Written by Michael Tennant on February 11, 2015

Feds Rob, Charge Iowa Widow for Depositing Cash in "Suspicious" Fashion

Next week, Janet Malone of Dubuque, Iowa, is expected to give up her quest to recover nearly $19,000 that was stolen from her bank account two years ago. And to add insult to injury, Malone, who obtained her money legally and harmed no one, will plead guilty to a misdemeanor while the thieves go scot-free.

Malone, 68, is accused of the so-called crime of "structuring": depositing a portion of $180,000 in cash left her by her late husband into her bank account in increments smaller than $10,000, the amount that triggers automatic reporting of a deposit to the Internal Revenue Service (IRS). As a result, reported the Associated Press, "the IRS obtained a warrant to seize [$18,775 in the account] based on suspicion that the transactions were meant to avoid reporting requirements."

This technique is known as civil asset forfeiture, and it's a handy way for federal, state, and local authorities to enrich themselves without having to go through the messy business of a trial. All they have to do is claim someone might have committed a crime — or even that a crime was committed using his property — and they can take that property without so much as a court hearing, let alone due process of law as required by the Fifth Amendment. It is then up to the property's rightful owner to prove that he is innocent and hope that he'll get his property back, usually at a cost of tens of thousands of dollars in legal fees and court costs.

Governments have made a killing via asset forfeiture. According to the *Washington Post*, since 2008, police departments and drug task forces have spent almost $2.5 billion obtained through asset forfeiture, bringing indictments in fewer than one in five of those cases. The IRS, meanwhile, "seized $242 million in 2,500 cases from 2005 to 2012 — a third of which arose from nothing more than cash transactions under $10,000," wrote the AP. "Nearly half was returned after owners challenged the action, often a year later."

The IRS pilfers cash via a combination of asset-forfeiture laws and the Bank Secrecy Act of 1970. That law requires banks to report any single deposit (or a series of related deposits) totaling $10,000 or more to the IRS. But it also requires them to report anyone who deposits amounts smaller than $10,000 in a way that appears to be designed to evade the reporting requirement. In other words, if you deposit more than $10,000, you'll be reported, but if you deposit less than $10,000 in a way the bank deems suspicious, you'll also be reported.

"Moreover," observed *Washington Post* blogger Radley Balko,

> your bank is prohibited from letting you know that it has reported you to the government. Banks that fail to sufficiently police their customers or banks that notify customers that they've been reported for suspicious deposits risk financial sanctions. Bank personnel found to have neglected their duties to report suspicious customer behavior can also be criminally charged and sent to prison. So there's quite a bit of incentive for your bank to give you up, and to cast a wide net around what constitutes "suspicious activity." There's lots of risk in under-policing for structuring, and virtually no risk of losing customers due to a policy of over-reporting them to the government. Most customers will never know.

Of course, if the IRS takes your money, you'll eventually discover it. When Janet Malone discovered she'd been robbed in 2013, she was, quite understandably, "irate," according to the AP.

As far as the IRS is concerned, however, Malone deserves what's coming to her. In 2011, the agency investigated her husband, Ronald Malone, as he was dying from cancer, accusing him of depositing cash in amounts designed to evade reporting requirements. "Ronald Malone admitted that bank deposits totaling $35,500 he'd made could appear to be structured and signed a form acknowledging he'd been warned about the law; no charges were filed," noted the AP. "Janet Malone was present for part of the meeting."

Just before his death, Ronald Malone told his wife about the $180,000 he was keeping in a briefcase — money he had obtained from his job, gambling, and investments. "She deposited some of it in increments between $5,800 and $9,000," stated the AP. That's when the IRS swooped in for the kill, taking the money under forfeiture laws.

An IRS affidavit claims Janet Malone told agents she didn't sign the form her husband signed and didn't remember the details of the 2011 meeting because of her concern over her husband's failing health. "You won't prosecute a widow," she allegedly said.

She was wrong. Not only did the IRS take Malone's money, but they also piled on a misdemeanor criminal charge (which could land Malone in jail for up to a year and cost her an additional $250,000 in fines) on the grounds that she had willfully violated the law regarding structuring — this despite the fact that the agency announced last fall, after its abuse of asset forfeiture was brought to light, that it would "no longer pursue" forfeiture cases when the funds were obtained legally and subsequently returned seized funds in two Iowa cases.

"This is shocking because it demonstrates that prosecutors are not taking seriously the IRS' alleged policy change not to prosecute legal source structuring," Larry Salzman, an attorney with the Institute for Justice, told the AP.

To the IRS, it seems, Ronald Malone was the one that got away, perhaps because even they knew that prosecuting a dying man would be bad public relations. Janet Malone isn't going to be so lucky. According to the AP, "Malone is expected to plead guilty next week and let the government keep the money, under a plea agreement filed Monday." And why not? It would probably have cost her most of the cash she has left to fight it, and she still might have lost.

And so the government gets to keep its pelf while its innocent victim ends up with legal bills, a criminal record, and possibly additional punishment. But never fear: Not everyone the feds target for forfeiture because of alleged structuring is punished. Those with friends in high places, such as former New York governor Eliot Spitzer, can structure cash transfers in order to hire prostitutes yet be given a pass by the Justice Department and be rewarded with well-paying TV gigs.