

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:CT-130919-05

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date: June 8, 2005

to: Bridgette Marchetta, Deputy Director, Financial Crimes

from: 
Edward F. Cronin
Division Counsel/Associate Chief Counsel (Criminal Tax)

subject: Use of Returns and Return Information in Money Laundering Investigations

Questions have arisen recently regarding the use of returns and return information in money laundering cases and permissible disclosure of returns and return information. Specifically, it has been asked what procedures a special agent should follow when a Suspicious Activity Report (S.A.R.) is received by CI.¹

A special agent who is investigating tax charges may have access to returns and return information, since the disclosure is for tax administration purposes. I.R.C. § 6103(h)(1). A special agent who is investigating money laundering is not engaged in tax administration, however, and thus is in the same position as a non-IRS employee, who may not have access to returns or return information unless disclosure is otherwise authorized by I.R.C. § 6103.

If CI wishes to determine whether the taxpayer identified in the SAR may have committed tax violations only, the special agent may access returns and return information in pursuit of that inquiry, because such inquiry is for tax administration purposes. If it is determined that there are potential tax violations, then the case will proceed as a tax crime investigation, either administratively or through a Service initiated request for grand jury investigation. If after reviewing returns and return information, it is determined that tax charges should not be pursued but that money laundering charges should be investigated, returns and return information should be purged from the file and the case should be assigned to a special agent who has not reviewed the returns and return information. This is because the reviewing special agent cannot "unlearn" what he found while reviewing the returns and return information. The special agent now assigned to the case can access returns and return information only as set forth below.

If CI wishes to consider money laundering charges, the special agent may not access returns and return information. If such information is needed, a determination should be made whether to request a related statute call or seek a § 6103(i) order. The related statute call is a written determination by the SAC that

¹ The procedures described in this memorandum apply to both Title 31 and 18 U.S.C. § 1956 and 1957 money laundering cases.

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the money laundering violation is related to the administration of the Internal Revenue laws. In determining whether a particular violation or offense is "related" to the administration of the Internal Revenue laws, the key factors to be considered are whether the offense was (a) committed in the furtherance of a violation of the Internal Revenue laws, or (b) is part of a pattern of violations of the Internal Revenue laws. Once the call is made, the special agent may access returns and return information. Returns and return information cannot be accessed for purposes of evaluating information to determine if a related statute call can be made.

Caution should be exercised in deciding whether to make a related statute call, however. Once made, all information collected by the IRS in the case from that point forward is deemed to be return information protected by § 6103, regardless of whether tax charges are ever pursued. Once made, the related statute call cannot be undone. Furthermore, while disclosure of returns and return information could be made to the Tax Division or U.S. Attorney's Office, if permissible under § 6103(h)(2), disclosure could not be made to other agencies participating in the grand jury investigation (without a § 6103(i) order). This is because disclosure to other participating agencies in a tax/non-tax investigation can be made only if the Tax Division has approved the investigation. Treas. Reg. § 301.6103(h)(2).² The Tax Division does not approve money laundering investigations (except 18 U.S.C. § 1956(a)(1)(A)(ii)). If the tax aspects of the case are dropped, no disclosure may be made to the Tax Division or U.S. Attorney's Office (without a § 6103(i) order).

Consideration should be instead given to obtaining an order pursuant to § 6103(i) to access returns and return information. The SAC may refer the money laundering case to the U.S. Attorney's Office for assistance in obtaining the order. To obtain the order, the application must establish reasonable cause to believe that a federal nontax crime has been committed and that tax information may be relevant to a matter relating to the crime, and that the information sought will be used exclusively for the federal criminal investigation and cannot reasonably be obtained from any other source. Section 6103(i) orders have been obtained where substantial reported miscellaneous income was found relevant in a drug case (United States v. Barnes, 604 F.2d 121 (2d Cir. 1979), where the signature on the return was found relevant (United States v. Dazzo, 672 F.2d 284 (2d Cir. 1982), in a bribery case (United States v. Clairborne, 765 F.2d 784 (9th Cir. 1985), to show membership in a conspiracy where the returns of all the conspirators were prepared by the same firm, (Barnes, supra), and where expenditures exceeded reported earnings, giving rise to a presumption that the funds were derived from illegal activities (Dazzo, supra).

² Tax Division approval is deemed given in grand jury requests to which Directive 86-59 applies.

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The advantages of using § 6103(i) rather than the related statute call to obtain returns and return information for a money laundering case are that only information obtained as a result of the (i) order is protected by § 6103, not all information collected in the investigation, and that information obtained pursuant to the (i) order can be disclosed to other agencies participating in the investigation. If a related statute call is made, and it is determined that the other participating agencies need access to the returns, an (i) order would have to be obtained anyway.

The advantage of making the related statute call rather than seeking an (i) order is that the call is made by the SAC and it is not necessary to get the U.S. Attorney's Office or the court involved. [REDACTED]

If CI wishes to pursue both tax and money laundering charges, returns and return information can only be accessed for purposes of evaluating the tax charges. If it is determined that both tax and money laundering charges should be pursued, a Service Initiated grand jury request should be forwarded to the Department of Justice and the money laundering case referred to the U.S. Attorney. Arguably, the SAC could refer the money laundering case to the U.S. Attorney, who could then ask for an expansion of the nontax grand jury to include tax charges.

If we can be of further assistance on this matter, please feel free to contact me directly on (202) 622-4460 or Martin Needle of my staff on (202) 622-4470.