




U.S. Immigration and Customs Enforcement

MAR 22 2005

MEMORANDUM FOR ALL SPECIAL AGENTS IN CHARGE

FROM: Marcy M. Forman 
Director
Office of Investigations

SUBJECT: Payments in Lieu of Forfeiture

This memorandum is intended to provide information and guidance concerning the use of payment in lieu of forfeiture in the resolution of cases where assets might also be available. Included are recommended procedures for payments in lieu of forfeiture. This office encourages all field offices to consider payment in lieu of forfeiture as a viable option in the resolution of appropriate cases.

Under the Treasury Forfeiture Fund Act of 1992, Title 31 United States Code, Section 9703, a payment in lieu of forfeiture is considered to be a "proceed from forfeiture" and therefore may be deposited into the Treasury Forfeiture Fund (TFF). (See 31 U.S.C. 9703(d)). Monies received from fines and penalties **are not** the proceeds from forfeiture and **may not** be deposited into the TFF. Monies collected from fines and penalties go to a specific fund designated for receipt of such payments. Absent a designated account, fines and penalties are deposited into the general fund of the Treasury. The obvious benefit of a payment in lieu of forfeiture is that the money deposited into the TFF may be "recycled" and utilized for law enforcement purposes. A payment in lieu of forfeiture is recorded similar to a seizure; an incident report is input into SEACATS, the funds are turned over to Customs and Border Protection (CBP) and deposited into the TFF after they are administratively forfeited. This allows the Office of Investigations (OI) to recoup expenses such as investigative costs as well as informant payments. These costs cannot be recouped from the collection of fines and penalties.

The government has an array of options available when considering the most appropriate disposition of a matter in civil litigation. Fines, penalties and forfeiture may all be used in appropriate circumstances. A payment in lieu of forfeiture is an appropriate method that may be used to settle any matter where there is property that is subject to forfeiture. The opportunity to utilize a payment in lieu of forfeiture arises in cases in which the government normally has chosen to seek the forfeiture of assets. Often in these cases, the violator retains the property that is the subject of the violation or is subject to forfeiture. For example, in a traditional forfeiture case, a payment in lieu of forfeiture might be used to resolve a case involving a business where the government would own a minority interest, or where the valuation of the business is extremely difficult. In addition, cases involving interdicted property that has a very limited market or cannot be sold at all, like weapons of mass destruction, weapons of war or toxic or prohibited chemicals may be appropriate for payments

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in lieu of forfeiture. Where the property involved in the violation is intellectual property rather than tangible property, a payment in lieu may also be appropriate. Other types of cases that OI may encounter where a payment in lieu may be used to resolve the matter include import and export violations, Title 8/Immigration violations, currency reporting and other Title 31 violations, and licensing violations. Generally, the regulatory, licensing and reporting violations are the most appropriate and most available for settlement through a payment in lieu of forfeiture.

The circumstances and situations cited above are intended to serve as examples and not to suggest the existence or absence of such facts and circumstances in any particular case. (b) (7)(E)

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[REDACTED]

To facilitate a payment in lieu of forfeiture, the defendant or violator must acknowledge that the government had probable cause for the forfeiture or that the government has alleged that it has probable cause and that the allegation will not be contested. Although preferred, the violator need not explicitly state that the property can be forfeited. However, there must be some acknowledgement, whether in an agreement, or if the government filed a civil action in the complaint, that the government has a legal basis to pursue forfeiture of the property. Further, the agreement should explicitly state that the amount tendered is a payment in lieu of forfeiture. Lastly, the agreement should explicitly state that the violator would not contest the ensuing forfeiture process and/or seizure notification(s) sent by CBP.

Questions concerning the use of payment in lieu of forfeiture in specific cases should be directed to Patrick Walsh, Chief, CELD at (202) 616- (b) (7)(E) or Unit Chief Paul Layman, Asset Forfeiture Unit, at (202) 353- (b) (7)(E)

cc: Chief, Customs Enforcement Law Division
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