



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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MEMORANDUM FOR ASSOCIATE AREA COUNSEL - GREENSBORO

CC:SB:2:GBO
ATTN: A. KENNEDY DAWSON

FROM: Alan C. Levine
Chief, Branch 1 (Collection, Bankruptcy & Summonses)
CC:PA:CBS:B01

SUBJECT: Disposition of Seized Handguns

This advice is in response to your memorandum dated November 14, 2000, concerning the above subject. This document is advisory only and is not to be relied upon or otherwise cited as precedent.

ISSUE:

How should the Internal Revenue Service ("Service") dispose of nine handguns and two collectible guns that were seized from Criminal Investigation ("CI") by Compliance?

CONCLUSION:

The Service should sell the collectible guns and Compliance should release the nine remaining handguns back to CI for disposition.

FACTS:

The Service has nine handguns and two collectible guns under seizure. CI seized the guns, along with other items (*i.e.*, silver bars and bullions, gold bullions, and approximately 15,000 to 20,000 coins), pursuant to a search warrant to gather evidence of tax evasion. In 1994 the Collection Division, now Compliance, subsequently served a Notice of Seizure on CI with respect to the firearms and other items. The taxpayers were convicted of tax evasion, served time and have since been released from prison. The taxpayers still have outstanding tax liabilities. The firearms are not contraband or subject to forfeiture under the Gun Control Act of 1968. The appraised values of each of the nine handguns range from a low of \$80.00 to a high of \$375.00. CI currently has custody of the firearms.

GL-124700-00

LAW AND ANALYSIS:

In your memorandum dated November 14, 2000, you requested advice as to the proper disposition of the seized firearms. Sections 5.10.2.7 and 9.7.10.11 of the Internal Revenue Manual ("IRM") provide the procedures for the disposition of seized and forfeited firearms. The collectible guns may be sold pursuant to section 5.10.2.7(6). 1/ However, the facts presented in this case are such that the methods of disposal provided in these sections cannot be used to dispose of the remaining nine handguns.

Section 5.10.2.7(2) of the IRM provides, in relevant part, that if personal guns "are found as part of a seizure, they should be released to the taxpayer after concurrence of Bureau of Alcohol, Tobacco and Firearms (ATF)." The Gun Control Act of 1968, however, prevents the Service from returning the nine handguns to the taxpayers because the taxpayers are convicted felons. 18 U.S.C. § 922(d)(1). 2/ Section 5.10.2.7(5) states that "a suit to foreclose the Federal tax lien should be recommended rather than holding a public sale of any weapons remaining in inventory." In this case the total value of the nine handguns is not sufficient to recommend a suit to enforce the federal tax lien. 3/ Even if the value were sufficient, it is our understanding that the United States Marshall may not be willing to sell the handguns as he would other property after a successful suit to foreclose. Finally, section 9.7.10.11 which provides for the disposal of forfeited firearms is not applicable in this case because the nine handguns are not forfeited property.

1/ Section 5.10.2.7(6) provides as follows: "Firearms that are primarily collector's items, as described in IRC 5845, may be sold at public auction or sealed bid sale, with the concurrence of ATF."

2/ Section 18 U.S.C. § 922(d)(1) provides as follows:

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person –

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

3/

GL-124700-00

Irrespective of this difficulty, we have been informed that CI will be able to dispose of the firearms at issue. 4/ Accordingly, we recommend that Compliance release the nine handguns back to CI for disposition. 5/ No credit for the nine handguns is to be given to the taxpayers' accounts since the handguns will not be sold pursuant to I.R.C. § 6335.

If you have any further questions, please contact Collection, Bankruptcy and Summonses, Branch 1 at (202) 622-3610.

cc: Division Counsel/Associate Chief Counsel (Criminal Tax)

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5/ The Service's position is that other than as provided in I.R.C. § 6343, the Commissioner, in his or her discretion, may return levied upon property that is in the possession of the government pending sale under I.R.C. § 6335.