

**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT**

Hearing on Protecting Small Businesses

From IRS Abuse, Part II

May 25, 2016

10:00 a.m.

Rayburn House Office Building

Room B318

Testimony of Randy Sowers

Good morning, Chairman Roskam, Ranking Member Lewis, and Members of the Committee. I am pleased to have this opportunity to appear for the second time before this Committee to talk about the IRS's use of civil forfeiture to take my bank account, as well as my fight today to get that money back.

I want to take this opportunity to thank the Committee for sending a letter signed by all the Members to the Secretary of the Treasury after I testified last year requesting that my money be returned. Your work on behalf of Americans wrongly targeted by the IRS is greatly appreciated.

My Farming Business

Along with my wife, Karen, I have owned and operated South Mountain Creamery, a well-known dairy farm in Frederick County, Maryland, for over three decades. Karen and I were both born in Frederick County; we both had grandparents who were farmers in Frederick County; and we met while participating in a local 4-H program. We opened our farm in 1981, when we purchased our first one hundred cows, and we bought the land where the creamery is located in 1987. For the first ten years, we mostly lived off Karen's income as a teacher, but in the 1990s the farm began to turn a profit. We put up our first chicken house in 1990, and Karen was able to quit her job as a teacher. Today, our farm produces and sells dairy products

and eggs throughout the surrounding area, not only at farmers' markets but also through a growing home delivery service.

Karen and I work practically around the clock to care for our animals. Every night, Karen and I go to sleep early and then wake up around midnight to milk the cows. We work through the night, until 4:30 or 5:00 a.m., and then we go back to sleep for a few hours before beginning our day. Our cows never take days off, so we repeat the same routine seven days a week and rarely take vacations.

For years, Karen and I have sold our products at farmers' markets. At some points we have sold at as many as seven markets, but we currently only sell at two. One market is held on Saturdays, and the other is held on Sundays. Both are in Baltimore. To get to a market, Karen and I pack up our truck and leave the farm by 4:30 a.m. for the drive into the city.

Because customers at farmers' markets typically pay in cash, Karen and I often have cash to deposit at the bank. After one particularly busy weekend in spring 2011, a bank teller told Karen that cash deposits over \$10,000 would require that the teller fill out unspecified "paperwork." From that point forward, Karen kept the size of our cash deposits under \$10,000 in order to make life easier for employees of the bank by avoiding what she believed was unnecessary red tape.

The Seizure

On February 29, 2012, two armed IRS agents came out to the farm to notify me that the IRS had seized the farm's entire bank account—over \$60,000. The agents explained that my money had been seized under the structuring laws. At that point, I had never before heard the term “structuring,” and I had no idea that depositing cash in the bank could even potentially be a federal crime. Nobody from the bank or the government warned me that under-\$10,000 bank deposits could lead to the seizure of our bank account. Indeed, nobody from the government contacted me about our bank deposits until *after* they seized our bank account.

The IRS agents who came to notify me about the seizure were apologetic in their manner and told me that they did not believe that Karen and I were criminals. However, the agents explained that a judge had already issued a warrant for the seizure of the bank account, and they said they had no choice but to carry through with the seizure.

The IRS agents also served me with a *criminal* grand jury subpoena seeking additional information about our bank deposits. I was shocked that the government would even consider bringing criminal charges when I had done nothing wrong.

Forced Settlement And Forfeiture

After the seizure, I contacted Dave Watt, who is the attorney for South Mountain Creamery, and Dave reached out to Stefan Cassella, the Assistant United States Attorney responsible for the seizure, in an attempt to resolve the case. Dave also enlisted the help of Paul Kamenar, a Washington, D.C. attorney experienced in federal civil and criminal enforcement, and Paul provided additional advice and assistance.

When Dave contacted Stefan Cassella, Mr. Cassella made clear that he expected the case would be resolved through a settlement. Mr. Cassella said that my attorneys should offer a settlement amount somewhere below the amount that had been seized, that Mr. Cassella would then counter, and that we would arrive at a forfeiture amount somewhere in the middle.

In the meantime, in April 2012, a reporter from *The City Paper* in Baltimore called me for comment about the seizure. I told the reporter the truth, which was that Karen and I had no idea that we were even potentially violating the law when we deposited our money in the bank.

Mr. Cassella filed a formal forfeiture complaint the very day after that article ran in *The City Paper*. And Mr. Cassella also informed my attorney, Dave Watt, that a forfeiture of \$29,500 was now his final settlement offer. When Mr. Cassella was asked why some terms of the settlement were less favorable than had been offered to Taylor Produce Farm on the Eastern

Shore, whose cash deposits were also seized under the structuring laws, Mr. Cassella candidly stated in an email: “Mr Taylor did not give an interview to the press.” I was being punished for exercising my First Amendment right to speak to the press.

When Mr. Cassella indicated that he was not open to further discussion, I felt I had little choice but to accept his offer. If I agreed to Mr. Cassella’s terms, I would have to forfeit about half of the \$60,000 seized. On the other hand, if I refused the offer I would have to go to court to fight for my money. A judicial proceeding would be expensive and time consuming. Even *without* going to court, I had already started to incur legal costs. At the same time, I needed whatever funds I could recover for my farming operation. For me to go to court to fight the seizure simply would not have been a rational business decision.

In weighing the government’s offer, I also had to consider the possibility that the government would attempt to seize additional money or even pursue criminal charges. The IRS agents who came to the farm told me that the judge who approved the seizure had given them authority to take anything up to \$243,455—the amount of cash deposited in the account over a period of eight months. In addition, as I already mentioned, the IRS agents who came to my farm served me with a criminal grand jury subpoena. I was

concerned that the government might take additional money or file criminal charges if I did not agree to Mr. Cassella's demands.

My concern about criminal charges was solidified further by the terms of the settlement offered by the government. In the agreement, the government stated that it would not pursue criminal structuring charges if I agreed to the forfeiture. This entire ordeal was taking an emotional toll on me and my wife, as the government was treating us as if we were criminals even though we had done nothing wrong.

Feeling I had no real choice, I agreed to forfeit \$29,500 to the United States government.

Fighting For Return Of My Money

In July 2015, I joined with the Institute for Justice to file a petition with the federal government seeking the return of my money. Dave Watt and Paul Kamenar also represented me in filing the petition.

It is my understanding that the IRS has announced a change of policy under which they are no longer seizing money in cases like mine. If the IRS realizes that it was wrong to take my money—and if the IRS would not take my money today—I do not think they should be allowed to keep it just because they took it before that policy change.

In my petition, I have asked the government to return the \$29,500 that was taken from me by the IRS. I worked hard to earn that money, and I do

not think the government should be allowed to keep it just because of how my wife and I deposited the legitimate proceeds of our business into the bank. I also hope that my petition can light a way for other people in similar circumstances to get their money back too.

I am a man of my word, and I stick to my agreements. But my “agreement” to give up \$29,500 was made under overwhelming pressure, including the implicit threat that federal prosecutors would try to put me in jail if I did not agree. I do not believe such an agreement is valid. To me, it was a case of extortion by the government.

Over 10 months have gone by since I filed my petition. I am still waiting for the government’s response.

Conclusion

The IRS took something that does not belong to them and that they had no right to take. Now I am asking them to do the right thing and give it back. Thank you for the opportunity to testify and for all your previous help in my struggle to get back money taken from me and others by the IRS.