

CLYDE-HIRSCH-SOWERS RESPECT ACT

SEPTEMBER 9, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 5523]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5523) to amend title 31, United States Code, to prohibit the Internal Revenue Service from carrying out seizures relating to a structuring transaction unless the property to be seized derived from an illegal source or the funds were structured for the purpose of concealing the violation of another criminal law or regulation, to require notice and a post-seizure hearing for such seizures, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Clyde-Hirsch-Sowers RESPECT Act” or the “Restraining Excessive Seizure of Property through the Exploitation of Civil Asset Forfeiture Tools Act”.

**SEC. 2. INTERNAL REVENUE SERVICE SEIZURE REQUIREMENTS WITH RESPECT TO STRUCTURING TRANSACTIONS.**

Section 5317(c)(2) of title 31, United States Code, is amended—

(1) by striking “Any property” and inserting the following:

“(A) IN GENERAL.—Any property”; and

(2) by adding at the end the following:

“(B) INTERNAL REVENUE SERVICE SEIZURE REQUIREMENTS WITH RESPECT TO STRUCTURING TRANSACTIONS.—

“(i) PROPERTY DERIVED FROM AN ILLEGAL SOURCE.—Property may only be seized by the Internal Revenue Service pursuant to subparagraph (A) by reason of a claimed violation of section 5324 if 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 section 5324.

“(ii) NOTICE.—Not later than 30 days after property is seized by the Internal Revenue Service pursuant to subparagraph (A), the Internal Revenue Service shall—

“(I) make a good faith effort to find all persons with an ownership interest in such property; and

“(II) provide each such person with a notice of the person’s rights under clause (iv).

“(iii) EXTENSION OF NOTICE UNDER CERTAIN CIRCUMSTANCES.—The Internal Revenue Service may apply to a court of competent jurisdiction for one 30-day extension of the notice requirement under clause (ii) if the Internal Revenue Service can establish probable cause of an imminent threat to national security or personal safety necessitating such extension.

“(iv) POST-SEIZURE HEARING.—If a person with a property interest in property seized pursuant to subparagraph (A) by the Internal Revenue Service requests a hearing by a court of competent jurisdiction within 30 days after the date on which notice is provided under subclause (ii), such property shall be returned unless the court holds an adversarial hearing and finds within 30 days of such request (or such longer period as the court may provide, but only on request of an interested party) that there is probable cause to believe that there is a violation of section 5324 involving such property and 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 section 5324.”.

**SEC. 3. EXCLUSION OF INTEREST RECEIVED IN ACTION TO RECOVER PROPERTY SEIZED BY THE INTERNAL REVENUE SERVICE BASED ON STRUCTURING TRANSACTION.**

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting before section 140 the following new section:

**“SEC. 139G. INTEREST RECEIVED IN ACTION TO RECOVER PROPERTY SEIZED BY THE INTERNAL REVENUE SERVICE BASED ON STRUCTURING TRANSACTION.**

“Gross income shall not include any interest received from the Federal Government in connection with an action to recover property seized by the Internal Revenue Service pursuant to section 5317(c)(2) of title 31, United States Code, by reason of a claimed violation of section 5324 of such title.”

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter B of chapter 1 of such Code is amended by inserting before the item relating to section 140 the following new item:

“Sec. 139G. Interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interest received on or after the date of the enactment of this Act.

## I. SUMMARY AND BACKGROUND

### A. PURPOSE AND SUMMARY

The “Clyde-Hirsch-Sowers RESPECT Act,” H.R. 5523, as reported by the Committee on Ways and Means, would limit the Internal Revenue Service’s (IRS) civil asset forfeiture authority. To seize funds the IRS believes to have been structured to avoid Bank Secrecy Act reporting requirements, the IRS would have to show probable cause that those funds were derived from an illegal source or connected to other criminal activity. H.R. 5523 also would provide procedural protections, including a prompt post-seizure hearing for people whose assets the IRS has seized. If a court determines the government should return funds and interest to a person whose funds were seized by the IRS based on allegations of structuring, the bill would exempt the interest from Federal income tax.

### B. BACKGROUND AND NEED FOR LEGISLATION

Current law allows the Federal government, including the IRS, to use civil procedures to seize assets the government believes are involved in illegal activity without ever having to prove that the owners of the assets actually were engaged in criminal activity. For almost two years, the Ways and Means Subcommittee on Oversight has been investigating the IRS’ abuse of its civil asset forfeiture authority.

The Subcommittee found IRS Criminal Investigation (IRS CI) was seizing funds that appeared to have been used in transactions “structured” to be under \$10,000 to avoid Bank Secrecy Act reporting requirements. Numerous small business owners had legitimate reasons for keeping their transactions under \$10,000, including insurance policies that only protected cash-on-hand up to \$10,000 and bank tellers who told the small business owners to keep their deposits under \$10,000 to reduce paperwork. When business owners tried to get their money back, their cases would be sent to the Department of Justice (DOJ); frequently, DOJ attorneys would hold the funds long enough that the business owners felt compelled to settle the cases and give up a portion of the funds to get the remainder returned to them.

The IRS changed its policy in October 2014 to restrict civil asset forfeitures based on allegations of structuring to only seize assets involved in other criminal activity, except in exceptional circumstances. H.R. 5523 would codify those restrictions without an exemption for exceptional circumstances. It also would allow asset owners an opportunity to contest the IRS’ seizure in a court hear-

ing 30 to 60 days after the seizure. Further, if an asset owner contests a seizure and the court orders that the government return assets and interest to the the asset owner, the bill would exempt that interest from Federal income tax.

### C. LEGISLATIVE HISTORY

#### *Background*

H.R. 5523 was introduced on June 16, 2016, and was referred to the Committee on Ways and Means, and in addition to the Committee on Financial Services.

#### *Committee action*

The Committee on Ways and Means marked up H.R. 5523, the “Clyde-Hirsch-Sowers RESPECT Act,” on July 7, 2016, and ordered the bill, as amended, favorably reported (with a quorum being present).

#### *Committee hearings*

The Ways and Means Oversight Subcommittee held two hearings on the IRS’ civil asset forfeiture authority during the 114th Congress. On February 11, 2015, the Subcommittee held a hearing entitled Protecting Small Businesses from IRS Abuse. On May 25, 2016, the Subcommittee held a hearing entitled Protecting Small Businesses from IRS Abuse, Part II.

## II. EXPLANATION OF THE BILL

### A. INTERNAL REVENUE SERVICE SEIZURE REQUIREMENTS WITH RESPECT TO STRUCTURING TRANSACTIONS (SEC. 2 OF THE BILL)

#### PRESENT LAW

The Bank Secrecy Act (BSA) mandates a reporting and record-keeping system that assists Federal law enforcement and regulatory agencies in the detection, monitoring, and tracing of certain monetary transactions.<sup>1</sup> 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 struc-

<sup>1</sup> 31 U.S.C. secs. 5311–5332.

ture) for the purpose of evading the reporting and record-keeping requirements<sup>2</sup> is subject to both civil and criminal penalties.<sup>3</sup>

Current law authorizes forfeiture of property involved in transactions or attempted transactions<sup>4</sup> in violation of these rules in accordance with the procedures governing civil forfeitures in money laundering cases.<sup>5</sup>

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 IRS.<sup>6</sup> The scope of that delegation of authority was expanded subsequently, after enactment of the USA PATRIOT Act of 2001,<sup>7</sup> and includes authority to determine and enforce civil penalties.<sup>8</sup> The IRS administers its delegated authority under the BSA through the IRS Small Business/Self-Employed Division, with assistance from IRS CI.

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.<sup>9</sup>

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 CI issued guidance on how it will conduct seizures and forfeitures in its structuring cases.<sup>10</sup> Pursuant to this guidance, the IRS will not pursue seizure

<sup>2</sup> 31 U.S.C. secs. 5313(a), 5324(a).

<sup>3</sup> 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.

<sup>4</sup> 31 U.S.C. sec. 5317(c)(2).

<sup>5</sup> See 18 U.S.C. sec. 981.

<sup>6</sup> 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.

<sup>7</sup> 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>.

<sup>8</sup> 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).

<sup>9</sup> 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.

<sup>10</sup> 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>

and forfeiture of funds associated only with so-called “legal source” structuring unless: (1) there are exceptional circumstances justifying the seizure and forfeiture and (2) the case is approved by the Director of Field Operations.

#### REASONS FOR CHANGE

The Committee has learned of numerous instances in which the assets of hardworking taxpayers were seized by the IRS in civil asset forfeiture actions on the basis of suspected violations of the structuring rules. Accordingly, the Committee believes it is necessary to limit the authority of the IRS by requiring that the IRS show probable cause that funds subject to forfeiture for structuring were derived from an illegal source or connected to other criminal activity before the IRS can seize funds. The Committee also believes it is necessary to implement new procedural protections for persons whose assets the IRS has seized in such forfeiture actions, including a post-seizure hearing.

#### EXPLANATION OF PROVISION

In cases in which a civil asset forfeiture is conducted by the IRS on the basis of a suspected 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 provision establishes post-seizure notice and review procedures for IRS seizures based on suspected 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 provision. 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.

#### EFFECTIVE DATE

The provision is effective on the date of enactment.

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*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>.

B. EXCLUSION OF INTEREST RECEIVED IN ACTION TO RECOVER PROPERTY SEIZED BY THE INTERNAL REVENUE SERVICE BASED ON STRUCTURING TRANSACTION (SEC. 3 OF THE BILL AND NEW SEC. 139G OF THE CODE)

PRESENT LAW

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. Accordingly, the interest received is includable in gross income, under section 61.

REASONS FOR CHANGE

The Committee believes interest on wrongly seized funds should be exempt from income tax if a court determines the Government must return the funds and interest accrued to the victim of IRS abuse.

EXPLANATION OF PROVISION

The provision 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 the BSA.

EFFECTIVE DATE

The provision applies to interest received on or after the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 5523, the “Clyde-Hirsch-Sowers RESPECT Act,” on July 7, 2016.

The Chairman’s amendment in the nature of a substitute was adopted by a voice vote (with a quorum being present).

The bill, H.R. 5523, as amended, was ordered favorably reported to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 5523, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2017–2026: The proposal is estimated to reduce Federal fiscal year budget receipts by less than \$500,000 for the period 2017 through 2026.

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX  
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provision involves a new tax expenditure. See Part IV.A., above.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET  
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 13, 2016.*

Hon. KEVIN BRADY,  
*Chairman, Committee on Ways and Means,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5523, the Clyde-Hirsch-Sowers RESPECT Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 5523—Clyde-Hirsch-Sowers RESPECT Act*

Current law requires that banks and other financial institutions report to the Treasury any financial transaction that involves more than \$10,000 in cash. People who circumvent that requirement by conducting a series of smaller transactions instead of a single transaction are subject to both civil and criminal penalties. H.R. 5523 would prohibit the Internal Revenue Service (IRS) from seizing money from people who circumvent those reporting requirements unless the agency proves that the money was connected to a crime. In addition, the bill would exempt from federal income tax any interest that the Treasury pays on seized funds that are returned.

Based on information from the Department of Treasury and the IRS, CBO estimates that implementing the legislation would have

no significant administrative cost over the next five years because most provisions would codify existing IRS policy and practice. The staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would decrease revenues by a negligible amount over the 2017–2026 period; therefore, pay-as-you-go procedures apply. Enacting H.R. 5523 would not affect direct spending.

CBO estimates that enacting H.R. 5523 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

CBO and JCT have determined that H.R. 5523 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

### A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

### C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

### D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

#### E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (“IRS Reform Act”) requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

#### F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

#### G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

#### H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

### VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

#### A. TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

**TITLE 31, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE IV—MONEY**

\* \* \* \* \*

**CHAPTER 53—MONETARY TRANSACTIONS**

\* \* \* \* \*

**SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS**

\* \* \* \* \*

**§ 5317. Search and forfeiture of monetary instruments**

(a) The Secretary of the Treasury may apply to a court of competent jurisdiction for a search warrant when the Secretary reasonably believes a monetary instrument is being transported and a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. The Secretary shall include a statement of information in support of the warrant. On a showing of probable cause, the court may issue a search warrant for a designated person or a designated or described place or physical object. This subsection does not affect the authority of the Secretary under another law.

(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

(c) FORFEITURE.—

(1) CRIMINAL FORFEITURE.—

(A) IN GENERAL.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

(B) PROCEDURE.—Forfeitures under this paragraph shall be governed by the procedures established in section 413 of the Controlled Substances Act.

(2) CIVIL FORFEITURE.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures gov-

erning civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

\* \* \* \* \*

**B. CHANGES IN EXISTING LAW PROPOSED BY THE BILL, AS REPORTED**

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with clause 3(e)(1)(B) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

**TITLE 31, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE IV—MONEY**

\* \* \* \* \*

**CHAPTER 53—MONETARY TRANSACTIONS**

\* \* \* \* \*

**SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS**

\* \* \* \* \*

**§ 5317. Search and forfeiture of monetary instruments**

(a) The Secretary of the Treasury may apply to a court of competent jurisdiction for a search warrant when the Secretary reasonably believes a monetary instrument is being transported and a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement. The Secretary shall include a statement of information in support of the warrant. On a showing of probable cause, the court may issue a search warrant for a designated person or a designated or described place or physical object. This subsection does not affect the authority of the Secretary under another law.

(b) **SEARCHES AT BORDER.**—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

(c) **FORFEITURE.**—

(1) **CRIMINAL FORFEITURE.**—

(A) *IN GENERAL.*—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

(B) *PROCEDURE.*—Forfeitures under this paragraph shall be governed by the procedures established in section 413 of the Controlled Substances Act.

(2) *CIVIL FORFEITURE.*—**【Any property】**

(A) *IN GENERAL.*—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(B) *INTERNAL REVENUE SERVICE SEIZURE REQUIREMENTS WITH RESPECT TO STRUCTURING TRANSACTIONS.*—

(i) *PROPERTY DERIVED FROM AN ILLEGAL SOURCE.*—Property may only be seized by the Internal Revenue Service pursuant to subparagraph (A) by reason of a claimed violation of section 5324 if 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 section 5324.

(ii) *NOTICE.*—Not later than 30 days after property is seized by the Internal Revenue Service pursuant to subparagraph (A), the Internal Revenue Service shall—

(I) make a good faith effort to find all persons with an ownership interest in such property; and

(II) provide each such person with a notice of the person's rights under clause (iv).

(iii) *EXTENSION OF NOTICE UNDER CERTAIN CIRCUMSTANCES.*—The Internal Revenue Service may apply to a court of competent jurisdiction for one 30-day extension of the notice requirement under clause (ii) if the Internal Revenue Service can establish probable cause of an imminent threat to national security or personal safety necessitating such extension.

(iv) *POST-SEIZURE HEARING.*—If a person with a property interest in property seized pursuant to subparagraph (A) by the Internal Revenue Service requests a hearing by a court of competent jurisdiction within 30 days after the date on which notice is provided under subclause (ii), such property shall be returned unless the court holds an adversarial hearing and finds within 30 days of such request (or such longer period as the court may provide, but only on request of an interested party) that there is probable cause to believe that there is a violation of section 5324 involving such property and 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 con-

*cealing the violation of a criminal law or regulation other than section 5324.*

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**INTERNAL REVENUE CODE OF 1986**

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**Subtitle A—Income Taxes**

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**CHAPTER 1—NORMAL TAXES AND SURTAXES**

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**Subchapter B—Computation of Taxable Income**

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**PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME**

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*Sec. 139G. Interest received in action to recover property seized by the Internal Revenue Service based on structuring transaction.*

\* \* \* \* \*

**SEC. 139G. INTEREST RECEIVED IN ACTION TO RECOVER PROPERTY SEIZED BY THE INTERNAL REVENUE SERVICE BASED ON STRUCTURING TRANSACTION.**

*Gross income shall not include any interest received from the Federal Government in connection with an action to recover property seized by the Internal Revenue Service pursuant to section 5317(c)(2) of title 31, United States Code, by reason of a claimed violation of section 5324 of such title.*

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