

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR ASSISTANT REGIONAL COUNSEL (CRIMINAL TAX)

FROM: Barry J. Finkelstein
Assistant Chief Counsel (Criminal Tax)

SUBJECT: U.S. Department of Justice Legislative Comparison of House
and Senate Forfeiture Bills.

This transmits a copy of the U.S. Department of Justice's Legislative Comparison of the House and Senate Forfeiture Bills dated October 19, 1999. The comparison sets forth the following three categories: the current law, the House version outlined in H.R. 1658 and the Senate version outlined in S. 1701. Overall, the House version has many anti-government proposed changes, but does not address all existing provisions. The Senate version, however, is more neutral in expanding privileges for both the government and owners/claimants. We note some of the more significant changes below, but as the proposed versions' fate is still unknown, current law still applies.

The most significant proposal shifts the burden of proof from the claimant to the government. The Senate version proposes requiring seizure warrants for all seizures of forfeitable property, unless there is an applicable Fourth Amendment exception. Under current law, the government was authorized to seize property based on probable cause without a warrant. Also, both the House and Senate versions settle an existing circuit split, making the government liable for pre-judgment interest.

The Senate Bill changes several provisions related to civil forfeiture proceedings. First, the court will stay all civil forfeiture proceedings if the government's criminal case may be hampered eliminating the required showing of "good cause." Further, access to other records, e.g., disclosure of tax returns or other information, authorized in the investigative stage of criminal cases has been expanded to also allow disclosure in investigations leading to civil forfeiture actions. Lastly, the use of grand jury information is also expanded to allow disclosure to federal prosecutors for use in any civil forfeiture action, not just concerning banking law violations.

Should you have any questions concerning this matter, please feel free to contact

Attachment