

## Bank Secrecy Act and Form 8300: Reporting Cash Payments Over \$10,000, Identifying Prohibited Structured Transactions

TUESDAY, AUGUST 20, 2019, 1:00-2:50 pm Eastern

### IMPORTANT INFORMATION FOR THE LIVE PROGRAM

This program is approved for 2 CPE credit hours. To earn credit you must:

- **Participate in the program on your own computer connection (no sharing)** - if you need to register additional people, please call customer service at 1-800-926-7926 ext. 1 (or 404-881-1141 ext. 1). Strafford accepts American Express, Visa, MasterCard, Discover.
- Listen on-line via your computer speakers.
- Respond to five prompts during the program plus a single verification code.
- To earn full credit, you must remain connected for the entire program.

### WHO TO CONTACT DURING THE LIVE PROGRAM

For Additional Registrations:

-Call Strafford Customer Service 1-800-926-7926 x1 (or 404-881-1141 x1)

For Assistance During the Live Program:

-On the web, use the chat box at the bottom left of the screen

If you get disconnected during the program, you can simply log in using your original instructions and PIN.

## *Tips for Optimal Quality*

FOR LIVE PROGRAM ONLY

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### Sound Quality

When listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, please e-mail [sound@straffordpub.com](mailto:sound@straffordpub.com) immediately so we can address the problem.

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August 20, 2019

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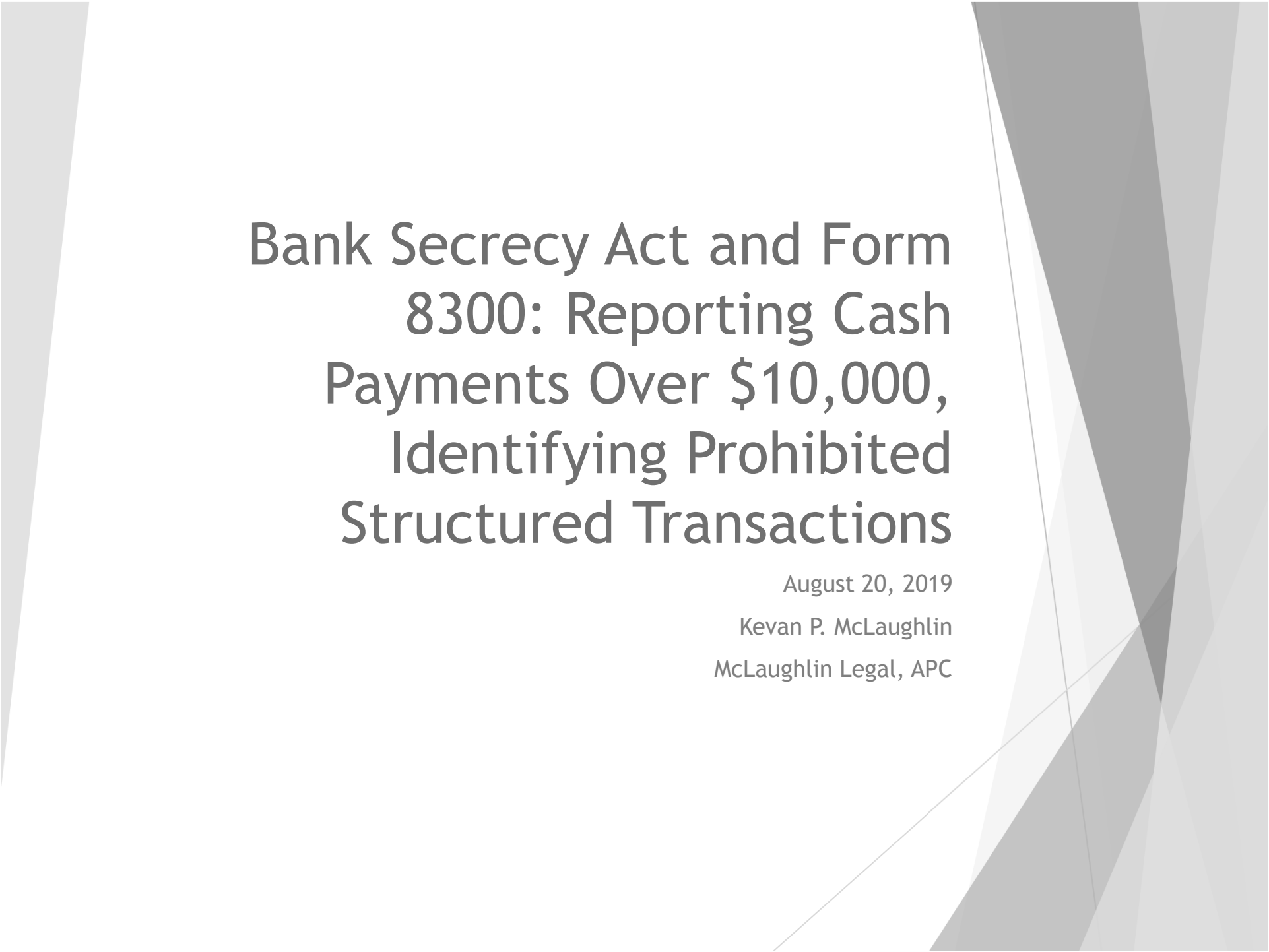
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# Bank Secrecy Act and Form 8300: Reporting Cash Payments Over \$10,000, Identifying Prohibited Structured Transactions

August 20, 2019

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# Kevan P. McLaughlin

Kevan McLaughlin is a San Diego tax attorney who specializes in tax controversy and litigation matters. In addition to representing taxpayers before the IRS, FTB, CDTFA, EDD, CUIAB, and Department of Justice in civil and criminal tax matters, McLaughlin has a unique practice in defending accounting professionals before the California Board of Accountancy (CBA) and IRS Office of Professional Responsibility (OPR) who are accused of violating various statutes and regulations, including Circular 230 provisions. McLaughlin is also an adjunct professor at SDSU's Charles W. Lamden School of Accountancy where he teaches "Ethics for Accountants." Kevan is also a California State Bar Certified Tax Law Specialist.

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## BSA - Background, Goals, etc.

The Bank Secrecy Act (“BSA”) was passed in 1970 as the first law to fight money laundering in the United States. It has become a key tool in combatting money laundering, narcotics trafficking, intelligence or counterintelligence activities, and other financial offenses.

The Financial Crimes Enforcement Network (“FinCEN”), a bureau within the U.S. Department of the Treasury, administers the BSA, but has delegated the enforcement authority to the IRS for nonfinancial trade and businesses.

31 U.S.C. § 5331 vs. 26 U.S.C. § 6050I

## IRC § 6050I - Background

Congress enacted IRC § 6050I with section 146 of the Tax Reform Act of 1984. Effective January 1, 1985, the law required that information returns relating to cash payments over \$10,000 received in trade or business be filed by all trades or businesses that are not required to file similar reports on currency transactions under the BSA. In 1986, the Tax Reform Act of 1986 amended the notice provisions effective for returns due after December 31, 1986, by requiring, among other things, an annual statement to the payor that aggregates the amounts received during the year.



## IRC § 6050I - Background

In 1988, as part of the Anti-Drug Abuse Act of 1988, Congress added subsection (f) to IRC § 6050I, effective for actions after November 18, 1988. The new section prohibited causing or attempting to cause a trade or business to fail to file a required return, to file a required return that contains a material omission or misstatement of fact, or structuring transactions; and provided penalties for violating the rules of IRC § 6050I.

The Omnibus Budget Reconciliation Act of 1990, commonly known as the Revenue Reconciliation Act of 1990, expanded the definition of cash to include certain monetary instruments, along with foreign currency, effective for amounts received after November 5, 1990. The notice requirements of subsection IRC § 6050I(e) were amended to include the telephone number of the contact in addition to the name and address. The amendment, included in the Taxpayer Bill of Rights 2, applies to statements required to be furnished after December 31, 1996.

## IRC § 6050I - Requirements

IRC section 6050I(a) and 26 CFR 1.6050I-1(e) require that any person engaged in a trade or business that receives cash in excess of \$10,000 in one transaction, or two or more related transactions, must file Form 8300 by the 15th day after the date the cash is received.

Any person required to file Form 8300 must also retain a copy for five years.

Any person filing a required Form 8300 must also furnish a written statement to each person identified on Form 8300 by January 31 of the succeeding calendar year. The statement must show:

1. The name, address, and telephone number of the information contact for the business,
2. The aggregate amount of reportable cash received during the calendar year, and,
3. That the information was reported to the IRS.

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1. The name, address, and telephone number of the information contact for the business,
2. The aggregate amount of reportable cash received during the calendar year, and,
3. That the information was reported to the IRS.

# IRC § 6050I - “Trade or Business”

*General Rule:* same meaning as IRC § 162

*Also Includes:*

1. Any transaction by a corporation;
2. Non-gaming businesses of a casino, such as shops, restaurants, and hotels, are considered separate trades or businesses;
3. Payments received by accountants, attorneys, doctors, and other service providers for services rendered or reimbursement of expenses, including cash received to be held in trust; and
4. Sales of assets used in a trade or business.

## IRC § 6050I - “Trade or Business”

### Example 1

You bought a new car and sold your old one to Dave for \$11,000. Dave paid you in cash. Are you required to report the receipt of cash from Dave?

NO.

YES.

## IRC § 6050I - “Trade or Business”

### Example 1

You are not in the trade or business of selling cars, therefore, you are not required to report the receipt of cash.

**NO.**

## IRC § 6050I - “Cash”

1. Coin and currency of the United States,
2. Foreign coin or currency which circulates in and is customarily used and accepted as money in the foreign country,
3. Cashier’s check (aka “treasurer’s check,” or “bank check”) having a face amount of not more than \$10,000.
4. Traveler’s checks having a face amount of not more than \$10,000, or
5. Money orders having a face amount of not more than \$10,000.





## IRC § 6050I - “Cash”

### Example 2

You are fortunate enough to be able to ask a travel agent to charter a passenger airplane to take a group of your friends to a sports event in another city. You also ask the travel agent to book hotel rooms and admission tickets for the group. You pay with two money orders, each for \$6,000. Does the travel agent have a Form 8300 filing obligation?

**NO.**

**YES.**

## IRC § 6050I - “Cash”

### Example 2

The travel agent has received more than \$10,000 cash in the designated reporting transaction and must file Form 8300.

YES.

## IRC § 6050I - “Cash”

### Example 3

Danny, an individual, purchases gold coins from Mark, a coin dealer, for \$13,200.

Danny tenders to Mark \$6,200 in cash and a cashier's check for \$7,000. Does the aggregate paid (\$13,200) trigger a Form 8300 filing requirement?

NO.

YES.

## IRC § 6050I - “Cash”

### Example 3

Because the sale is a designated reporting transaction (retail sale of a collectible), the cashier's check is treated as cash for purposes of IRC § 6050I. Therefore, because Mark has received more than \$10,000 in cash with respect to the transaction, Mark must make the Form 8300 filing.

YES.

## IRC § 6050I - “Cash”

### Example 4

Frank, an individual, purchases an item of jewelry from Susan, a retail jeweler, for \$12,000. Frank gives Susan a traveler's checks totaling \$2,400 and pays the balance with a personal check payable to Susan in the amount of \$9,600.

Does the aggregate paid (\$12,000) trigger a Form 8300 filing requirement?

NO.

YES.

## IRC § 6050I - “Cash”

### Example 4

Because the sale is a designated reporting transaction (sale of a collectible), the traveler's checks are treated as cash for purposes of IRC § 6050I. However, because the personal check is not treated as cash for purposes of IRC § 6050I, Susan has not received more than \$10,000 in cash in the transaction and no report is required to be filed.

**NO.**

# IRC § 6050I - “Transaction”

1. 24 Hours
2. Beyond 24 Hours

## IRC § 6050I - “Transaction”

### Example 5

A retail motorcycle dealer sells a motorcycle for \$9,000 in cash to you at 10 a.m. During the afternoon, on the same day, you return to buy another motorcycle for your son and pays another \$9,000 in cash. Does the motorcycle dealer have an 8300 filing obligation?

NO.

YES.



## IRC § 6050I - “Transaction”

### Example 5

Since, both transactions occurred within a 24-hour period, they are related transactions, and the motorcycle dealer must file Form 8300. Note that a 24-hour period is 24 hours, not necessarily a calendar day or banking day.

YES.

## IRC § 6050I - “Transaction”

### Example 6

You agree to prepare a client’s delinquent 2016 - 2018 income tax returns and your fee will be determined on an hourly basis. In the first month in which you represents the client, the bill for your services comes to \$8,000, which the client pays in cash. In the second month in which you represent the client, the bill for your services comes to \$4,000, which the client again pays in cash. Does the aggregate amount of cash paid (\$12,000) trigger a Form 8300 filing requirement?

**NO.**

**YES.**

## IRC § 6050I - “Transaction”

### Example 6

The aggregate amount of cash paid (\$12,000) relates to a single transaction as defined in paragraph Treas. Reg. 1.6050I-1(c)(7)(i), and the receipt of cash must be reported.

YES.

## IRC § 6050I - “Transaction”

### Example 7

Your client intends to contribute a total of \$45,000 to a trust fund. Your client decides to make five separate \$9,000 cash contributions to the single fund or by making five \$9,000 cash contributions to five separate funds administered by a common trustee. Does the trustee have a Form 8300 filing requirement?

NO.

YES.

# IRC § 6050I - “Transaction”

## Example 7

The \$45,000 contribution is treated as a single transaction and the reporting requirement cannot be avoided by structuring the contributions.

YES.

## IRC § 6050I - “Transaction”

### Example 8

Ted’s Farming Equipment Leasing leases equipment to you, and you sign a lease agreeing to pay \$1,000 per month, not to exceed 24 months. You pay on the first day of every month starting Feb 1, 2017 through Jan 1, 2019, and you always pay in cash. Does Ted’s Farming Equipment Leasing need to file Form 8300?

NO.

YES.

## IRC § 6050I - “Transaction”

### Example 8

Yes, once more than \$10,000 in installment payments are received within a 12-month period.

YES.





## IRC § 6050I - “Transaction”

### Example 9

On 1/10/2019, you receive an initial cash payment of \$11,000 with respect to a transaction with Mark. You receive subsequent cash payments from Mark with respect to the same transaction of \$4,000 on 2/15/2019, \$6,000 on 3/20/2019, and \$12,000 on 5/15/2019. When must you file a Form 8300, if at all?

# IRC § 6050I - “Transaction”

## Example 9

A) 1/25/2019 (15 days from 1/10/2019 payment of \$11,000)

2/15/2019 of	\$4,000
3/20/2019 of	\$6,000
	<u>\$10,000</u>

5/15/2019 of	\$12,000
	<u>\$22,000</u>

B) 5/30/2019 (15 days from the \$22,000 collected as of 5/15/2019)

## Missing TIN

Title 26 penalty provisions have a technical reasonable cause exception found in IRC § 6724. Under IRC § 6724(a), no penalty should be imposed for any failure that is due to reasonable cause and not to willful neglect, which extends to Form 8300 by operation of IRC § 6724(d)(1)(B)(vi). The applicable regulation, Treas. Reg. § 301.6724-1(a)(1), reaffirms this, in that “[t]he penalty for a failure relating to an information reporting requirement ... is waived if the failure is due to reasonable cause and is not due to willful neglect.” This regulatory statement continues to extend to Form 8300 by operation of Treas. Reg. § 301.6724-1(j)(1).

## Missing TIN

A concern exists in to what extent the Title 26 provisions can satisfy the Title 31 requirements given the independent, albeit nearly verbatim, requirements found in 31 USC § 5331 of the BSA. Despite the fact that 31 C.F.R. § 1010.330(a)(1)(ii) and Treas. Reg. § 1.6050I-1(a)(1)(ii) allow a single Form 8300 to satisfy both Title 26 and Title 31 filing requirements, it is not entirely clear that such dual satisfaction extends to waivers based on a missing TIN. No direct authority exists. However, I.R.M. § 4.26.11.4.6 (Rev. 11-24-2006) references the same reasonable cause waivers applicable to the Title 26 requirement in the context of Title 31 enforcement. Moreover, the same administrative authority provisions emphasize that Form 8300 civil penalties can be applied under IRC §§ 6721 and 6722. Therefore, a realistic possibility exists that the following analysis of Title 26 reasonable cause requirements for missing TINs equally applies for purposes of 31 USC § 5331.

## Missing TIN

Accordingly, Treas. Reg. § 301.6724-1(a)(2) provides a singular definition of “reasonable cause” as one in which the Form 8300 filer can establish that:

1. there are significant mitigating factors with respect to the failure; or
2. the failure arose from events beyond the filer's control; and
3. the filer can establish that they acted in a responsible manner both before and after the failure occurred.

## Missing TIN - Significant Mitigating Factors

Under the first of two alternative requirement elements, a filer must be able to show that there are significant mitigating factors for the failure to file a Form 8300.

The mitigating factors include, but are not limited to: (a) the fact that prior to the failure the filer was never required to file the particular type of return or furnish the particular type of statement with respect to which the failure occurred, or (b) the fact that the filer has an established history of complying with the information reporting requirement with respect to which the failure occurred. In determining whether the filer has such an established history, significant consideration is given to whether the filer has incurred any similar penalty in prior years for the failure, and if the filer has incurred any such penalty in prior years, the extent of the filer's success in lessening its error rate from year to year.

# Missing TIN - Events Beyond Filer's Control

Under the second of two alternative requirement elements, a filer must show that their failure to file (including a complete) a Form 8300 was due to events beyond the filer's control. Events which are generally considered beyond the filer's control include, but are not limited to: (a) the unavailability of the relevant business records; (b) an undue economic hardship relating to filing on magnetic media; (c) certain actions of the IRS; (d) certain actions of an agent; and (e) certain actions regarding providing necessary information with respect to the return or statement. The first four of these examples appear non-applicable.

Nevertheless, Treas. Reg. § 301.6724-1(c)(6)(ii) provides that a waiver for reasonable cause may exist where the Form 8300 filer's failure relates to TIN's such that they are "events beyond filer's control" for purposes of Treas. Reg. § 301.6724-1(c)(1)(v). The applicable provision incorporates by reference the Treas. Reg. § 301.6724-1(e). This reasonable cause for missing TIN's is reaffirmed by the IRS administratively in I.R.M. § 4.26.10.10.4.1 (Rev. 7-13-2012).

Under Treas. Reg. § 301.6724-1(e) a Form 8300 filer may meet the reasonable cause exception if a payor refuses to provide their TIN by making an (a) Initial Solicitation and (b) an Annual Solicitation.

## Missing TIN - Reasonable Manner

Unless the special exception of Treas. Reg. § 301.6724-1(e) is used, regardless of whether significant mitigating factors or other events beyond a filer's control are used, any Form 8300 filer must also demonstrate that they exercised reasonable care. Because Treas. Reg. § 301.6724-1(d)(2) incorporates the events beyond a filer's control found in Treas. Reg. § 301.6724-1(c)(6), it is believed that the superfluous and redundancy will not require both reasonable manner and events beyond a filer's control, i.e., satisfaction of Treas. Reg. § 301.6724-1(e) will be enough for both elements.

Nevertheless, "reasonable manner" is a standard of care that a reasonably prudent person would use under the circumstances in the course of its business in determining any Form 8300 filing obligation, and for which the Form 8300 filer undertook significant steps to avoid any failure to file or file without complete information. Examples of the steps that can be taken to avoid any failure to file or file without complete information include: (a) working to prevent an impediment to file or file without complete information, if it was foreseeable; (b) acting to remove an impediment or the cause of a failure to file or file without complete information, once it occurred, and (c) rectifying the failure as promptly as possible once the impediment is removed or the failure was discovered. Ordinarily, a rectification is considered prompt if it is made within 30 days. Deguerin v. U.S., 214 F.Supp.2d 726 (S.D. Texas 2002) provides a detailed analysis of conduct that is not reasonable.



## Missing TIN - Reasonable Manner

Although not addressed by the IRS administratively, Treas. Reg. § 301.6724-1(m) appears to provide a further requirement that a Form 8300 filer seeking to obtain a reasonable cause waiver must also submit a written statement to the IRS. That written statement must: (A) state the specific provision under which the waiver is being requested (i.e., Treas. Reg. §§ 301.6724-1(c)(6), (e)); (B) set forth all the facts alleging as the basis for reasonable cause; (C) be signed by the person required to file the return; and (D) contain a declaration that it is made under penalties of perjury.

# Consequences

- Civil
- Criminal
- Beyond

**FILED**  
JUN 15 2017  
CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
[REDACTED]  
Defendant.

Case No. [REDACTED]  
ORDER OF CRIMINAL  
FORFEITURE

WHEREAS, in the Information in this case, the United States alleged forfeiture of all property, real or personal, involved in Count 1, and of any property traceable to such property in favor of the United States against Defendant, [REDACTED] ("Defendant"), pursuant to 31 U.S.C. § 5317(c), in violation of 31 U.S.C. §§ 5324(a)(3) and 5324(d), and 18 U.S.C. § 2, as charged in the Information; and

WHEREAS, on or about February 9, 2017, the Defendant entered a guilty plea to Count 1 of the Information charging violation of 31 U.S.C. § 5324(a)(3), structuring transactions to evade reporting requirements, which plea included a consent to the forfeiture allegations of the Information and an agreement to entry of a \$29,784.00 money judgment against the Defendant in favor of the United States, before Magistrate Judge Barbara Lynn Major; and

WHEREAS, on 6-12-17, 2017, this Court accepted the guilty plea of Defendant; and

# Structuring

## 31 U.S.C. § 5324(b)

**Domestic coin and currency transactions involving nonfinancial trades or businesses.** --No person shall, for the purpose of evading the report requirements of section 5331 ... --

1. cause or attempt to cause a nonfinancial trade or business to fail to file a [Form 8300];
2. cause or attempt to cause a nonfinancial trade or business to file a [Form 8300] that contains a material omission or misstatement of fact; or
3. structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.

Whoever violates this section shall be fined ..., imprisoned for not more than 5 years, or both.

## IRC § 7203

Section 7203 covers four different situations, each of which constitutes a failure to timely perform an obligation imposed by the Internal Revenue Code: (1) failure to pay an estimated tax or tax, (2) failure to make (file) a return, (3) failure to keep records, and (4) failure to supply information.