

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR DISTRICT COUNSEL

FROM: Assistant Chief Counsel (Criminal Tax) CC:EL:CT

SUBJECT: Search Warrant Request on

This responds to the above-referenced search warrant request submitted for approval by memorandum dated (we note that it was not received by our office until). As of this office has advised of your office, our review of this application has led us to conclude that the affidavit does not set forth a sufficient factual predicate to establish probable cause to believe that the alleged violations of Title 26 have transpired and that the books, records, and computer equipment sought are likely to contain evidence of such crimes. Accordingly, we are not inclined to approve the application as presently drafted and are closing our files and returning the search warrants and application package.

The search warrants are sought in connection with an ongoing criminal investigation of for possible violations of 26 U.S.C. §§ 7201 and 7206(1) for the years through . The special agent alleges that skimmed money from her law practice and omitted this income from tax returns. operated as a sole proprietorship until incorporated as a Sub-Chapter S Corporation in . has had at least over the past . The attached tax returns indicate reported between \$ and \$ of adjusted gross income for the years through . The returns show Schedule C gross income of over \$ for the years through . There are no S-Corp returns attached for each of the years and . There is, however, no indication that is living beyond means on unreported income.

The search warrant affidavit is based primarily on information obtained from confidential sources, who where either sometime in or early for anywhere between and . This raises an initial concern regarding the confidential informants' information regarding the years at issue. The warrant seeks records from through the present. There is no indication that any of the informants before . Accordingly, it would be difficult for

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them to attest to business practices before their .
Furthermore, there is a possible staleness issue, since the last contact of a confidential source with was in

In addition, the affidavit does not describe any clear theory for advancing the belief that the subject, , has committed tax evasion in violation of 26 U.S.C. § 7201. The affidavit contains several allegations which could arouse a general suspicion that may have engaged in some illicit conduct,¹ but the affidavit does not explain their nexus to the specific evasion scheme. For instance, the affidavit indicates paid for personal expenses out of account. There is no indication how knew this information or the extent of the payments. A detail of the personal expenses and an explanation of how each confidential source knew this information would be helpful to corroborate their story. “Probable cause is more than bare suspicion: Probable cause exists were the facts and circumstances within the officers’ knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Brinegar v. United States*, 338 U.S. 160, 175 (1949) citing *Carroll v. United States*, 267 U.S. 132, 162 (1925).

Here the reader is left to infer that the evasion theory advanced in the affidavit is one based on skimmed business receipts. Moreover, these allegations alone do not establish a factual predicate for the belief that has evaded income tax by failing to report monies allegedly skimmed from . This is because there is no information suggesting that these monies were not properly accounted for or that failed to report any income derived from “pocketing” these monies. When paid in cash, an original receipt would be filed in a binder and the cash would be clipped to copies of the receipts. Afterwards, would go through the receipts and remove some of the cash for . There is no indication that the money removed was not properly “booked” or otherwise accounted for, particularly since a receipt would still remain. In fact, there is no information regarding the preparation of tax returns.

Finally, there is no probable cause to believe that the computer hardware and software contain evidence of a crime. At this point, all that is known is that kept a listing of all on the computer. repeatedly advised not to put anything regarding in the computer. The importance of obtaining

¹ For example, “pocketing” cash business receipts and paying personal expenses out of business accounts.

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the information from the computer must be explained. Similarly, Attachment B sets forth an exhaustive list of the type of records to be seized, while the affidavit indicates [redacted] did not keep ordinary business records. In fact, there is probable cause to the contrary. The affidavit indicates that [redacted] had never seen any general journals, ledgers or any formal books for [redacted]. The only records that [redacted] knew [redacted] kept consisted of receipts and bank account records. Based on these concerns, we are returning the warrant application to you without authorizing its referral to the Department of Justice.

Should you have any questions concerning the warrant, please feel free to contact Martin Needle of my staff on (202) 622-4470.

Attachments