



Robert W. Wood

THE TAX LAWYER

TAXES 2/24/2015

Can IRS Seize First, Ask Questions Later? 'Yes We Can'

Remember those horrible stories about the [IRS seizing accounts merely on suspicion, no crime required](#)? Outrage and press coverage lead to Attorney General [Holder announcing changes to government asset forfeiture programs](#). However, that doesn't mean the law has been changed or that there are no more seizures. In fact, the IRS can still do it, as the IRS Chief recently testified. There has been growing concern that the federal government grabs first and asks questions later.

Often, the damage is immediate and irreparable, and undoing something takes time and is expensive. How aggressive the IRS is in grabbing first depends on the *type* of transgression the government thinks is occurring. IRS Commissioner John Koskinen recently testified that the IRS will *not* seize funds from legal activity 'structuring' except in exceptional circumstances. He was appearing before the House Committee on Ways and Means Subcommittee on Oversight on Financial Transaction Structuring.

'Structuring' involves manipulating cash transactions to fall below the \$10,000 IRS cash reporting threshold. If you go into the bank frequently to deposit \$9,500, you *might* be aware that more than \$10,000 triggers a cash report under the Bank Secrecy Act. The law can aggregate multiple cash transactions if they exceed \$10,000 in any business day.



If the government catches you structuring, it can mean a fine of up to \$250,000, and up to five years in jail. Criminal forfeiture follows a criminal conviction. But what if you aren't convicted *or even accused*? Civil forfeiture rules allow the government to seize cash or property it *suspects* has been *somehow* used in criminal activity. There is no requirement that a property owner be convicted or even charged with a crime.

Between 2005 and 2012, the IRS reportedly seized more than \$242 million in over 2,500 cases, according to FOIA data obtained by the Institute for Justice. Several bills have been introduced to curtail the practice. House Ways and Means Committee Chairman Dave Camp (R-MI) and Ranking Member Sander Levin (D-MI) [introduced](#) the Taxpayer Protections Against Abusive Seizures Act to add protections against civil forfeiture laws. More recently, Sen. Rand Paul, R-Ky and Rep. Tim Walberg, R-Mich., introduced the [Fifth Amendment Integrity Restoration Act or FAIR Act](#) to require a court hearing within 14 days of any seizure. If the court finds no probable cause to believe a structuring violation occurred, the property would have to be returned.

But the laws remain proposed, and the IRS says it needs this enforcement tool. Besides, the IRS says there are already due process protections in place to protect you if you are innocent. Before it can seize property in a structuring case, special agents of the IRS Criminal Investigation Division prepare a seizure warrant affidavit. Its approved internally and then reviewed by an Assistant U.S. Attorney and a manager. If they agree the affidavit is legally sufficient, they go before a federal magistrate judge.

If the magistrate judge determines there is sufficient evidence to establish probable cause, a seizure warrant is issued. IRS agents then serve the warrant and seize the property. Commissioner Koskinen emphasized that structuring bank transactions to evade Bank Secrecy Act reporting is a felony. That's so *regardless* of whether the funds come from a legal or illegal sources.

Still, the IRS takes notice that small businesses and individuals may make deposits or withdrawals under \$10,000 without a bad intent. From now on, the IRS wants to seize assets only if they think the structured funds were derived from illegal sources. Well, except in exceptional circumstances. Even if your bank/cash efforts come from 100% legal money, the IRS says it *still* an seize it.

In that case, though, the action would have to be approved by a senior executive in the IRS Criminal Investigation Division. Mr. Koskinen said this will help to ensure consistency in how IRS investigations and seizures are conducted. Nevertheless, he said IRS seizures in 'illegal source' structuring cases will continue. Seizures are a powerful tool that must be administered fairly, efficiently, and in compliance with the law, the IRS Chief noted.

For alerts to future tax articles, follow me on Forbes.com. Email me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.