



IRS Can Seize Your Assets Even If It Just Suspects You Committed a Crime

The Internal Revenue Service (IRS) has increasingly used the process called civil asset forfeiture to seize the assets — including bank accounts — of people suspected of being engaged in criminal activity, even if no criminal charges are filed.

A report in the *New York Times* for October 26 by the paper's national economy reporter, Shaila Dewan, revealed the IRS's "legal" theft:

Using a law designed to catch drug traffickers, racketeers and terrorists by tracking their cash, the government has gone after run-of-the-mill business owners and wage earners without so much as an allegation that they have committed serious crimes. The government can take the money without ever filing a criminal complaint, and the owners are left to prove they are innocent.

The report quoted David Smith, a former federal prosecutor who is now a forfeiture expert and lawyer in Virginia, who said: "[The IRS is] going after people who are really not criminals. They're middle-class citizens who have never had any trouble with the law."

As part of the investigative report, the *Times* contacted the IRS about its policies, and on October 25 received a reply from Richard Weber, the IRS's chief of criminal investigation (CI).

Weber stated, in part:

I.R.S.-C.I. 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 at the director of field operations (D.F.O.) level. While the act of structuring — whether the funds are from a legal or illegal source — is against the law, I.R.S.-C.I. special agents will use this act as an indicator that further illegal activity may be occurring.... The policy involving seizure and forfeiture in "illegal source" structuring cases will remain the same.

"Structuring" (also called "smurfing" in the banking industry) is the practice of making deposits under \$10,000 to evade reporting requirements. Under 31 USC 5324, if a person's "transaction could have been conducted as a single transaction and that the person took actions to break it up to avoid a currency transaction report," he is considered to be in violation of the law. The IRS describes its examining process to determine guilt as follows:

Civil penalties or referrals to CI should be pursued only if the results of the interview establish that:

- A. The transactions were structured to avoid a currency transaction report
- B. The person(s) involved had knowledge of the BSA [Bank Secrecy Act];
- C. No legitimate purpose existed for structuring the transaction(s): and,





D. The amounts involved are material.

According to the BSA, “Any persons who receive more than \$10,000 in one transaction or a series of related transactions, while conducting their trade or business, must file a Form 8300.”

Note that Weber reminded us that “the act of structuring — whether the funds are from a legal or illegal source — is against the law.” So, even if a person has not broken the law but decides to make a series of small deposits totaling \$10,000, either because it is more convenient, or simply because they value their privacy, the IRS holds them to be a lawbreaker. As such, their assets are subject to civil asset forfeiture.

The *Times* was not the only newspaper to report about abuses stemming from the federal forfeiture program. An article run by *Forbes* on October 22 noted that the program, not only the IRS, but also local and state law enforcement can seize cash, cars, and other property they suspect have links to crime. However, notes *Forbes*, the seized property overwhelmingly came from people who have never committed a crime.

The article cited a recent investigation conducted by the *Washington Post* that found that the government never charged property owners with a crime in 81 percent of equitable sharing cases. And the assets are not returned, but used by the law-enforcement agencies seizing them. Since 2008, 5,400 police departments and task forces have spent \$2.5 billion in federally forfeited property.

But the abuse of authority goes far beyond the seizure of assets, however. Notes the *Forbes* article:

These off-budget funds are a driving force behind the militarization of America’s police forces, giving rise to “warrior cops.” A Georgia town of 8,000 people spent nearly \$80,000 on weapons and protective gear, including 27 M-4 rifles. Another department in Georgia purchased an eight-ton BearCat armored personnel carrier for \$227,000. Police in Prince George’s County, Md. obtained a “mobile command bus” worth \$1.2 million. Nationwide, police have spent over \$175 million in equitable sharing funds on weaponry.

Senator Rand Paul (R-Ky.) and Rep. Scott Garrett (R-N.J.) have introduced legislation to restore the integrity of the Fifth Amendment to the Constitution by restricting the federal government’s exercise of civil asset forfeiture powers. Paul introduced the legislation in the Senate as S. 2644 (the Fifth Amendment Integrity Restoration Act of 2014, or the FAIR Act), and Garrett introduced the companion bill (H.R. 5502) in the House. The CRS summary advises that the FAIR Act:

Amends the federal criminal code to increase the federal government’s burden of proof in civil forfeiture proceedings to clear and convincing evidence. Requires the government, in addition to showing a substantial connection between the seized property and the offense in a forfeiture proceeding, to establish by clear and convincing evidence that the owner of any interest in the seized property intentionally used the property in connection with the offense or knowingly consented or was willfully blind to the use of the property by another in connection with the offense.

Requires proceeds from the disposition of forfeited property to be deposited into the General Fund of the Treasury, rather than to Department of Justice (DOJ) accounts for law enforcement activities.

H.R. 5212 provides for “the innocent owner defense,” which states: “The innocent owner defense shall be available to a claimant. Where a prima facie case is made for such a defense, the Government has the burden of proving that the claimant knew or reasonably should have known that the property was



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involved in the illegal conduct giving rise to the forfeiture.”

While the FAIR Act may not completely solve the problems stemming from the IRS’s overzealous enforcement practices, it is a step in the right direction.

However, an even better solution would be to eliminate the income tax entirely, as Senator Paul’s father, former Representative Ron Paul, wanted to do. The senior Paul noted in a column entitled “The Case Against the Income Tax” on May 7, 2001:

The harmful effects of the income tax are obvious. First and foremost, it has enabled government to expand far beyond its proper constitutional limits, regulating virtually every aspect of our lives. It has given government a claim on our lives and work, destroying our privacy in the process. It takes billions of dollars out of the legitimate private economy, with most Americans giving more than a third of everything they make to the federal government. This economic drain destroys jobs and penalizes productive behavior. The ridiculous complexity of the tax laws makes compliance a nightmare for both individuals and businesses. All things considered, our Founders would be dismayed by the income tax mess and the tragic loss of liberty which results.

The IRS’s practice of civil asset forfeiture is only one of many ways in which the federal income tax erodes our liberty.



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