

Taxpayer Advocate Questions IRS CID's Narrow Reading of the Taxpayer Bill of Rights

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On March 30, 2017, the ***US Treasury Inspector General for Tax Administration (TIGTA)*** published a report identifying numerous violations of taxpayer rights from 2012 to 2014 by the Internal Revenue Service Criminal Investigation Division (IRS CID) in structuring cases. TIGTA examined over 300 investigations for structuring in this time period and identified 21 cases in which taxpayer rights had been compromised.

The Bank Secrecy Act of 1970 (BSA) requires US financial institutions to file reports of currency transactions exceeding \$10,000. A provision of the BSA, 31 U.S.C. § 5324(a), prohibits structuring, that is, setting up a transaction for the purpose of evading this reporting requirement. Violations of the law can result in fines, imprisonment and asset forfeiture. This law is administered by the US Department of the Treasury, and one of its major goals is to monitor traffic in illegal-source funds (*i.e.*, funds used in drug transactions or to support terrorism).

From 2012 to 2014, IRS CID maintained a policy of asset seizure and forfeiture in structuring cases, even when solely legal-source funds were involved. IRS CID formally discontinued this policy at the end of 2014 for legal-source cases; however, TIGTA's report identified several lapses in policy that occurred in fiscal year 2015 as well. In asset forfeiture cases, the US Department of Justice seizes a taxpayer's assets, placing the burden to recover the property upon its titular owners (and other creditors and claimants). To obtain release of the asset, the claimants typically must show, among other elements, evidence of their interest in the property and evidence that the asset was not used in furtherance of a crime. Thus, when alleged currency structuring is the only potential crime involved (*i.e.*, in cases involving legal source funds), IRS CID's former policy had potential to work unfair results.

Beyond the fairness of the policy itself, TIGTA examined whether taxpayers involved in these cases between 2012 and 2014 had been fully apprised of their rights. Significantly, IRS CID took the position that advice of taxpayer rights was only required in Title 26 cases (cases arising under the Internal Revenue Code) and not in grand jury investigations (in which IRS CID is acting at the direction of the US Department of Justice) or in Title 31 cases (cases involving currency transactions). As TIGTA found, "[i]n only five of the 229 interviews conducted, noncustodial statements of rights, such as the right to remain silent, were provided. For 54 investigations, the

property owners provided realistic defenses or explanations, and for 43 of those cases, there was no evidence they were considered by [CID]. In 202 interviews, the property owners were not adequately informed of important information, such as the purpose of the interview, by [CID] during the interview.”

TIGTA recommended that the chief of IRS CID implement better controls regarding case selection and in conducting structuring investigations. IRS CID agreed with some, but not all, of the recommended changes.

On April 4, 2017, the National Taxpayer Advocate released a statement regarding the TIGTA report. She noted that “[f]ourteen members of Congress concluded that these cases ‘unfairly harmed American citizens and have undermined Americans’ trust in their government.’” She also harshly criticized IRS CID’s policy of only advising taxpayers of their rights under the [Taxpayer Bill of Rights \(TBOR\)](#) in Title 26 cases and not in other cases. These rights include the right to be informed, the right to challenge the position of the Internal Revenue Service and be heard, and the right to privacy. The National Taxpayer Advocate noted that there are many situations in which IRS employees interact with taxpayers on non-Title 26 issues:

If the IRS were to adopt [CID]’s interpretation that the TBOR does not apply outside the context of Title 26, all IRS employees would be able to ignore taxpayer rights when responding to Freedom of Information Act requests, making determinations, or promulgating regulations under Title 5; administering bankruptcy laws under Title 11; or enforcing the structuring laws under Title 31. Such a narrow interpretation would gut the TBOR and is unlikely to have been the IRS’s or Congress’ intent.

Practice Point: TIGTA’s report and the Taxpayer Advocate’s commentary highlight the need—in potential criminal cases and otherwise—for taxpayers to fully understand their rights, to consult with knowledgeable counsel about these rights and to be extremely mindful when responding to IRS inquiries. The [IRS provides the Taxpayer Bill of Rights](#) and the Taxpayer Advocate Service [lists both the rights and the impact](#) they may have on the taxpayer.

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National Law Review, Volume VII, Number 96

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