



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTORS, FIELD COLLECTION AREA OPERATIONS
DIRECTOR, ADVISORY AND INSOLVENCY

FROM: Scott Reisher /s/ **Scott D.Reisher**
Director, Collection Policy

SUBJECT: Petition for Remission

The purpose of this memorandum is to provide guidance on the Petition for Remission Forfeiture process. The Petition for Remission (PFR) is a tool available to the IRS to recover fraudulent refund amounts that have been seized by a federal law enforcement agency and subsequently forfeited using Title 18 seizure/forfeiture authority. This tool ensures that the recovered funds are returned to the General Fund. The PFR process has been transferred from Criminal Investigation (CI) to Collections based on feedback by the Department of Justice (DOJ). A new chapter will be added to IRM 25, *Special Topics*, to include the new procedures.

The federal regulations governing PFRs provide that, where an agency of the United States is entitled to remission or mitigation of forfeiture because of an interest that is recognizable under this part or is eligible for such transfer pursuant to 18 U.S.C § 981(e)(6) [providing for restoration of forfeited property to "any victim of the offense giving rise to the forfeiture"], such agency shall request the transfer in writing, in addition to complying with any applicable provisions of 28 CFR §§ 9.3 through 9.5 dealing with PFRs.

Historically, CI rarely used Title 18 seizure/forfeiture authority in tax or tax-related investigations. In 2004, the Department of Justice issued Directive 128, which allowed CI to use Title 18 forfeiture statutes in certain tax investigations to recover fraudulent refund amounts. Although IRS civil collection methods are the usual means to recover fraudulent refund amounts, these methods may prove inadequate in certain cases. Such cases where

civil collection methods may not be adequate include, but are not limited to, refund fraud schemes using:

- The identities of fictitious or deceased individuals or
- The identity of an individual obtained without the knowledge or consent of that individual (Identity Theft); and
- The individual was not in any way complicit in the filing of the false return for refund

According to IRM 9.7.13.4.4.2, a Directive 128 variance may be considered by CI in certain limited egregious circumstances where:

- Significant assets have been identified;
- IRS civil collection methods such as levy, filing a notice of federal tax lien, seizure, or filing suit cannot adequately protect the assets; and
- Title 26 seizure/forfeiture provisions are not applicable.

The following sections in Title 18 provide for civil and criminal forfeitures for violations of 18 USC § 1956 and §1957:

- a. 18 USC § 981 - Civil Forfeiture
- b. 18 USC § 982 - Criminal Forfeiture
- c. 18 USC § 983 - General Rules for Civil Forfeiture Proceedings

Civil or Administrative Forfeitures

Civil forfeiture is an *in rem* proceeding against the property itself, not the owner of the property, where the property is accused of the wrongdoing. For that reason, only property that was actually used to commit, or was derived from, an offense, or property traceable to it, is subject to forfeiture. For more information on Title 18 civil forfeitures see IRM 9.7.2 and 18 USC § 981.

Criminal Forfeitures

Criminal forfeitures are *in personam* actions that are limited to the property interests of the defendant. They are imposed as part of the defendant's sentence and are distinguished from civil forfeiture that may be pursued as an action against the property *in rem* without regard to whom the owner may be. A criminal forfeiture may only be sought as part of a criminal prosecution, and may not be ordered unless and until the defendant is convicted of the crime(s) for which forfeiture is to be imposed.

Providing Notice of Forfeiture

In a Title 18 administrative civil forfeiture action, the seizing agency is required to send notice to interested parties as soon as practicable. Notice is required to be sent no more than 60 days after the date of the seizure unless one of the exceptions listed in 18 USC § 983 applies. For example, if the Federal Bureau of Investigation (FBI) seized the

proceeds of fraudulent refunds, they would provide notice to the IRS. Notices in civil judicial forfeitures will be sent by the United States Attorney's office.

A notice must be sent by the seizing agency or AUSA to all persons whose rights and interests in the seized property will or may be affected by forfeiture and whose identities and addresses are reasonably ascertainable. These include all possessors, owners, and lienholders. When the seizing agency determines that the Internal Revenue Service may have an interest in the assets, notice of the seizure will be sent to:

Internal Revenue Service
 Petition for Remission
 Attn: Advisory
 801 N. Broadway, MDP-53
 Nashville, TN 37203

Any field personnel receiving a notice of seizure should forward the notice to the address above.

Notices must include the following:

- a. Description of the property seized;
- b. Time, place, and cause of the seizure;
- c. Procedure and rights to contest the forfeiture;
- d. Newspaper in which the notice of seizure is to be published and the dates of the publication;
- e. Final claim date;
- f. Forfeiture date;
- g. Procedure to request relief through the petition process; and
- h. Right to seek release of seized property based on hardship.

Notice of seizure of the property will also be published once a week for three consecutive weeks in a newspaper of general circulation in the judicial district where the property was seized.

Receiving a Notice of Forfeiture

Collection Advisory is responsible for receipt and review of all notices of forfeiture and will be responsible for filing a timely PFR. Per 18 USC § 983, a PFR may not be filed later than 35 days after the date the notice letter is mailed. However, if the letter is not received, then a PFR may be filed not later than 30 days after the date of final publication of notice of seizure. If the claim date falls on a weekend or holiday, it may be extended to the next workday.

The advisor should review the notice to ensure it is timely and that it has the information required. This needs to be done within three business days of receipt. The notice should be reviewed to determine if filing a PFR is appropriate. The advisor will check to ensure # [REDACTED]

-----# interest or claim in the asset(s). In most cases these funds are identified and seized prior to assessment of tax and therefore no NFTL will be on file. This PFR process will allow the IRS to exercise its claim against these monies.

Any line marked with a # is for Official Use Only.

Requesting the Investigation Information

If, after the initial review, the advisor determines that filing a petition may be appropriate, the next step in working the notice is to request the investigation file. The investigation file will provide the advisor with the needed information to determine if a petition should be filed. Such requests should be sent via email to the Director, Warrants and Forfeitures.

In the case of CI forfeiture, the Asset Forfeiture Coordinator (AFC) will not send a notice until a Criminal Tax (CT) Attorney has prepared and submitted a Law and Fact Memorandum to the Special Agent in Charge (SAC) supporting the administrative forfeiture. The advisor will want to include a copy of the Law and Fact Memorandum prepared by the CT Attorney with the request.

In the case of forfeiture initiated by other federal agencies, such as the USSS, the CI Warrants and Forfeiture Petition for Remission Senior Analyst will be the point of contact when requesting any investigation file regardless of which federal agency conducted the forfeiture. The advisor can contact the Director, Warrants and Forfeiture, and request the CI Analyst provide the investigation information. The CI Analyst will work with the seizing agency as well as provide any internal CI information that could be useful.

The advisor's email request will include the advisor's personal contact information and include a copy of the notice.

The advisor should follow-up with the CI analyst no later than 10 days after contact if the investigation information has not been received. If additional time is needed, the CI analyst will call the advisor to notify them of the delay.

Petition for Remission

When a PFR is filed in an administrative or civil judicial forfeiture action, the forfeiture process, including the publication of the notice of seizure, will continue as scheduled. However, if no claims are filed and once the property is forfeited, it shall not be placed into official use, sold, or otherwise disposed of according to law until final action is taken on the petition.

Preparing the Petition for Remission

Once the advisor receives the investigation file, and, in the case of a CI forfeiture, the Law and Fact Memorandum, the advisor will review all the information to determine if a PFR

should be filed. In most cases, even if the information is not complete, a PFR will be filed. In an administrative forfeiture action, the agency that conducted the forfeiture will be responsible for determining if there is sufficient evidence to grant the PFR. In some cases, the agency may request additional information to support the petition filed. In a civil judicial forfeiture action, the Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section (AFMLS) will determine whether the petition should be granted.

There is no prescribed format for a PFR. The written notice sent to interested parties in a civil forfeiture action includes the instructions to request relief through the petition process and advises that:

- a. The petition should be addressed to the party listed on the notice.
- b. The petition must identify the property seized, the date of the seizure, and proof of ownership interest in the property.
- c. The petition should describe the facts and circumstances that justify the return of the property, the basis for the IRS's claim, and the nexus between the IRS and the property.
- d. The petition should provide information linking the asset to the crime and the interest of the United States.
- e. The petition should include copies of documentary evidence where appropriate.
- f. The petition should be signed under oath subject to penalty of perjury. The authority to sign the petition has been given to the Director, Advisory and Insolvency (A&I). Petitions will be forwarded to the Director A&I for approval and signature.
- g. The petition should also include the statement that if accepted, the party listed on the notice should contact the advisor for the Intergovernmental Payment and Collection (IPAC) instructions to transmit the funds to the IRS. A copy of these instructions is attached to the memorandum.

The petition must establish:

- a. A valid, good faith, and legally cognizable interest in the seized property as owner or lienholder and
- b. The petitioner is an innocent owner within the meaning of 18 USC § 983(d).

The petitioner has the burden of proof, by preponderance of the evidence, to show that he/she is an innocent owner.

If legal advice or assistance is needed in preparing the petition, the advisor should contact Associate Area Counsel, SB/SE.

Routing the Completed Petition for Remission

Once the PFR is complete, the advisor will route the PFR through her/his manager to the Territory Manager, SBSE Collection Advisory Territory via email, US Postal Service, or hand delivery. See Delegation Order 5-6 signed 4-12-2012.

When the forfeiture was conducted by CI, the signed petition can be electronically signed and emailed back to the originator of the notice.

- a. All other petitions should be printed out, signed with an original signature and mailed back to the originator using overnight mail.
- b. A copy of all completed and signed petitions should be electronically transmitted to the Director, Warrants and Forfeiture, IRS Criminal Investigation.
- c. Route a copy of the PFR to the Director, AI.
- d. A copy of the PFR should be routed to the advisor working the case for maintenance with the case file.

If the petition is granted, the forfeiting agency or AFMLS will contact the advisor for the IPAC procedures to transmit the funds

Denial of a Petition for Remission

In the case of a law enforcement agency seizure, if the agency denies the PFR or mitigation, a decision letter will be sent by the agency and will advise the IRS of the reasons for denial. The letter will also advise the petitioner of the right to appeal the decision of the agency, by submitting a request for reconsideration of the denial.

Request for Reconsideration

A request for reconsideration of the denial of a PFR or mitigation will likely be considered if the request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous. The request for reconsideration should be postmarked or received by the agency submitting the notice of seizure within 10 days from receipt of the letter denying the petition. If no new information is available since the submission of the original PFR to the seizing agency, no reconsideration should be requested. If additional information is available to substantiate that the funds identified in the PFR were issued due to fraudulent schemes, then a Request for Reconsideration will be submitted with the newly acquired information.

Only one request for reconsideration of a denial of a petition will likely be considered.

Once the approval, denial, or reconsideration denial has been received, the advisor can close the case. If no response is received within 180 days from the date the PFR is submitted to the seizing agency, then a follow up letter with a copy of the PFR attached should be sent to the seizing agency asking them to reply within 60 days. If no response is received to the follow up letter, close the PFR.

Case Files

The case files for PFRs should be retained for two years and then sent to the Federal Records Center to be retained for ten years.

If you have any questions please contact me, or a member of your staff may contact Michelle Alvarado, Program Manager, or Kim Borbon, Senior Program Analyst.

Attachments: (2)

cc: Director, Field Collection
Director, Field Operations & Policy/West

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**Intergovernmental Payment and Collection (IPAC)
Instructions**

When a Petition for Remission has been approved, the information below should be provided to the accepting agency for input on IPAC.

Customer ALC: # [REDACTED] **#**

Receiver Treasury Account Symbol: # [REDACTED] **#**

Receiver Department Code: # [REDACTED] **#**

Transaction Contact: # [REDACTED] **#**

Contact Phone: # [REDACTED] **#**

Miscellaneous Information:

Case Number: from the agency transmitting the funds to the IRS.

Seizure Number: from the agency transmitting the funds to the IRS.

Agency: Name of the agency transmitting the funds.

“ASSET FORFEITURE”

A copy of the IPAC system input screen is attached.

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The following IPAC form is needed to transfer funds to another Government Agency

IPAC Input Format

Originating ALC	<input type="text"/>	Customer ALC	# <input type="text"/> #
ALC Contact		Contact Phone	
Receiver Treasury # Account Symbol	<input type="text"/>	Sender Treasury Account Symbol	<input type="text"/>
		Receiver # Dept. Code	<input type="text"/>
Purchase Order Number	<input type="text"/>	Invoice Number	<input type="text"/>
		Obligating Document Number	<input type="text"/>
Requisition Number	<input type="text"/>	Contract Number	<input type="text"/>
		CLIN	<input type="text"/>
JAS Number	<input type="text"/>	ACT (trace Number)	<input type="text"/>
		Job (project Number)	<input type="text"/>
Quantity	<input type="text"/>	Unit Price	<input type="text"/>
		Detail Amount	<input type="text"/>

Pay Flag	<input type="text"/>	Unit of Issue	<input type="text"/>	ACRN	<input type="text"/>
Accounting Classification	<input type="text"/>	FSN/AAA/ADSN	<input type="text"/>	DOD Activity Address Code	<input type="text"/>
Transaction Contact	<input type="text"/>	Contact Phone #	<input type="text"/>		

Miscellaneous Information

Case #: Seizure #: Agency: ASSET FORFEITURE
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