WRITTEN TESTIMONY OF
JOHN D. FORT
CHIEF, CRIMINAL INVESTIGATION
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
ON FINANCIAL TRANSACTION STRUCTURING
June 20, 2018

I. Introduction

Chairwoman Jenkins, Ranking Member Lewis, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the implementation of policy changes concerning seizure and forfeiture activities involving legal source structuring. Structuring as defined in 31 U.S.C. § 5324 criminalizes the practice of conducting financial transactions in a specific pattern calculated to avoid the creation of records and reports required by the Bank Secrecy Act. Structuring can involve "illegal" source funds associated with an illegal cash-generating activity, such as drug dealing, or the concealment of income "legally" earned in order to evade the payment of income taxes. In substance, however, Title 31 authorizes the government to seize and forfeit property involved in or traceable to structuring, irrespective of whether the property was derived from an illegal source.

II. The October 2014 Policy Change

Criminal Investigation ("CI") changed its policy with regard to "legal source" structuring cases on October 17, 2014. Under the current policy, the IRS does not pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless: (1) there are exceptional circumstances justifying the seizure and forfeiture; and (2) the case has been approved at the Director of Field Operations ("DFO") level.

We have taken a number of steps to implement and enforce the new policy since its release on October 17, 2014. Our executives have communicated both the letter and spirit of the policy to CI field personnel and asset forfeiture personnel through our intranet site, executive-led in-person meetings and conference calls, and a virtual town hall meeting. We also updated the Internal Revenue Manual ("IRM") on March 3, 2015, to incorporate the new policy. We believe the IRS's current policy strikes the proper balance between the needs of law enforcement and the rights of property owners. By concentrating primarily on illegal source structuring violations, we are able to devote our limited resources to investigating the most egregious federal violations, including those cases where structuring activity is indicative of other, more serious crimes.

After the House Ways and Means Oversight Subcommittee hearing about this topic on May 25, 2016, CI proactively sent letters to property owners whose assets were forfeited based on

structuring activity going back five years prior to the date of the policy change. In these letters, we advised property owners of the opportunity to file a petition for return of the forfeited funds. We identified a total of 691 cases that fell within this time period. We sent more than 1,800 letters to people with a potential interest in forfeited property. We accepted petitions under this program until December 31, 2016.

In reviewing the petitions, CI followed section 9.7.7.4 of the IRM regarding remission or mitigation of forfeiture and the Department of Justice ("DOJ") regulations governing remission or mitigation of forfeiture under 28 C.F.R. § 9.1 et seq. Under those provisions, CI assigned the petitions filed during the program to the CI Special Agent in Charge ("SAC") office in the location where the property was forfeited. The area SAC evaluated the merits of the petition and prepared a report of their findings. Criminal Tax (CT) Counsel also reviewed the petition and rendered an opinion of the merits based on the DOJ regulations and the IRM. Based on the SAC's report and CT Counsel's recommendation, the CI Chief either reviewed the petition if it involved an administrative forfeiture or made a recommendation through the respective United States Attorney's Offices for consideration of the petition by the Money Laundering Asset Recovery Section, DOJ, Criminal Division ("MLARS"), if it involved judicial forfeiture.

CI has sole discretion and authority under 19 U.S.C. § 1618 and 28 C.F.R. § 9.3(g) to grant or deny the petition in an administrative forfeiture case. DOJ is the deciding official for each petition involving a judicial forfeiture pursuant to 28 C.F.R. § 9.4(g). DOJ provided a copy of their final decision letter (the same letter provided to the petitioner) to CI in each judicial forfeiture case it reviewed.

III. Results

CI received a total of 464 petitions, of which 208 were determined to be administrative forfeiture cases and 256 were determined to be civil judicial forfeiture cases. Based on the DOJ regulations and the IRS guidance set forth in the IRM, CI granted relief with respect to 174 administrative forfeiture petitions (representing over 80%) and made a recommendation to DOJ to grant relief with respect to 194 judicial forfeiture petitions (representing over 75%). For the 174 administrative forfeiture petitions granted by CI, all funds (totaling $9,916.800.12) were returned to petitioners.

Chairwoman Jenkins, Ranking Member Lewis, and Members of the Subcommittee, I appreciate the opportunity to testify on this important topic and would be happy to take your questions.