

DEPARTMENT OF JUSTICE

TAX DIVISION

DIRECTIVE NO. 145

Restraint, Seizure and Forfeiture Policy
In Criminal Tax and Tax-Related Investigations and Prosecutions

Purpose

1. The purpose of this Directive is to set forth Tax Division policy with respect to the restraint, seizure and forfeiture of property in criminal tax and tax-related investigations and prosecutions.¹

Declaration of Authority

2. The Tax Division has supervisory authority over all criminal proceedings arising under the internal revenue laws. *See* 28 C.F.R. §0.70(b).² As a result, Tax Division approval is required for any criminal charge if the conduct at issue arises under the internal revenue laws, regardless of the criminal statute(s) used to charge the defendant. For example, Tax Division authorization is required before charging mail fraud, wire fraud, or bank fraud alone or as the predicate to a RICO or money laundering charge for any conduct arising under the internal revenue laws, including any charge based on the submission of a document or information to the Internal Revenue Service (“IRS”).

¹ A thorough discussion of the restraint, seizure and forfeiture of property in criminal tax investigations and prosecutions is set forth in Chapter 10 of the Criminal Tax Manual. See also Internal Revenue Manual 9.7. Nothing in this Directive is intended to conflict with existing Departmental policy concerning the restraint, seizure, and forfeiture of property. If Tax Division policy overlaps with other Departmental policy, adherence to all policies is required. This Directive does not apply to the restraint, seizure or forfeiture of property pursuant to Chapter 53 of Title 26, 26 U.S.C. §§5801 et. seq., or any actions taken by the Bureau of Alcohol Tobacco, Firearms and Explosives (“ATF”) to enforce these provisions, nor is it intended to conflict with Departmental or ATF policy with regard to enforcement of the National Firearms Act.

² 28 C.F.R. §0.70(b): “Criminal proceedings arising under the internal revenue laws . . . are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Tax Division,” with a few specified exceptions. An offense is considered to arise under the internal revenue laws when it involves (1) an attempt to evade responsibility imposed by the Internal Revenue Code, (2) an obstruction or impairment of the Internal Revenue Service, or (3) an attempt to defraud the Government or others through the use of mechanisms established by the Internal Revenue Service for the filing of internal revenue documents or the payment, collection, or refund of taxes.

3. The Tax Division, therefore, also has authority over all:

(a) civil judicial forfeiture actions arising from a criminal tax or tax-related investigation and/or prosecution;

(b) criminal forfeiture actions arising from a tax or tax-related prosecution; and

(c) the restraint and/or seizure of property for forfeiture in a criminal tax or tax-related investigation and/or prosecution when an attorney for the Department of Justice (Tax Division Trial Attorney or Assistant United States Attorney) is assigned to, or asked to, assist law enforcement authorities in their attempt to restrain or seize property for forfeiture pursuant to any forfeiture law.

4. Tax Division authority extends to all tax and tax-related grand jury investigations in which any law enforcement agency is a participant.

5. The Tax Division retains final authority to approve the filing of tax and tax-related forfeiture actions brought pursuant to Title 26 (commonly referred to as "Code forfeitures").

6. The Tax Division retains final authority to approve the filing of all civil judicial forfeiture actions and criminal forfeitures brought pursuant to Title 18 arising from criminal tax and tax-related offenses.³

7. Tax Division authorization is generally not required to administratively forfeit property seized in a criminal tax and/or tax-related investigation. However, Tax Division approval is required before any declaration of forfeiture is entered by a seizing agency if preparation fees or rightful tax refunds of innocent taxpayers seized from a tax preparer are at risk of being forfeited (See subparagraph 8(b) below).

Delegation of Authority

8. Regarding the restraint and/or seizure of property for forfeiture as described in subparagraph 3(c) above, pursuant to the authority vested in me by Part 0, Sub-Part M, of Title 28 of the Code of Federal Regulations, Section 0.70, I hereby delegate to the United States Attorney the authority to apply to the district court for an order to restrain and/or seize personal property for forfeiture arising from a criminal tax and/or tax-related investigation or prosecution when said personal property is restrained or seized pursuant to a provision of Title 18, except that:

(a) No personal property shall be seized for forfeiture in a tax and/or tax-related investigation if the personal property consists entirely of legal source income and the

³ If a multi-agency criminal investigation includes both tax (and/or tax-related) and non-tax offenses, and the restraint, seizure, and/or forfeiture of property is legally based upon the non-tax criminal offenses, then the Tax Division has no authority over the restraint, seizure, and/or forfeiture of said property.

only criminal activity associated with the personal property is that unpaid taxes remain due and owing on the income.⁴

(b) Tax Division authorization is required before a declaration of forfeiture is entered by a seizing agency forfeiting from a tax preparer funds held on deposit in an account in a financial institution (as defined in 18 U.S.C. §20) that may include tax preparation fees or rightful tax refunds of innocent taxpayers. For purposes of this Directive, no portion of a wholly fraudulent tax refund shall be deemed a “preparation fee.”

Notice requirement

9. The United States Attorney or his/her designee shall notify the Tax Division in writing of any actions taken pursuant to this delegation and shall electronically transmit to the Tax Division copies of all applications and court orders to restrain and/or seize property as well as the pleadings in support thereof. **If property is seized, the written notification must include acknowledgment that Tax Division authorization will be sought prior to forfeiture if either of the exceptions set forth in subparagraphs 8(a) or 8(b) above apply.**

10. The United States Attorney may seek the timely opinion and/or advice of the Tax Division regarding any matters contemplated herein, and if the United States Attorney elects not to exercise his or her delegation of authority as provided in paragraph 8 above, the Tax Division shall have final authority over all matters described therein.

11. If, per this Directive, the Tax Division is required to take action on any matter involving the restraint, seizure, and/or forfeiture of property arising in a criminal tax investigation and a deadline for that action has been imposed by statute, regulation, Departmental policy, or court order, the law enforcement agency or United States Attorney’s Office responsible for administering or litigating the forfeiture-related matter shall, at the earliest possible date and no later than ten (10) business days preceding the deadline, forward to the Tax Division all relevant materials necessary to making a determination on the matter.

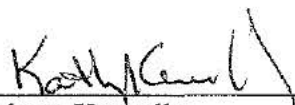
Effective date

12. This Directive shall be in effect beginning on the date noted below.

This Directive provides only internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural,

⁴ The forfeiture laws should not be used to seize and forfeit personal property such as wages, salaries, and compensation for services rendered that is lawfully earned and whose only relationship to criminal conduct is the unpaid tax due and owing on the income. Title 18 fraud statutes such as wire fraud and mail fraud cannot be used to convert a traditional Title 26 legal-source income tax case into a fraud offense even if the IRS is deemed to be the victim of tax fraud.

enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative perogatives of the Department of Justice.



Kathryn Keneally
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Tax Division

APPROVED TO TAKE EFFECT ON: January 30, 2014.