

Congress of the United States

JOINT COMMITTEE ON TAXATION

Washington, D.C. 20515

FYI

April 30, 1981

MEMORANDUM

TO: Members of the Ways and Means and Finance Committees

FROM: Mark McConaghy

SUBJECT: Summary of GAO Report on the Legal Review Process
for Criminal Tax Cases

* The U.S. General Accounting Office (GAO) recently issued a report (copy enclosed)* to the Joint Committee on Taxation concerning the legal review process for criminal tax cases ("Streamlining Legal Review of Criminal Tax Cases Would Strengthen Enforcement of Federal Tax Laws," GAO Report No. 81-25). This report was issued in response to a request by the Joint Committee on Taxation, and is a companion to a 1979 GAO report on the Internal Revenue Service's criminal tax case development and selection activities ("Improved Planning for Developing and Selecting IRS Criminal Tax Cases Can Strengthen Enforcement of Federal Tax Laws," GAO Report No. GGD-80-9). The recent report discusses the need for revisions to the legal review process for criminal tax cases.

The following is a brief summary of GAO's findings and conclusions and recommendations, as well as agency and ABA comments on the report.

GAO FINDINGS AND CONCLUSIONS

According to the GAO, the efficiency and effectiveness of the Federal Government's tax enforcement efforts have been hampered by a time-consuming and duplicative legal review process for criminal tax cases. The GAO found that about 75 percent of the investigations conducted annually (representing over 100,000 staff days) by the IRS Criminal Investigation Division do not lead to prosecutive recommendations or convictions. GAO indicates that the quality, timeliness, and productivity of IRS criminal tax investigations could be improved if special agents were provided with meaningful legal assistance during, rather than after, their investigations.

* Copy of report available in 1013A -- See Tony or John.

According to the GAO, the current legal review process is not conducive to providing timely assistance because it consists almost entirely of sequential, post-investigative reviews by IRS District Counsel, the Justice Department's Tax Division, and the cognizant U.S. Attorney. The GAO notes that, on the average, it takes IRS District Counsel attorneys about six months to review recommendations for prosecution; cases approved by IRS attorneys then are referred to the Justice Department's Criminal Section for a second review, which may take another six months; finally, approved cases are forwarded to U.S. Attorneys for a third legal review and prosecution, if warranted.

The GAO concludes that the sequential legal review process for criminal tax cases is duplicative, unnecessary, and results in delays which reduce IRS' effectiveness.

GAO RECOMMENDATIONS

Administrative recommendations

The GAO recommends that the Attorney General and the Commissioner of Internal Revenue jointly develop a streamlined legal review process for criminal tax cases. Further, the GAO proposes that any revised process should: (1) provide a means through which the IRS Criminal Investigation Division can obtain timely legal assistance during its investigations; (2) improve timeliness and eliminate any unnecessary duplication and cost; (3) ensure that criminal tax cases receive a high quality, independent legal review before they are prosecuted; and (4) safeguard the legal rights of taxpayers.

Recommendation to the Congress

The GAO recommends that because enforcement of the tax laws involves separate Governmental agencies with their own budgets, the Congress ensure that the Treasury and Justice Departments develop a streamlined legal review process for criminal tax cases which realizes a potential cost savings while safeguarding taxpayers' legal rights.

COMMENTS ON THE GAO REPORT

Agency comments

Both the IRS and the Justice Department agreed that the existing legal review process for criminal tax cases should be streamlined and that any revisions in the process should comply with the criteria proposed by the GAO. However, they were not able to develop a mutually agreeable approach for streamlining the legal review process. Justice indicated that it had reevaluated its policies and procedures and planned to significantly revise its process for reviewing criminal tax cases. IRS, however, presented no specific plan for changing its procedures. IRS did state that it would try to provide increased legal assistance to the Criminal Investigation Division during its investigations.

American Bar Association comments

The ABA Section of Taxation concluded that the current tiered process (IRS/Justice review) for legal review of criminal tax cases has worked well (indicating that approximately 94 percent of the criminal tax cases result in conviction or a plea of guilty), and that it should be retained. However, the Tax Section recommended that the review process could and should be improved and accelerated by providing for more specialization by the lawyers in District Counsel's office, and by making those specialized lawyers more easily available to the Criminal Investigation Division to answer specific legal questions which arise during the investigation.

AVAILABILITY OF GAO REPORT

Additional copies of GAO's report are available from the U.S. General Accounting Office, Distribution Section, Room 1518, 441 G Street, N.W., Washington, D. C. 20548.

Enclosure: GAO Report No. 81-25

