

**WRITTEN TESTIMONY OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
ON FINANCIAL TRANSACTION STRUCTURING
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Chairman Roskam, Ranking Member Lewis and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the role of Internal Revenue Service Criminal Investigation (IRS-CI) in the detection and deterrence of financial crimes such as structuring and the law enforcement procedure called asset forfeiture.

The national strategy for combatting financial crimes involves multiple law enforcement organizations working together to disrupt and dismantle criminal enterprises. Financial crimes undermine the stability of the U.S. economy and threaten the integrity of our tax system, as funds from legal and illegal sources go undetected through tax evasion schemes. This untaxed underground economy ultimately erodes public confidence in the tax system and contributes to the tax gap.

As the sole law enforcement organization responsible for enforcing our nation's tax laws and supporting federal tax administration, IRS-CI plays a unique role in fighting financial crimes and has a long history of working in partnership with law enforcement organizations at the federal, state and local levels. Over time, IRS-CI has become known as having the best financial investigators in the government and their skills are often sought by other law enforcement agencies and prosecutors. They focus their efforts on national law enforcement priorities such as tax evasion, money laundering, public corruption and terrorist financing. IRS-CI's conviction rate, which is indicative of the quality of cases it recommends to the U.S. Department of Justice for prosecution, remains one of the highest among federal law enforcement agencies. In fiscal year 2014, the IRS-CI conviction rate was 93 percent.

Congress has enacted numerous statutes to help law enforcement organizations like IRS-CI detect and investigate potential crimes through mechanisms such as third-party reporting.¹ The *Currency and Foreign Transactions Reporting Act of 1970* – also known as the Bank Secrecy Act (BSA) – was passed in part to uncover criminal activities previously hidden from the government. Under the law, financial institutions are required to report individuals engaging in cash transactions exceeding \$10,000 in currency. These reports, called Currency Transaction Reports (CTRs), in combination with other reports like Suspicious Activity Reports (SARs) required by applicable laws and

¹ Statutory authorities, delegated authorities, and internal policies, procedures and guidelines apply to the conduct of criminal investigations by IRS-CI. Title 26 United States Code (USC) §7608(b) provides the initial authority for investigating crimes arising under the Internal Revenue laws. IRS-CI also has explicit enforcement responsibilities with regard to Title 18 USC §1956 and 18 USC §1957 dealing with money laundering and Title 31 USC §5311 *et seq.* dealing with the Bank Secrecy Act.

regulations, constitute a robust set of data widely used by federal law enforcement organizations to uncover a variety of illegal activities both domestically and around the world.

To circumvent BSA reporting requirements, criminals manipulate cash transactions to fall below the \$10,000 threshold that triggers the requirement to file a CTR. This intentional manipulation of the CTR filing threshold is referred to as structuring. The *Money Laundering Control Act of 1986* criminalized structuring for the purpose of evading the reporting requirements and made a person who willfully violated the law subject to possible fines and imprisonment. Ignorance of the law is not a defense to criminal structuring.

Criminals structure financial transactions to avoid BSA reporting for any number of reasons. For instance, structuring can be used to conceal from the government illegal cash-generating activities, such as drug-dealing. Structuring can also be used to conceal legal cash-generating activities as a way to evade paying taxes. Regardless of whether the funds come from a legal or illegal source, structuring financial transactions to evade BSA reporting requirements is a felony that IRS-CI continues to investigate in adherence with the law.

For a structuring violation to occur, the individual must act with the purpose of evading reporting obligations under the BSA. Depending on the facts and circumstances presented, a conspicuous pattern of cash deposits or other transactions may constitute circumstantial evidence that the bank's account holder acted with this illegal purpose. When evidence indicates criminal wrongdoing has occurred, structuring will be investigated and where appropriate, prosecution will be recommended, often together with other crimes such as tax evasion and money laundering. In cases where structuring occurred but is not separately charged as a crime, evidence of structuring may be presented to establish willfulness or as an affirmative act in furtherance of tax evasion or other crimes.

A critical tool to combat criminal activity is the seizure and forfeiture of assets related to those criminal activities. A "seizure" is the process through which the government initially comes into possession of property. "Forfeiture" proceedings are proceedings through which the government may acquire legal title and full rights of ownership as to the property. There are significant due process protections in place to protect the rights of innocent parties.

Before it can seize property in a structuring case, IRS-CI special agents prepare a seizure warrant affidavit, which is reviewed and approved internally by CI management. The affidavit is then reviewed by an Assistant U.S. Attorney (AUSA) and his/her manager and if they agree the affidavit is legally sufficient, the AUSA and the special agent appear before a federal magistrate judge where the special agent swears to the information contained in the affidavit. If the magistrate judge determines sufficient evidence was presented to establish probable cause, a seizure warrant is issued. IRS-CI agents then serve the warrant, and assets (cash and/or property) are seized.

Once a seizure takes place, the applicable civil or criminal forfeiture process follows pursuant to 18 U.S.C. § 983, 21 U.S.C. § 853 and other applicable federal forfeiture statutes. To civilly forfeit property, the government must prove by a preponderance of the evidence that the property is the proceeds of a criminal offense, or is involved in or traceable to a criminal offense, for which forfeiture is an available sanction. The property owner has the opportunity to challenge the government's evidence and assert his or her claim in the applicable civil or criminal process.

At issue in recent months has been the practice of law enforcement organizations seizing for forfeiture funds that were structured but were not derived from or associated with any other illegal activity. To be clear, structuring is a felony no matter the source of the funds, and federal law allows for seizures as a permissible tool. But it should also be noted that there are significant safeguards to ensure the reasonableness of any seizure action and that parties with an interest in the seized asset have a full and fair opportunity to be heard.

Structuring bank deposits or withdrawals to evade BSA reporting requirements is a felony, regardless of whether the funds come from a legal or illegal source. However, we recognize that small businesses and individuals may make deposits under \$10,000 without any intent to avoid the reporting requirements. In that light, after conducting a review of structuring cases last year, the IRS concluded that it will focus its resources on cases where evidence indicates that the structured funds are derived from illegal sources. We have tried to take a common sense approach to how we operate in this area.

Specifically, the IRS will no longer pursue the seizure and forfeiture of funds associated solely with "legal source" structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture and the case has been approved by a senior headquarters executive within IRS-CI. While the act of structuring to evade BSA requirements – whether the funds are from a legal or illegal source – is against the law, IRS-CI special agents will view this act as an indicator that other, more serious crimes may be occurring. This ensures that IRS-CI continues to focus its limited investigative resources on identifying and investigating tax violations within its jurisdiction that closely align with IRS-CI's mission and key priorities.

The new policy will help ensure consistency in how IRS-CI structuring investigations and related seizures are conducted. Seizure and forfeiture in "illegal source" structuring cases will continue, and in conducting any and all asset forfeiture actions, IRS-CI will continue to fully comply with all legal, regulatory, and policy requirements. IRS recognizes that seizure and forfeiture are powerful tools that must be administered fairly, efficiently, and in compliance with the law.

Let me conclude by noting that the IRS recognizes and emphasizes in all of its work the importance of administering the law fairly. We have processes in place to ensure we use our investigative tools appropriately and we continually look to make improvements. At the same time, IRS-CI will continue to investigate and assist in these significant financial investigations that will generate the maximum deterrent effect to criminals and

those considering violations of the law, and that will enhance voluntary compliance and ensure fairness. I appreciate the opportunity to testify on this important topic and I would be happy to take your questions.