

**INTERNAL REVENUE SERVICE**

Number: **200009001**  
Release Date: 3/3/2000  
CC:MSR:HOU:CT-705110-99

September 27, 1999

UILC# 7201.00-00

MEMORANDUM FOR

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

SUBJECT: Search Warrant Request on

This responds to the above referenced search warrant request submitted for approval by memorandum dated \_\_\_\_\_ As \_\_\_\_\_ of this office have advised \_\_\_\_\_, our review of this application has led us to conclude that although the affidavit may set forth enough evidence to establish probable cause to believe certain violations of Title 26 and Title 18 have occurred, it does not set 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 or are likely to contain evidence of the crimes alleged to have been committed. Accordingly, we are not inclined to approve the application as presently drafted and are closing our files and returning the search warrant and application package.

FACTS

The search warrant is sought in connection with an ongoing criminal investigation of \_\_\_\_\_, for possible violations of 26 U.S.C. §§ 7201, 7206(1), 7206(2), 7203, and 18 U.S.C. § 371. The place to be searched is located at \_\_\_\_\_. The items to be seized consist of all of the records, files, documents, and computer equipment found on the premises of \_\_\_\_\_. In the affidavit, the special agent alleges that \_\_\_\_\_, thereby enabling them to hide income and assets from the United States Government. Furthermore, the affidavit alleges that \_\_\_\_\_ omitted gross receipts from \_\_\_\_\_ in the amounts of \$ \_\_\_\_\_ and \$ \_\_\_\_\_ for the tax years \_\_\_\_\_ and \_\_\_\_\_, respectively. Finally, the special agent concludes the affidavit by asserting \_\_\_\_\_ is "permeated with fraud" and therefore, any \_\_\_\_\_ which might serve as a bar to the seizure of certain documents and files is inapplicable in this case.

The search warrant affidavit is based primarily on information obtained from an IRS Revenue Agent who conducted a civil audit of [redacted] for [redacted] and [redacted] and from information obtained through the use of an undercover agent (“UCA”) [redacted]. The UCA has [redacted]

[redacted] The purpose of [redacted] was for the UCA to [redacted] which would enable the UCA to shield his assets and income from the Internal Revenue Service. [redacted] has stated [redacted] has been devoted to [redacted]. The following discussion summarizes the areas we find problematic with the affidavit in its present state.

DISCUSSION

Our main concern is the affidavit, as presently drafted, does not set forth a sufficient factual predicate to establish probable cause to believe the items sought to be seized are located on the premises to be searched. Based on the UCA’s observation [redacted]

[redacted], it is assumed that [redacted] in that room. As to the [redacted], there is no information regarding its nature or contents.<sup>1</sup> The assumption is then stretched a step further, as the affidavit asserts these uncorroborated [redacted] contain evidence of alleged violations of Titles 26 and 18 committed by [redacted]. While we agree with the general idea that [redacted] would maintain [redacted], we are unable to accept this conclusion for the purpose of establishing probable cause in this case, absent further substantiation that [redacted] does in fact [redacted]. With respect to the computer system, there is absolutely no evidence provided which establishes probable cause to believe it contains evidence of a crime. All we know is that it may contain copies of [redacted], however, according to “the receptionist does all of the computer work.”

Another area of concern stems from the fact that, according to the affidavit, the Service is in possession of the names and addresses of [redacted] for whom [redacted]

[redacted]. Additionally, the affidavit indicates the UCA has [redacted] who now views himself as a criminal due to [redacted] income and assets from the United States Government. It is our opinion that these [redacted] can form the basis of a substantial case against [redacted]. By analyzing their returns to determine whether they had prior histories of reporting substantial interest income and capital gains which [redacted]

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<sup>1</sup> Similarly, there is no evidence or information suggesting [redacted] relative to [redacted] income tax evasion.

suddenly disappears from their returns after \_\_\_\_\_, the argument that \_\_\_\_\_ in evading income taxes through \_\_\_\_\_ grows increasingly stronger. Moreover, this could be accomplished without \_\_\_\_\_, thereby preventing them from alerting \_\_\_\_\_ of the pending investigation.

The investigation will further benefit from examining the returns of \_\_\_\_\_ for probable cause may be established to believe evidence of his alleged violations of Titles 26 and 18 is located in \_\_\_\_\_. At present, the affidavit lacks particularity when describing the items to be seized from \_\_\_\_\_. In fact, the affidavit provides a generic description of the items to be seized and resembles that of a general warrant. The warrant must describe with particularity and specificity the items to be seized and the premises to be searched to protect against a general exploratory search on the part of law enforcement officers. Stanford v. Texas, 379 U.S. 476, reh'g denied, 380 U.S. 926 (1965). Here, the description of the items to be seized has not been tailored to the evidence establishing probable cause to seize them. Through examination of the returns of \_\_\_\_\_ for whom \_\_\_\_\_, this situation may be remedied. Moreover, sufficient probable cause may be established to support an affidavit for a search of \_\_\_\_\_ limited to the seizure of only those \_\_\_\_\_ bearing \_\_\_\_\_.

This would provide the affidavit with the particularity and specificity which it lacks in its present state.

Counsel attempts to overcome this lack of particularity problem by relying upon the theory that general classifications in a warrant are acceptable when a more precise description is not possible. James v. United States, 416 F. 2d 467 (5th Cir.), cert. denied, 397 U.S. 907, 928 (1970). Counsel concludes that a specific description of the documents maintained by \_\_\_\_\_ is not possible. For the reasons stated above, we differ with this conclusion. Alternatively, the special agent asserts in the affidavit itself that \_\_\_\_\_ is "permeated with fraud," thereby obviating the necessity to particularize the description of the items to be seized. We find it unclear from the affidavit whether \_\_\_\_\_.

\_\_\_\_\_. If the former is true, this would negate the "permeated with fraud" argument contained in the affidavit and advanced by Counsel. Finally, we find it impossible to categorize \_\_\_\_\_ as "permeated with fraud," based solely upon innocuous statements made by \_\_\_\_\_ UCA<sup>2</sup> and only two brief \_\_\_\_\_ by CID with \_\_\_\_\_, wherein \_\_\_\_\_ implicates \_\_\_\_\_.

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<sup>2</sup> Specifically,

Lastly, we are concerned with Counsel's indication that the search warrant would be used to recover evidence of [redacted] own personal income tax evasion. The affidavit states that [redacted] failed to report gross receipts from [redacted] of \$ [redacted] and \$ [redacted] for the tax years [redacted] and [redacted], respectively. However, there is no discussion of how these amounts were derived, but for a statement concerning the Revenue Agent obtaining limited [redacted] for the years in question. The affidavit fails to state, or at a minimum, approximate, how [redacted] may have. Moreover, there is no substantiation, other than [redacted] own statements, as to the range of [redacted].

Based on these concerns, we are returning the warrant application to you without authorizing its referral to the Department of Justice. Should further assistance be required, please feel free to contact Chris Monica of the Criminal Tax Division on (202) 622-4470.

Attachment