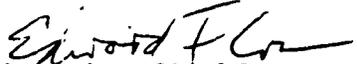


Office of Chief Counsel
Internal Revenue Service
memorandum

date: January 10, 2006

to: CHIEF, CRIMINAL INVESTIGATION

from: Edward F. Cronin 
Division Counsel/Associate Chief Counsel (Criminal Tax)

subject: 18 U.S.C. § 510

This responds to your request that we opine on CI's utilization of 18 U.S.C. § 510 charges in cases involving forged signatures on tax refund checks. Section 510 was enacted in 1983 as a supplement to the general forgery statute (18 U.S.C. § 495), and specifically created a criminal offense for forgeries involving U.S. Treasury checks, bonds and other securities of the United States. While not entirely certain, we believe a strong argument can be made that CI may recommend charges under § 510, provided the ordinary review process typical of criminal tax cases is followed.¹ Set forth below is a discussion of § 510, including the statutory language, criminal activity covered by the statute, and an analysis of CI's investigatory jurisdiction with respect to § 510.

Statutory Language:

18 U.S.C. § 510 provides:

Forging endorsements on Treasury checks or bonds or securities of the United States

(a) Whoever, with intent to defraud--

- (1) falsely makes or forges any endorsement or signature on a Treasury check or bond or security of the United States; or**
- (2) passes, utters, or publishes, or attempts to pass, utter, or publish, any Treasury check or bond or security of the United States bearing a falsely made or forged endorsement or signature;**

¹ We also note that the IRM will have to be revised if the decision is made to include § 510 as a statute under CI's jurisdiction.

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shall be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever, with knowledge that such Treasury check or bond or security of the United States is stolen or bears a falsely made or forged endorsement or signature buys, sells, exchanges, receives, delivers, retains, or conceals any such Treasury check or bond or security of the United States shall be fined under this title or imprisoned not more than ten years, or both.

(c) If the face value of the Treasury check or bond or security of the United States or the aggregate face value, if more than one Treasury check or bond or security of the United States, does not exceed \$1,000, in any of the above-mentioned offenses, the penalty shall be a fine under this title or imprisonment for not more than one year, or both.

Scope of 18 U.S.C. § 510:

Section 510 encompasses forged endorsements of Treasury checks, bonds, or other securities of the United States and may be charged as a ten-year felony or as a misdemeanor for forged instruments with a face value of under \$1,000. It is foreseeable that CI could make use of a § 510 charge in cases involving targets who use other taxpayers' identities to make fraudulent claims for refund and then forge those taxpayers' signatures on the ensuing refund checks. Currently, such cases are routinely investigated and charged under 18 U.S.C. §§ 286 and 287 (false claims). A § 510 charge could be considered in addition to these charges or as an alternative to a § 287 charge.

Investigatory Jurisdiction:

Generally, pursuant to the provisions of 28 C.F.R. § 0.85, the Federal Bureau of Investigation ("FBI") has jurisdiction over all violations of federal law, unless "such responsibility is by statute or otherwise specifically assigned to another investigative agency." 28 C.F.R. § 0.85(a). Thus, the IRS' investigative jurisdiction is dependent upon a particular assignment of responsibility. Although a logical extension of 18 U.S.C. § 510 would be in the prosecution of tax cases involving false claims, the statute does not contain an express provision granting investigative jurisdiction to the Service or any other law enforcement agency. The statute's legislative history is also silent as to which federal agencies have jurisdiction to investigate and charge § 510 violations. In *United States v. LeCoe*, 936 F.2d 398 (9th Cir. 1991), the Ninth Circuit recognized

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that "[s]ection 510's legislative history is sparse.² The bill that became section 510, Senate Bill 1558, was apparently an eleventh hour amendment to a much larger piece of legislation." *LeCoe* at 400.

Thus, the question remains as to whether the Service has jurisdiction to investigate and refer cases under § 510. The real issue is whether § 510 relates closely enough to the internal revenue laws that the Service can derive jurisdiction from 26 U.S.C. § 7608(b).³ Consistent with this, Department of Treasury Order 150-10 further states, the Commissioner of Internal Revenue shall be responsible for the administration and enforcement of the Internal Revenue laws.

There have been instances where § 510 has been charged in conjunction with other tax crimes. See *United States v. Lowe*, 76 F.3d 389 (9th Cir. 1996) (defendant convicted of forgery of a Treasury check (§ 510); subscribing to false income tax returns (§ 7206(1)); and aiding in the preparation of a false return (§ 7206(2))). The U.S. Attorney's Manual (USAM) 9-64.133 discusses prosecution policies for §§ 495 and 510, but is silent as to which agency has primary investigative authority over violations of these statutes.⁴

² In contrast, 18 U.S.C. § 514, which criminalizes the use of fictitious government obligations, contains express language in its legislative history which identifies interference with tax administration as a dominate reason for the enactment of the statute. It is important to note that § 514 was enacted in 1996, 13 years after the enactment of § 510. A clear correlation can be drawn between the two statutes, especially their placement within Chapter 25 of Title 18, Counterfeiting and Forgery. Our office has previously concluded that IRS CI should have jurisdiction over violations of § 514 involving tax administration.

³ Title 26 U.S.C. § 7608(b) states in pertinent part:

(1) Any criminal investigator of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service, is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

The functions described in 26 U.S.C. § 7608(b)(2) include execution and service of search and arrest warrants, service of subpoenas and summonses, authority to make arrests without a warrant, and authority to make seizures of property subject to forfeiture.

⁴ By contrast, USAM 9-64.400 states that the USSS has primary investigative authority over 18 U.S.C. § 1028 (false identity) cases, suggesting the failure to assign primary investigative authority to a specific agency in § 510 cases was an intentional omission.

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The USAM states only that the Fraud Section, Criminal Division has supervisory authority over §§ 495 and 510.

Although forgery of a refund check presumably fits under the language of § 7608(b) as conduct violating a law "related to internal revenue for the enforcement of which the Secretary is responsible," § 510 is absent from the list of crimes within CI's investigatory jurisdiction contained within IRM 9.1.3-1. Furthermore, there is no specific grant of authority, such as a Treasury Directive, that grants CI either exclusive or concurrent jurisdiction over the enforcement of the statute.

The Financial Crimes Division of the U.S. Secret Service ("USSS") has traditionally had jurisdiction over forgery cases involving U.S. Treasury checks. See IRM 9.5.3.2.2.1(3)(clearly stating that activities involving the counterfeiting or forgery of U.S. Treasury checks are within the jurisdiction of the USSS). Moreover, 18 U.S.C. § 3056 specifically authorizes the USSS to detect and arrest any person who violates § 510. See 18 U.S.C. § 3056(b)(1). IRM 9.3.1 instructs CI agents to contact their local Disclosure Officer when encountering counterfeit or forged refund checks and provides guidance on coordinating with the USSS in such cases. See IRM 9.3.1.9.4.3(1)(i),(j); 9.3.1.9.4.4. Should CI wish to formally expand the list of crimes under its jurisdiction to include § 510, the policy and procedures under IRM 9.1.3 should be updated accordingly to reflect this change.⁵

Conclusion:

The absence of any express grant of jurisdiction in § 510 coupled with the fact § 510 violations can be construed as relating to the administration of internal revenue laws pursuant to 26 U.S.C. § 7608(b), suggests that CI may properly exercise concurrent jurisdiction with the USSS to investigate and charge § 510 violations. [REDACTED] JP

If there are any comments or questions concerning this memorandum, please contact James Ulicny of my staff at (202) 622-4470.

⁵ Before making this change, any existing MOUs between the Service and USSS should be taken into consideration.