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91% Of IRS Seizures For 'Structuring' Involve Lawful Taxpayers

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The Bank Secrecy Act requires financial institutions to report currency transactions in excess of $10,000 to the IRS. This law also makes it a crime to structure currency transactions to *avoid* the reports. The IRS Criminal Investigation Division enforces the rules on cash transactions. Yet a new report says the law is enforced primarily against individuals and businesses whose income was legally obtained. The report comes from the Treasury Inspector General for Tax Administration (TIGTA). It report says the rights of some individuals and businesses were compromised in these investigations.

If a taxpayer is structuring transactions to avoid the reports–say multiple transactions just below the $10,000 mark–it subjects structured amounts to civil or criminal forfeiture proceedings. Yet, the U.S. Constitution requires that penalties in civil forfeiture cases must be proportionate to the conduct, and squaring these rules has been controversial. There have long been complaints about IRS seizures of property without sufficient evidence of a crime. TIGTA audited to determine how seizures and forfeitures are conducted, what procedures the IRS used, and whether those procedures are fair.

The report isn't rosy. It says that in 91% of the 278 investigations in the sample where the source of funds could be determined, the funds were obtained *legally*. IRS procedures dictate that the overall purpose of its civil forfeiture program is to disrupt and dismantle *criminal* enterprises, not legal ones. Most people impacted by the program did not appear to be criminal enterprises engaged in illegal activity. They were legal businesses such as jewelry stores, restaurants, gas stations, scrap metal dealers, and others.

One of the reasons why legal source cases were pursued, according to the report, was that the Department of Justice had encouraged task forces to engage in "quick hits." That way property can more quickly be seized and more quickly resolved through negotiation, compared with pursuing cases with criminal activity (such as drug trafficking and money laundering). Those real criminal cases are more time-consuming, so the IRS opted for the quick hits. And the report even suggests that investigating didn't seem to be a high priority.

In most cases, the IRS relied on the pattern of currency transactions to support the seizure, rather than asking the property owners. When property owners were interviewed *after* the seizure, agents did not always even identify themselves properly. They did not explain the purpose of the interviews, did not advise property owners of any rights they might have, and told property owners they had committed a crime at the conclusion of the interviews. The report doesn't paint a pretty picture.

In 54 cases, property owners gave reasonable explanations why their currency transactions did not exceed $10,000. Yet in most cases, TIGTA found no evidence that the IRS bothered to investigate these explanations. In some cases, the government appeared to bargain non-prosecution to resolve the civil forfeiture case. In 2014, the IRS changed its policy so that it would only pursue illegal source income in structuring cases unless there are "exceptional circumstances." In 2016, after two congressional hearings on this program, Criminal Investigations also began a process of notifying approximately 1,800 property owners who had funds forfeited in this program, inviting them to send in petitions for return of their funds.

TIGTA made recommendations for improvement, and the IRS agreed with at least some of them. Curiously, though, the IRS declined to provide additional guidance or training regarding the bargaining of nonprosecution to resolve a civil case. "This report reaffirms our committee's findings that the IRS has repeatedly and knowingly abused its authority to wrongly target and seize money from hardworking Americans," said House Ways and Means Committee chairman Kevin Brady, R-Texas, Tax Policy Subcommittee chairman Peter Roskam, R-Ill., and Oversight Subcommittee chairman Vern Buchanan, R-Fla., in a joint statement.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.