

INTERNAL REVENUE SERVICE

UIL: 9999.98-00  
Number: **199909039**  
Release Date: 3/5/99

CC:EL: CT-117291-98  
RThomas

January 5, 1999

MEMORANDUM FOR ASSISTANT REGIONAL COUNSEL (CRIMINAL TAX)

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

SUBJECT Documents That Must Be Forwarded to the Criminal Tax  
Division for Review and Reconciliation

The purpose of this memorandum is to remind you of those items requiring National Office coordination in light of the recent Notice concerning Reconciliation of Disagreements Between Offices.<sup>1</sup> In that Notice, the Deputy Chief Counsel outlined a procedure for reconciliation which, *inter alia*, required that advice be followed unless the receiving office "successfully challenges the advice" through a detailed reconciliation process. While we have had few problems in this area, there have been occasions where our advice in coordinated matters has been ignored. We remind all that a challenge and reconciliation would be a better approach.

The CCDM requires the following criminal tax items be coordinated with this office:

- (1) Requests for Tax Division prereferral opinions regarding the Dual/Selective Prosecution Policies. CCDM (31)340(5)(d).
- (2) Administrative or Grand jury cases involving the following "politically sensitive individuals:"
  - (a) Currently serving elected federal officials (Members of Congress);
  - (b) Current Article III judges;
  - (c) Current high-level Executive Branch officials ( i.e., Cabinet level

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<sup>1</sup> Reconciliation of Disagreements Between Offices Within Chief Counsel, Notice N(35)3(18)0-1).

- officials);
  - (d) Currently serving elected statewide officials;
  - (e) Current member of the highest court of the state; and
  - (f) Currently serving mayors of municipalities (population in excess of 250,000). CCDM (31)440(1)(a)(1).
- (3) Cases involving perjury in the U.S. Tax Court. CCDM (31)440(1)(a)(2).
  - (4) Cases where the proposed target of a grand jury investigation is a §§ 501(c) or (d) organization. CCDM (31)440(1)(a)(3).
  - (5) Tax shelter conspiracy cases. CCDM (31)440(5).
  - (6) Protests by CID of cases previously decline by District Counsel. CCDM (31)4(13)0(3).
  - (7) Cases declined by the Tax Division of the Department of Justice and submitted for reconsideration. CCDM (31)4(15)0(4).
  - (8) Search warrants which require Tax Division approval or warrants directed at the premises owned, controlled or under the dominion and control of a subject or target of an investigation who is:
    - (a) an accountant;
    - (b) a lawyer;
    - (c) a physician;
    - (d) a local, state, federal or public official or political candidate;
    - (e) a member of the clergy;
    - (f) a representative of the electronic or printed news media;
    - (g) an official of a labor union;
    - (h) an official of an organization deemed to be exempt under §§ 501(c) or (d), and
    - (i) disinterested third party subject to a warrant.<sup>2</sup> CCDM (31)720(2)(c)(1).
  - (9) Code forfeitures (non-wagering § 7302 forfeitures which do not solely relate to a § 6050i violation). CCDM (31)810(2)(b).

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<sup>2</sup> The Privacy Protection Act of 1980, 42 U.S.C. § 2000aa (1994) requires the Criminal Division of the Department of Justice to approve search warrants which seek work product materials pertaining to books, newspapers, broadcasts or other forms of public communication. Criminal Tax Division review is not required.

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(10) Petitions for remission or mitigation. CCDM (31)810(2)(c).

Should you have any questions, please feel free to contact Ricky Thomas on (202) 622-4470.