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CASH REPORTING

— by Neil E. Harl*

The enactment of tighter reporting rules in 1990,¹ the issuance of amended regulations,² and the issuance of temporary regulations³ have modified the cash reporting requirements sufficiently to affect far more firms than was the case previously. The most significant expansion in scope of the requirement — the change in definition of "cash" — applies to amounts received on or after February 3, 1992.⁴

Basic rule. In general, any person who, *in the course of a trade or business*, receives cash in excess of \$10,000 in one transaction (or two or more related transactions) is to make a return of information on Form 8300 with respect to the receipt of the cash.⁵ The Form 8300 is to be filed within 15 days after the cash is received.⁶

Definition of cash. For amounts received before February 3, 1992, the term "cash" means coin and currency only.⁷ For amounts received on or after February 3, 1992, the term cash means, in addition to coin and currency, cashier's checks, bank drafts, traveler's checks or money orders having a face amount of not more than \$10,000 received in a "designated reporting transaction" or in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid the reporting of the transaction.⁸ Note that personal checks are not considered cash; indeed, personal checks are about the only monetary instrument in common use that is not considered as cash.

A "designated reporting transaction" is a retail sale of — (a) a consumer durable, (2) a collectible or (3) a travel or entertainment activity.⁹

- A consumer durable includes items of "tangible personal property of a type that is suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sales price of more than \$10,000."¹⁰ As the regulations note, a \$20,000 automobile would be a consumer durable; a \$20,000 truck would not be a consumer durable.¹¹

- A collectible is a work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage or any other tangible personal property identified as a collectible by action of the Secretary of the Treasury.¹² Note that collectibles do not have a \$10,000 minimum amount or even a *de minimis* level to be subject to the reporting requirement.¹³

- A travel or entertainment activity means an item of travel or entertainment pertaining to a single trip or event where the aggregate sales price exceeds \$10,000.¹⁴

Meaning of "transaction." The term "transaction" includes a sale of goods or services; a sale of real property; a sale of intangible property; a rental of real or personal property; an exchange of cash for other cash; the establishment or maintenance of a custodial, trust or escrow arrangement; a payment of a pre-existing debt; a conversion of cash to a negotiable instrument; a reimbursement for expenses paid or the making or repayment of a loan.¹⁵ The term "related transaction" means any transaction conducted in a 24-hour period.¹⁶ Transactions over a period of more than 24 hours are related "if the recipient knows or has reason to know that each transaction is one of a series of connected transactions."¹⁷

Exceptions to reporting requirements. One important exception is that the receipt of cash in excess of \$10,000 by a person *other than in the course of the person's trade or business* is not reportable.¹⁸ Under another exception, a cashier's check, bank draft, traveler's check or money order received in a designated reporting transaction is not treated as cash if the instrument is received in payment on a promissory note or an installment sales contract provided the promissory notes or installment sale contracts are used in the ordinary course of the recipient's trade or business in connection with sales to ultimate consumers and the total amount of payments received on or before the 60th day after the date of the sale does not exceed 50 percent of the purchase price.¹⁹ An exception is also provided for instruments received pursuant to a payment plan requiring one or more down payments and the payment of the balance of the purchase price by a date no later than the date of the sale provided similar payment plans are used in the ordinary course of the trade or business in connection with ultimate sales to consumers and the instrument is received more than 60 days before the date of the sale.²⁰

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Reporting. As noted, a person making a return of information required under the cash reporting rules must file Form 8300 by the 15th day after the cash is received.²¹ In addition, a statement must be furnished to each person whose name is identified in the return by the following January 31.²²

Penalties. The cash reporting rules are subject to both civil and criminal penalties.²³

FOOTNOTES

- ¹ Omnibus Budget Reconciliation Act of 1990, Pub.L. 101-508, 104 Stat. 1388-458 (1990).
- ² Treas. Reg. § 1.6050I-1, T.D. 8373, 56 Fed. Reg. 57974, Nov. 15, 1991.
- ³ Temp. Treas. Reg. § 1.6050I-1T, T.D. 8373, 56 Fed. Reg. 57974, Nov. 15, 1991.
- ⁴ Treas. Reg. § 1.6050I-1(c)(1)(ii).
- ⁵ Treas. Reg. § 1.6050I-1(a)(1).
- ⁶ Treas. Reg. § 1.6050I-1(e).
- ⁷ Treas. Reg. § 1.6050I-1(c)(1)(i).
- ⁸ Treas. Reg. § 1.6050I-1(c)(1)(ii).
- ⁹ Treas. Reg. § 1.6050I-1(c)(iii).
- ¹⁰ Treas. Reg. § 1.6050I-1(c)(2).
- ¹¹ *Id.*
- ¹² Treas. Reg. § 1.6050I-1(c)(3). See I.R.C. § 408(m)(2).
- ¹³ *Id.*
- ¹⁴ Treas. Reg. § 1.6050I-1(c)(4).
- ¹⁵ Treas. Reg. § 1.6050I-1(c)(7)(i).
- ¹⁶ Treas. Reg. § 1.6050I-1(c)(7)(ii).
- ¹⁷ *Id.*
- ¹⁸ Treas. Reg. § 1.6050I-1(d)(3).
- ¹⁹ Treas. Reg. § 1.6050I-1(c)(1)(v).
- ²⁰ Treas. Reg. § 1.6050I-1(c)(1)(vi).
- ²¹ Treas. Reg. § 1.6050I-1(e). See Ann. 91-184, I.R.B. 1991-52, 28 (IRS issued revised Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business and Pub. 1544, Reporting Cash Payments of Over \$10,000, available in February 1992).
- ²² Treas. Reg. § 1.6050I-1(f).
- ²³ Treas. Reg. § 1.6050I-1(g).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The debtor was an attorney and after the filing of the case, the state bar initiated disciplinary proceedings against the debtor. The court held that the disciplinary proceedings were excepted from the automatic stay under Section 362(b)(4) as an action by a governmental unit. *In re Wade*, 948 F.2d 1122 (9th Cir. 1991).

AVOIDABLE LIENS. A Chapter 7 debtor sought to avoid the unsecured portion of a lien secured by land valued at less than the amount of the loan secured by the land. The debtor argued that the unsecured portion of the loan was avoidable under Section 506(d) because that portion of the loan was not an "allowed secured claim" as defined by Section 506(a). In a 6-2 decision affirming the Tenth Circuit denial of the avoidance, the U.S. Supreme Court held that "allowed secured claim" in Section 506(d) did not mean the same as determined by Section 506(a) and that the unsecured portion of the claim was not avoidable because the claim was allowed and generally secured. Thus, the Section 506(d) avoidance was limited to claims which were entirely unallowed and unsecured. This position was based upon pre-Bankruptcy Code law which the court used to solve the ambiguity of Section 506 as found in the contrary interpretations argued by the parties to the case. The court held that because the Congress preserved no legislative history to support a change in prior law, the Congress must have intended to retain prior law and the court was required to interpret the "allowed secured claim" language of Section 506(d) as if the prior law remained in effect. *Dewsnup v. Timm*, 133 B.R. 13 (yellow) (S. Ct. 1992), *aff'g*, 908 F.2d 588 (10th Cir. 1990), *aff'g*, 87 B.R. 676 (Bankr. Utah 1988).

The debtor claimed an exemption, under the Indiana personal property exemption, for a pickup truck used to carry tools for his job as a steelworker. The debtor also sought to avoid a nonpossessory, nonpurchase money lien against the truck under Section 522(f)(2)(B) as a tool of the trade. The court held that although the Indiana exemption did not specifically mention tools of a trade, the general personal property exemption encompassed tools as large as pickup trucks and that the lien was avoidable. *In re Stallsworth*, 133 B.R. 470 (Bankr. S.D. Ind. 1991).

AVOIDABLE TRANSFERS. Within 90 days prior to filing for bankruptcy, the debtor made two interest payments and a loan commitment payment on some long term debt. Although the Bankruptcy Court held that the payments were made in the ordinary course of business, the trustee sought to avoid the transfers under Section 547(c)(2) because the payments were made on long term debt. The U.S. Supreme Court held that payments on long term debt were eligible for the ordinary course of business exception to the preferential transfer rules. *Union Bank v. Wolas*, 112 S.Ct. 527 (1991), *rev'g and rem'g*, 921 F.2d 968 (9th Cir. 1990).

DISMISSAL. The debtors had filed a previous Chapter 12 case but had filed for voluntary dismissal after a creditor had filed for relief from the automatic stay. The debtors then filed the instant case in Chapter 11 within 180 days after dismissal of the Chapter 12 case. The court held that Section 109(g)(2) was mandatory in prohibiting the debtor from filing the second case within 180 days after the previous case because the case was voluntarily dismissed after a motion for relief from the automatic stay was filed. *In re Tooke*, 133 B.R. 661 (Bankr. M.D. Fla. 1991).