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Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

When the Canada Border Services Agency Seizes Your Cash, What Can You Do To Get Your Cash Back?

By Cyndee Todgham Cherniak on December 11th, 2015

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The Canada Border Services Agency (“CBSA”) may seize your cash if you are carrying financial instruments over \$Canadian 10,000 and fail to declare the financial instruments when you enter Canada or leave Canada. When arriving in Canada by air, all passengers complete the E311 form – Declaration Card. One of the questions on the form asks “I/We are bringing into Canada Currency and/or financial instruments totaling \$CAD 10,000 or more”. When arriving by land, the CBSA officer at the primary booth is required to ask whether the travelers are bringing into Canada currency or financial instruments in excess of \$Canadian 10,000. When travelers are leaving Canada by air or by land, they must voluntarily report to the CBSA and inform them if they are traveling with more than \$Canadian 10,000.

Section 12(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* provides that “Every person or entity referred to in subsection (3) shall report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.” Section 12(3) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* provides that

“Currency or monetary instruments shall be reported under subsection (1)

- (a) in the case of currency or monetary instruments in the actual possession of a person arriving in or departing from Canada, or that form part of their baggage if they and their baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;
- (b) in the case of currency or monetary instruments imported into Canada by courier or as mail, by the exporter of the currency or monetary instruments or, on receiving notice under subsection 14(2), by the importer;
- (c) in the case of currency or monetary instruments exported from Canada by courier or as mail, by the exporter of the currency or monetary instruments;
- (d) in the case of currency or monetary instruments, other than those referred to in paragraph (a) or imported or exported as mail, that are on board a conveyance arriving in or departing from Canada, by the person in charge of the conveyance; and
- (e) in any other case, by the person on whose behalf the currency or monetary instruments are imported or exported.”

If an CBSA officer believes on reasonable grounds that subsection 12(1) has been contravened, the CBSA officer may seize

as forfeit the currency or monetary instruments. This means they can take and hold as forfeit the money.

That being said, subsection 18(2) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act states that “the officer shall, on payment of a penalty in the prescribed amount, return the seized currency or monetary instruments to the individual from whom they were seized or to the lawful owner unless the officer has reasonable grounds to suspect that the currency or monetary instruments are proceeds of crime within the meaning of subsection 462.3(1) of the Criminal Code or funds for use in the financing of terrorist activities.”

The penalties are set out in the *Cross-border Currency and Monetary Instruments Reporting Regulations*, SOR/2002-412. Section 18 limits the penalties as follows:

For the purposes of subsection 18(2) of the Act, the prescribed amount of the penalty is

- (a) \$250, in the case of a person or entity who
 - (i) has not concealed the currency or monetary instruments,
 - (ii) has made a full disclosure of the facts concerning the currency or monetary instruments on their discovery, and
 - (iii) has no previous seizures under the Act;
- (b) \$2,500, in the case of a person or entity who
 - (i) has concealed the currency or monetary instruments, other than by means of using a false compartment in a conveyance, or who has made a false statement with respect to the currency or monetary instruments, or
 - (ii) has a previous seizure under the Act, other than in respect of any type of concealment or for making false statements with respect to the currency or monetary instruments; and
- (c) \$5,000, in the case of a person or entity who
 - (i) has concealed the currency or monetary instruments by using a false compartment in a conveyance, or
 - (ii) has a previous seizure under the Act for any type of concealment or for making a false statement with respect to the currency or monetary instruments.”

If the CBSA does not believe that the money is proceeds of crime and this is a person’s first offense, the penalty should be only \$250. The CBSA should not impose a level 2 penalty (\$2,500) if the person is a NEXUS card holder because the regulations do not allow for an upgrading of the penalty.

We have seen many situations where the CBSA has imposed the incorrect level of penalty. In these circumstances, the person may file a request for a review under section 25 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which provides:

“A person from whom currency or monetary instruments were seized under section 18, or the lawful owner of the currency or monetary instruments, may, within 90 days after the date of the seizure, request a decision of the Minister as to whether subsection 12(1) was contravened, by giving notice to the Minister in writing or by any other means satisfactory to the Minister.”

Pursuant to section 24.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the Minister has the authority to cancel the seizure or reduce the penalty. Section 24.1 provides:

“The Minister, or any officer delegated by the President for the purposes of this section, may, within 90 days after a seizure made under subsection 18(1) or an assessment of a penalty referred to in subsection 18(2),
(a) cancel the seizure, or cancel or refund the penalty, if the Minister is satisfied that there was no contravention; or
(b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Minister considers that there was an error with respect to the penalty assessed or collected, and that the penalty should be reduced.”

It is important to exercise care in drafting a request for a review. The Recourse Directorate looks at many forms of appeal. Depending on what you admit to, you could find yourself in more trouble. How you set out the facts is important. What

information you provide is important. Always be mindful that the offense provisions include jail time. Section 74.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* states that:

“Every person or entity that knowingly contravenes any of sections ... 612(1) and (4) ... or the regulations is guilty of an offence and liable

(a) on summary conviction, to a fine of not more than \$50,000 or to imprisonment for a term of not more than six months, or to both; or

(b) on conviction on indictment, to a fine of not more than \$500,000 or to imprisonment for a term of not more than five years, or to both.

We would be pleased to help you if you would like to challenge the CBSA's seizure in circumstances where the cash/financial instruments is not proceeds or crime of terrorist financing. Please call us at 416-307-4168.

Tags: (Money Laundering), Canada Border Services Agency, CBSA, exports, financial instruments, imports, NEXUS, penalty, Proceeds of Crime, reporting, seizure

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