event in one transaction or related transactions is more than $10,000.

For the above-referenced transactions, cashier's checks and the like with a face value of less than $10,000 are considered cash, but cashier's checks and the like with a face value greater than $10,000 are *not* considered to be cash. Thus, the receipt of both cashier's checks and cash can trigger a Form 8300 filing requirement.

In addition, any transaction in which the business knows the customer is trying to avoid reporting the transaction on Form 8300 is also subject to a reporting requirement even if the customer only uses cashier's checks and the like.

When Must Form 8300 be Filed?

The Form 8300 must be filed within 15 days of the date on which the cash was received. The IRS accepts paper and electronic copies of the form.

What Is the Penalty for Failing to File?

A business can face civil penalties of up to $250 for each unfiled Form 8300 with a maximum penalty of up to $3,000,000 per calendar year. The IRS can also institute criminal

proceedings against individuals and businesses whose failure to file Forms 8300 are willful.

What if the Customer Refuses to Furnish Accurate Information?

The IRS expects businesses to file Forms 8300 even if they are incomplete. If the form is not able to be completed, the business will avoid a penalty by establishing that it acted with reasonable cause. The IRS expects that, at the time of the transaction, the business will ask the purchaser for the pertinent information including the taxpayer identification numbers ("TINs") (*i.e.*, Social Security number and employer identification number). If the purchaser declines to furnish a TIN, the business must make a follow-up request by the end of the year (or by January 31, if the transaction occurs in December). IRS regulations and policy manuals provide guidance as to what is required in a business's request to a customer who pays with cash.

Any business that receives cash or cashier's checks and the like from its customers should have a policy in place to ensure that the identity of the individual who pays with cash is documented. Businesses that realize that they have not implemented such a policy and may be subject to the Form 8300 filing requirement should consult a lawyer.

NOTES:

[1]The notice can be found at https://www.irs.gov/newsroom/cash-payment-report-helps-government-combat-money-laundering and the Form 8300 can be found at https://www.irs.gov/pub/irs-pdf/f8300.pdf.

[2]The Form 8300 reporting requirement is different from the requirements imposed on title agents who engage in all cash transactions in certain residential real transactions. FinCEN, a bureau of the Treasury Department, re-issued a geographical targeting order ("GTO") in May 2019. Under the terms of the GTO, title agents who engage in a residential real estate transaction without financing (i.e., the transactions is paid for by cashier's check, personal check, funds transfer or virtual currency) *for a legal entity* must file a currency transaction report ("CTR") with FinCEN.

The CTR must identify certain information about the transaction including the identity of the legal entity's beneficial owner (i.e., individual with an ownership interest in the legal entity). The CTR reporting requirement only applies to real estate transactions that exceed $300,000 and where the subject property is located in 1) Bexar, Tarrant, or Dallas counties (Texas); 2) Miami-Dade, Broward, or Palm Beach counties (Florida); 3) the Boroughs of Brooklyn, Queens, Bronx, Staten Island, or Manhattan in New York City, New York; 4) San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara counties (California); 5) the city of Honolulu (Hawaii); 6) Clark county (Nevada); 7) King county (Washington state); 8) Suffolk or Middlesex counties (Massachusetts); or 9) Cook county (Illinois). A copy of the GTO which sets forth all of the rules pertaining to these transactions can be found at: https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20Order%20FINAL%20GENERIC%205.15.2019_508.pdf