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CC:EL:CT-114196-99
CTMonica

MEMORANDUM FOR NATIONAL DIRECTOR, OFFICE OF TAX REFUND FRAUD

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

SUBJECT: Use of a Summons To Obtain Account Information
From an Internet Service Provider

This is in response to your memorandum of May 20, 1999, wherein you requested legal assistance regarding the use of a summons to obtain account information from an Internet Service Provider (ISP). Upon receipt of your request, we forwarded it to the Assistant Chief Counsel (General Litigation), whose office is responsible for providing legal guidance in the area of summonses. Attached hereto, you will find General Litigation's (GL's) memorandum which specifically addresses the legal questions posed by your office. A summary of your questions and GL's conclusions follows.¹

1. Is there any statutory or other bar to obtaining the information by administrative summons where the investigation is not of a specific person?

- Section 2703 of the Electronic Communications Privacy Act of 1986, 18 U.S.C. § 2701 et seq., (the ECPA), sets forth the standards which must be followed when the Government desires to obtain access to the contents of electronic communications, records pertaining to the transmission of the communications, and specific, identifying account information from an ISP. Access to the contents of electronic communications which have been in electronic storage for less than one hundred and eighty (180) days may only be obtained through the use of a search warrant. 18 U.S.C. § 2703(a). Similarly, a search warrant or court order is required for the Government to gain access to records pertaining to the transmission of electronic communications. § 2703(c)(1)(B). The statute does, however, permit the use of an administrative subpoena, which GL

¹ Please refer to the attached memorandum for a detailed legal discussion in support of these conclusions.

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equates to a summons, to obtain certain identifying account information from an ISP. The only statutory restrictions imposed by the Internal Revenue Code in this type of situation are located at I.R.C. § 7609(f), which requires the Service to follow the procedures in place for obtaining "John Doe" summonses where the specific person under investigation is unknown.

2. Are ISP's third-party record-keepers and is there any Internal Revenue Service policy against obtaining this type of information?

- ISP's are not third-party record-keepers within the meaning of the Internal Revenue Code and as such, no policy exists which would prevent the Service from obtaining the types of information sought herein.

3. Is it necessary to obtain the desired information by use of a "John Doe" summons?

- Although the Service may possess the names and social security numbers used on the returns involved in the fraudulent refund scheme, this does not obviate the requirement that a "John Doe" summons be employed, since the actual perpetrator's name and social security number remain unknown.

4. Assuming the Service cannot use a summons to obtain access to the content of electronic transmissions, should CI develop procedures to acquire search warrants in this type of investigation?

- Since the contents of electronic communications are generally not retained for long periods of time and the ECPA restricts Government access to this information only through the use of a search warrant, GL recommends that CI should develop procedures to acquire search warrants in these situations.



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We hope this serves to answer the various questions posed by your office. Should our assistance be further required, please feel free to contact Chris Monica of the Criminal Tax Division on (202) 622-4470.

Attachment

CTMonica/8-30-99/FWDGLSUMISP/Disk#3