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NMKelley**

March 16, 2005

MEMORANDUM FOR: Steven Pregozen, Director, Planning and Strategy, Criminal Investigation

FROM: Neil B. Worden, Chief
Neil B. Worden
Claims, Labor and Personnel Law Branch

SUBJECT: Request for Advisory Opinion – Use of Number of Convictions and Conviction Rate for Budgetary and Planning Purposes

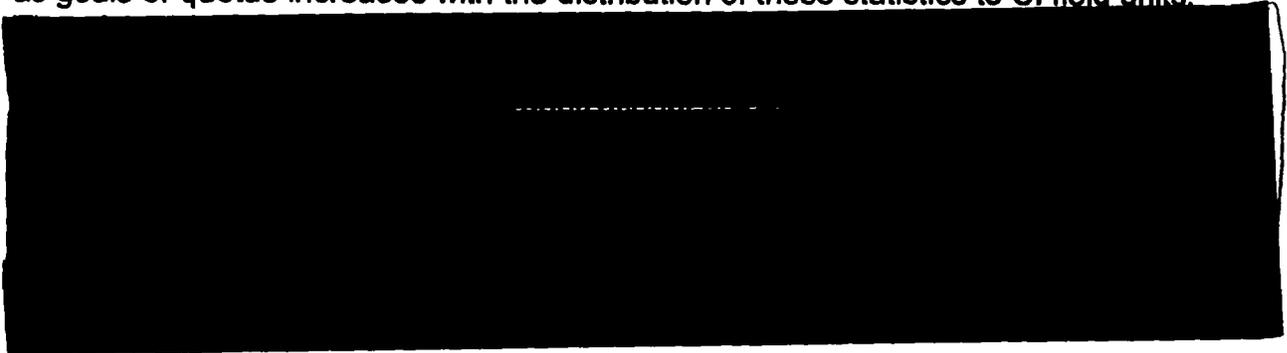
This memorandum responds to your request for an opinion as to whether the Criminal Investigation (CI) Division may use the number of convictions, conviction rate, and/or cases sentenced as budgetary and planning factors to be presented to the Department of the Treasury (Treasury) and the Office of Management & Budget (OMB) in support of CI programs and budgetary requests. By way of background, you advised that OMB is focusing on return on investment when evaluating budget requests, and therefore is stressing performance and efficiency measures in the budgetary requests for CI's programs. In meetings you have had with OMB and Treasury, they have endorsed using number of convictions and conviction rate as performance measures, and a conviction efficiency rate as an efficiency measure. You have also determined that cases sentenced may be an appropriate performance measure. You have advised that these measures would only be used for the purposes of financial planning and resource management, and the measures would not flow to lower levels of the CI organization to impose or suggest goals or quotas.

Section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998 specifically precludes the IRS from using records of tax enforcement results (ROTERS) "to evaluate employees; or to impose or suggest production quotas or goals with respect to such employees." Section 1204, however, did not define the term ROTER. That term was defined in 26 C.F.R. § 801.6(d)(2) as "data, statistics, compilations of information or other numerical or quantitative recordations of the tax enforcement results reached in one or more cases." This regulation continues to advise that ROTERS "may be used for purposes such as forecasting, financial planning, resource management, and the formulation of case selection criteria." 26 C.F.R. §801.6(e).

PMTA : 00707

In IRM 1.5.5., CI's portion of the Internal Revenue Manual addressing implementation of section 1204 and 26 C.F.R. Part 801, CI identified a number of criteria which CI determined met the definition of a ROTER, including the number of convictions and conviction rate. IRM 1.5.5.3(1)(o) & (p). While the IRM does not specifically define "cases sentenced" as a ROTER, it appears to be a ROTER because it meets the definition of ROTER in 26 C.F.R. 801.6(d)(2) by being a recordation of a tax enforcement result. The use of the proposed measures contemplated by CI does not violate section 1204, 26 C.F.R. Part 801, or the IRM because these ROTERs are being used for financial planning and resource management purposes. See IRM 1.5.5.5 and Exhibit 1.5.5-1, Q.3.

You also expressed concern as to how to relate these measures to field units without violating the restrictions on uses of ROTERs. Section 1204 prohibits use of ROTERs to evaluate employees. Consequently, you should ensure that CI employees are not evaluated on these statistics. Section 1204 also prohibits using ROTERs "to impose or suggest production quotas or goals." The possibility of these ROTERs being perceived as goals or quotas increases with the distribution of these statistics to CI field units.



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