



CHIEF COUNSEL

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

APR 11 2003

CC:CT-148896-02
MFKlotz

MEMORANDUM FOR DIRECTOR, FINANCIAL CRIMES (CI:OP:FC)
ATTN: MAURA FAHY

FROM: Barry J. Finkelstein
Acting Division Counsel/Associate Chief Counsel (Criminal Tax)

SUBJECT: Revised Form 3949

By way of background, on or about September 9, 2002, we were asked to review revisions which Criminal Investigation ("CI") proposed making to Form 3949. As a result of our reviewing these changes, we modified the proposed language to mirror the language in 26 U.S.C. § 7602(c) and, on or about December 19, 2002, recommended forwarding the proposed revision to the Assistant Chief Counsel (Collection, Bankruptcy and Summons), for his approval. Specifically, in the context of revising Form 3949, we asked whether a Service employee who receives a telephone call from an informant and later determines it is necessary to call the informant back, comes within the meaning of § 7602(c)(1).

In the attached memorandum from the Office of the Assistant Chief Counsel (Collection, Bankruptcy and Summons) it has been determined that Form 3949 is used exclusively to record unsolicited communications with informants and thus, the proposed revision to Form 3949 which was designed to make a reprisal determination is unnecessary. The memorandum goes on to state the unsolicited contact recorded on the Form 3949 is not a contact within the meaning of § 7602(c) since it was not initiated by the Service and since an informant is the person making the unsolicited contact, any follow-up contacts regarding the same information are excluded from the notice requirements of § 7602(c)(1) and (2) by Treas. Reg. § 301.7602-2(f)(6). The memorandum further notes CI does not have to rely on the foregoing statutes and Regulation since any and all of CI's contacts would be excepted from the notice requirements of § 7602(a)(1) by § 7602(c)(3)(C). Thus, as we initially pointed out, this

concern is and has always been an issue concerning the civil functions of the Service. Regardless, this should now provide a comfort zone for all who have an occasion to use a Form 3949.

If you have any questions in regard to this matter, please contact Martin F. Klotz, Criminal Tax Special Counsel, who may be reached telephonically at 202-622-4470.

Attachment