

**DESCRIPTION OF H.R. 5523,
THE “CLYDE-HIRSCH-SOWERS RESPECT ACT”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on July 7, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5523, the “Clyde-Hirsch-Sowers RESPECT Act,” on July 7, 2016. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5523, the “Clyde-Hirsch-Sowers RESPECT Act”* (JCX-63-16), July 6, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein “Code”), unless otherwise stated.

A. Internal Revenue Service Seizure Requirements with Respect to Structuring Transactions

Present Law

The Bank Secrecy Act (“BSA”) mandates a reporting and recordkeeping system that assists Federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions.² The reporting requirements are imposed on individuals, financial institutions, and non-financial trades and businesses relative to monetary transactions and banking relationships. The requirements include reporting currency transactions exceeding \$10,000.

To circumvent these reporting requirements, persons sometimes structure cash transactions to fall below the \$10,000 reporting threshold (referred to as “structuring”). In other words, instead of conducting a single transaction in currency in an amount that would require a report to be filed or record made by a financial institution, an individual conducts a series of currency transactions, willfully keeping each individual transaction at an amount below applicable thresholds to evade reporting or recording. Structuring can be used to conceal illegal cash-generating activities, such as the selling of narcotics, and to conceal income earned legally in order to evade the payment of taxes. Structuring (or attempts to structure) for the purpose of evading the reporting and record keeping requirements³ is subject to both civil and criminal penalties.⁴

Current law authorizes forfeiture of property involved in transactions or attempted transactions⁵ in violation of these rules in accordance with the procedures governing civil forfeitures in money laundering cases.⁶

The Secretary of the Treasury has delegated responsibility for implementing and enforcing the BSA to the Director, Financial Crimes Enforcement (“FinCEN”), who in turn re-delegated responsibility for civil compliance with the law to various Federal agencies including the Internal Revenue Service (“IRS”).⁷ The scope of that delegation of authority was expanded

² The Bank Secrecy Act, 31 U.S.C. secs. 5311-5332 (“BSA”).

³ 31 U.S.C. secs. 5313(a), 5324(a).

⁴ A person who willfully violates the law is subject to a fine of not more than \$250,000, or imprisonment for not more than five years, or both. 31 U.S.C. sec. 5324(a); 31 U.S.C. sec. 5322.

⁵ 31 U.S.C. sec. 5317(c)(2).

⁶ See 18 U.S.C. sec. 981.

⁷ Treasury Directive 15-41 (December 1, 1992). At the time of the initial delegation, FinCEN was an entity created by regulatory action, but has since been explicitly authorized by statute. 31 U.S.C. sec. 310.

subsequently, after enactment of the USA PATRIOT Act of 2001,⁸ and includes authority to determine and enforce civil penalties.⁹ The IRS administers its delegated authority under the BSA through the IRS Small Business/Self-Employed Division, with assistance from the IRS Criminal Investigation Division (“IRS-CID”).

If a person whose property was subject to forfeiture prevails in a civil forfeiture proceeding involving seizure of currency, the United States may be liable for reasonable attorney fees and other litigation costs reasonably incurred by the claimant; post-judgment interest; and interest actually paid to the United States from the date of seizure or arrest of the property that resulted from the investment of the property in an interest-bearing account or instrument as well as imputed interest for the period for which no interest was paid.¹⁰ The interest paid is includable in gross income, under section 61.

Prior to October 2014, the IRS provided partial relief in structuring cases involving a first offense, a legitimate funding source, and no criminal conviction. The IRS procedures also required its criminal investigation division to consider additional mitigating or aggravating factors. On October 17, 2014, IRS-CID issued guidance on how it will conduct seizures and forfeitures in its structuring cases.¹¹ Pursuant to this guidance, the IRS will not pursue seizure and forfeiture of funds associated only with so-called "legal source" structuring unless: (1) there

⁸ Treasury Order 180-01, <https://www.treasury.gov/about/role-of-treasury/orders-directives/Pages/to180-01.aspx>, delegating authority to FinCEN. For a discussion of the relationship between FinCEN and the agencies to which it re-delegated authority, see, Office of Inspector General, “TERRORIST FINANCING/MONEY LAUNDERING: Responsibility for Bank Secrecy Act Is Spread Across Many Organizations,” OIG-08-030 (April 9, 2008), available at <https://www.treasury.gov/about/organizational-structure/ig/Documents/oig08030.pdf>.

⁹ A penalty may be assessed before the end of the six-year period beginning on the date of the transaction with respect to which the penalty is assessed. 31 U.S.C. sec. 5321(b)(1). A civil action for collection may be commenced within two years of the later of the date of assessment and the date a judgment becomes final in any a related criminal action. 31 U.S.C. sec. 5321(b)(2).

¹⁰ 28 U.S.C. sec. 2465(b)(1). The imputed interest that may be paid under that section is the amount that such currency, instruments, or proceeds would have earned at the rate applicable to the 30-day Treasury Bill, for any period for which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), commencing 15 days after the property was seized by a Federal law enforcement agency, or was turned over to a Federal law enforcement agency by a State or local law enforcement agency.

¹¹ Memorandum for Special Agents in Charge Criminal Investigation, October 17, 2014, available at <http://ij.org/wp-content/uploads/2015/07/IJ068495.pdf>; Written Testimony of John A. Koskinen and Richard Weber, House Committee on Ways and Means Subcommittee on Oversight on “Financial Transaction Structuring,” May 25, 2016, available at <https://www.irs.gov/uac/newsroom/written-testimony-of-john-a-koskinen-and-richard-weber-before-the-house-committee-on-ways-and-means-subcommittee-on-oversight-on-financial-transaction-structuring-may-25-2016>; New IRS Special Procedure to Allow Property Owners to Request Return of Property, Funds in Specific Structuring Cases, June 16, 2016, available at <https://www.irs.gov/uac/newsroom/new-irs-special-procedure-to-allow-property-owners-to-request-return-of-property-funds-in-specific-structuring-cases>; Letter to Chairman Roskam and Ranking Member Lewis summarizing planned actions, June 10, 2016, available at <http://waysandmeans.house.gov/wp-content/uploads/2016/06/6.9-Roskam-Lewis-Response-Letter-and-Enclosure.pdf>.

are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

Nothing in the BSA or the administrative guidance issued by the IRS affects the Federal tax treatment of the interest that may be paid to the successful litigant in civil asset forfeiture proceedings. The Code provides no specific exclusion from gross income (or deduction from adjusted gross income) for amounts received pursuant to an action to recover property seized by the IRS pursuant to the BSA.

Description of Proposal

In cases in which a civil asset forfeiture is conducted by the IRS on the basis of a structuring violation, either the property to be seized must be derived from an illegal source or the structuring must be done for the purpose of concealing a violation of a criminal law or regulation other than structuring.

The proposal establishes notice and post-seizure review procedures for IRS seizures based on structuring violations. The IRS must, within 30 days, make a good faith effort to find the owner of the property seized and inform him or her of certain post-seizure hearing rights provided under the proposal. This 30-day notice requirement may be extended if the IRS can establish probable cause of an imminent threat to national security or personal safety. If a notice recipient requests a court hearing within 30 days of the notice, the property is required to be returned unless the court finds that there is probable cause to believe that the property to be seized was derived from an illegal source or the funds were structured for the purpose of concealing the violation of a criminal law or regulation other than the structuring provisions of the BSA.

The proposal also amends the Code to exclude from gross income any interest received from the Federal Government in connection with an action to recover property seized by the IRS pursuant to a claimed violation of the structuring provisions of BSA.

Effective Date

The proposal concerning IRS seizure requirements with respect to structuring transactions is effective on the date of enactment. The proposal concerning the exclusion of interest applies to interest received on or after the date of enactment.

B. Estimated Revenue Effect of the Proposal

The proposal is estimated to reduce Federal fiscal year budget receipts by less than \$500,000 for the period 2017 through 2026.