

Steve Leimberg's Income Tax Planning Email Newsletter - Archive Message #99

Date: 20-Sep-16

From: Steve Leimberg's Income Tax Planning Newsletter

Subject: [Kevin E. Packman and Andrew H. Weinstein: Is the IRS Becoming a Gun Culture?](#)

“While much has been written in the media about the militarization of local police, numerous federal governmental agencies, including the IRS have quietly been stockpiling an impressive array of machinery and ammunition. According to a report released earlier this summer, the IRS spent \$10.71 million on guns, ammunition and military-style equipment for its 2,316 Special Agents.

*While it is unclear which statutory authority the IRS is relying upon to permit its Special Agents to carry weapons, most tax practitioners are aware that Special Agents carry guns. Certainly, governmental agents need to be protected when seeking to enforce federal law. As shown in the movie *The Untouchables*, Kevin Costner and his colleagues from the Treasury Department had guns when going after Al Capone. What the report reflects is that the IRS is stockpiling an assortment of weapons that are usually found in movies, television shows and select video games. However, many of the same weapons that are being purchased for the agents are already available to the criminal element.”*

Kevin E. Packman and **Andrew H. Weinstein** provide members with fascinating commentary on the IRS’s acquisition of guns, ammunition and military-style equipment.

Kevin E. Packman is a Partner with **Holland & Knight LLP** and a member of its International Estate Planning Group, an integral part of the firm's Private Wealth Services Department. He chairs the firm's [Offshore Tax Compliance Team](#) and focuses his practice on IRS tax controversies. He also assists clients with estate and gift tax planning for domestic and international clients as well as on pre-immigration planning for international clients. Kevin, a member of ACTEC (The American College of Trust and Estate Counsel) and STEP

(Society of Tax and Estate Practitioners) has lectured for the American Bar Association, NYU, AICPA, Florida Bar Association, national financial institutions, national and local accounting offices, and community organizations. He has been published in numerous national publications including the Journal of Taxation, Estate Planning, Practical Tax Strategies, Trusts & Estates as well as in The Jerusalem Post. He has been quoted repeatedly in The Wall Street Journal, and in The New York Times, The Financial Times, and Business Week on issues related to IRS enforcement and foreign bank account reports. Kevin also serves as **Technical Editor** of **LISI**'s International Tax Planning Newsletters.

Andrew H. "Andy" Weinstein is a partner in **Holland & Knight's** Miami office and a member of the firm's Taxation Practice. Mr. Weinstein has extensive experience that includes providing domestic and international tax planning and compliance for ultra high-net-worth individuals, with a focus on multijurisdictional tax disputes, and reporting of international financial accounts and related tax litigation. Mr. Weinstein represents clients in civil and criminal tax matters before the IRS and Department of Justice, from early stage examinations and investigations through termination. He structured and implemented the largest expatriate matter in U.S. history; reorganized control of major international shipping fleets; structured domestic and foreign trusts involving cross-border investments; coordinated global trust projects; and handled tax planning and compliance for transactions involving multibillion-dollar projects.

Here is their commentary:

EXECUTIVE SUMMARY:

While much has been written in the media about the militarization of local police,^{[\[i\]](#)} numerous federal governmental agencies, including the IRS have quietly been stockpiling an impressive array of machinery and ammunition. According to a report released earlier this summer, between fiscal year 2006 and fiscal year 2014, "67 non-military federal agencies spent \$1.48 billion on guns, ammunition, and military-style equipment. Since 2004, Department of Homeland Security (DHS) purchased 1.7 billion bullets including 453 million hollow-point bullets. As of 1/1/2014, DHS estimated its bullet inventory-reserve at 22-

months, or 160 million rounds.” Additionally, the IRS spent \$10.71 million on guns, ammunition and military-style equipment for its 2,316 Special Agents.

FACTS:

In June 2016, Openthebooks.com, which is a project of American Transparency, a 501(c)(3) organization, published a report titled, “The Militarization of America: Non-Military Federal Agencies Purchases of Guns, Ammo, and Military-Style Equipment Fiscal Years 2006 – 2014: Oversight Study.”^[iii] According to GuideStar, American Transparency’s mission statement is “to expand government transparency by inputting and entering government transactions on the internet.”^[iii]

While a review of the report’s Key Findings is available on page 5 of the report, and worth a perusal, as noted above, the IRS spent \$10.71 million on weaponry during 2006-2014 or \$4,624 for each of its Special Agents. Specifically, those funds were allocated \$6.452 million on guns and ammunition and \$4.258 million on equipment.

Upon reviewing the report, we thought back to a 2014 case in the First Circuit Court of Appeals. In what was a case of first impression, the Appellate Court held that evidence seized by IRS Special Agents from the taxpayer’s home was admissible even though IRS Special Agents were armed when they entered the residence. The case, *United States v. Adams*^[iv] dealt with a tax protestor charged with two counts of tax evasion and conspiracy to defraud the United States by impeding the Government with the collection of payroll taxes.

In an effort to suppress the evidence collected from his home, the taxpayer focused on Code Section 7608. Section 7608(a) specifically provides that IRS personnel that enforce the laws pertaining to alcohol, tobacco and firearms (often referred to as ATF) are permitted to carry firearms.

Because the Special Agents who seized the property were enforcing the income tax laws, and not the ATF laws, Section 7608(a), arguably did not apply. Rather, Section 7608(b) applied, and carrying firearms is

not enumerated as a power or right provided to Special Agents in enforcing other tax laws.

The taxpayer was found guilty following a jury trial during which the illicit evidence was admitted, which led to an appeal.

All Special Agents carry firearms, and if it is not permitted by Section 7608(b) from where does the authority come? The answer is the Internal Revenue Manual (the "IRM"). Section 9.1.2.4.1 of the IRM is titled "Authority To Carry Firearms." [\[v\]](#) It provides as follows:

1. There is no specific statutory authority for special agents to carry firearms. The General Counsel, Department of the Treasury, has concluded that no specific authority is necessary because "where a Federal officer has authority to make an arrest, he/she has implied authority to carry firearms." Authority for special agents to make arrests is contained in 26 USC §7608(b).
2. The authority to carry firearms is limited to the conduct of official duties in enforcing any of the criminal provisions of the Internal Revenue laws or other criminal provisions of laws relating to the Internal Revenue where the enforcement is the responsibility of the Secretary or his/her delegate.

During his appeal the taxpayer argued that since Section 7608)(b) did not explicitly permit Special Agents enforcing an income tax matter to carry firearms, Congress intended to prohibit such agents from being armed. Therefore, the search was illegal.

Both the lower court and appellate courts assumed that the Special Agents violated Section 7608(b) during their search because they were carrying weapons. However, they found suppressing the evidence was not the appropriate remedy. The appellate court held that the fact that the agents carried weapons had no impact on the scope of the search or evidence procured. Neither court referenced the IRM or ruled on whether Section 7608(b) actually permits Special Agents to carry weapons.

COMMENT:

While it is unclear which statutory authority the IRS is relying upon to permit its Special Agents to carry weapons, most tax practitioners are aware that Special Agents carry guns. Certainly, governmental agents need to be protected when seeking to enforce federal law. As shown in the movie *The Untouchables*, Kevin Costner and his colleagues from the Treasury Department had guns when going after Al Capone. What the report reflects is that the IRS is stockpiling an assortment of weapons that are usually found in movies, television shows and select video games. However, many of the same weapons that are being purchased for the agents are already available to the criminal element.

**HOPE THIS HELPS YOU HELP OTHERS MAKE
A POSITIVE DIFFERENCE!**

Kevin Packman

Andy Weinstein

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CITATIONS:

[i] <http://huff.to/2aiWf4L>; <http://bit.ly/1qsqkBQ>; <http://n.pr/2a5XYgl>;
<http://bit.ly/1R6Pxtf>

[ii] <http://bit.ly/1tu0Pnn>

[iii] <https://www.guidestar.org/profile/26-3593601>

[iv] United States v. Adams, ___ F. 3d ___ (1st Cir. 2014) [Nos. 12-2276];
<http://bit.ly/2ckL8GP>

[v] <http://bit.ly/2d9mZJ9>