

Why You Need to Be Careful With Large Cash Bank Deposits

By Sheryl Nance-Nash

The IRS made headlines last year when word got out that they had seized \$43 million from more than 600 people for violating structuring laws, despite the fact that there was nothing that suggested criminal wrongdoing.

If you're like most people, you have no clue about structuring laws. To keep it simple, federal law states that if an individual conducts a cash transaction of more than \$10,000, the bank is required to file a currency transaction report to the U.S. Treasury Department. You can't get around this rule by breaking up or "structuring" cash deposits in amounts below \$10,000 to avoid having to report your doings to the government.

Prior to 2014 the IRS routinely seized bank accounts where individuals had structured their deposits to avoid the reporting laws even though there was no suggestion that the individual had done anything illegal other than violating the structuring laws, says Dennis Brager, a certified tax specialist and founder of the Brager Tax Law Group.

"Sadly, life can be very difficult when dealing with the IRS," says Robert Kiggins, a partner with the law firm Culhane Meadows.

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The Institute for Justice litigated a number of cases challenging the constitutionality of what the IRS was doing. When called on the carpet, "Basically, the IRS said oops, even when they had been holding



someone's money for more than two years. Or weeks before we got involved in a case the IRS had given someone a settlement offer where the IRS would keep 50% of the money," says Robert Everett Johnson, an attorney with the Institute of Justice.

The Institute of Justice kept the cases coming. With such pressure, in mid-2014, the IRS changed its prior policy and stated that it would no longer seize funds associated with so-called "legal source" income cases unless there are "exceptional circumstances", and there was high level IRS approval, says Brager.

In May of 2016, there was a Congressional inquiry, and the IRS agreed to notify property owners who had their property seized prior to the change in the policy that they could apply for the return of the property. "The IRS gave back millions, but the Department of Justice, which also has a role in this, is still sitting on petitions, and people haven't had their money returned," says Johnson.

While the Institute of Justice isn't seeing any new cases, people shouldn't get comfortable. "The IRS change in policy is voluntary, they could go back to

what they were doing at any time. What's needed is for Congress to change the law," says Johnson. "If there's no change in the law you really have no security that this won't happen again."

The period to request the return of property closed in February of this year, and the IRS is no longer accepting applications for the return of seized funds. "Little is known about how many individuals were successful in having their funds returned," says Brager.

"It is unknown if the IRS has been following its own policies. Nor has the IRS released any statistics that would help us in deciding if legal source income seizures are still taking place. It will probably be necessary to file a Freedom of Information Act Request in order to obtain at least some of the data to determine if the practice of seizing assets even though there is no violation of other laws has truly ceased," says Brager.

How best to protect yourself? The first step is being aware. "Know the basics of how the rules work," says Jeffrey Schneider, a director with the National Association of Enrolled Agents. Ignorance may or may not be much of a defense. Says Smalley, "If someone

honestly didn't know any better, an IRS agent would be able to see that. I would hope that they wouldn't get the book thrown at them. IRS agents are trained, for the most part, to know when someone is

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being honest with them. Just be honest. I am sure there will be some penalty, but I don't see the Service going full force on someone that just made an honest mistake."

But just in case you can't depend on the generosity of Uncle Sam, if you're uncertain about what you can and can't do, talk to your financial advisor. that," he said. "We don't know the reality of this new venture."