



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

9.7.7

AUGUST 24, 2015

## EFFECTIVE DATE

(08-24-2015)

## PURPOSE

- (1) This transmits revised IRM 9.7.7, Claims and Petitions.

## MATERIAL CHANGES

- (1) Subsection 9.7.7.2 paragraphs (2)-(4) are added to include the revised guidance issued by the U.S. Department of Justice addressing the quick release of certain property after Federal seizure.
- (2) Additional revisions, deletions, and grammatical changes were made throughout the section, that did not result in substantive changes but contributed to procedural clarity of the subject matter.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.7.7, dated November 4, 2008.

## AUDIENCE

CI

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9.7.7  
Claims And Petitions

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9.7.7.1  
(11-04-2008)  
**Overview**

- (1) When property is seized for forfeiture, there may be several individuals or entities that have claims to the property, including the individual from whom it was seized. This section will discuss three types of requests for the seized property. They include:
  - Quick Release
  - Release of Seized Property Based on Hardship
  - Petitions for Remission or Mitigation
- (2) A claim filed in an administrative forfeiture action requesting judicial determination is discussed in IRM 9.7.2, Civil Seizure and Forfeiture.

9.7.7.2  
(08-24-2015)  
**Quick Release**

- (1) Where the forfeiture proceedings are administrative, the Special Agent in Charge (SAC) is authorized to release property seized before forfeiture. The property can be quick released when the SAC deems there is an innocent owner having an immediate right to possession of the property or when release would be in the best interest of justice and the government.
- (2) Certain property may be released after federal seizure for forfeiture but before the filing of any claim pursuant to 28 CFR §8.7 (quick release). This may include property that does not meet asset-specific net equity threshold, property belonging to an innocent owner having an immediate right to possession, or other property the release of which serves to promote the best interests of justice or the government. While such issues ideally should be resolved in pre-seizure planning, post-seizure quick release may be used whenever warranted.
- (3) After electing to use quick release, determining the appropriate party to whom the property should be released will depend on the nature of the seized property and the particular circumstances. If the property to be released is such that there is no registered owner, e.g., currency, usually it should be returned to the person from whom it was seized. If there is a registered owner of the property, such as an automobile, the property should usually be returned to that party, regardless of whether there is a lien or other third party interest with ownership rights to the property. However, if a third party such as a lienholder asserts its contractual rights in a judicial proceeding and obtains a final judgment that provides satisfactory proof of its ownership interest and right to immediate possession of the property, the seizing agency may return the property to that party instead of the registered owner. Similarly, if a state court authorizes a state or local law enforcement agency to take possession of the seized property, the seizing agency may release the property in accordance with that court order. If the seizing agency is aware of a third party with ownership interest in the property, regardless of whether it has asserted any contractual rights to immediate possession, it may notify the third party in advance of release to the registered owner.
- (4) There may be instances in which a prosecutor declines to proceed with a judicial forfeiture after a claim has been filed in an administrative proceeding. Once that decision is made and the federal government no longer has a legal basis for holding seized property (i.e., it is not evidence of a violation of law), the agency that seized the property becomes responsible for returning it to the appropriate party and/or initiating abandonment proceedings. In determining the appropriate party to whom to return the seized property, the guidance provided in paragraph (3) above should be followed, including prompt notification to the appropriate party.

9.7.7.2.1  
(11-21-2001)  
**Definition of Innocent  
Owner**

- (1) The Civil Asset Forfeiture Reform Act of 2000 (CAFRA) created a uniform innocent owner defense (18 USC §983(d)) for forfeitures under “any civil forfeiture statute.” The term “owner” means a person with an ownership interest in the specific property to be forfeited.
- (2) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term “innocent owner” means an owner who:
  - a. did not know of the conduct giving rise to forfeiture; or
  - b. upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property
- (3) Ways in which a person may show that he/she did all that reasonably could be expected may include demonstrating that he/she:
  - a. gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred, and
  - b. in a timely fashion revoked or made a good faith attempt to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property
- (4) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term “innocent owner” means a person who, at the time that person acquired the interest in the property:
  - a. was a bona fide (good faith) purchaser or seller for value, and
  - b. did not know and was reasonably without cause to believe that the property was subject to forfeiture
- (5) A person claiming to be an innocent owner has the burden of proving that he/she is an innocent owner and must show satisfactory proof of ownership or an ownership interest.

9.7.7.2.2  
(11-04-2008)  
**Investigation of an  
Innocent Ownership  
Claim**

- (1) The investigating agent, in coordination with the Asset Forfeiture Coordinator (AFC), will timely investigate the merits of an innocent ownership claim based on the criteria above and report the results of the investigation to the SAC, who will make the determination whether to authorize the quick release.
- (2) If the SAC determines that the person is not an innocent owner, the property will be retained and the forfeiture action will continue.
- (3) If the SAC determines that the person is an innocent owner and authorizes the quick release, a Release of Claim (see Exhibit 9.7.7-1) and an executed Form 5914, Release and Receipt of Property, should be obtained from the innocent owner at the time the property is returned.
- (4) The basis for any quick release of seized property shall be documented in the seizure/forfeiture file.

- 9.7.7.3  
(11-04-2008)  
**Release of Seized Property (Hardship Petition)**
- (1) Under CAFRA, the law (18 USC §983(f)) provides for the immediate release of seized property to claimants upon a request setting forth certain requirements to the appropriate official. A request of this kind is commonly referred to as a hardship petition; however, the provision does not apply to criminal forfeiture actions.
  - (2) In light of CAFRA's hardship petition provisions, the Treasury Executive Office for Asset Forfeiture (TEOAF) issued Directive Number 35, Review of Hardship Petitions Filed Pursuant to 18 USC §983(f). The policy directive is intended to provide basic guidance on the seizing agency's responsibilities regarding hardship petitions under 18 USC §983(f), see Directive Number 35 on CI Connections - Warrants and Forfeitures web page.
- 9.7.7.3.1  
(11-21-2001)  
**Persons Who May File a Hardship Petition**
- (1) Only a claimant may file a petition with the seizing agency for immediate release of seized property to avoid a hardship. The term "claimant" is defined as a person who has filed a claim in an administrative forfeiture action requesting judicial determination of the forfeiture. To file a hardship petition, the individual claiming the hardship must also file a claim (see IRM 9.7.2, Civil Seizure and Forfeiture).
- 9.7.7.3.2  
(11-04-2008)  
**Notification of Release of Seized Property (Hardship) Provision**
- (1) Directive Number 35 instructs seizing agencies to provide appropriate information regarding the release of seized property (hardship) in the written notice sent to interested parties. The model notice letter in Attachment A of Directive 35 includes the language of the statute, and cites 18 USC §983(f), as required by TEOAF.
  - (2) The information required in a notice letter includes:
    - a. who may file a hardship petition
    - b. how to file a hardship petition
    - c. the procedures for petitioning the court if the seizing agency does not release the seized property within 15 days
- 9.7.7.3.3  
(06-22-2005)  
**Requirements for Release of Seized Property**
- (1) A claimant seeking release of seized property must provide a written request for possession of the seized property.
  - (2) A claimant is entitled to immediate release of seized property if the claimant establishes that the following requirements are met:
    - a. The claimant has a possessory interest in the property.
    - b. The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial.
    - c. The government's continued possession while the proceedings are pending will cause substantial hardship to the claimant or someone else, such as preventing the functioning of a business; preventing an individual from working; or leaving an individual homeless.
    - d. The claimant's likely hardship from the government's continued possession of the property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding.
  - (3) If the claimant fails to establish any of the requirements listed above, the hardship petition must be denied.
  - (4) A claimant is not entitled to the release of:

- a. contraband
  - b. currency, monetary instruments, or electronic funds (such as bank accounts) unless such currency, monetary instruments, or electronic funds are the assets of a legitimate business which has been seized
  - c. property to be used as evidence of a violation of the law
  - d. property that by reason of design or other characteristic, is particularly suited for use in illegal activities (examples include cars with hidden compartments, property altered for some illegal purpose)
  - e. property likely to be used to commit additional criminal acts if returned to the claimant
- (5) A hardship petition requesting seized property that falls within any of the categories listed in (4) above must be denied.
  - (6) If the seized property is not released to the claimant within 15 days after receipt of a hardship petition, the claimant may file a petition in US district court. Directive 35 provides additional responsibilities on the part of the seizing agency where a claimant files a hardship petition in court.
  - (7) The AFC is responsible for recording the date a hardship petitioner requests a release of property and the date the agency received the request.

9.7.7.3.4  
(06-22-2005)  
**Investigation of a  
Hardship Petition**

- (1) The investigating agent, in coordination with the AFC, will timely investigate the merits of a hardship petition. He/she will report the results of the investigation by memorandum to the SAC. This will enable the seized property to be returned within 15 days of receipt of the hardship petition, in the event the hardship petition is granted.
- (2) The SAC has delegated authority to grant or deny a hardship petition.
- (3) As some US Attorney's Offices may want to be involved in the hardship petition process, the AFC may facilitate coordination between the US Attorney and Criminal Investigation (CI) as directed by the SAC.

9.7.7.3.5  
(11-04-2008)  
**Grant of a Hardship  
Petition**

- (1) If the SAC grants a hardship petition, the seized property must be released within 15 days of receiving the hardship petition.
- (2) The AFC will work closely with the seized property contractor to achieve return of the seized property within 15 days of receiving a hardship petition.
- (3) The statute (18 USC §983(f)) does not authorize the seizing agency to take specific protective action to ensure the value of seized property released pursuant to a hardship petition. A general release should be used to protect the government from certain liabilities and inform the petitioner that the seizing agency reserves the right to retake possession of the property if it is used in violation of Federal law. The release is contained in Attachment D of Directive 35 and Exhibit 9.7.7-2.
- (4) The signature of the claimant or party to whom the seized property will be released should be obtained on the release. The claimant's refusal to sign the release is not a basis for denying the hardship petition. A claimant that refuses to sign a release should be provided a copy to document that he/she was made aware of the contents of the release.

- (5) The AFC should notify and/or consult with the Assistant US Attorney (AUSA) responsible for the forfeiture prior to the release of seized property when a hardship petition is granted.

9.7.7.3.6  
(11-04-2008)  
**Denial of a Hardship  
Petition**

- (1) If a hardship petition is denied, a letter stating the statutory basis for the denial will be prepared by the AFC for the signature of the SAC and sent to the claimant (Directive Number 35-Attachments B and C). Exhibit 9.7.7-3 and Exhibit 9.7.7-4 contain sample denial letters; either letter is appropriate. The denial letter does not need to include specific reasons for the denial, although such specific information should be well documented in the seizure/forfeiture file. The denial letter will be sufficient if it states the general statutory basis for the denial and explains the other relief available to the petitioner.
- (2) The AFC should notify and/or consult with the AUSA responsible for the forfeiture of the decision on a hardship petition prior to sending a denial letter.

9.7.7.4  
(11-21-2001)  
**Petitions for Remission  
or Mitigation**

- (1) The remission or mitigation of forfeiture is a remedy designed to lessen the harshness of the forfeiture sanction. A petition for remission or mitigation is a request for an Executive Branch pardon of the property or an interest therein, based on either the good faith of the petitioner and his/her innocence, or the lack of knowledge of the underlying unlawful conduct. In the case of the violator, it is a plea for leniency.
- (2) Petitions for remission or mitigation are separate and independent of civil (administrative or judicial) or criminal forfeiture proceedings.

9.7.7.4.1  
(11-04-2008)  
**Effect of Petition on  
Forfeiture Proceedings**

- (1) An individual or entity with an ownership interest in the property seized for forfeiture may contest the forfeiture by filing a claim, filing a petition for remission or mitigation, or both. The filing of a petition does not waive or suspend any time limits for filing a claim requesting a judicial determination of the forfeiture.
- (2) When a petition for remission or mitigation of forfeiture 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, 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.
- (3) When an interested party in an administrative forfeiture action has filed a claim requesting a judicial determination of the forfeiture, and another interested party has filed a petition for remission or mitigation, the processing of the petition will be terminated. The petition and associated evidence will be included in the referral of the claim from the SAC to the US Attorney's Office, see IRM 9.7.2, Civil Seizure and Forfeiture.

9.7.7.4.2  
(11-21-2001)  
**Content of a Petition for  
Remission or Mitigation**

- (1) There is no prescribed format for a petition for remission or mitigation. The written notice sent to interested parties in an administrative forfeiture action includes the procedure to request relief through the petition process and advises that:
  - a. The petition must identify the property seized, the date of seizure, and proof of ownership interest in the property.
  - b. The petition should describe the facts and circumstances that justify the return of the property.

- c. Copies of documentary evidence should be submitted where appropriate.
- d. The petition should be signed, under oath subject to the penalty of perjury.

9.7.7.4.3  
(11-21-2001)

**Procedure for Filing a  
Petition for Remission  
or Mitigation**

- (1) Petitions for remission or mitigation in an administrative forfeiture action should be addressed to the SAC of the field office responsible for the forfeiture. Petitions in civil judicial or criminal forfeiture proceedings should be addressed to the Attorney General and submitted to the US Attorney for the judicial district where the forfeiture proceedings are brought.

9.7.7.4.4  
(11-04-2008)

**Time Limits for Filing a  
Petition for Remission  
or Mitigation**

- (1) The written notice sent to interested parties in an administrative forfeiture action advises that a petition for remission or mitigation must be filed within 35 days of the mailing of the letter.
- (2) Petitions for remission or mitigation will be considered any time after written notice is sent to interested parties, after the property is forfeited and until the forfeited property is placed into official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore the proceeds.

9.7.7.4.5  
(11-21-2001)

**Criteria for Remission**

- (1) A petitioner seeking remission of civilly forfeited property, must establish:
  - a. a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder; and
  - b. that he/she is an innocent owner within the meaning of 18 USC §983(d) (see subsection 9.7.7.2.1).
- (2) The petitioner has the burden of proving that he/she is an innocent owner by the preponderance of the evidence.

9.7.7.4.6  
(11-04-2008)

**Criteria for Mitigation**

- (1) Mitigation may be granted to a party not involved in the commission of the offense underlying the forfeiture where:
  - a. The petitioner has not met the minimum conditions for remission, but the deciding official finds that some relief should be granted to avoid extreme hardship; and that return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law; or
  - b. The minimum standards for remission have been satisfied but the overall circumstances are such that complete relief is not warranted.
- (2) Mitigation may be granted to a party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to the:
  - a. Lack of a prior record or evidence of similar criminal conduct;
  - b. Violation was minimal and was not part of a larger criminal scheme;
  - c. Violator has cooperated with Federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or
  - d. Complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.
- (3) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property or the return of the property, in addition to the imposition of any other costs that would be charge-

able as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, to be deposited into the Treasury Forfeiture Fund as an amount realized from forfeiture.

- (4) Criminal Investigation has established mitigation guidelines for 18 USC §981 seizures/forfeitures relating to 31 USC §5313(a) and 31 USC §5324(a) violations. See Exhibit 9.7.7-5 for a complete recitation of the guidelines.

9.7.7.4.7  
(11-04-2008)  
**Creditors**

- (1) A general creditor is one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. Unsecured general creditors are not entitled to remission or mitigation since they are unable to directly trace their ownership interest to identifiable assets in the forfeiture pool. The petitioner may have grounds that entitles him/her to bring a suit against the violator on the debt, but will have no specific interest in the property subject to forfeiture. Trade creditors, who have breach of contract actions against the violator or former employees with claims for employee benefits, have no standing to file petitions for the same reason. The situation is different if the creditor has reduced his claim to a judgment and obtained a judgment lien against specific assets.
- (2) A judgment creditor is one who has obtained a judgment against a debtor/ violator, but has not yet received full satisfaction of the judgment. A judgment creditor may qualify as a lienholder entitled to remission if it meets certain conditions. For more information regarding judgment creditors, see 28 CFR 9.6(f).

9.7.7.4.8  
(11-04-2008)  
**Investigation of a  
Petition for Remission  
or Mitigation**

- (1) In an administrative forfeiture action, once a petition for remission or mitigation has been filed, the agency that seized the property is responsible for investigating the merits of the petition and submitting a report on the investigation to the deciding official. In a judicial forfeiture action, the AUSA must submit the petition, with any requested report of the investigation by the seizing agency and his/her recommendation to the Department of Justice Asset Forfeiture and Money Laundering Section for a final determination.
- (2) The Deputy Director, Operations Policy & Support, is the CI deciding official with authority to grant or deny a petition for remission or mitigation of forfeiture of property seized under 18 USC §981 in an administrative forfeiture action.
- (3) Where the petition for remission or mitigation alleges facts not previously considered or that are unsupported, it may be necessary to investigate these issues before the merits of the petition can be evaluated. The investigation of a petition filed in an administrative forfeiture action will be completed within 30 days of receipt whenever possible. If a petition refers to the existence of evidence that was not included with the petition, the petitioner will be allowed a reasonable period of time (such as 10 days) to submit the evidence. The investigation of a petition must be thorough, accurate, and conclusive to support the actions taken by the Deputy Director, Operations Policy & Support. An inordinate amount of time and effort should not be expended addressing irrelevant claims.
- (4) The petitioner's cooperation in an investigation of a petition for remission or mitigation is paramount. A petitioner should be advised that failure to cooperate or to provide requested information or documents and submit to interviews, might result in denial of the petition.

- (5) A report of the investigation of a petition for remission or mitigation, with the field office recommendation to grant or deny the petition prepared in the form of a memorandum, will be forwarded from the SAC to the Division Counsel/ Associate Chief Counsel (Criminal Tax) (hereinafter referred to as "Division Counsel") through the field Criminal Tax (CT) attorney. The SAC will ensure that all issues presented within the petition have been addressed in the report. The petition (evidence submitted by the petitioner, evidence supporting the recommendation by the field office, and any other relevant documentation that will assist Division Counsel in reviewing the petition) should be included with the report.
- (6) The SAC may make a recommendation in the report as to the application of the mitigation guidelines for violations of 31 USC §5313(a) and 31 USC §5324(a) (see Exhibit 9.7.7-5).

9.7.7.4.9  
(11-04-2008)

**Processing a Petition for  
Remission or Mitigation**

- (1) There are no specific time limits established by statute or case law for ruling on a petition for remission or mitigation. However, CI has established guidelines for processing petitions to prevent unreasonable or undue delay.
- (2) The SAC will forward the report of the investigation of a petition for remission or mitigation and the field office recommendation to grant or deny the petition to the Division Counsel, through the field CT attorney, within 30 days of receipt of the petition whenever possible.
- (3) The field CT attorney will review and forward to the Division Counsel the report of the investigation of a petition for remission or mitigation, the Law and Fact Memorandum previously prepared in the administrative forfeiture action, and any additional information, if applicable, within 15 days of receipt from CI.
- (4) The Division Counsel, after reviewing the report of the investigation of a petition for remission or mitigation and making any contacts with the investigating agent, AFC, or field CT attorney, as necessary for additional information, will prepare and submit the following to the Deputy Director, Operations Policy & Support, within 30 days of receipt from the field CT attorney:
  - a. a Law and Fact Memorandum to the Deputy Director, Operations Policy & Support, discussing the petition and the facts underlying the recommendation as to whether the petition should be granted or denied
  - b. a proposed memorandum from the Deputy Director, Operations Policy & Support, to the SAC, setting forth the authority of the Deputy Director, Operations Policy & Support, to grant or deny the petition, and the decision to grant or deny the petition
  - c. a proposed letter from the SAC to the petitioner, stating whether the petition has been granted or denied which includes instructions for the petitioner to follow if the petition has been granted and which will address the appeal rights of the petitioner if the petition has been denied
- (5) The Deputy Director, Operations Policy & Support, will review the factual situation and the recommendation of the Division Counsel in making the decision whether to grant or deny a petition for remission or mitigation. No hearing will be held.
- (6) The Deputy Director, Operations Policy & Support, will forward the decision to grant or deny the petition for remission or mitigation to the SAC for implementation, using the memorandum and letter drafted by the Division Counsel, if in

agreement, or by original documents if the decision of the Deputy Director, Operations Policy & Support, differs from that recommended by the Division Counsel.

- 9.7.7.4.10  
(11-04-2008)  
**Grant of a Petition for Remission or Mitigation of Forfeiture**
- (1) If the Deputy Director, Operations Policy & Support, grants the petition for remission or mitigation, a decision letter from the SAC will be sent to the petitioner and/or the petitioner's attorney by certified mail, return receipt requested. The letter to the petitioner, prepared by or with assistance from the Division Counsel.
  - (2) A model first offense warning letter for violations of 31 USC §5313(a) and 31 USC §5324(a) is found in Exhibit 9.7.7-6.
- 9.7.7.4.11  
(11-04-2008)  
**Terms and Conditions of Remission and Mitigation**
- (1) Costs incurred in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. The Deputy Director, Operations Policy & Support, has the discretion to waive the costs.
  - (2) For detailed information on the terms and conditions of remission and mitigation for owners and lien holders see 28 CFR Part 9 Section 7, Terms and conditions of remission and mitigation.
- 9.7.7.4.12  
(11-04-2008)  
**Denial of a Petition for Remission or Mitigation of Forfeiture**
- (1) If the Deputy Director, Operations Policy & Support, denies the petition for remission or mitigation, a decision letter from the SAC will be sent to the petitioner and/or the petitioner's attorney by certified mail, return receipt requested. The letter to the petitioner, prepared by or with assistance from the Division Counsel, will advise the petitioner of the reasons for denial. The letter will also advise the petitioner of the right to appeal the decision of the Deputy Director, Operations Policy & Support, by submitting a request for reconsideration of the denial.
- 9.7.7.4.13  
(11-04-2008)  
**Request for Reconsideration**
- (1) A request for reconsideration of the denial of a petition for remission or mitigation will be considered if:
    - a. It is postmarked or received by the field office within 10 days from the receipt of the letter denying the petition.
    - b. 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.
  - (2) The same official that ruled on the original petition for remission or mitigation will not decide a request for reconsideration. The new information or evidence in the request for reconsideration of the denial of a petition for remission or mitigation will be investigated and the recommendation to grant or deny the request will be forwarded from the SAC to the Director, Operations Policy & Support, Attn: Director, Warrants and Forfeiture Section). The request may be referred to the Division Counsel if the Director, Operations Policy & Support believes that any new evidence submitted by the petitioner warrants a review of the Division Counsel's position.
  - (3) Only one request for reconsideration of a denial of a petition will be considered.

9.7.7.4.14  
(11-21-2001)

**Petition for Restoration  
of the Proceeds**

- (1) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or transferred to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:
  - a. did not know of the seizure prior to the entry of a declaration of forfeiture
  - b. could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture
- (2) A petition for restoration of the proceeds must be submitted within 90 days of the date the property is sold or otherwise disposed of.
- (3) A petition for restoration of the proceeds will be investigated and processed in the same manner as a petition for remission or mitigation.

9.7.7.5  
(11-04-2008)

**Transfer of Forfeited  
Assets to Victims**

- (1) Certain types of investigations will invariably lead to the disclosure of multiple victims of the crime. Under 18 USC §982 (a)(1) and the Mandatory Victim Restitution Act, 18 USC §3663A (a)(1), both forfeiture and full restitution are mandatory and are not mutually exclusive as they fulfill different goals. A defendant will be required to pay both, however, if the government so requests, the court may order that forfeited funds be used to satisfy a portion of the defendant's restitution obligation where both forfeiture and restitution have been ordered. The victims are entitled to file petitions for remission or mitigation.
- (2) The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), as amended in 18 USC §981(e)(6), authorizes the Attorney General and the Secretary of the Treasury to transfer forfeited property as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity. The Chief, Asset Forfeiture and Money Laundering Section (AFMLS) will authorize in appropriate cases the use of forfeited property to compensate victims based on the losses recognized in criminal restitution orders (AFMLS Forfeiture Policy Directive 02-1). When assets have been forfeited administratively, the Chief of AFMLS will need the concurrence of CI to grant the restoration request relative to those assets.
- (3) Review IRM 9.7.4, Pre-Seizure Planning, when considering a proposed seizure and forfeiture that involves identifiable victims other than the government, and such identifiable victims have an interest in the seized property which will likely result in remission or mitigation, or transfer of forfeited property in favor of the victims.
- (4) For any seizures where restitution (all or part) is expected, that information must be recorded on AFTRAK, as soon as CI is aware of it.

Exhibit 9.7.7-1 (11-21-2001)  
IRS Release of Claim

Seizure Case Number: \_\_\_\_\_

**INTERNAL REVENUE SERVICE  
RELEASE OF CLAIM**

This agreement is made between

\_\_\_\_\_  
(Name) (Address)

and the Internal Revenue Service of the United States Department of the Treasury. This agreement is made in consideration of the return of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Description of Property)

registered to/owned by:

\_\_\_\_\_  
(Name and Address)

which was seized pursuant to 18 USC 981 or 982/26 USC 7302 in the course of a criminal or civil investigation, and for other consideration, the receipt of which is hereby acknowledged.

Being the \_\_\_\_\_ of the property as evidence by a  
(Type of Interest)

\_\_\_\_\_  
(Title, Registration, Contract, Note, Etc.)

dated \_\_\_\_\_

The registrant/owner hereby agrees to unconditionally release and hold harmless the Internal Revenue Service, its officers, employees and agents, from any and all claims, demands, damages, causes of action or suits, whether in official or individual capacity, of whatever kind and description, and wheresoever situated, that might now exist or hereafter exist by reason of, or growing out of, or affecting, directly or indirectly, the seizure, custody or return of the above-described property.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Signature of Recipient

\_\_\_\_\_  
Signature of Witness

Exhibit 9.7.7-2 (11-21-2001)

Agreement for the Release of Seized Property

## AGREEMENT FOR THE RELEASE OF SEIZED PROPERTY

Case No. \_\_\_\_\_  
Seizure No. \_\_\_\_\_

This Agreement for the Release of Seized Property ("Agreement") is made between \_\_\_\_ (Name of Requester) and \_\_\_\_ (Name of Agency) \_\_\_\_\_. It is made as a result of a request for release of property made pursuant to 18 USC 983.

On \_\_\_\_ (Date) \_\_\_\_, the United States of America, by and through \_\_\_\_ (Name of Agency) \_\_\_\_, seized under authority of a \_\_\_\_ (State Type of Warrant) \_\_\_\_, bearing number \_\_\_\_ (Docket Number) \_\_\_\_, and under the provisions and authority of \_\_\_\_ USC \_\_\_\_, personal property ("property") from \_\_\_\_ (Name of Party from Whom Seized) \_\_\_\_, which was located at \_\_\_\_ (Cite Address) \_\_\_\_. This property is described more fully as follows:

(Description of Property)

The undersigned, \_\_\_\_ (Name) \_\_\_\_ ("Requester"), was in possession of the property (or state another valid reason) at the time it was seized and desires to have the property returned under the provisions of 18 USC 983(f). The requester previously filed a claim stating that such return is necessary because continued possession by the \_\_\_\_ (Name of Agency) \_\_\_\_ is creating a hardship on the requester or a third party. This Agreement is made pending disposition of the forfeiture proceedings with respect to this property. It becomes effective at the time the property is placed into the custody of the requester or a person designated by the requester to receive the property.

Therefore, it is hereby agreed, upon execution of this Agreement, and in compliance with all the terms and conditions stated herein, that the requester may continue to maintain custody of the property until such time as an order is entered by the Court, it has been forfeited by the \_\_\_\_ (Name of Agency) \_\_\_\_, or it is determined that the \_\_\_\_ (Name of Agency) \_\_\_\_ no longer requires possession of the property.

Exhibit 9.7.7-2 (Cont. 1) (11-21-2001)  
Agreement for the Release of Seized Property

**AGREEMENT FOR THE RELEASE OF SEIZED PROPERTY**  
**PAGE 2**

**TERMS AND CONDITIONS**

1. Requester shall be permitted to maintain custody of the property subject to the terms and conditions of this Agreement. It is understood by the requester that this Agreement does not create, or imply, additional ownership interest or rights to the requester.
2. If the property is a vehicle or conveyance of any type, the requester shall maintain insurance equal to full replacement cost of the property and shall maintain liability insurance for injuries resulting from use of the property, as is required by law in the state of \_\_\_\_ (Name the State) \_\_\_\_.
3. Requester shall timely pay any and all obligations, otherwise necessary and due on the property, for the life of this agreement. Moreover, requester shall abide by all laws, codes, regulations, ordinances, covenants, rules, bylaws, binding agreements, and/or stipulations or conditions pertaining to the care, maintenance, control, and use of the property.
4. Requester shall not use or permit the use of the property in violation of any state or federal law.
5. Requester, on behalf of himself/herself, his/her heirs, statutory survivors, executors, administrators, representatives, successors and assignees, or any other potential claimants, agrees that he/she does hereby release the United States, its agencies, agents, assigns and employees in their official and individual capacities, from any and all pending or future claims, for injuries, demands, damages, suits, and causes of actions arising from requester's possession, maintenance, and/or use of the property.
6. Requester, on behalf of himself/herself, and other potential claimants, further agrees to indemnify the United States, and other potential federal defendants, as to any and all pending or future claims, demands, damages, suits and causes of action, regarding any damage or personal injuries incurred as a result of the requester's use and/or possession of the property.
7. Requester, on behalf of himself/herself, and other potential claimants, further agrees that he/she does hereby release the United States, to include its agents and employees, and other potential federal defendants, in their official and individual capacities, from any and all pending or future claims for injuries, demands, damages, suits, and causes of action, arising from the seizure, detention, and/ or forfeiture of the property by the United States.
8. Requester, on behalf of himself/herself, and other potential claimants, further agrees to hold and save the United States, to include its agents and employees, and other potential federal defendants, in their official and individual capacities, harmless from any claims by any other, including costs

Exhibit 9.7.7-2 (Cont. 2) (11-21-2001)  
Agreement for the Release of Seized Property

**AGREEMENT FOR THE RELEASE OF SEIZED PROPERTY  
PAGE 3**

and expenses for, or on account of, any and all lawsuits or claims of any character whatsoever, in connection with the seizure, detention, and/or forfeiture of the property.

- 9. Requester acknowledges that the United States reserves the right to retake possession of the property should it be used in violation of federal law.
- 10. Requester acknowledges that, pursuant to 18 USC 2232, anyone who knowingly destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of preventing or impairing the Government's lawful authority to take such property into its custody or control or to continue holding such property under its lawful custody and control, shall be fined under this title or imprisoned not more than 5 years, or both.
- 11. Requester further acknowledges that, pursuant to 18 USC 2232(b), anyone who, knowing that property is subject to the in rem jurisdiction of a United States court for purposes of civil forfeiture under Federal law, knowingly and without authority from that court, destroys, damages, wastes, disposes of, transfers, or otherwise takes any action, or knowingly attempts to destroy, damage, waste, dispose of, transfer, or otherwise take any action, for the purpose of impairing or defeating the court's continuing in rem jurisdiction over the property, shall be fined under this title or imprisoned not more than 5 years, or both.

DATE \_\_\_\_\_

Requester \_\_\_\_\_  
(Name of Requester)

(Name of Agency)

DATE \_\_\_\_\_

\_\_\_\_\_  
Name/Title

Exhibit 9.7.7-3 (11-21-2001)  
Name of Petitioner (Denial Letter)



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

Date

CRIMINAL INVESTIGATION

NAME OF PETITIONER  
(OR PETITIONER'S ATTORNEY, IF REPRESENTED)  
ADDRESS  
CITY, STATE 12345

RE: PETITION FOR RELEASE OF PROPERTY  
[PROPERTY DESCRIPTION]  
PETITIONER:  
SEIZURE NO.:  
CASE NO.:

Dear Mr./Ms. [petitioner or attorney's name]:

The hardship petition you filed [on behalf of petitioner's name] was received by this office on [insert date]. The petition was denied because [you/name of petitioner] failed to establish that the requirements of 18 USC 983(f) are met. Specifically, you failed to establish that [you/petitioner's name] [have/has] [a possessory interest in the property, and that [you/he/she] [have/has] sufficient ties to the community to ensure that the property will be available at trial.] We will advise the U.S. Attorney of our decision.

You may choose to petition the court for release of your property. Should you choose this option, you must petition for release of the property in the district court where the seizure warrant was issued, or in the district court where the property was seized. If a complaint has been filed, the petition must be filed in the district court in which the complaint was filed.

Sincerely,

[Deciding Official Name & Title]

cc: [Name of U.S. Attorney in judicial district likely to receive the petition]  
U.S. Attorney  
[District of —]

[any other agency official you deem appropriate]

Exhibit 9.7.7-4 (11-21-2001)

Name of Petitioner (Denial Letter)



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

Date

CRIMINAL INVESTIGATION

NAME OF PETITIONER  
(OR PETITIONER'S ATTORNEY, IF REPRESENTED)  
ADDRESS  
CITY, STATE 12345

RE: PETITION FOR RELEASE OF PROPERTY  
[PROPERTY DESCRIPTION]  
PETITIONER:  
SEIZURE NO.:  
CASE NO.:

Dear Mr./Ms. [petitioner or attorney's name]:

The hardship petition you filed [on behalf of petitioner's name] was received by this office on [insert date]. The petition was denied because [you/name of petitioner] failed to establish that the requirements of 18 USC 983(f) are met. Specifically, [you/petitioner's name] [have/has] failed to establish the following [check all that apply]:

- that the claimant has a possessory interest in the property
- that the claimant has sufficient ties to the community to ensure that the property will be available at trial
- that the government's possession of the property while the proceedings are pending will cause substantial hardship to the claimant (e.g., preventing the functioning of a business, or preventing an individual from working, or leaving an individual homeless)
- that the likely hardship from the government's continued possession of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if returned to the claimant during the pendency of the proceedings
- the petitioner is not eligible to file hardship petition because the petitioner is not a claimant. Persons who file a hardship petition must be claimants pursuant to 18 USC 983(a). You may file a claim with the Internal Revenue Service, Special Agent in Charge, (Address of Field Office), Attn: Asset Forfeiture Coordinator (Name). It is suggested, but not required, that you send your request by certified mail, return receipt requested.

Exhibit 9.7.7-4 (Cont. 1) (11-21-2001)  
Name of Petitioner (Denial Letter)

2

You may choose to petition the court for release of your property. Should you choose this option, you must petition for release of the property in the district court where the seizure warrant was issued, or in the district court where the property was seized. If a complaint has been filed, the petition must be filed in the district court in which the complaint was filed.

Sincerely,

[Deciding Official Name & Title]

cc: [Name of U.S. Attorney in judicial district likely to receive the petition]  
U.S. Attorney  
[District of —]

[any other agency official you deem appropriate]

**Exhibit 9.7.7-5 (11-21-2001)**  
**Mitigation Guidelines**

**INTERNAL REVENUE SERVICE  
MITIGATION GUIDELINES FOR  
18 USC 981 SEIZURES/FORFEITURES RELATING TO  
31 USC 5313(a) AND 5324 VIOLATIONS**

- I. If the violator fails to provide credible evidence in their petition for remission or mitigation that the monies/property were derived from a legitimate source—deny relief.
- II. First offense, legitimate source shown, no criminal conviction—The mitigated penalty will be determined as shown below:
  - A. No aggravating or mitigating factors—The base mitigated penalty is 10 percent of the total amount involved in the transaction or transactions.
  - B. If one or more mitigating factors are found—The mitigated penalty should be equal to the 10 percent base amount less a percentage of the total amount for each mitigating factor. Examples of mitigating factors and penalty reduction percentages are as follows:
    1. Language barrier, physical ailment or mental condition which would inhibit rather than totally bar violator's understanding of Bank Secrecy Act reporting requirements—subtract 3 percent of the total amount from the base amount (where conditions are subject to totally bar the violator's understanding of the reporting requirements, full relief is appropriate).
    2. Inexperience in banking matters—including inexperience by a non-resident with reporting requirements, coupled with misapprehension that the filing of a report will result in confiscation of the funds or in notification to the home government—subtract 3 percent of the total amount from the base amount.
    3. Cooperation with IRS officials after discovery of the violation by providing additional information which facilitates conclusion of the case—subtract 2 percent of the total amount from the base amount.
    4. Contributory IRS error; violator given incorrect advice by IRS official—may be mitigated to -0- penalty depending on circumstances.
    5. Humanitarian factor; especially with regard to intended use of funds, e.g., medical expenses—subtract 9 percent of the total amount from the base amount.

Exhibit 9.7.7-5 (Cont. 1) (11-21-2001)  
Mitigation Guidelines

- C. If one or more aggravating factors are present—the mitigated penalty should be equal to the 10 percent base amount plus an additional percentage of the total amount for each aggravating factor. Examples of aggravating factors are:
  - 1. Evidence of intentional disregard of reporting requirements found (e.g., admission that report was not filed because violator could not be bothered, or informant provides information evidencing premeditation on part of violator) add an additional 25 percent of the total amount to the base amount.
  - 2. Experience in banking or business which would necessarily result in exposure to reporting requirements—add an additional 3 percent of the total amount to the base amount.
  - 3. Extreme lack of cooperation, verbal or physical abuse, attempted escape or any other behavior which displace lack of respect for law or authority—add an additional 25 percent of the total amount to the base amount.
  - 4. Documentary or other evidence which would indicate a continuing course of conduct by violator in ignoring requirements on this and other occasions—add an additional 50 percent of the total amount to the base amount.
  - 5. Deliberate effort taken to conceal funds in order to prevent discovery by IRS—add an additional 25 percent of the total amount to the base amount.
- D. If truly exceptional circumstances require that some consideration be given to granting relief beyond the above guidelines, the following procedures must be followed:
  - 1. The seizing agent must initiate a penalty investigation.
  - 2. Results of the penalty investigation must substantiate the need to warrant an exception.
- III. Second or subsequent offense, whether or not legitimate source and use shown—deny relief, provided that the violator was notified in writing of the reporting requirements when the previous decision was rendered.
- IV. Prior or concurrent Federal or state conviction or guilty plea—any Federal felony conviction or guilty plea of a violation of 18 USC 1956 or 1957, any offense listed in 18 USC 1956(c)(7), or any violation of Title 31, Chapter 53

**Exhibit 9.7.7-5 (Cont. 2) (11-21-2001)**  
**Mitigation Guidelines**

of the US Code (or any state equivalent to the above), coupled with one or more of the aggravating factors, will be grounds for denying relief. If truly exceptional circumstances require that some consideration be given to granting limited relief, the following procedures must be followed:

- A. The seizing agent must initiate a penalty investigation.
- B. Results of the penalty investigation must substantiate the need to warrant an exception.
- V. All CTR decision letters will have, as an enclosure, a warning that failure to comply in the future will result in forfeiture. The warning letter will include the reporting requirements in a form to be provided by Headquarters.

**IN ALL OF THE SITUATIONS ADDRESSED IN THE MITIGATION GUIDELINES, IF TAXES AND/OR PENALTIES ARE DUE ON THE MONIES INVOLVED IN THE TITLE 31 VIOLATION, ALL APPROPRIATE REMEDIES UNDER THE TAX LAWS SHOULD BE USED AS WELL.**

Exhibit 9.7.7-6 (11-21-2001)  
First Offense Warning Letter



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

(date)

Name  
Title  
Department/Division  
Organization  
Street Address or PO Box  
City, ST Zip

Dear :

**FIRST OFFENSE WARNING LETTER**  
**FOR VIOLATIONS OF 31 USC 5313 AND 5324**

This letter will serve as your first offense warning letter for violations of the above-referenced statute. 31 USC 5313 and its implementing regulation, 31 C.F.R. 103.22, require banks and many other domestic financial institutions (defined in 31 USC 5312) to file Currency Transaction Reports, Form 4789, on all currency transactions in excess of \$10,000. 31 USC 5324 prohibits individuals from causing a bank or other domestic financial institution to fail to file such a report, to file a false report, or to structure transactions to avoid the reporting requirements.

18 USC 981(a)(1)(A) authorizes the government to seize and forfeit property involved in a transaction or attempted transaction in violation of Sections 5313 or 5324, or property traceable to such property.

You are hereby advised that any act in violation of Sections 5313 or 5324 will result in seizure and possible forfeiture of all property involved in or traceable to such violation. Additionally, you may be criminally prosecuted.

If you have any questions whether any of your currency transactions must be reported, ask the bank or other financial institution with which you are dealing, or contact the nearest office of the Internal Revenue Service.

Sincerely,

Full Name  
Title

