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Attending to Legal Tender: The Perils of Structuring Currency Transactions to Avoid Treasury's Reporting Requirements

By **LEONARD R. ROSENBLATT** and **LAWRENCE S. FELD**

According to the authors, although the few reported cases on the subject are in clear conflict, there appears to be a growing tendency on the part of the IRS to investigate and on the part of the Department of Justice to prosecute individuals engaged in currency transactions designed to avoid reporting requirements. Leonard R. Rosenblatt is a sole practitioner specializing in criminal and civil tax litigation in New York City. Lawrence S. Feld is a partner in the law firm of Kostelanetz & Ritholz in New York City.

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Introduction

Sometimes in the course of practicing law, attorneys learn of substantial transactions conducted in the medium of currency. Indeed, to those attorneys with active residential real estate practices, as well as those who represent buyers and sellers of small businesses, cash transactions are a familiar—albeit often unseen—occurrence. On occasion, counsel's advice may be sought as to whether all or part of the currency should be deposited. Alerted by newspaper articles to the IRS reporting requirements for cash transactions in excess of $10,000, clients may seek specific advice regarding the information required by the reports, the possible consequences of filing of such reports, and the means (and legality) by which currency can be deposited without "triggering" the reporting requirements.

Practitioners who are not familiar with the IRS currency transaction reporting requirements and recent case law on this subject may advise their clients to "structure" deposits so that none exceed $10,000 individually. However, counsel should realize that, as part of the government's intensifying war on the use of "money laundering" by tax evaders, narcotics traffickers and organized crime figures, instances of structured deposits have recently been prosecuted as criminal "evasions" of the reporting requirements. Al-

though the few reported cases on the subject are in clear conflict, there appears to be a growing tendency on the part of the IRS to investigate and on the part of the Department of Justice to prosecute individuals engaged in currency transactions designed to avoid reporting requirements.

In view of these developments and in the absence of a decision in the area by the United States Supreme Court, it is essential that all practitioners be keenly aware that their advice to clients regarding the propriety of structuring deposits to avoid the reporting requirements may subsequently become the subject of governmental scrutiny. More importantly, such advice by an attorney may even be viewed as violative of the federal criminal laws.

This article presents an overview of the law and regulations regarding the reporting requirements for currency transactions in excess of $10,000. In addition, it discusses the issues which may arise as a result of advising clients to conduct currency transactions in a structured fashion.

Overview of Law and Regulations

The Currency Transaction Reporting Act, 31 U. S. C. § 5311 et seq., authorizes the Secretary of the Treasury to require domestic financial institutions, and any other participants in transactions for the "payment, receipt or transfer of United States coin or currency," to report such transactions to the Secretary.[1] The Secretary has issued regulations requiring financial institutions to file reports of each deposit, withdrawal, exchange or transfer which involves a transaction in currency of more than $10,000.[2] The form prepared by the Treasury Department for use by financial institutions, Form 4789 (Currency Transaction Report) ("CTR"), seeks the name, address, Social Security number and occupation of the person conducting the transaction, the same information of anyone conducting a transaction on behalf of another individual, along with certain information verifying the identification, e. g., driver's permit, passport, alien identification card.[3]

CTRs must be filed with the Internal Revenue Service, where ultimately they may be reviewed by Special Agents of the IRS's Criminal Investigation Division. These reports have been a prime source of criminal tax investigations.

Pursuant to 31 U. S. C. § 5322(a), a willful violation by an individual of a regulation promulgated under the Act is subject to a fine of not more than $250,000, imprisonment for not more than five years, or both.[4] In addition, a person willfully violating a regulation "while violating another law of the United States or as part of illegal activity involving transactions of more than $100,000 in a 12-month period" is subject to a fine of not more than $500,000, imprisonment for not more than five years, or both.[5]

Neither the Act nor the regulations speak directly of an obligation on the part of a financial institution—or anyone else—to "aggregate" multiple deposits in amounts of less than $10,000 individually in order to trigger the reporting requirement. Ostensibly then, a bank could knowingly participate in multiple currency transactions without triggering the regulations' re-

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[1] 31 U. S. C. § 5313(a) states:

When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

[2] 31 C. F. R. 103.22(a) provides:

Each financial institution . . . shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution, which involves a transaction in currency of more than $10,000. Such reports shall be made on forms prescribed by the Secretary . . . and all information called for in the forms shall be furnished. . . .

[3] A copy of an IRS Form 4789 is reproduced in Fink, *Tax Fraud*, App. III-80.

[4] 31 U. S. C. § 5322(a) states:

A person willfully violating this subchapter or a regulation prescribed under this subchapter . . . shall be fined not more than $250,000, or [imprisoned for] not more than five years, or both.

[5] 31 U. S. C. § 5322(b) states:

A person willfully violating this subchapter or a regulation prescribed under this subchapter . . . while violating another law of the United States or as part of a pattern of illegal activity involving transactions of more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than five years, or both.

Pursuant to 18 U. S. C. § 3623(b), a corporation convicted of a violation of 31 U. S. C. § 5322(a) or 31 U. S. C. § 5322(b) may be fined not more than $500,000. Pursuant to 18 U. S. C. § 3623(c)(1), if a defendant (individual or corporate) derives pecuniary gain from the offense, or if the offense results in pecuniary loss to another person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss. In addition, an act which is indictable under the Currency Transaction Reporting Act may constitute "racketeering activity" within the meaning of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U. S. C. § 1961, et seq.

quirements so long as no single transaction was in excess of $10,000. Indeed, the only suggestion to the contrary (aside from recent case law) appears as part of the "General Instructions" on the reverse side of the Form 4789 (Rev. December, 1985), which states that "[m]ultiple transactions by or for any person which in any one day total more than $10,000 should be treated as a single transaction, if the financial institution is aware of them."[6] However, such instructions are not part of the Code of Federal Regulations and are thus not binding on financial institutions.

In addition, the regulations plainly state that the obligation to file a CTR rests on the financial institution—not the customer. No authority has ever indicated that a customer has any obligation to prepare or file a CTR. Accordingly, the absence of any duty on the part of a bank to aggregate transactions or on the part of a customer to file CTRs would presumably lead even the most cautious attorney to the conclusion that a customer could properly structure cash deposits to avoid having a bank file a CTR.[7] However, judicial decisions on this subject cast doubt on the validity of such a conclusion.

Criminal Liability Upheld as to a Financial Institution's Employee

In 1979, the United States Court of Appeals for the Fifth Circuit held that a bank officer who participated in a structured currency transaction to avoid the reporting requirements violated the criminal provisions of the Reporting Act.

In *United States v. Thompson*,[8] the chairman of a Texas bank was indicted for causing the bank to fail to file a CTR. At trial, the government proved that Thompson, acting on behalf of the bank, lent $45,000 in cash to an associate for the purpose of purchasing cocaine. In order to avoid filing a CTR, he transferred the funds through five separate loans, each in the amount of $9,000.

On appeal from his conviction, Thompson argued that he was entitled to structure the transaction as multiple loans, even if his conduct was designed to circumvent the bank's obligation to report the transaction. Thompson analogized his conduct to that of a taxpayer structuring a financial transaction in a certain manner to avoid, rather than evade, the payment of taxes.

The Court of Appeals rejected this argument as follows:

> The analogy is inapposite. Congress has lawfully required reporting of transactions in currency of more than $10,000.00 as an aid to criminal, tax, or regulatory proceedings. In the instant case, appellant intentionally sought to defeat the statutory requirements by engaging in an unreported transaction in currency of more than $10,000.00. Appellant cannot flout the requirements of [31 U. S. C. § 5322] with impunity. The decision to structure a $45,000,000 transaction in currency as five $9,000,000 loans with the intent to annul the reporting requirements does not equate to a decision to structure a financial transaction in a lawful manner so as to minimize or avoid the applicability of a tax covering only specific activity.[9]

Although the Fifth Circuit held that a currency transaction could not be structured to avoid the filing of a CTR, its holding is limited to conduct on the part of individuals having a duty to file such reports, i. e., employees of banks. Nothing in the *Thompson* opinion suggests that a customer, who is under no obligation to comply with the Reporting Act, would incur any liability, for example, by making five separate deposits of currency, each in the sum of $9,000, instead of a single $45,000 deposit, *even if* this were done in connection with a similar criminal scheme.

Criminal Liability Extended to Customers

The first reported decision sustaining the imposition of criminal liability on a customer who structured a currency transaction to avoid the filing of a CTR was *United States v. Tobon-Builes*.[10] There, the defendant and a female companion went to 10 banks in Northern Florida over a six-hour period. At each bank they made virtually simultaneous pairs of cash purchases of cashier's checks, each pair totaling around $18,000, yet each individual check for less than $10,000. The couple used false names in identifying themselves, entered the banks separately and used different tellers. As a result of their conduct, no CTR's were filed.

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[6] Fink, *Tax Fraud*, App. III-80.1.

[7] Of course, if an individual acted as a "financial institution" within the meaning of the Act and the regulations promulgated thereunder, he would be responsible for complying with the reporting requirements. See 31 U. S. C. § 5312(a)(2); 31 C. F. R. § 103.11; *United States v. Goldberg*, 756 F. 2d 949 (CA-2), cert. denied, 105 S. Ct. 2706 (1985).

[8] 603 F. 2d 1200 (CA-5 1979).

[9] Id. at 1203-04.

[10] 706 F. 2d 1092 (CA-11), reh. denied, 716 F. 2d 914 (CA-11 1983).

Significantly, the defendant was not charged with a violation of the Reporting Act. Rather, the indictment charged him with a violation of 18 U. S. C. § 1001, which states in pertinent part:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, *conceals or covers up by any trick, scheme, or device, a material fact* . . . shall be fined not more than $10,000 or imprisoned not more than five years, or both. [Emphasis added.]

The government's theory of prosecution was that the defendant, by structuring cash purchases of cashier's checks totaling $185,200 as a number of smaller purchases, participated in a "trick, scheme or device" which caused the bank to "conceal material facts" from the Treasury Department. The "material fact" which was allegedly concealed was the "existence, source and transfer" of the currency.

On appeal from his conviction, Tobon-Builes argued, as the defendant in *Thompson* had argued, that his conduct in intentionally structuring a single currency transaction as smaller multiple transactions was entirely lawful. In addition, he argued that, since he was under no legal duty to file CTR's, he could not be convicted of having concealed the underlying currency transaction.

The United States Court of Appeals for the Eleventh Circuit rejected both arguments. In doing so, the court relied upon *Thompson* for the proposition that a currency transaction could *not* be structured by a *bank* to avoid the filing of CTR's. More importantly, the court also held that the scope of criminal liability for failing to file CTRs extended beyond those who had a legal duty to do so under the regulations and included those who, though under no direct obligation themselves, somehow *caused* financial institutions to violate their "duty" to the Treasury Department.

The court found support for its holding in 18 U. S. C. § 2(b), a definitional provision of the federal criminal code, which provides that one who "willfully causes an act to be done which if directly performed by him or another would be an offense . . . is punishable as a principal." Under Section 2(b), one who causes another to commit an offense is punishable as a principal even though the defendant himself, i. e., the customer, did not have the capacity to commit the crime. Similarly, under Section 2(b), a defendant is punishable as a principal even though the intermediary who actually performed the act, i. e., the bank, had no criminal intent. Thus, the court concluded that Tobon-Builes could be convicted under Section 1001 even though he did not have a duty to file a CTR, and even though the banks were unaware of his conduct. As the court stated:

> . . . Tobon's willfullness was clearly established by evidence showing he knew about the currency reporting requirements and that he purposely sought to prevent the financial institutions from filing required reports by using false names and by structuring his transactions under $10,000. Moreover, because of Tobon's deceptive transactions, the financial institutions, *i. e.*, the innocent intermediaries, were duped into not reporting currency transactions they would have had a duty to report and indeed would have reported had they known of Tobon's scheme. Thus, by operation of § 2(b), Tobon's criminal intent to cause a concealment is joined together with his innocent intermediaries' duties to report (*i. e.*, their capacity to commit the crime of concealment) and their failure to report . . . to constitute the elements of actionable concealment under § 1001.[11]

A Contrary View

In 1985, the United States Court of Appeals for the First Circuit, under closely analogous facts, declined to follow the Eleventh Circuit's holding in *Tobon-Builes*. In *United States v. Anzalone*,[12] the defendant, a bank customer, was charged with both a violation of the Reporting

[11] 706 F. 2d at 1101, citing, *United States v. Ruffin*, 613 F. 2d 408 (CA-2 1979). The Eleventh Circuit relied upon its decision in *Tobon-Builes* in affirming the convictions of a teller and two customers in *United States v. Puerto*, 730 F. 2d 627 (CA-11), cert. denied, 105 S. Ct. 162 (1984) (conspiracy, Reporting Act and § 1001 charges). Subsequently, the Tenth Circuit, in *United States v. Cook*, 745 F. 2d 1311 (1984), cert. denied, 105 S. Ct. 1205 (1985), relied on *Thompson*, *Tobon-Builes* and *Puerto* in affirming a customer's conviction on Reporting Act charges. See also *United States v. Konefal*, 566 F. Supp. 698 (N. D. N. Y. 1983) (denying motion to dismiss an indictment charging customers with conspiracy, Reporting Act and § 1001 charges); *United States v. Sanchez-Vasquez*, 585 F. Supp. 990 (N. D. Ga. 1984) (denying motion to dismiss indictment charging customers with conspiracy, Reporting Act and § 1001 charges); *United States v. Goldberg*, 587 F. Supp. 302, 308 (S. D. N. Y.), reversed, 756 F. 2d 949(CA-2), cert. denied, 105 S. Ct. 2706 (1985) (language suggesting that customer could incur liability; no actual discussion of issue).

[12] 766 F. 2d 676 (CA-1 1985).

Act (as in *Thompson*), and with a violation of 18 U. S. C. § 1001 (as in *Tobon-Builes*).

At trial, the government proved that on November 13, 1980, the defendant purchased three cashier's checks from a Massachusetts bank. The three checks totaled more than $25,000, but none exceeded $10,000 individually. Thereafter, between November 18, 1980 and December 1, 1980, he purchased nine additional checks totalling $75,000, again none of which exceeded $10,000. All the checks were payable to a brokerage firm and were used to pay for bonds purchased for the account of the wife and mother of a public official. The bank did not file any CTRs concerning any of these transactions.

On appeal, the defendant argued that his conviction on the Reporting Act charge violated the due process clause of the Fifth Amendment to the United States Constitution in that the Act and the regulations were unconstitutionally vague and failed to provide him with due notice that his actions were proscribed by these provisions. In effect, the defendant argued that nothing in these provisions gave him fair warning that structured transactions were illegal.

The First Circuit agreed. Citing the recent admonition of the United States Supreme Court in *Kolender v. Lawson* [13] that "a penal statute [must] define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement," the First Circuit searched the language and legislative history of the Reporting Act and regulations to determine whether there was any indication of a legislative intent that a structured transaction by a customer might constitute an illegal evasion of any reporting requirement. The court found none.

To the contrary, the Court of Appeals noted that although 31 U. S. C. § 5313(a) authorized the Secretary of the Treasury to require reports of financial institutions and *any other participants in the transaction,* the Secretary had not done so. As the court stated:

> This would indicate to any objective viewer that the Secretary was looking to the Bank, *not* to the "other participants in the transaction," as the source of the information required by the Reporting Act. . . . [T]he self-imposed limitation made upon the original power granted to the Secretary by § 5313(a) would at the least cause confusion in the minds of the "other participants in the transaction," and even more likely lead them to conclude that they had been excluded from its affirmative duties.[14]

In addition, the Court quoted at length from a 1981 report prepared by the Comptroller General of the United States which, inter alia, admitted that even though the regulations were silent on the propriety of a customer's conducting multiple transactions to avoid reporting, no action had been taken to revise them. In view of this inaction, the court stated, in words of refreshing candor, as follows:

> Although this court, like all other institutions of the United States, is supportive of the law enforcement goals of the government and society, we cannot engage in unprincipled interpretation of the law, lest we foment lawlessness instead of compliance. This is particularly so when the confusion and uncertainty in this law has been caused by the government itself, and when the solution to that situation, namely eliminating any perceived loopholes, lies completely within the government's control. If the government wishes to impose a duty on customers . . . let it require so in plain language. It should not attempt to impose such a duty by implication, expecting that the courts will stretch statutory construction past the breaking point to accommodate the government's interpretation.[15]

Accordingly, the court reversed the Reporting Act conviction and dismissed the count of the indictment charging a violation thereof.

With respect to the § 1001 charge, the court held that it must also fail since it "depended" upon the applicability of the Reporting Act to a customer. The court reasoned, as above, that since the customer had *no* duty to report to the Secretary either directly or through the financial institution, he had no legal duty to disclose the "material facts" at the time he was alleged to have "concealed" them. Since there was no legal duty of disclosure, there could be no § 1001 concealment violation.

Finally, the court rejected the government's argument that the defendant was punishable under the provisions of 18 U. S. C. § 2(b). The court concluded that since no crime had been committed by either the bank or the customer, § 2(b) was inapposite. Accordingly, the § 1001

[13] 461 U. S. 352 (1983).

[14] 766 F. 2d at 681.

[15] Id. at 682 (citation omitted) (footnote omitted).

conviction was also reversed and the indictment dismissed.[16]

Recent Developments

On January 10, 1986, the Ninth Circuit, in *United States v. Varbel,*[17] decided to follow *Anzalone* and held that a customer could not be prosecuted for structuring a currency transaction to avoid the reporting requirements. In *Varbel,* the Court of Appeals reversed convictions of four defendants (including an attorney) on conspiracy and substantive charges relating to "money laundering." In doing so, the court stated:

> Even though money laundering furthers the goals of those who may be engaged in criminal activity, it is not our function to rewrite the law or the implementing currency reporting regulations promulgated by the Secretary. If Congress or the Secretary wish to impose a reporting duty on financial institution customers, they must do so in clear, unambiguous language. We cannot impose the duty by implication.[18]

In addition, on January 16, 1986, the Eleventh Circuit limited its prior decision in *Tobon-Builes,* and reversed a customer's judgment of conviction on a charge of violating § 1001. In *United States v. Denemark,*[19] the defendant purchased 14 cashier's checks from 14 different financial institutions, all of which were used in connection with his purchase of a home in Tampa, Florida. The checks, which totaled $154,232.50, were purchased for cash in amounts of less than $10,000. False names were used in purchasing the checks, and the defendant later falsely denied purchasing all but three of them when questioned by a Special Agent of the United States Customs Service.

On appeal from his conviction of having violated § 1001 by using a "trick, scheme or device" to conceal from the IRS the existence, source, origin and transfer of the currency, Denemark argued that since his conduct did not give rise to a reportable transaction, he could not be found guilty of having caused a concealment of a material fact. Specifically, he argued that since he, unlike the defendants in *Thompson* and *Tobon-Builes,* had not transferred more than $10,000 to any *one* bank, neither he nor any of the banks owed any duty to report any of the transactions. Accordingly, he argued, his conduct did not fall within the wide scope of § 1001.

Despite its prior decision in *Tobon-Builes,* the Court of Appeals for the Eleventh Circuit agreed with the defendant's argument. The court distinguished *Tobon-Builes* on the basis that a reportable transaction had taken place there when the defendant and his confederate bought cashier's checks each for a sum of less than $10,000 (but more than $10,000 in the aggregate) at the same time in the same bank, which conduct gave rise to a duty of disclosure on the part of the defendant. In addition, the court distinguished *Thompson* on the same basis, i. e., that since the defendant's conduct in that case gave rise to a reportable transaction, he had a duty to disclose the transaction. The court in *Denemark* concluded its analysis by holding that since there was no transaction which would require any financial institution to file a CTR, the defendant could not have violated a legal duty of disclosure under § 1001.

Discussion

Although the *Denemark* decision may be read as an attempt to reconcile *Tobon-Builes* and the considerations supporting the First Circuit's decision in *Anzalone,* analysis demonstrates that such reconciliation is not possible. First, while the court in *Denemark* based its decision upon the fact that the defendant did not transfer more than $10,000 to any one bank so as to require any bank to report the transaction, the court in *Anzalone* made no such distinction. Indeed, in *Anzalone* the First Circuit rejected the notion that a customer could incur criminal liability on account of a structured deposit *even though* in that very case the defendant purchased three cashier's checks totaling more than $25,000 from a single bank on the same date. More importantly, the *Denemark* decision implicitly holds that a customer has a duty of disclosure under circumstances where his conduct gives rise to a duty to report on the part of the financial institution. The court in *Anzalone* specifically rejected this concept.

Clearly, the conflict is irreconcilable. In the absence of any effort on the part of the Secretary of the Treasury to clarify the regulations, the conflict will have to be resolved by Supreme Court action. Indeed, the nature of the conflict is such that compelling arguments can be advanced for both legal positions. On one hand, the law enforcement goals which underlie an expansive application of the Reporting Act are

[16] Id. at 683.
[17] 86-1 USTC ¶ 9203, 780 F. 2d 758 (CA-9).
[18] 780 F. 2d at 762-63.
[19] 86-1 USTC ¶ 9174, 779 F. 2d 1159 (CA-11).

laudable. On the other hand, one can feel little sympathy for the government's position in view of the fact that, as the court stated in *Anzalone,* "the confusion and uncertainty in this law has been caused by the government itself, and . . . the solution to that situation . . . lies completely within the government's control." [20] However, other factors must be considered.

First, the view adopted by the Fifth and Eleventh Circuits is contrary to the fundamental axiom of our legal system that criminal laws are to be strictly construed.[21] In addition, by permitting the courts to, in effect, rewrite the regulations and thereby impose a reporting duty on the part of a customer, the courts themselves become subject to criticism for violating the principle that the power to enact criminal sanctions is vested in the legislative, not in the judicial department.[22] When these considerations are weighed, the First Circuit's opinion in *Anzalone* emerges as the better view.

Recommendations

Despite the clear preference expressed above, counsel must be extremely cautious in advising clients to structure cash transactions to avoid the reporting requirements. In the absence of any definitive action by the Supreme Court or the Secretary of the Treasury, attorneys who advise their clients to do so run the risk of having to defend themselves against charges—criminal or disciplinary—that they advised their clients to violate the law. The best that can be said is that such counseling presents substantial risks and, accordingly, should be avoided.[23] ●

[20] 766 F. 2d at 682.

[21] *United States v. Emmons,* 410 U. S. 396 (1973).

[22] In view of the recent enactment of 26 U. S. C. § 6050 I and the issuance of temporary regulations thereunder, the Secretary's continued failure to issue clarifying regulations under Title 31 should give the courts additional reason to reject the government's position as to a customer's liability under the existing statutes and regulations. Under Section 6050 I, any person engaged in a trade or business who, in the course of that trade or business, receives more than $10,000 in cash in one transaction (or two or more related transactions) is required to report the transaction to the IRS on a Form 8300 within 15 days after receipt of the payment. See Temp. Reg. § 1.6050 I-1(T). The temporary regulations require a recipient to aggregate transactions within a 24-hour period. In addition, where there are multiple payments relating to the same transaction or related transactions, a report must be filed when the aggregate exceeds $10,000 within one year of the first payment. The regulations specifically state that "a single transaction may not be divided into multiple transactions in order to avoid reporting under this section." Temp. Reg. § 1.6050 I-1(T), Q&A 9. Although these regulations do not apply to financial institutions, 26 U. S. C. § 6050 I(c)(1)(B), and although they do not require anything of the "payor," they do reflect an awareness of some of the loopholes contained in the current Title 31 regulations. See, generally, Harris, "Temporary Regulations Clarify Over-$10,000 Cash Reporting, But Leave Many Questions," 63 *Journal of Taxation* 138 (1985).

[23] This article does not discuss the issues raised by the enactment of 26 U. S. C. § 6050 I and the promulgation of temporary regulations thereunder, which require separate discussion.

Some Plans Amended After Compliance Dates May Get Partial Relief

Plans disqualified for missing the deadlines for meeting requirements added by the Tax Equity and Fiscal Responsibility Act of 1982, the Tax Reform Act of 1984, or the Retirement Equity Act of 1984 may qualify for partial relief by adopting the requisite amendments. Corrective action must be taken by the last day of the eleventh month following a compliance date that fell in November or December 1985, by the last day of the tenth month following a compliance date that fell in January or February 1986, or by the last day of the ninth month following a compliance date falling after February 1986. Eligibility for partial relief is limited to recipients of favorable pre-compliance-date determination letters and master or prototype plans for which favorable determination letters have been obtained. Under the relief provided, nonkey employees would be treated as if the plan had always been qualified, assets allocable to key employees would be treated as assets of qualified plans, and a formula is provided for determining the deductible portion of employer contributions.—Notice 86-3, CCH FEDERAL TAX MANUAL REPORTS ¶ 7965.