

INTERNAL REVENUE SERVICE

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[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]

This letter responds to your inquiry dated February 23, 2000, to Mr. Floyd Williams, National Director of Legislative Affairs, Internal Revenue Service (IRS), which includes correspondence from your constituent, [REDACTED] is concerned that a dyed diesel fuel inspection of his diesel fueled pick-up truck by an IRS Diesel Compliance Officer violated his Fourth Amendment right to freedom from unreasonable search and seizure.

The Internal Revenue Code (IRC) authorizes the IRS to detain any container which contains or may contain any taxable fuel for the purpose of determining the amount or composition of the fuel. The statutory penalty for refusing to allow an inspection is \$1,000.00. (IRC section 4083(c)(1) and (c)(3)).

The Manufacturers and Retailers Excise Taxes Regulations (Regulations) provide that officers or employees of the IRS may detain any vehicle for the purpose of inspecting its fuel tank. Detainment will be either on the premises under inspection or at a designated inspection site. A designated inspection site is any State highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the Commissioner of the IRS to be used as a fuel inspection site. A designated inspection site will be identified as a fuel inspection site. (Regulations section 48.4083-1(c)(2) and (b)(2)).

In Lievesley v. Commissioner, 985 F. Supp. 206 (D.Mass. 1997), the court explained that the Congress enacted § 4083(c) to combat the tax evasion that results from the illegal use of fuel on which tax has not been paid. In order to deter this type of tax evasion the Congress authorized warrantless inspections because the prerequisite of a warrant could easily frustrate inspections and minimize their deterrent value. The court determined that the IRS fuel inspection program met the three criteria for a constitutional warrantless search that the United States Supreme Court prescribed in Burger v. U.S., 482 U.S. 691, 702-703 (1987). The three criteria are: 1) a "substantial"

government interest must inform the regulatory scheme pursuant to which the inspection is made; 2) the warrantless searches must be “necessary to further the regulatory scheme;” and 3) the statute’s inspection program must provide a constitutionally adequate substitute for a warrant in terms of the certainty and regularity of its application.

I hope this information is helpful to you in responding to your constituent. If you have any questions, please contact Celia Gabrysh, Identification Number 50-02491, at (202) 622-3130.

Sincerely,

Assistant Chief Counsel
(Passthroughs and Special Industries)

By:

Richard A. Kocak
Chief, Branch 8