

MONEY LAUNDERING IN THE SECOND DEGREE

Penal Law § 470.15(1)(b)

**(Transaction: Laundering proceeds of
specified criminal conduct - \$100,000)**

(Committed on or after April 7, 2009)

The (specify) count is Money Laundering in the Second Degree.

Under our law, a person is guilty of Money Laundering in the Second Degree when knowing that the property involved in one or more financial transactions represents the proceeds of specified criminal conduct, he or she conducts one or more such financial transactions which in fact involve the proceeds of specified criminal conduct:

Select appropriate alternative [1] or [2] or both:

[1] with intent to: Select appropriate alternative(s)

promote the carrying on of specified criminal conduct; [or]

engage in conduct constituting a felony¹ in violation of the tax law]; [or]

[2] knowing that the transaction or transactions in whole or in part are designed to: Select appropriate alternative(s):

conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified criminal conduct; [or]

¹ At this point, the statute states: a felony “as set forth in section eighteen hundred three [1803], eighteen hundred four [1804], eighteen hundred five [1805], or eighteen hundred six [1806] of the tax law. The charge here substitutes “in violation of the tax law.” If this alternative is chosen, the court must either define the applicable Tax Law in the definition section of this instruction or, if that law constitutes a separate charge, cross reference to that count.

avoid any transaction reporting requirement imposed by law;

and the total value of the property involved in such financial transaction or transactions exceeds one hundred thousand dollars.

The following terms used in that definition have a special meaning:

CONDUCTS includes initiating, concluding, or participating in initiating or concluding a transaction.²

TRANSACTION

[Select appropriate alternative(s)]

includes a payment, purchase, sale, loan, pledge, gift, transfer, or delivery,

[and] with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected, [except that "transaction" shall not include payments to attorneys for legal services].³

[Note: If the definition of "transaction" that is charged to jury includes a reference to "financial institution," it may be appropriate to add here the applicable portion of the definition of a "financial institution," set forth in Penal Law § 470.00(6).]

² Penal Law § 470.00(2).

³ Penal Law § 470.00(3).

SPECIFIED CRIMINAL CONDUCT⁴ means criminal conduct committed in this state constituting a crime.

[(or) conduct committed in any other jurisdiction which if committed in this state, is or would be a crime.]

Select appropriate alternative:

(Specify) is a crime.

Note: If the crime is charged in a separate count, a cross-reference to that count should suffice. Otherwise, add a definition of the crime:

(Specify) is a crime in *(specify jurisdiction)* that is or would be a crime under the laws of this state, and is defined as follows *(specify)*:

Financial transaction means a transaction involving:

Select appropriate alternative(s):

- (a) the movement of funds by wire or other means; or
- (b) one or more monetary instruments; or
- (c) the transfer of title to any real property, vehicle, vessel, or aircraft; or
- (d) the use of a financial institution.⁵

[Note: If (b) ["one or more monetary instruments] is read to the jury, it may be appropriate

⁴ Penal Law § 470.00(5) defines SPECIFIED CRIMINAL CONDUCT to mean: criminal “conduct committed in this state constituting a criminal act, as the term criminal act is defined in section 460.10 of this chapter, or constituting the crime of enterprise corruption, as defined in section 460.20 of this chapter, or conduct committed in any other jurisdiction which is or would be specified criminal conduct if committed in this state.” The court must accordingly identify and define the applicable “specified criminal conduct,” which must be one or more of the crimes listed in Penal Law § 470.00(5) or “enterprise corruption” [Penal Law § 460.20].

⁵ Penal Law § 470.00(7).

here to add the applicable portion of the definition of “monetary instrument” in Penal Law § 470.00(1).

If (d) [the use of a financial institution] is read to the jury and “financial institution” has not been defined, it may be appropriate to add here the applicable portion of the definition of a “financial institution,” set forth in Penal Law § 470.00(6).]

Financial transactions may be considered together and the value of the property involved may be aggregated, provided that the transactions are all part of a single “criminal transaction.”⁶

"Criminal transaction" means conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either:

so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or

so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture.⁷

Note: If applicable, add:

A FELONY⁸ IN VIOLATION OF THE TAX LAW is:
[Note: name and define applicable felony or cross reference to the count charging that felony).

Note: If applicable, add:

⁶ Penal Law § § 470.03(1). At this point the statute continues: “as defined in subdivision two of section 40.10 of the criminal procedure law.”

⁷ CPL 40.10(2)

⁸ See footnote one.

It is not unlawful to return funds held in escrow: Select appropriate alternative(s):

as a portion of a purchase price for real property pursuant to a contract of sale; or

to satisfy the tax or other lawful obligations arising out of an administrative or judicial proceeding concerning the person who provided the escrow funds.⁹

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, each of the following elements:

1. That on or about (*date*) in the County of (*County*), the defendant, (*defendant's name*), conducted one or more financial transactions which in fact involved the proceeds of specified criminal conduct;
2. That the defendant did so knowing that the property involved in one or more financial transactions represented the proceeds of specified criminal conduct;
3. That the defendant did so

Select appropriate alternative [1] or [2] or both:

[1] with intent to:

Select appropriate alternative(s)

promote the carrying on of criminal conduct;
[or]

engage in conduct constituting a felony in violation of the tax law]; [or]

[2] knowing that the transaction or transactions in whole or in part were designed to:

⁹ Penal Law § 470.03(3).

Select appropriate alternative(s):

conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of criminal conduct; [or]

avoid any transaction reporting requirement imposed by law;

[and]

4. That the total value of the property involved in such financial transaction or transactions exceeded one hundred thousand dollars [and]

Add one or both of the following if applicable:

5. That the defendant was not returning funds held in escrow [and]
6. That the transaction(s) (was/were) not payments to attorneys for legal services.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.