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United States Attorneys' Manual

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This is the current and official copy of the *United States Attorneys' Manual* (USAM). The USAM was comprehensively revised in 1997. Changes or additions since 1997 are noted at the end of affected sections.

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6-4.000

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6-4.010 Federal Criminal Tax Enforcement

The Government helps to preserve the integrity of this Nation's self-assessment tax system through vigorous and uniform criminal enforcement of the internal revenue laws. Criminal prosecutions punish tax law violators and deter other persons who would violate those laws. To achieve maximum deterrence, the Government must pursue broad, balanced, and uniform criminal tax enforcement. Uniformity in tax cases is necessary because tax enforcement potentially affects more individuals than any other area of criminal enforcement. Broad and balanced enforcement is essential to effectively deter persons of varying economic and vocational status, violators in different geographic areas, and different types of tax law violations.

To achieve uniform, broad, and balanced criminal tax enforcement, the Attorney General has authorized the Tax Division to oversee all federal criminal tax enforcement and to authorize or decline investigations and prosecutions in tax matters. See USAM 6-4.200. For a map reflecting the geographical assignments of the Tax Division Criminal Enforcement Sections, see Tax Resource Manual 1. For contact information, including mailing addresses and telephone and fax numbers, see Tax Resource Manual 2.

[updated September 2007] [cited in USAM 6-4.211]

6-4.011 Criminal Tax Manual and Other Tax Division Publications

The Tax Division's Criminal Tax Manual (2001) contains comprehensive discussions of statutes, methods of proof, various specialized areas, and policies and procedures pertaining to criminal tax prosecutions. The Manual also contains indictment and information forms and jury instructions. All prosecutors involved in federal criminal tax cases should consult the Manual for guidance on handling criminal tax cases. The Criminal Tax Manual may be accessed in at

<http://www.usdoj.gov/tax/readingroom/foia/tax.htm>. The Tax Division also compiles other resources useful in criminal tax prosecutions. Those resources conflict with this Title of the USAM, this Title of the USAM also controls.

[updated September 2007]

6-4.110 IRS Administrative Investigations

The special agents of IRS Criminal Investigation conduct the administrative investigations into allegations of criminal violations arising under the internal revenue laws and related provisions of Title 18, U.S.C. (e.g., 18 U.S.C. §§ 286, 287, 371, 1341). See Tax Resource Manual 5 and 6.

After an administrative investigation is completed, the special agent must prepare a special agent's report (SAR), together with exhibits, in order to recommend that the Government prosecute the matter. The SAR contains a detailed account of the investigation and the special agent's recommendations, and is reviewed by both the special agent's supervisors and the Chief Counsel, Criminal Tax Division (CT). CT then prepares a Criminal Enforcement Memorandum (CEM) that discusses the nature of the crime(s) for which the agent recommends prosecution, the evidence relied upon to prove the crime(s), technical or legal issues, anticipated difficulties in prosecution, and the special agent's specific recommendation. Thereafter, if CI concludes that the Government should prosecute the matter, the CI Special Agent-in-Charge (SAC) refers the matter to the Tax Division or, in some cases, the United States Attorney. See USAM 6-4.243. When the IRS directly refers a matter to the United States Attorney, it simultaneously forwards a copy of the transmittal letter to the Tax Division.

During an administrative investigation of a criminal tax case, the IRS may refer the case directly and simultaneously to both the United States Attorney and the Tax Division for an expedited guilty plea, if only legal source income is involved (i.e., neither narcotics nor organized crime), and the taxpayer's counsel states that the taxpayer wishes to enter such a guilty plea. The plea must be consistent with the Tax Division's major count policy. See Tax Resource Manual 7.

When the IRS refers a criminal matter to the Department of Justice, it may share returns or return information with the Department of Justice (see 26 U.S.C. § 6103(h)(2)). Once a criminal referral is made, the IRS, including CI, may not issue or commence an action to enforce an administrative summons with respect to the taxpayer for the same tax and the same taxable period. See 26 U.S.C. § 7602 (d), Tax Resource Manual 8.

[updated September 2007]

6-4.120 Grand Jury Investigations—Generally

Although a federal grand jury is empowered to investigate both tax and non-tax violations of federal criminal laws, the Tax Division must first approve and authorize the United States Attorney's use of a grand jury to investigate criminal tax violations (see 28 C.F.R. § 0.70). The Tax Division has delegated to the United States Attorneys, however, the authority to approve grand jury investigations of certain false and fictitious claims for tax refunds in violation of 18 U.S.C. § 286 and 18 U.S.C. § 287 (other than those investigations involving a professional tax return preparer). See Tax Division Directive No. 96 (December 31, 1991), Tax Resource Manual 9.

[updated September 2007] [cited in USAM 6-2.000]

6-4.121 IRS Requests to Authorize Grand Jury Investigations

In addition to using administrative process to secure evidence in an investigation, CI also may request that the Tax Division authorize a grand jury investigation when CI either cannot complete its investigation or otherwise determines that it cannot feasibly gather evidence through the administrative process. The IRS's request to authorize a grand jury investigation constitutes a referral of the matter to the Department of Justice. Once a criminal referral is made, the IRS, including CI, may not issue or commence an action to enforce an administrative summons with respect to the taxpayer for the same tax and the same taxable period. See 26 U.S.C. § 7602(d).

[updated September 2007]

6-4.122 United States Attorney's Grand Jury Investigations and Prosecutions

- A. Tax Division Referrals for Prosecution.** The Tax Division authorizes the United States Attorney to conduct grand jury investigations into matters arising under the internal revenue laws to the extent necessary to perfect those tax charges that the Tax Division refers for prosecution.
- B. Tax Division Referrals for Grand Jury Investigation.** The Tax Division authorizes the United States Attorney to conduct grand jury investigations into matters arising under the internal revenue laws to the extent necessary to 1) perfect the tax charges for which the Tax Division authorizes an investigation or 2) determine whether the Tax Division should authorize prosecution. See USAM 6-4.242.
- C. Expansion of Non-tax Grand Jury Investigation to Possible Federal Criminal Tax Violations.** The Assistant Attorney General, Tax Division, has delegated limited authority to the United States Attorney to expand non-tax investigations in order to inquire into possible federal criminal tax violations, designate targets (subjects), determine the scope of the expanded investigation, and terminate such proceedings. Before a United States Attorney may file an information or seek the return of an indictment on matters arising under the internal revenue laws in an expanded investigation, however, the Tax Division must first authorize the specific tax charges. See Tax Division Directive No. 86-59 (October 1, 1986), Tax Resource Manual 10.
- D. IRS Direct Referrals for Prosecution.** In limited categories of cases, the Tax Division authorizes the IRS to refer certain matters arising under the internal revenue laws directly to the United States Attorney for prosecution. See USAM 6-4.243. In turn, the Tax Division authorizes the United States Attorney to conduct grand jury investigations into these matters, to the extent necessary to perfect the charges that the IRS has directly referred.

6-4.123 Joint United States Attorney—IRS Request to Expand Tax Grand Jury Investigation

The United States Attorney may not, without Tax Division approval, expand grand jury investigations into matters arising under the internal revenue laws to include targets that the Tax Division did not previously authorize. The United States Attorney, together with the IRS, must submit a written request to obtain Tax Division approval. The request must establish the basis for the Tax Division to authorize expansion of the investigation. See USAM 6-4.211(B).

[updated September 2007] [cited in USAM 6-2.000; 6-4.212]

6-4.125 IRS Transmittal of United States Attorney's Recommendation, Special Agent's and Criminal Tax Counsel's Reports, and Exhibits from Grand Jury Investigation

When a grand jury investigation is complete and the United States Attorney concludes that the Government has gathered sufficient evidence to proceed with prosecution, the United States Attorney should request that the special agent assigned to the matter prepare a SAR. After the SAR is completed, the special agent should request that CT Counsel review the SAR and prepare a CEM. Then, the SAC must forward the SAR, with copies of the relevant exhibits, and the CEM to the Tax Division for review and authorization. At the same time, the United States Attorney or the SAC must forward to the Tax Division the United States Attorney's written recommendation regarding prosecution of a target(s) for tax violations. See USAM 6-4.200. Whenever possible, the Tax Division will complete its review of the prosecution recommendation within thirty (30) days of receiving the transmittal letter, reports, and exhibits. See USAM 6-4.242.

The IRS also must transmit a recommendation against prosecution resulting from a grand jury investigation to the Tax Division for evaluation. Alternatively, the IRS must advise the Tax Division that it has no recommendation. See IRM 9.5.14.12.2(3); *see also* USAM 6-4.242. The Tax Division will complete its evaluation of the matter and authorize declination or other actions within thirty (30) days of receiving the recommendation.

[updated September 2007] [cited in USAM 6-4.242]

6-4.126 Restriction on Disclosure of Grand Jury Matters to IRS for Civil Use

Federal Rule of Criminal Procedure 6(e)(3)(C)(i) prohibits the United States Attorney from disclosing "matters occurring before the grand jury" to the IRS for use in civil tax audit or administrative collection proceedings. See *United States v. Baggot*, 463 U.S. 476 (1983). The court may grant the Government's motion for disclosure of grand jury matters for use in certain civil proceedings, if the United States Attorney satisfies the exception requirements set forth in Rule 6(e)(3)(C)(i), which require the Government to show that it will make the disclosure "preliminarily to or in connection with a judicial proceeding...." and that it has a "particularized need" for the requested materials. See *United States v. John Doe, Inc. I*, 481 U.S. 102, 108 (1987). Information that is not deemed to be "matters occurring before the grand jury" may be disclosed consistent with the requirements of 26 U.S.C. section 6103. See Tax Resource Manual 11.

[updated September 2007]

6-4.130 Search Warrants

The Assistant Attorney General, Tax Division, has delegated to the United States Attorney and other specified supervisory officials in United States Attorney's Offices the authority to approve search warrants in many matters arising under the internal revenue laws: a warrant directed at an office, structure, or premises of a target or subject of an investigation; a warrant directed to a provider of electronic communication services or remote computing services and relating to a subject or target of a criminal investigation; and a warrant directed to a disinterested third party owning a storage space business or similar business and relating to a subject or target of a criminal investigation. See Tax Division Directive No. 52 (modified March 17, 2008) and related documents in Tax Resource Manual 12 and 13. The United States Attorney must, however, submit a written request and obtain the approval of the Tax Division for any search warrant where the target or subject is reasonably believed to be

- an accountant
- a lawyer
- a physician
- a public official/political candidate
- a member of the clergy
- a news media representative
- a labor union official or
- an official of an organization exempt from tax under 26 U.S.C. § 501(c)(3)

Except as provided above, the United States Attorney must also submit a written request and obtain the approval of the Tax Division for any search warrant directed at an office, structure, or premises of a third party, i.e., a person who is not a target or subject of the investigation.

[updated April 2008]

6-4.200 Tax Division Jurisdiction and Procedures

The Assistant Attorney General, Tax Division, has responsibility for all criminal proceedings arising under the internal revenue laws, with the exception of proceedings that pertain to: misconduct of IRS personnel; taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and wagering; forcible rescue of seized property (26 U.S.C. § 7212(b)); corrupt or forcible interference with an officer or employee acting under the internal revenue laws (26 U.S.C. § 7212(a) (but not the "omnibus clause")); unauthorized disclosure of information (26 U.S.C. § 7213); and counterfeiting, mutilation, removal, or reuse of stamps (26 U.S.C. § 7208). See 28 C.F.R. § 0.70.

[updated September 2007]

[cited in USAM 6-1.110; 6-2.000; 6-4.010; 6-4.125; 6-4.210]

6-4.210 Tax-Related Mail, Wire, or Bank Fraud, RICO, or Money Laundering Charges

The Tax Division must approve any and all criminal charges that a United States Attorney intends to bring against a defendant in connection with conduct

arising under the internal revenue laws, regardless of which criminal statute(s) the United States Attorney proposes to use in charging the defendant. See USAM 6-4.200; 28 C.F.R. § 0.70. Thus, a United States Attorney must obtain Tax Division approval *before* bringing mail, wire or bank fraud charges, either alone or as the predicate to RICO or money laundering charges, if the conduct arises under the internal revenue laws. Conduct arising under the internal revenue laws includes a defendant's submission of a document or information to the IRS. A United States Attorney also must obtain Tax Division approval to bring charges based on state tax violations if the case involves parallel federal tax violations. See Tax Division Directive No. 128 (October 29, 2004), Tax Resource Manual 14.

A. Mail, Wire or Bank Fraud Charges. The Tax Division may approve mail, wire or bank fraud charges in tax-related cases involving schemes to defraud the Government or other persons if there was a large fraud loss or a substantial pattern of conduct and there is a significant benefit to bringing the charges instead of or in addition to Title 26 violations. See *generally* USAM 9-43.100. Absent unusual circumstances, however, the Tax Division will not approve mail or wire fraud charges if a case involves only one person's tax liability or when all submissions to the IRS were truthful.

Examples of situations where, with Tax Division approval, a United States Attorney may appropriately use mail, wire or bank fraud charges in a tax case include:

- 1) when a target has filed multiple fraudulent returns seeking tax refunds, using fictitious names, or using the names of real taxpayers without their knowledge, appropriate charges may include mail fraud (18 U.S.C. § 1341) or wire fraud (18 U.S.C. §1343);
- 2) when a target has promoted a fraudulent tax scheme, appropriate charges may include mail fraud (18 U.S.C. § 1341) or wire fraud (18 U.S.C. §1343);
- 3) when a target has induced a financial institution to approve refund

anticipation loans on the basis of the fraudulent information submitted to the IRS, appropriate charges may include bank fraud charges (18 U.S.C. § 1344).

The Government may derive significant benefits at different stages of the litigation by using mail, wire or bank fraud charges. First, at the charging stage, the charges may support the Government's effort to forfeit the proceeds of the fraud scheme or may enable the Government to describe the entire scheme in the indictment. Second, at trial, the charges may support the Government's presentation of all relevant evidence of the scheme or permit flexibility in the Government's choice of witnesses. And third, at sentencing, the charges may support the Government's efforts to obtain full restitution. See USAM 9-27.320(B)(3) ("If the evidence is available, it is proper to consider the tactical advantages of bringing certain charges.").

B. Racketeering and Money Laundering Charges Based on Tax Offenses.

The Tax Division will not authorize the use of mail, wire or bank fraud charges to convert routine tax prosecutions into RICO or money laundering cases, but will authorize prosecution of tax-related RICO and money laundering offenses when unusual circumstances warrant such a prosecution. A United States Attorney who wishes to bring a RICO charge (18 U.S.C. § 1962) in any criminal matter arising under the internal revenue laws, must first obtain the authorization of the Tax Division and the Criminal Division's Organized Crime and Racketeering Section. See USAM 9-110.101. This requirement also applies to RICO cases where the predicate act is a state tax violation and there is a parallel federal violation. A United States Attorney who wishes to bring a money laundering charge (18 U.S.C. § 1956) based on conduct arising under the internal revenue laws, must first obtain the authorization of the Tax Division and, if necessary, the Criminal Division's Asset Forfeiture and Money Laundering Section. See USAM 9-105.300.

[updated September 2007] [cited in USAM 6-2.000]

6-4.211 Standards of Review