



COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

February 6, 2015

The Honorable Mike Crapo  
United States Senate  
Washington, DC 20510

Dear Senator Crapo:

Thank you for your letter to Secretary Lew concerning the law enforcement procedure called asset forfeiture. I am responding on behalf of the Department of the Treasury and the IRS.

Asset forfeiture, along with enforcement of the Bank Secrecy Act, is an important part of law enforcement, and we agree that forfeiture programs must be administered fairly and efficiently. The federal forfeiture programs have procedures and controls in place to help ensure the integrity of the program. We also value the input and recommendations of members of Congress and seek to address the concerns of Congress, private citizens and advocates.

There are a number of basic principles that we should take into account. First and foremost, in order to seize property, the government must establish probable cause to believe that the property are the proceeds of a criminal offense or is involved in or traceable to a criminal offense. In the federal system, this ordinarily means that a law enforcement agent, such as an IRS special agent, prepares a seizure warrant affidavit for review by an Assistant U.S. Attorney (AUSA). If the AUSA believes the affidavit is legally sufficient, the AUSA and the special agent appear before a federal magistrate judge and the special agent swears to the information contained in the affidavit. When a seizure warrant is issued by the magistrate judge, the warrant is served and assets (cash and/or property) are seized under Title 31. The applicable civil forfeiture process will follow pursuant to 18 U.S.C. § 983 and other applicable federal forfeiture statutes.<sup>1</sup> In order to civilly forfeit property, the government must prove to a federal judge or jury, by a preponderance of the evidence, that the property are the proceeds of a criminal offense, or are involved in or traceable to a criminal offense, for which forfeiture is an available sanction. The property-owner has the opportunity to challenge the government's evidence in court pursuant to 18 U.S.C. § 983 in civil cases and 21 U.S.C. § 853 in criminal cases.

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<sup>1</sup> To clarify, a "seizure" is the process through which the government initially comes into possession of property. "Forfeiture" proceedings are proceedings through which the government may acquire legal title and full rights of ownership as to the property.

The news articles that were cited reference the crime of "structuring," which is also a federal offense, a violation of the Bank Secrecy Act, 31 U.S.C. §§ 5313 and 5324 and implementing regulations. Federal law requires banks to file reports with the Department of the Treasury when account holders engage in cash transactions involving over \$10,000 in currency. The crime of "structuring" occurs when a bank's account-holders break up or otherwise manipulate cash transactions for the purpose of preventing the bank from filing a "currency transaction report," or CTR. A bank's account-holders may purposefully structure transactions for various reasons. For example, they may wish to prevent their bank from filing CTRs in order to conceal illegal cash-generating activities, such as drug-dealing, from the government. Alternatively, they may wish to conceal large amounts of cash income from the IRS. In the latter instance, where the cash-income-generating activity is not itself illegal, we sometimes refer to "legal source" structuring. Whether the funds come from a legal or illegal source, structuring bank deposits or withdrawals to evade Bank Secrecy Act reporting requirements is a felony. The law authorizes law enforcement agencies to seize and forfeit money and property involved in structuring violations.

We recognize that small businesses and other bank account holders often make deposits under \$10,000 without any intent to avoid the reporting requirements. After conducting a review of structuring cases, the IRS concluded last year that it will focus its limited resources on cases where evidence indicates that the structured funds are derived from illegal sources. When the evidence indicates criminal wrongdoing has occurred, however, structuring will still be investigated and prosecuted, often together with other crimes such as tax evasion and money laundering. And even in cases where structuring is not separately charged as a crime, evidence of structuring may be presented to establish willfulness or as an affirmative act in furtherance of tax evasion or other crimes.

Please do not hesitate to contact me with any additional questions, or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at (202) 317-6985.

Sincerely,



John A. Koskinen

Enclosure

Enclosure

- 1. What fund holds the assets seized and forfeited by the IRS generally and that specifically related to structuring crimes? Does the IRS share these funds with local law enforcement or any other agency?**

Funds seized for forfeiture by IRS – Criminal Investigation (IRS-CI) for violations of any law other than Title 26 tax violations, are deposited into the Treasury Suspense Account pending adjudication. Once forfeited, the funds are transferred to the Treasury Forfeiture Fund (TFF), which is managed by the Treasury Executive Office for Asset Forfeiture (TEOAF). TFF funds support the federal forfeiture program, to include compensation of certain crime victims and the investigation and prosecution of violations of law enforced or administered by the federal law enforcement agencies participating in the TFF. Pursuant to federal equitable sharing law and policies, where state or local law enforcement agencies assist IRS-CI in an investigation that results in a forfeiture, the TFF may share a portion of the forfeited funds with those agencies in an amount commensurate with their respective degree of effort in the investigation. .

- 2. What types and threshold amount of evidence was required by IRS under the old policy before IRS seized a bank account? What kind of evidence is required now, under the new October 17<sup>th</sup> policy?**

The required evidentiary thresholds for seizure are set by federal law, not by IRS policy, and therefore, they have not changed. To seize property, the government must establish probable cause to believe that the property are the proceeds of a specified federal offense or are involved in or traceable to a crime for which forfeiture is an available sanction; and in order to prevail in a subsequent federal civil forfeiture proceeding, the government must make this showing by a preponderance of the evidence. IRS-CI pursues asset seizures only in cases where the government can meet these burdens of proof. The types of evidence presented in these proceedings vary on a case-by-case basis.

- 3. How often and how long were assets seized or forfeited under suspicion of structuring only to never see a structuring case prosecuted?**

IRS-CI does not specifically track such information. Many legal source structuring cases are handled civilly, while others are handled criminally.

- 4. When was work begun on the new policy? Were seizures of legal sourced funds, unconnected to a second crime, suspended during this time period?**

IRS-CI announced its policy on seizure of funds linked to legal source structuring on October 17, 2014, after several months of study. The new policy applied to seizures that occurred on or after October 17, 2014. IRS-CI did not suspend seizures of legal source funds, unconnected to a second crime prior to October 17, 2014.

**5. Did the new policy guideline go through interagency review?**

No, the new IRS policy was not reviewed outside of the IRS.

**6. What effect does IRS expect the new guideline to have on taxpayers? On law enforcement efforts?**

IRS-CI expects that the new guideline will further its goal of consistently applying forfeiture to disrupt and dismantle criminal endeavors by depriving criminals of property used or acquired through illegal activities. The purpose of the IRS's revised forfeiture policy is to ensure that IRS-CI continues to focus its limited investigative resources on identifying and investigating violations within its jurisdiction that closely align with IRS-CI's mission and key priorities. The IRS fully complies with all legal requirements regarding asset forfeiture.

**7. What qualifications are required for state and local law enforcement officers to participate on IRS task forces or Suspicious Activity Review (SAR) teams and what training is provided?**

Task Force Officers (TFOs) work with IRS-CI agents in a number of different contexts, including Organized Crime and Drug Enforcement Task Force (OCDETF), High Intensity Drug Trafficking Area (HIDTA), and Joint Terrorism Task Force (JTTF) investigations. In addition, IRS-CI frequently sponsors TFOs for its Financial Investigative Task Force (FITF), which enlists state and local law enforcement officers to assist on large, non-tax financial crime task forces. TFOs are commissioned officers, often with senior status, in good standing with their respective agencies and current with all training standards. TFOs approved and detailed to IRS-CI must fulfill a number of requirements, which include being employed full-time with a federal, state or local law enforcement agency, successfully completing basic law enforcement training, having at least one year of law enforcement experience, and agreeing to comply with the deadly force policy of either their agency or IRS-CI. In addition, IRS-CI provides specialized training to TFOs which includes instruction on the elements of Bank Secrecy Act and money laundering offenses, instruction on accounting principles and analysis of financial records and data, instruction on IRS investigative steps, techniques and procedures, and instruction on asset forfeiture statutes and procedures. Each new TFO is initially required to work alongside an IRS special agent or an experienced

IRS-trained TFO in the field. For additional information regarding these procedures, see Internal Revenue Manual 9.4.13.

- 8. How often did IRS discover that either federal or affiliated state and local law enforcement authorities interpreted 31 U.S.C. § 5324 to mean that multiple or serial sub-\$10 thousand deposits without more were acts of structuring and grounds for seizure?**

As detailed above, in order for there to be a structuring violation, the bank account-holder must act with the intent to prevent his or her bank from complying with its legal reporting obligations under the Bank Secrecy Act. Depending on the facts and circumstances presented, a conspicuous pattern of cash deposits or other transactions may constitute circumstantial evidence that the bank's account-holder acted with this illegal purpose. Neither Treasury nor the IRS tracks federal, state, and local law enforcement authorities' interpretation of 31 U.S.C. § 5324, however, as discussed above, for the government to prove that structuring occurred, it must offer evidence to the court of the account-holder's illegal purpose.

- 9. Does IRS believe that this anti-structuring guideline should be implemented across all law enforcement agencies, nationwide? Why or why not?**

Respectfully, the IRS cannot comment on what strategies other law enforcement agencies should or should not implement in furtherance of their missions.

- 10. Will the guideline lead to consistency of nationwide investigations or lead to the uneven application of the structuring law depending on the investigating agency?**

Again, the IRS cannot comment on what other agencies will or will not do, but IRS-CI's goal is that the revised policy will result in consistency in how IRS-CI structuring investigations and related seizures are conducted throughout the country.