



*Improvements Are Needed to Ensure
That the Search and Seizure Warrant
Process Is Adequately Documented
and That Evidence Is Properly Secured*

September 19, 2014

Reference Number: 2014-30-081

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

2 = Risk Circumvention of Agency Regulation or Statute

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HIGHLIGHTS

IMPROVEMENTS ARE NEEDED TO ENSURE THAT THE SEARCH AND SEIZURE WARRANT PROCESS IS ADEQUATELY DOCUMENTED AND THAT EVIDENCE IS PROPERLY SECURED

Highlights

Final Report issued on September 19, 2014

Highlights of Reference Number: 2014-30-081 to the Internal Revenue Service Chief, Criminal Investigation.

IMPACT ON TAXPAYERS

Each IRS Criminal Investigation (CI) special agent has the authority to perform all duties under all laws and regulations administered by the IRS, including the authority to conduct searches and issue search and seizure warrants. However, this authority needs to be exercised in accordance with the Fourth Amendment to the United States Constitution, which protects individuals against unreasonable searches and seizures by the Federal Government.

WHY TIGTA DID THE AUDIT

This audit was initiated to determine whether CI is properly processing search and/or seizure warrants and following the policies for maintaining the chain of custody for any evidence obtained.

WHAT TIGTA FOUND

TIGTA requested 152 closed search and/or seizure warrant cases from the IRS to review. However, CI management did not provide 91 of these cases. According to CI management, these cases contained grand jury information, were part of an ongoing investigation, or had been sealed by the court.

For 70 of these cases, CI management could not provide any documentation to support that these cases contained grand jury information, were part of an ongoing investigation, or were sealed. As such, TIGTA had to rely on CI

management's verbal statements. This constitutes a significant scope impairment because it prevented TIGTA from fully evaluating CI's processing of search and seizure warrants and from determining whether the IRS is following established legal requirements to prevent the abuse of taxpayer rights.

TIGTA reviewed the remaining 61 closed search and/or seizure warrant cases provided by the IRS and found that six cases were missing documentation of the Criminal Tax Counsel's post-search warrant inventory review, six cases were missing signed affidavits, and *****|*****
*****|*****.

TIGTA also identified that procedures were not always followed to ensure that seized evidence was properly stored and/or controlled. Without maintaining proper documentation and following evidence procedures, evidence may be inappropriately disclosed, lost, tampered with, or stolen.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS ensure that required documentation is maintained in the case files, including the Criminal Tax Counsel's post-search warrant inventory reviews as well as signed copies of the affidavits. TIGTA also recommended that the IRS reinforce the need for physical controls over seized evidence, study the physical space needs for evidence storage, and improve access controls over evidence.

In its response to the report, the IRS agreed with all five recommendations and plans to take corrective actions on four of them. While the IRS agreed with the fifth recommendation, IRS officials stated that they do not have the capability to have a designated evidence custodian in each post-of-duty due to resource constraints. Instead, the IRS will issue a reminder to managers and special agents of the proper procedures for preserving the chain of custody.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 19, 2014

MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

Michael E. McKenney

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Improvements Are Needed to Ensure That the Search and Seizure Warrant Process Is Adequately Documented and That Evidence Is Properly Secured (Audit # 201330049)

This report presents the results of our review to determine whether Criminal Investigation is properly processing search and/or seizure warrants and following the policies for maintaining the chain of custody for any evidence obtained. This review is included in our Fiscal Year 2014 Annual Audit Plan and addresses the major management challenge of Taxpayer Rights and Entitlements.

Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Bryce Kisler, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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Abbreviations

CI	Criminal Investigation
CIMIS	Criminal Investigation Management Information System
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
PACER	Public Access to Court Electronic Records
U.S.C.	United States Code



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Background

The mission of the Internal Revenue Service's (IRS) Criminal Investigation (CI) is "to serve the American public by investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law." CI's general authority derives from Title 26 United States Code¹ (U.S.C.) Section (§) 7608(b), which provides the initial authority for investigating crimes arising under the Internal Revenue laws. In addition to Title 26 U.S.C., CI also has enforcement responsibilities with regard to Title 18 U.S.C. and Title 31 U.S.C., which deal with money laundering and the Bank Secrecy Act,² respectively.

Each CI special agent has the authority to perform all duties under all laws and regulations administered by the IRS, including the authority to investigate, inquire, and receive information. One investigative technique that special agents use in the performance of their duties is the authority to conduct searches and issue search and seizure warrants. However, this authority needs to be exercised in accordance with the Fourth Amendment to the U.S. Constitution, which protects individuals against unreasonable searches and seizures by the Federal Government. Specifically, the Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The authority for CI personnel to serve search warrants comes from Title 26 U.S.C. and the authority to seize assets and force taxpayers to forfeit property originates from Title 18, Title 26, and Title 31 of the U.S.C. According to the Internal Revenue Manual (IRM),³ search warrants for tax and tax-related offenses are to be utilized with restraint and only in significant tax investigations. All other investigative tools should be considered before deciding that a search warrant is the least intrusive means to acquire the evidence.

A search warrant consists of a set of documents, each with a specified legal purpose.⁴ These documents address the nature of the alleged criminal violations and that the evidence of the

¹ See Appendix V for a glossary of terms.

² Pub. L. No. 91-508, 84 Stat. 1114 to 1124 (1970) (codified as amended in scattered sections of 12 U.S.C., 18 U.S.C., and 31 U.S.C.).

³ IRM 9.4.9.2(5) (February 11, 2013).

⁴ The search warrant documents consist of the *Application for Search Warrant*, the *Affidavit*, the *Search Warrant*, the *Search Warrant Attachment A*, the *Search Warrant Attachment B*, and the *Search Warrant Return*.



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crime is contained at the specified location (probable cause), and identify, among other things, the place to be searched and the items to be seized. Special agents are also required to prepare internal documents that are reviewed by IRS management before seeking and/or obtaining a warrant from the U.S. District Courts.⁵

For any items that are seized, the Federal Government is responsible for properly maintaining the chain of custody. In order that a seized item may be admissible as evidence, CI as the evidence custodian must be able to prove it is the same item that was seized and that the item is in the same condition as when it was seized. If the evidence is grand jury related, the evidence should be kept separate from other non-grand jury evidence.⁶ When an item no longer has evidentiary value, the IRS may dispose of the property by returning it to the owner, transferring it to another Federal Government agency, or destroying it. In some instances, the IRS may keep the item (through a forfeiture action).

All CI investigations⁷ are assigned a number and tracked on the Criminal Investigation Management Information System (CIMIS). The CIMIS tracks the status, progress, and time expended on the investigation by the special agents. The CIMIS is also designed to capture a variety of different aspects of a case, such as whether the case is grand jury⁸ or non-grand jury.⁹

This review was performed at CI's Headquarters in Washington, D.C., and at the ****2*****
*****2*****
September 2013 through May 2014. Additionally, we interviewed representatives from two other Federal law enforcement agencies to gain an understanding of how these agencies process search and/or seizure warrants. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective.

We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. However, CI management did not provide any information on most of the closed non-grand jury cases we requested for our review, stating that they contained grand jury information, were related to an ongoing investigation, or had been sealed by the court. For most of these cases, CI management could not provide any

⁵ Depending on the type of warrant, the internal documents are the Form 13739, *Enforcement Action Review Form*, the *Risk Assessment Guide*, the *Search Warrant Pre-Operation Plan*, the *Search Warrant Checklist*, and the Criminal Tax Counsel's Pre- and Post-Inventory Review memorandum.

⁶ IRM 25.1.5.4(6) (January 15, 2010).

⁷ The types of CI investigations are General Investigations, Primary Investigations, and Subject Criminal Investigations.

⁸ Federal Rules of Criminal Procedure Rule 6(e)(2) prohibits members of the grand jury, Federal Government attorneys and their authorized assistants, and other grand jury personnel from disclosing matters occurring before the grand jury.

⁹ Grand jury proceedings are required to be kept secret to preserve the confidentiality and privacy of witnesses and targets. Non-grand jury proceedings do not follow the same secrecy requirements.



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documentation that these cases were grand jury, related to an ongoing investigation, or sealed. We consider these limitations to be a material scope impairment. As a result, we were unable to evaluate the majority of the closed search and/or seizure warrant cases selected for our review. Appendix IV provides further details on this scope impairment. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

Special Agents Are Sometimes Not Maintaining Proper Case Documentation

We reviewed 61 closed cases¹⁰ involving search and seizure warrants and identified the following issues concerning the retention of case file documentation.

- Six closed case files were missing documentation of the Criminal Tax Counsel's post-search warrant inventory review.
- Six closed case files were missing the signed affidavits.
- *****↑*****.

Per the IRM,¹¹ when the CI special agent is the affiant, various documents will be maintained by the originating CI group. The retention of case file documentation is an important internal control that provides verifiable evidence to ensure that cases were appropriately processed and contained the necessary documentation and approvals.

Documentation of the Criminal Tax Counsel's post-search warrant inventory reviews were missing from some case files

We identified that documentation of the Criminal Tax Counsel's post-search warrant inventory reviews were missing from six closed case files. The special agents who worked these cases informed us that the reviews were not completed because they had overlooked the need to provide these cases to the Criminal Tax Counsel for review. IRS policy¹² requires this review for all tax-related Title 18 U.S.C. and Title 26 U.S.C. cases to ensure that items seized during the search were properly listed on the search warrant. If the Criminal Tax Counsel is not given the opportunity to conduct a post-search warrant inventory review, improperly conducted searches may not be identified, which could eventually cause problems in legal proceedings.

¹⁰ The 61 closed cases reviewed include 47 closed non-grand jury cases plus the 14 closed cases, which contained grand jury information that was redacted.

¹¹ IRM 9.4.9.4(1) (March 17, 2011). The documents include the signed *Affidavit*, the signed *Search Warrant* with Attachments, the Criminal Tax Counsel's Pre- and Post-Inventory Review memorandum, the Form 13739, *Enforcement Action Review Form*, the *Risk Assessment Guide*, the *Search Warrant Checklist*, the *Search Warrant Pre-Operations Plan*, the *Post Enforcement Operation Summary*, and the signed *Search Warrant Return*.

¹² IRM 9.4.9.3.6(3) (March 17, 2011).



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Signed affidavits were not in closed case files

We identified six closed case files that were missing the affiant signature on the affidavit to support that it was sworn before a magistrate and that it contained factual information. The IRM¹³ requires that CI retain signed affidavits in the case files with search and seizure activity.

When we questioned CI management as to why the affidavits were missing the special agent's signature, they provided five of the six affidavits for these cases appropriately signed and dated by the special agent. It appears that electronic copies of these affidavits were stored on the Public Access to Court Electronic Records (PACER) system and not maintained in the physical case files. CI management was unable to provide a cause for the affidavits to be missing from the case files and*****1*****. When documentation is not maintained in accordance with IRS policy, it makes it difficult for management to review actions taken on the case to ensure procedural and legal compliance.

Errors were made on a few warrant documents

*****1*****
*****1*****

1 The *Search Warrant Attachment B* or the *Seizure Warrant* lists the items to be seized during a search or seizure. These documents provide the evidence to show that CI met the Fourth Amendment requirement that a search warrant must describe particularly “the place to be searched, and the persons or things to be seized.” Federal Rules of Criminal Procedure 41(e)(2) requires the return of the warrant served. CI files the *Search Warrant Return* document that includes an inventory of the items seized to the magistrate judge designated in the warrant.

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If careful attention is not given when documenting information on a warrant, there is a possibility that a court may suppress the evidence obtained from the warrant during a trial. For example, if the list of items written on the *Search Warrant Attachment B* or on the *Seizure Warrant* is

¹³ IRM 9.4.9.4(1) (March 17, 2011).



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incorrect, the wrong item could be seized, which may violate the taxpayer's right to a reasonable search or seizure.

Recommendations

The Chief, Criminal Investigation, should issue a reminder to managers to ensure that:

Recommendation 1: The Criminal Tax Counsel's post-search warrant inventory reviews are completed for each tax-related Title 18 and Title 26 search warrant issued and that special agents have included the review documentation and signed copies of all affidavits in the case file. In addition, special agents should be reminded of the current procedures regarding the Criminal Tax Counsel's post-search warrant inventory reviews.

Management's Response: The IRS agreed with this recommendation. Specifically, management will issue a reminder to managers and special agents to ensure that (1) Criminal Tax Counsel's post-search warrant inventory reviews are completed for each tax-related Title 18 and Title 26 search warrant issued and a copy of the review is maintained in the case file and (2) that a copy of all signed affidavits are maintained in the case file.

Recommendation 2: Special agents update the CIMIS if the status of the case changes to grand jury during the investigation.

Management's Response: The IRS agreed with this recommendation. Specifically, management will issue guidance and clarify when the CIMIS needs to be updated when the status of the case changes to grand jury.

Procedures Were Not Always Followed to Ensure That the Integrity of Seized Evidence Was Properly Preserved

We interviewed 15 special agents and conducted site visitations at nine CI offices¹⁴ to observe the handling and storage of seized evidence. We found that evidence was not always properly stored and that Evidence Access Control Logs for evidence storage rooms were not maintained.

Evidence was not always properly stored

During our walkthroughs at the CI offices, we observed that some sites had evidence placed in hallways, stacked outside cubicles, and in break rooms. In addition, seven of the nine offices did not keep grand jury material in a separate, secure area. The grand jury material was intermingled with non-grand jury evidence and other case file information.

¹⁴ *****2*****
*****2*****
*****2*****.



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The Federal Rules of Criminal Procedure Rule 6(e)(2) states that grand jury material is secret and should be stored in either a lock-bar file cabinet or in a secured and locked room.¹⁵ Per the IRM,¹⁶ grand jury material should be kept in a separate work area, inaccessible to other IRS personnel not assisting in the grand jury case. Through interviews with a judgmental sample¹⁷ of 15 special agents, we discovered that storage capacity in these offices is a major problem. Six special agents stated their concerns that there is not enough room to properly store all the evidence gathered during their investigations.

In order for a seized item to be admissible as evidence, it is necessary to prove that the item is in the same condition as when it was seized. If evidence is not stored properly, evidence may have been inappropriately disclosed, lost, tampered with, or stolen. In addition, the chain of custody could be called into question, which could result in the item being deemed inadmissible in court.

Evidence Access Control Logs are not being maintained

All nine offices we visited did not maintain an Evidence Access Control Log to record access to controlled areas where evidence is stored. Per the IRM,¹⁸ the Evidence Access Control Log is designed to record and document all access to controlled areas where evidence is stored, such as who accesses the evidence, what evidence was accessed, and the specific reason for the access.

When we asked why an Evidence Access Control Log was not being maintained, local CI management did not think the log was necessary for the type of evidence that they usually maintain, such as seized paper documents. However, according to IRS policy,¹⁹ “in order for documents or other physical objects to be admissible as evidence, it is necessary to prove the items are in the same condition as when they were seized, since failure to maintain the evidence in its original condition could jeopardize admissibility.” The evidence we found stored in open areas within the CI offices could result in chain of custody concerns, which could jeopardize the investigation and any subsequent court proceeding. A strong chain of custody that clearly states when a person accesses the evidence and why the evidence is being accessed will help maintain the credibility and security of that evidence.

In addition, we interviewed representatives from two other Federal law enforcement agencies to gain an understanding of how they maintained their chain of custody. It was apparent from these interviews that both Federal agencies have an extensive chain of custody process. For example, each agency limits access to the locked evidence room, which is maintained by an evidence custodian. If evidence needs to be removed from the room, an agent must gain access through the evidence custodian and a record of that access is maintained. This process helps ensure that

¹⁵ Department of Justice Grand Jury Manual Chapter 2(M)(2) (November 1991, 1st Edition).

¹⁶ IRM 25.1.5.4(6) (January 15, 2010).

¹⁷ A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.

¹⁸ IRM 9.4.9.3.6.1(3) (February 9, 2005) and IRM 9.7.12.3(1) (August 11, 2003).

¹⁹ IRM 9.4.9.3.5.1(2) (February 9, 2005).



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evidence does not become lost or misplaced and helps keep the chain of custody from being broken.

Recommendations

The Chief, Criminal Investigation, should:

Recommendation 3: Reinforce the need for compliance with the required access controls over evidence, such as storing grand jury evidence separately from other evidence and the use of the Evidence Access Control Log.

Management's Response: The IRS agreed with this recommendation. Specifically, management will issue a reminder to managers and special agents regarding proper storage of grand jury information and documents subpoenaed by the grand jury and the utilization and maintenance of an Evidence Access Control Log.

Recommendation 4: Conduct a study to determine if each CI office has sufficient and proper storage space in which to maintain evidence in its possession. If a CI office does not have adequate storage space, coordinate with the Agency-Wide Shared Services' Real Estate and Facilities Management function to develop and implement an action plan to resolve this issue.

Management's Response: The IRS agreed with this recommendation. Specifically, management will conduct a study to determine if each CI office has sufficient and proper storage space in which to maintain evidence in its possession. If additional storage space is needed, CI will coordinate with the Agency-Wide Shared Services' Real Estate and Facilities Management function to develop an action plan to obtain additional storage space.

Recommendation 5: Enhance physical access controls over evidence through the use of a designated evidence custodian, such as a special agent or administrative personnel within the CI office.

Management's Response: While the IRS agreed with this recommendation, CI does not have the capability to have a designated evidence custodian in each post of duty due to resource constraints. Instead, CI will issue a reminder to the managers and special agents of the proper procedures of preserving the chain of custody for all access to controlled areas where evidence is stored, such as a wired cage, file cabinet, envelope, box, or locked room.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether CI is properly processing search and/or seizure warrants¹ and following the policies for maintaining the chain of custody for any evidence obtained. To accomplish our objective, we:

- I. Determined whether CI is properly processing search and seizure warrants.
 - A. Obtained and reviewed the policies and procedures for processing search and seizure warrants, including e-mail communications in relation to Policy Statement 4-120.² This included the process for obtaining the proper approvals and maintaining the proper documentation as well as preserving the chain of custody for any evidence acquired.
 - B. Interviewed personnel at the CI Headquarters and a judgmentally³ selected sample of five special agents at three site locations *****2***** and obtained an understanding of the search and seizure warrant process, including e-mail communications in relation to Policy Statement 4-120.
 - C. Interviewed two other law enforcement agencies and obtained an understanding of their search and seizure warrant process and compared/contrasted it to CI's process.
 - D. Obtained a download from the CIMIS of closed criminal investigations with search and/or seizure warrants and identified the non-grand jury criminal investigations closed between October 1, 2011, and June 30, 2013.
 - E. Requested the total population of 152 closed non-grand jury criminal investigations with search and/or seizure warrant activity from the data obtained in Step I.D.
 1. Determined the top three cities with cases from the closed criminal investigations population to conduct site visits (*****2*****).

¹ See Appendix V for a glossary of terms.

² IRS Policy Statement 4-120 states that the IRS will obtain a search warrant in all cases when seeking the content of e-mail communications.

³ A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population. Due to limited audit resources, we chose a judgmental sample because the interviews were determined by the special agents that were available during our site visits.



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2. Obtained the closed non-grand jury criminal investigation case files through the CI liaison.
- F. Reviewed each sampled investigation case file and determined whether:
1. The search warrant was prepared with the proper legal documentation.
 2. The proper documentation for planning the enforcement action of a search/seizure warrant was maintained.
 3. CI personnel obtained proper approval for the search and/or seizure warrants.
- II. Determined whether CI followed the policies for maintaining the chain of custody for evidence obtained.
- A. Obtained and reviewed policies for storing, accessing, retaining, and disposing of evidence obtained through the search/seizure warrant process.
- B. Interviewed personnel at the CI Headquarters and the judgmental sample of 15 special agents identified in Step I.B and obtained an understanding of the site location's specific chain of custody policies and processes for any evidence obtained through a search/seizure warrant.
- C. Interviewed two other law enforcement agencies and obtained an understanding of their evidence chain of custody process and compared/contrasted it to CI's process.
- D. Conducted a walkthrough of the chain of custody process at the three sites identified in Step I.E.1 and determined whether CI personnel are properly following procedures.
- E. Prepared a case review sheet and captured all of the necessary chain of custody information from each criminal investigation case file selected in our sample.
- F. Reviewed each sampled criminal investigation case file selected in Step I.E and determined whether:
1. The search and/or seizure warrant and inventory for the items seized was returned to the issuing magistrate judge and the *Post Enforcement Operation Summary* form was prepared.
 2. A post-search warrant inventory review was completed.
 3. The evidence was disposed of properly.

Data validation methodology

Due to grand jury secrecy restrictions to case file information, we could not conduct any testing to determine the accuracy and reliability of the CIMIS data we received from CI. To avoid the potential that inaccurate data from the CIMIS could negatively affect the accuracy of our



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analyses, we validated the data pertaining to the search and seizure warrants in the CIMIS through the specific tests related to the case reviews included in this audit.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: CI's policies, procedures, and practices relating to search and seizure warrants. We evaluated these controls by interviewing CI personnel and analyzing data related to investigations with search and seizure warrants.



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Appendix II

Major Contributors to This Report

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Todd Anderson, Senior Auditor
Margaret Filippelli, Senior Auditor
Melvin Thomas, Auditor



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Deputy Chief, Criminal Investigation SE:CI
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Chief, Criminal Investigation SE:CI



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Appendix IV

Scope Impairment

Between October 1, 2011, and June 30, 2013, CI closed 385 investigations with search and/or seizure activity. Of the 385 closed search and/or seizure warrant¹ cases, special agents classified 233 cases as grand jury and 152 cases as non-grand jury on the CIMIS.² Due to the grand jury secrecy rules, we requested the 152 closed non-grand jury cases for our review. CI management did not provide access to 91 (60 percent) of the 152 closed non-grand jury cases requested. According to CI management:

- 71 closed cases were treated as grand jury because they may have grand jury material.³
- 18 closed cases had documentation that was sealed by the court from disclosure.
- *****1*****

Since CI management did not provide these 91 closed cases for review, we requested corroborating information to support that these cases were either grand jury, associated with open investigations, or sealed.

For 11 of the 71 cases that were classified as grand jury, the IRS provided us Grand Jury Access Lists. Federal Rules of Criminal Procedure Rule 6(e)(3)(B) states that an attorney for the Government must provide the court a list of names that have been approved for access to grand jury information. The attorney must certify that the persons on the list have been made aware of their secrecy obligation under the rule. However, according to the IRM,⁴ the IRS is only required to maintain a Grand Jury Access List for Title 26 Subject Criminal Investigations utilizing the grand jury investigative process. According to the IRS, a majority of the 71 cases were Primary Investigations that did not require a Grand Jury Access List.

In addition, CI management informed us that, for some of these cases, the Assistant United States Attorney invited the IRS into the case because there may have been issues that fell under CI's jurisdiction that were to be addressed during the investigation, such as Title 18, Title 26, or Title 31 issues. CI management told us that they decided to handle these cases as if a grand jury had been called due to the possibility that the evidence may eventually be presented to a grand jury or a subpoena may be issued in the future.

¹ See Appendix V for a glossary of terms.

² We did not review the validity of data on the CIMIS.

³ There were an additional 14 grand jury cases (not included in this number) that the IRS provided to us after redacting the grand jury information.

⁴ IRM 9.5.2.4.1 (November 5, 2004).



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For eight of the 18 cases that were sealed, the IRS provided us information from the PACER showing that the court documents were sealed. When we inquired why information was not supplied for the remaining 10 cases, CI management replied that they were unable to provide anything further because not all sealed cases are located on the PACER.

*****1*****, we did not receive any additional information from the IRS. The fact that we were not able to review a majority of the cases we selected for review constitutes a significant scope limitation that prevented us from fully evaluating CI's processing of search and seizure warrants. It also prevented us from determining whether the IRS is following established legal requirements in every case for which a search and/or seizure warrant was used.



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Appendix V

Glossary of Terms

Term	Definition
Affiant	Person who signs an affidavit and swears to its truth.
Affidavit	Document that sets forth, in a logical fashion, all the existing evidence to establish probable cause that a crime was committed, that evidence of the crime exists, and that the evidence is located at a particular location.
Agency-Wide Shared Services	The IRS function responsible for providing payroll, facilities, physical security, travel, credit card, and cross-functional administrative and procurement support for all its organizational entities.
Assistant United States Attorney	An attorney for the Federal Government.
Bank Secrecy Act of 1970	Requires U.S. financial institutions to assist U.S. Government agencies to detect and prevent money laundering.
Chain of Custody	Preservation, by successive custodians, of the evidence of a crime or any relevant writing in its original condition.
Criminal Investigation Management Information System (CIMIS)	A database that tracks the status and progress of criminal investigations and the time expended by special agents. It is also used as a management tool that provides the basis for decisions of both local and national scope.
Criminal Tax Counsel	The section within IRS Chief Counsel that provides legal advice to CI throughout the criminal investigation process.
Evidence Access Control Log	A log used to record and document all access to controlled areas where evidence is stored.
Field Office	CI is divided into three geographic areas throughout the United States. These areas are further divided into field offices. Several smaller posts-of-duty are located within each field office.



Improvements Are Needed to Ensure That the Search and Seizure Warrant Process Is Adequately Documented and That Evidence Is Properly Secured

Term	Definition
Forfeiture	Forfeiture is the act of giving up something as punishment or because of a rule or law.
General Investigation	A CI investigation that is a study, survey, canvassing, or coordination activity related to a group, an activity, or a CI program/subprogram to identify possible noncompliance with the laws enforced by the IRS.
Grand Jury	A group of people who are selected and sworn in by a court that listen to evidence and decide if someone should be charged with a crime.
Internal Revenue Code	The codified collection of U.S. laws on income, estate and gift, employment, and excise taxes, plus administrative and procedural provisions.
Internal Revenue Manual (IRM)	Internal guidelines for personnel of the IRS.
Money Laundering	A financial transaction scheme that aims to conceal the identity, source, and destination of illicitly obtained money.
Non-Grand Jury	A case that is not presented to a grand jury.
Primary Investigation	A CI investigation that is an evaluation of an allegation that an individual or entity is in noncompliance with the laws enforced by the IRS and has the viability of criminal prosecution.
Probable Cause	A reasonable basis for believing that a crime may have been committed and that evidence of the crime is present in the place to be searched.
Public Access to Court Electronic Records	An electronic public access service that allows users to obtain case and docket information from Federal appellate, district, and bankruptcy courts.
Sealed	The process used by the courts to keep some of their proceedings and records confidential.
Search Warrant	A court order issued by a magistrate that authorizes law enforcement officers to conduct a search of a person, location, or vehicle for evidence of a crime and to confiscate evidence if it is found.



Improvements Are Needed to Ensure That the Search and Seizure Warrant Process Is Adequately Documented and That Evidence Is Properly Secured

Term	Definition
Seizure Warrant	A court order issued by a magistrate that authorizes law enforcement officers to seize property.
Special Agent	A law enforcement employee who investigates potential criminal violations of the Internal Revenue laws and related financial crimes.
Subject Criminal Investigation	A CI investigation that is initiated on an individual or entity alleged to be in noncompliance with the laws enforced by the IRS and having criminal prosecution potential.
United States Code (U.S.C.)	A consolidation and codification by subject matter of the general and permanent laws of the United States.



*Improvements Are Needed to Ensure That the
Search and Seizure Warrant Process Is Adequately
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Appendix VI

Management's Response to the Draft Report



Criminal Investigation

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 29, 2014

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Richard Weber 
Chief, Criminal Investigation

SUBJECT: Response to Draft Audit Report – Improvements Are Needed to
Ensure that the Search and Seizure Warrant Process is
Adequately Documented and that Evidence is Properly Secured
(Audit #201330049)

Thank you for the opportunity to respond to the above referenced draft report and to discuss the report with the audit team. We take the findings in this report very seriously, and appreciate and agree with your recommendations for ensuring proper documentation and proper storage of all evidence. Reductions in our administrative resources have necessitated that special agents maintain the administrative files and evidence for their individual cases; however, we are in the process of working on an improved system of maintaining and storing documents such as search and seizure warrant files.

In addition to implementing your recommendations, we intend to add additional procedures and measures of our own to further improve and strengthen our current procedures. First, the policies for proper case file documentation for search and seizure warrants and proper storage of the evidence will be reinforced to all Special Agents. Second, through management and national reviews, we will ensure that the policies and procedures for properly maintaining administrative documentation related to search and seizure warrants are being properly followed. In addition, we are actively working on securing sufficient space for all seized evidence. As you are aware, evidence can only be stored in Criminal Investigation (CI) space, which is restricted secured-access space that is accessible only by CI employees.

CI is cognizant of, respects and is sensitive to the rights of taxpayers, when utilizing the authority to conduct searches and obtain search and seizure warrants in accordance with the Fourth Amendment to the United States Constitution. We stress to our special



*Improvements Are Needed to Ensure That the
Search and Seizure Warrant Process Is Adequately
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agents to consider all other investigative tools before deciding that a search warrant is the least intrusive means to acquire evidence for an investigation.

Attached is a detailed response outlining our corrective actions.

If you have any questions, please contact me or Deputy Chief Don Fort at (202) 317-3200.

Attachment



*Improvements Are Needed to Ensure That the
Search and Seizure Warrant Process Is Adequately
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1

Attachment
August 29, 2014

Our comments on the specific recommendations in this report are as follows:

RECOMMENDATION #1

The Criminal Tax Counsel's post search warrant inventory reviews are completed for each tax-related Title 18 and Title 26 search warrant issued and that special agents have included the review documentation and signed copies of all affidavits in the case file. In addition, special agents should be reminded of the current procedures regarding the Criminal Tax Counsel's post search warrant inventory reviews.

CORRECTIVE ACTION

We agree with this recommendation. CI will issue a reminder to managers and special agents to ensure that (1) Criminal Tax Counsel's post search warrant inventory reviews are completed for each tax-related Title 18 and Title 26 search warrant issued and a copy of the review is maintained in the case file; and (2) that a copy of all signed affidavits are maintained in the case file.

IMPLEMENTATION DATE

April 15, 2015

RESPONSIBLE OFFICIAL

Director, Operations Policy and Support

RECOMMENDATION #2

Special agents update the CIMIS if the status of the case changes to grand jury during the investigation.

CORRECTIVE ACTION

We agree with the recommendation. CI will issue guidance and to clarify when CIMIS needs to be updated when the status of the case changes to grand jury.

IMPLEMENTATION DATE

November 15, 2015

RESPONSIBLE OFFICIAL

Director, Operations Policy and Support

RECOMMENDATION #3

Reinforce the need for compliance with the required access controls over evidence, such as storing grand jury evidence separately from other evidence and the use of the Evidence Access Control Log.

CORRECTIVE ACTION (S)

We agree with this recommendation. CI does maintain an evidence control log, which is maintained for each case by the Special Agent assigned the case. However, CI will issue a reminder to managers and special agents regarding the proper storage of grand jury information and documents subpoenaed by the grand jury and the utilization and maintenance of an Evidence Access Control Log.

IMPLEMENTATION DATE

August 15, 2015



Improvements Are Needed to Ensure That the Search and Seizure Warrant Process Is Adequately Documented and That Evidence Is Properly Secured

2

Attachment
August 29, 2014

RESPONSIBLE OFFICIAL

Director, Operations Policy and Support

RECOMMENDATION #4

Conduct a study to determine if each CI office has sufficient and proper storage space in which to maintain evidence in its possession. If a CI office does not have adequate storage space, coordinate with Agency-Wide Shared Services, Real Estate and Facilities Management function to develop and implement an action plan to resolve this issue.

CORRECTIVE ACTION

We agree with this recommendation. CI will conduct a study to determine if each CI office has sufficient and proper storage space in which to maintain evidence in its possession. If additional storage space is needed, CI will coordinate with Agency-Wide Shared Services, Real Estate and Facilities Management function to develop an action plan to obtain additional storage space.

IMPLEMENTATION DATE

November 15, 2015

RESPONSIBLE OFFICIAL

Director, Strategy

RECOMMENDATION #5

Enhance physical access controls over evidence through the use of a designated evidence custodian, such as a special agent or administrative personnel within the CI office.

CORRECTIVE ACTION

Due to resource constraints, CI does not have the capability to have a designated evidence custodian in each post of duty; however, Per IRM 9.4.9.3.6.1, CI case agents are the official evidence custodians for the evidence obtained in their investigations and as such maintain the chain of custody. We will issue a reminder to the managers and special agents, of the proper procedures of preserving the Chain of Custody, for all access to controlled areas where evidence is stored such as a wire cage, file cabinet, envelope, box, locked room etc.

IMPLEMENTATION DATE

October 15, 2015

RESPONSIBLE OFFICIAL

Director, Operations Policy and Support