

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR

DISTRICT COUNSEL

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

SUBJECT: Search Warrant Request For

This responds to the above referenced search warrant request submitted to our office on _____ by _____ District Counsel. Because the target of the investigation is to a certain degree “a representative of the _____” the Office of the Assistant Chief Counsel (Criminal Tax) is required to review the search warrant application and recommend whether it should be referred to the Tax Division, Department of Justice for final approval. See, CCDM (31)720(2). Upon reviewing the application, we conclude there are no significant policy considerations which would prevent your office from forwarding the matter to the Tax Division. Accordingly, we are returning the search warrant package to your office subject to your decision to seek final approval from the Tax Division.

FACTS

The search warrant is sought in connection with an ongoing criminal investigation of _____ and the subchapter S corporation he controls, _____, for possible violations of 26 U.S.C. §§ 7201 and 7206(1), and 18 U.S.C. § 371, for the years _____ through _____.¹ The premises to be searched are _____ s corporate offices located at _____, the offices of _____, a business operated by _____, located at _____, and a condominium unit _____, located at _____.

The items to be seized include all property that constitutes instrumentalities, fruits, or evidence of the commission of tax offenses. The affidavit alleges _____ has made extensive net worth acquisitions and/or personal expenditures during the years at issue which are inconsistent with his reported income. Moreover, the affidavit

¹ Although the affidavit for the search warrant states _____ is under criminal investigation for the years _____ through _____, technically, _____ individual return, as well as

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alleges [redacted] has conspired with various employees of the businesses he controls through [redacted] to divert corporate cash receipts, as well as bartered income and assets, to his own personal use.

[redacted] is an [redacted] which [redacted] several [redacted] in the [redacted] area. Its largest [redacted], is [redacted] and appears in [redacted]. The majority of [redacted] income is generated through the sale of [redacted] to individuals and by selling [redacted] to business clients. [redacted] is a subchapter S corporation owned primarily by [redacted], with a minority interest owned by [redacted]. In [redacted], and [redacted], reported gross receipts of \$ [redacted], \$ [redacted], and \$ [redacted], respectively. For the same years, [redacted] reported earnings of \$ [redacted], \$ [redacted], and \$ [redacted], respectively, with corresponding tax liabilities of \$ [redacted], \$ [redacted], and \$ [redacted].

The search warrant affidavit is based primarily on information obtained from two confidential informants, each of whom were [redacted]. The first informant, identified as [redacted], was the [redacted] from [redacted] approximately [redacted] through [redacted]. Because of his high ranking position, he was able to gain [redacted] of [redacted] corporate structure and [redacted] business activities and practices. Moreover, he became familiar with the [redacted], as well as its [redacted] for the years [redacted] through [redacted]. The second informant, [redacted], was [redacted] in the [redacted] for [redacted] years, leaving the [redacted] in [redacted] to start his own business. [redacted] has corroborated many of the allegations made by [redacted] as to the questionable business practices of [redacted] and, most significantly, the location of the corporate sales, gross receipts, and accounting records necessary to establish [redacted] diversion of corporate cash receipts and under reporting of corporate income.

The informants describe in detail a system whereby [redacted] would directly receive weekly cash payments from various businesses and individuals in the [redacted] area in return for [redacted] and other [redacted] controlled and [redacted]. [redacted] would personally drive to the businesses and pick up the cash payments. He would then cause [redacted] sales records to either reflect no charge for the [redacted] or a specific dollar amount to be charged for the [redacted]. However, the accounting records would not reflect the income received by [redacted], nor would his individual tax returns. [redacted] asserts that at a minimum, [redacted] receives \$ [redacted] of unreported income per week and has been operating in this fashion for the past [redacted] years. Moreover, the informants describe instances where they were specifically directed by [redacted] to [redacted] from business [redacted] for [redacted] had been paid directly, either in the form of cash, free meals, or through the provision of other products and services, such as automobiles, home

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furnishings, and office supplies. None of these items were reported as income to

DISCUSSION

After reviewing the search warrant application, we do not believe the traditional policy considerations concerning protecting the privacy interests of “representatives of the _____” are present in this case. Although _____ and _____ are in the business of _____ various _____, the records sought are not those of _____ which might contain _____ information. The records sought are business records which reflect its gross sales and receipts, the manner in which _____ conducts its accounting, as well as its reporting of income for tax purposes. Essentially, this case concerns a business owner skimming from gross receipts and failing to report that income.

From a substantive standpoint, we believe the affidavit in support of the search warrant clearly establishes probable cause to believe the alleged violations of Title 18 and Title 26 have occurred. Moreover, the detailed and corroborated information provided by the two confidential informants sets forth a sufficient factual predicate to establish probable cause to believe the records, books, and computer equipment sought are located on the premises to be searched and are likely to contain evidence of the crimes alleged to have been committed. Initially, we were concerned that a staleness issue might arise due to the fact that the two informants had not been _____ since _____, causing their information to be over _____ old. However, the recently monitored consensual telephonic conversation between _____ and _____, which occurred on _____, bolsters the fact that _____ is actively evading his income tax reporting requirements. Additionally, no other evidence has been developed to date which would undermine the credibility of the informants or question the detail of the information they have provided. Therefore, we are returning the search warrant package to your office subject to your decision to seek final approval from the Tax Division.

Should further assistance be required, please feel free to contact Chris Monica of the Criminal Tax Division on (202) 622-4470.

Attachment