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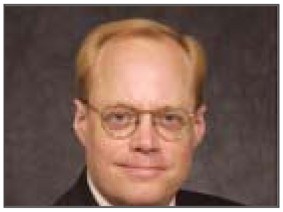

Robert W. Wood
THE TAX LAWYER

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Skimming Cash -- Even From Yourself -- Can Mean Prison For Tax Fraud

Kenneth Horner and Kimberly Horner of Milledgeville, Georgia, were each sentenced to 18 months in prison and three years each of supervised release thereafter. They were also ordered to pay restitution to the IRS. The Horners were found guilty of filing false corporate tax returns and false individual income tax returns.

Prosecutors said the Horners owned Topcat Towing and Recovery Inc., a towing business in Georgia. Between 2005 and 2008, they skimmed $1.5 million in cash from the businesses, depositing into their personal bank account without disclosing the income on their corporate or personal tax returns filed with the IRS. They tried to conceal their cash deposits from the government by “structuring,” splitting up cash deposits that exceed $10,000.

The idea is to try to avoid those $10,000 cash Currency Transaction Reports that are filed by the financial institution. Most financial institutions, including banks, are generally required to file reports to the IRS for cash transactions that exceed $10,000. ‘Structuring’ involves manipulating cash transactions to fall below the $10,000 IRS cash reporting threshold.

(Photographer: Patrick T. Fallon/Bloomberg)

That is what happened to former House Speaker Dennis Hastert, who was indicted over cash payments. The $10,000 cash reporting law allows the government to crack the whip on banks and other businesses that fail to report. And as you might imagine, the government would like you to resolve all doubts in favor of reporting. We're from the government, and we're here to help, they seem to say.

If you go into the bank frequently to deposit $9,500, you *might* be aware that more than $10,000 triggers a cash report under the Bank Secrecy Act. The law can aggregate multiple cash transactions if they exceed $10,000 in any business day. If the government catches you structuring, it can mean a fine of up to $250,000, and up to five years in jail. Criminal forfeiture follows a criminal conviction. But what if you aren't convicted *or even accused*? Outrage and press coverage eventually lead the Attorney General to announce changes to government asset forfeiture programs.

However, that doesn't mean the law was changed or that there are no more seizures. The IRS can still do it. In fact, earlier this year, the IRS seized over $100,000 from an innocent small business owner, despite calling for an end to such practices. If your cash or assets are taken, the damage can be immediate and irreparable. Civil forfeiture rules allow the government to seize cash or property it *suspects* has been *somehow* used in criminal activity. *There is no requirement that a property owner be convicted or even* *charged with a crime*. Between 2005 and 2012, the IRS reportedly seized more than $242 million in over 2,500 cases, according to FOIA data obtained by the Institute for Justice. Several bills have been introduced to curtail the practice.

Rep. Dave Camp (R-MI) and Rep. Sander Levin (D-MI) introduced the Taxpayer Protections Against Abusive Seizures Act to add protections against civil forfeiture laws. More recently, Sen. Rand Paul (R-KY) and Rep. Tim Walberg (R-MI), introduced the Fifth Amendment Integrity Restoration Act or FAIR Act to require a court hearing within 14 days of any seizure. If the court finds no probable cause to believe a structuring violation occurred, the property would have to be returned.

But the laws remain proposed, and the IRS says it needs this enforcement tool. Besides, the IRS says there are already due process protections in place to protect you if you are innocent. Before it can seize property in a structuring case, special agents of the IRS Criminal Investigation Division prepare a seizure warrant affidavit. Its approved internally and then reviewed by an Assistant U.S. Attorney and a manager. If they agree the affidavit is legally sufficient, they go before a federal magistrate judge.If the magistrate judge determines there is sufficient evidence to establish probable cause, a seizure warrant is issued. IRS agents then serve the warrant and seize the property.

Structuring bank transactions to evade Bank Secrecy Act reporting is a felony *regardless* of whether the funds come from a legal or illegal sources. The IRS has said that it wants to seize assets only if the structured funds appear to be derived from illegal sources. Yet even if your bank/cash efforts come from 100% legal money, the IRS says it *still* can seize it. The action just has to be approved by a senior executive in the IRS Criminal Investigation Division. IRS Chief Mr. Koskinen said this will help to ensure consistency in how IRS investigations and seizures are conducted. Nevertheless, he said IRS seizures in 'illegal source' structuring cases will continue. Seizures are a powerful tool that must be administered fairly, efficiently, and in compliance with the law, the IRS Chief has noted.

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