



WHAT HAPPENS IF YOU FAIL TO REPORT CASH PAYMENTS TO THE IRS?

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What Happens If You Fail to Report Cash Payments to the IRS?

By Sanford Millar of MillarLaw A Professional Corporation – 11/13/16

If you operate a trade or business and receive \$10,000 or more in cash for goods or services you must file an IRS Form 8300 and report the payment within 15 days. The calculation of the \$10,000 threshold includes lump sum and cumulative payments made in a twelve month period. The IRS Form 8300 Reference guide provides as follows:

Trades and businesses must report cash payments received if all of the following criteria is met:

1. The amount of cash is more than \$10,000
2. The business receives the cash as:
 - One lump sum of more than \$10,000, or
 - Installment payments that cause the total cash received within one year of the initial payment to total more than \$10,000, or
 - Previously unreported payments that cause the total cash received within a 12-month period to total more than \$10,000

In order to comply with the Form 8300 reporting requirements the recipient must supply and the business must obtain the correct Taxpayer Identification Number of person making the payment(s).

The penalties for failure to timely file a Form 8300 are as follows:

Civil Penalties:

- “The penalty for negligent failure to timely file, to include all required information or to include correct information is \$250 per return, not to exceed \$3,000,000 per calendar year. IRC Section 6721(a)(1).
- For persons with average annual gross receipts of not more than \$5,000,000, the ceiling is \$1,000,000. The penalty applies to each return. IRC Section 6721(d)(1)(A).
- If any failure to file under IRC Section 6721(a) is corrected on or before the 30th day after the required filing date, the penalty is reduced to \$50 in lieu of \$250 and the maximum amount imposed shall not exceed \$500,000 per calendar year. IRC Section 6721(b)(1). The ceiling is \$175,000 for persons with average annual gross receipts of not more than \$5,000,000. IRC Section 6721(d)(1)(B).
- The penalty for intentional disregard of the requirement to timely file or to include all required information, or to include correct information is the greater of: (1) \$25,000 or (2) the amount of cash received in the transaction, not to exceed \$100,000 (with no calendar year limitation applicable). The penalty applies to each failure. IRC Section 6721(e)(2)(C).
- The penalty for negligent failure to furnish a timely, complete, and correct notice to the person(s) required to be identified on the Form 8300 is \$250 per statement, not to exceed \$3,000,000 per calendar year. IRC Section 6722(a)(1). For persons with average annual gross receipts of not more than \$5,000,000 the ceiling is \$1,000,000. IRC Section 6722(d)(1)(A).

- If any failure to furnish described in IRC 6722(a) is corrected within 30 days, the penalty is \$50 in lieu of \$250, and the ceiling is \$500,000. IRC 6722(b). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$175,000. IRC 6722(d)(1)(B).
- If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs the penalty is \$100 in lieu of \$250, and the ceiling is \$1,500,000. IRC 6722(b)(2). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$500,000. IRC 6722(d)(1)(C).
- Intentional disregard of the requirement to furnish timely, correct, and complete notices is \$500 per failure or, if greater, 10 percent of the aggregate amounts of the items required to be reported correctly (with no calendar year limitation applicable). IRC Section 6722(e).

Criminal Penalties

A person may be subject to criminal penalties for:

- Willfully failing to file a Form 8300,
- Willfully filing a false or fraudulent Form 8300,
- Stopping, or trying to stop, a Form 8300 from being filed, or
- Setting up, helping to set up, or trying to set up a transaction in a way that would make it seem unnecessary to file Form 8300.

Any person required to file Form 8300 who willfully fails to file, fails to file timely, or fails to include complete and correct information is subject to criminal sanctions as a felony under IRC Section 7203. Sanctions include a fine up to \$25,000 (\$100,000 in the case of a corporation), and/or imprisonment up to five years, plus the costs of prosecution.

Any person who willfully files a Form 8300 which is false with regard to a material matter may be fined up to \$100,000 (\$500,000 in the case of a corporation), and/or imprisoned up to three years, plus the costs of prosecution. IRC Section 7206(1)

The penalties for failure to file may also apply to any person (including a payer) who attempts to interfere with or prevent the seller (or business) from filing a correct Form 8300. This includes any attempt to structure the transaction in a way that would make it seem unnecessary to file Form 8300. "Structuring" means breaking up a large cash transaction into small cash transactions to disguise the true amount of cash involved in the transaction"

There have been several notable prosecutions for Form 8300 violations including those of jewelers, physicians, and auto dealers. However, an area ripe for investigation is that of suppliers to cannabis operators. Many licensed Cannabis operators, let alone unlicensed operators, run on a cash only basis. Many do not have bank accounts do to banking restrictions imposed by banking regulators. As a result they pay suppliers in cash. The suppliers, some of whom are "cultivators" also often operate on a cash basis for the same reasons and do not file Form 8300. The result could be seen as a "willful" failure to file Form 8300 and provide a rationale for prosecution. This is perhaps one of the unintended consequences of "legalization".

A compliance review for any business that receive cash payments and may not have filed Form 8300's is in order and curative steps should be taken to avoid an interpretation of "willful" conduct.

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