

INTERNAL REVENUE SERVICE

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MEMORANDUM FOR ASSISTANT REGIONAL COUNSEL (CT),
NORTHEAST REGION

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

SUBJECT:

This responds to your recent e-mail regarding the _____ case. As you know, the Tax Division declined a search warrant request in this case, based in part, on their conclusion that there had been disclosure violations arising from the manner in which a CID special agent brought together an informant and Assistant United States Attorney. This Office became involved for we were lead to believe what occurred herein might be standard practice in the New England District. To assist us, we requested Disclosure Litigation (DL) to provide us an opinion discussing whether they concurred with the Tax Division's conclusion.

As set forth in the enclosed memorandum, although DL is not as critical as the Tax Division is about what occurred, they suggest caution in this area, and speculate whether the special agent has disclosed, is disclosing, or will disclose return information in following these practices. Since then, the Service has suffered two set backs in the CI/disclosure arena – Gandy and Payne.

The result is that although we might believe the Tax Division is overly conservative, we are not in a position to challenge their conclusion. In fact, it might be that being conservative is not inappropriate.

If you have any further questions, please contact Chris Monica on (202) 622-4470.

Enclosure