

March 12, 1999

CC:SER:GEO:ATL:CT:F-601258-99; 601260-99;
601262-99; 601264-99; 601268-99; 601273-99;
601275-99; 601277-99; 601278-99; 601279-99
MYanes

7302.02-00

Number: **199919030**
Release Date: 5/14/1999

MEMORANDUM FOR DISTRICT COUNSEL, ATLANTA

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

SUBJECT: - Proposed Administrative Forfeiture of
Computer Equipment, Printers and Typewriters

We have reviewed your proposed law and fact memorandum from a policy perspective with respect to the proposed administrative forfeiture of the above referenced property. While we concur with the proposed forfeiture from a policy standpoint, we wonder whether I.R.S.'s limited resources are best served by instituting forfeiture proceedings for property valued at less than

You indicate the computers and related equipment were seized under the authority of I.R.C. § 7302 based on violations of I.R.C. § 7602(2). Generally, § 7302 authorizes the seizure and forfeiture of property used or intended to be used in violation of any of the internal revenue laws. To be forfeitable under § 7302, the government must prove by a preponderance of the evidence that the property was used as an "active aid" in the violation of the internal revenue laws. United States v. One 1954 Rolls Royce, 777 F.2d 1358 (9th Cir. 1985). was charged with conspiracy to impede and impair the lawful function of the Internal Revenue Service by aiding and assisting in the preparation of false and fraudulent returns in violation of 18 U.S.C. § 371 and 26 U.S.C. § 7206(2) to which he entered into a plea agreement and was subsequently sentenced to incarceration. Grant's conviction satisfies the required burden. The computers, printers and other office equipment seized were essential and instrumental in conducting's illegal tax return preparation businesses.

We note the proposed forfeiture fails to comply with CID's LEM IX forfeiture case selection criteria. CID's LEM IX, forfeiture case selection criteria,

However, the Chief, CID can make an exception to this rule if he determines that one of the exceptions apply. The e-mail included with the law and fact

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memorandum indicates the Chief, CID has made the required determination that although the proposed forfeiture does not comply with their guidelines as discussed in greater detail below, he believes the items seized were "critical instrumentalities of the crime and it would not be appropriate to return them." Further, he believes "the egregiousness of this preparer scheme warrants the forfeiture of these items." As long as the Chief, CID makes this determination, we authorize you to recommend and refer for forfeiture the above reference property pursuant to I.R.C. § 7302.

Additionally we note the significant time lapse from the time of seizure to instituting forfeiture proceedings, four year and ten months. We agree that as _____ has not raised any claims of right for the property seized during this time period and as the delay between the conclusion of the criminal case and instituting the forfeiture proceedings is not substantial, five months, no significant due process issues are apparent. Lastly, if a claim and cost bond is filed and forfeiture must proceed judicially, referral must be to the Department of Justice, Tax Division. CCDM (31)840(3)(c).

Should you have any questions or wish to discuss this matter further, please feel free to contact Marta Yanes of my staff on (202) 622-4470.