

MONEY LAUNDERING

Do You Know Where Your Customer's Money is Coming From? *By Craig S. Denney, Snell & Wilmer L.L.P.*

Federal law enforcement has become extremely aggressive in financial investigations for criminal activity. With the global financial crisis, hundreds of bank failures, multibillion-dollar Ponzi schemes, and financial credit crunch, federal law enforcement agencies such as the FBI, IRS-CI, and DOJ are constantly looking for suspected money laundering activities. This article is a brief primer on the money laundering statutes and provides some practical advice on how businesses should be aware of the source of funds they receive and what they need to do to avoid unnecessary exposure to violations of federal law.



Contrary to popular Hollywood depictions, money laundering does not only occur when a drug trafficker spends his illicit cash to buy a fancy sports car. The IRS describes the crime generally as “activities and financial transactions that are undertaken specifically to hide the true source of the money. In most cases, the money involved is earned from an illegal enterprise and the goal is to give that money the appearance of coming from a legitimate source.”

The offense can occur with seemingly mundane financial transactions like depositing cash funds in a federally insured bank, investing in the construction of a shopping mall, or transferring money in violation of a loan agreement.

Money laundering is a federal crime. It is a felony offense. If one is convicted of money laundering, he or she will likely go to prison. And there is no parole in the federal system. Of more concern to business owners is that “aiding and abetting” another person in the offense of money laundering can result in equal punishment.

The basic elements of the offense of money laundering are:

1. The person knows the funds in a financial transaction were from a criminal source;
2. The money came from specified unlawful activities; and
3. The person conducted the transaction with the intent to promote the activity or conceal the source of the funds.

There are a number of different types of offenses under the money laundering statutes, Title 18, United States Code, Sections 1956 and 1957. The following terms are key to

understanding the money laundering statutes.

“Financial transaction” is broadly defined under federal law and includes just about any transaction that affects interstate or foreign commerce by movement or transfer of funds, instruments, real property, vehicles, aircraft, or boats.

“Transaction” is also described as the purchase, sale, loan, pledge, gift, transfer, or delivery. If a bank is involved, then the term includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase of stocks, bonds, CDs, or other monetary instruments. It can even involve the mere use of a safety deposit box!

“Specified Unlawful Activities” (known as SUAs) refer to racketeering offenses, drug offenses, and bank-secrecy violations. But SUAs can also be less nefarious criminal activities like copyright infringement, entry of goods by means of false statements, health care offenses, and environmental crimes.

The level of knowledge (or *mens rea*) required for a money laundering offense is that the person knew the property involved in the financial transaction represents the proceeds of “some form of unlawful activity.” This means that the federal agents do not have to prove the person knew he was depositing drug money in the bank. Instead, the knowledge is that funds were from some form of activity that is a felony under state, federal, or foreign law.

What does this mean to the average company, financial institution, or businessperson? Don’t be an ostrich regarding who your customer is or what your customer does. Under federal law, willful blindness can satisfy the criminal mental state for knowledge. A couple of examples may be helpful to illustrate this standard. A customer goes to a bank to make a large cash deposit. The teller informs the customer that the bank must fill out a Currency Transaction Report (CTR) with the IRS for deposits of more than \$10,000. The customer then decides to reduce the amount of the deposit below \$10,000 to avoid the CTR requirement. What should the teller do? The teller should fill out a Suspicious Activity Report (SAR). The failure to prepare a CTR or SAR may expose the teller and the bank to aiding another person in money laundering activities. Employees should be educated on these requirements.

Another scenario is when a customer provides a large amount of cash to a company or a professional (such as an attorney or accountant) for a transaction. The company or professional is obligated to fill out a Form 8300 for report of cash payments in

excess of \$10,000. This form must be filed within 15 days after receiving more than \$10,000 in cash from a customer as a result of a single or two or more related transactions. Failure to file the form carries monetary penalties. It can also result in the company becoming entangled in a money laundering investigation. The advice is simple. Prepare and file the form.

Need more reasons? The IRS has revenue officers who collect unpaid taxes — the IRS auditors who examine taxpayer returns. And the IRS has a Criminal Investigation Division (IRS-CI) that focuses on money laundering when the underlying conduct is a violation of the income tax laws or the Bank Secrecy Act. If your business is ever contacted by Special Agents from IRS-CI then you need to contact defense counsel immediately. The involvement of IRS-CI means the inquiry has turned criminal and, at that point, civil “offers in compromise” will no longer work to resolve a tax matter. IRS-CI views money laundering as the “means by which criminals evade paying taxes on illegal income by concealing the source and the amount of profit.”

History buffs may recall that when law enforcement was repeatedly unsuccessful in convicting mobster Al Capone for his violent criminal activities, it was the IRS who succeeded in taking down Scarface for tax evasion. After his trial, Capone was quoted as saying, “This is preposterous. You can’t tax illegal income!”

He was wrong. All income from whatever source derived (even if illegal) is taxable income. In the 1930s, Capone’s conduct was criminal tax evasion because there was no money laundering statute on the books. Today, however, such conduct would be investigated as money laundering, which carries much heavier penalties than tax evasion.

A word to the wise: if your business ever finds itself with a mysterious and wealthy customer who seems to have unlimited resources, then you should “know your customer” and do appropriate due diligence to avoid the possibility of becoming ensnared in a federal investigation for money laundering. In other words, do not put your head in the sand. And if you find yourself in the even more unfortunate situation in which IRS-CI agents call or come knocking, you should notify the company’s attorney or outside counsel familiar with federal investigations for advice on how to proceed.

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Snell & Wilmer Welcomes Craig Denney

Snell & Wilmer is pleased to announce that Craig Denney has joined the firm as Counsel in the Reno and Las Vegas locations. His practice is focused on white collar criminal defense and investigations. He previously served as an Assistant United States Attorney for the District of Nevada, and has more than seventeen years of experience as a Judge Advocate in the U.S. Army. He is certified as a criminal trial advocate by the National Board of Trial Advocacy.

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