Case Study: Asset Forfeiture

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AN INTRODUCTION TO ASSET FORFEITURE

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What is Asset Forfeiture?

- Asset forfeiture is the taking of property derived from a crime, "involved in" a crime, or that which makes a crime easier to commit or harder to detect.
- Asset forfeiture is either punitive or remedial.
WHAT IS THE PURPOSE OF ASSET FORFEITURE?

- Punish the criminal.
- Deter the illegal activity.
- Remove the tools of the trade.
- Disrupt the organization.
- Return the assets to the victim.
- Protect the community.
- Use the money for law enforcement.
STATUTORY BASES FOR FORFEITURE

Forfeitures must be authorized by specific statute:

- Controlled substance offenses
- Money laundering, mail and wire fraud, other financial crimes
- Organized crime/racketeering
- Structuring and other currency violations
- Crimes listed as “specified unlawful activity”
- Terrorism, financing of terrorism
THEORIES OF FORFEITURE

• Proceeds
• Facilitation
• Property "Involved In" Money Laundering
• Terrorism
THEORIES OF FORFEITURE: PROCEEDS

“Proceeds” means:

• Any property that is traceable to the illegal activity for which the applicable statute provides forfeiture authority.

• Any property traceable to the original proceeds.
THEORIES OF FORFEITURE: PROPERTY “INVOLVED IN” MONEY LAUNDERING

• Money laundering statutes authorize forfeiture of all property "involved in" a violation of 18 U.S.C. § 1956, § 1957, or § 1960, including:
  – all the property used to commit the offense;
  or
  – any property used to facilitate the underlying offense.
Theories of Forfeiture: Terrorism

- The forfeiture statute for terrorism was enacted in October 2001.

- If someone is engaged in planning or perpetrating acts of domestic or international terrorism, the government may seize and forfeit all assets, foreign or domestic.
SEIZURES UNDER THE MONEY LAUNDERING CONTROL ACT: PROCEEDS

• Authorizes forfeiture of the proceeds of many federal crimes and some state crime, like ...
  – Mail and wire fraud;
  – Bank fraud;
  – Arson;
  – Gambling; and
  – Interstate transport of stolen property.
SEIZURES UNDER THE MONEY LAUNDERING CONTROL ACT: MONEY LAUNDERING (1956)

- Also forfeits all property involved in a money laundering violation.
- Money laundering is:
  
  \[
  \text{SUA (Specified Unlawful Activity) + FT (Financial Transaction) + SI (Specific Intent)} = \text{Forfeiture.}
  \]

- Specific intent means using the ill-gotten gains of crime in a financial transaction with the intent to ...
  
  - Conceal or disguise the nature, location, source, ownership, or control of the proceeds; or
  - Promote the carrying on of further illegal activity.
SEIZURES UNDER THE MONEY LAUNDERING CONTROL ACT: MONEY LAUNDERING (1957)

- Does not require specific intent
- Functions as a money spending forfeiture
- Requires:
  - Knowing engagement in monetary transaction
  - Criminally derived property > $10,000
  - Which is in fact proceeds from an SUA
TYPES OF FORFEITURES

- Administrative
- Criminal Judicial
- Civil Judicial
**Administrative Forfeiture**

- Property forfeited to the United States without judicial involvement.
- Seizures must be based on probable cause.
- Makes up the majority of forfeiture proceedings and can seize any amount of currency.
- Includes personal property valued up to $500,000.
- No administrative forfeiture of real property.
CRIMINAL JUDICIAL FORFEITURE

- *In personam* action that includes forfeiture of property in a criminal indictment.
- Requires a conviction of the crime for which the forfeiture is authorized.
- Can only forfeit defendant’s interest.
- Requires preponderance of the evidence.
- Allows for substitute assets.
Civil Judicial Forfeiture

- *In rem* proceeding brought against property.
- No criminal conviction required.
- Connection between the crime and the property must be proven.
- Limited to property traceable to the offense.
- No substitute assets.
POINTS OF CONTACT – GOVT/BANKS

1. Investigative – for example, SARs

2. Service of seizure warrant or restraining order

3. Protection of bank’s interest by virtue of deed of trust on real property or UCC filing
Subpoenas

- Big banks get thousands of subpoenas
- Serve your subpoena properly
- Be specific about what you want
- Ask for everything – but work with the bank to get what you really want.
- Find someone to talk to at the bank.
- Ask for expedited service only when you need it.
- Banks will be happy to join the investigative “team.”
ASSETS FORFEITURE FUND
AND
SEIZED ASSET DEPOSIT FUND
ANNUAL FINANCIAL STATEMENTS
FISCAL YEAR 2012

U.S. Department of Justice

Office of the Inspector General
Audit Division
Audit Report 13-07
January 2013
Note 7. Forfeited and Seized Property (continued) (page 44 & 45)
Analysis of Changes in Seized Property -- For the Fiscal Year Ended September 30, 2012

<table>
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<th>FY 2011</th>
<th>FY 2012</th>
<th>Difference</th>
<th>% Change</th>
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<tr>
<td>Total Seizures</td>
<td>44,534</td>
<td>43,566</td>
<td>-968</td>
<td>-2.17%</td>
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<tr>
<td>Total amount seized</td>
<td>$4,041,929,000</td>
<td>$1,785,240,000</td>
<td>$2,256,689,000</td>
<td>-55.83%</td>
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The data — obtained by TRAC as a result of a multi-year effort under the Freedom of Information Act (FOIA) — categorizes the money laundering cases under two broad groups: narcotic-related matters ("drug") and non-drug-related ("other").

The latest available data from the Justice Department show that for the recently ended 2012 fiscal year the federal government prosecuted 310 individuals for criminal money laundering offenses. According to the case-by-case information analyzed by the Transactional Records Access Clearinghouse (TRAC), this number is down 4% from the previous fiscal year when the number of prosecutions totaled 322.
In the drug area, however, money laundering prosecutions in FY 2012 were at an all time low, 12 percent lower than the previous year, down 60 percent from the high reached seven years ago and down 30 percent from a decade ago.
For the larger group of non-drug cases, the annual total of individuals charged in federal court are significantly down from the highs that were achieved during the first two years of President Bush's second term.