

RESOLUTION NO. 524 2012

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH INTERNAL REVENUE SERVICE, CRIMINAL INVESTIGATION, FOR CONTINUATION OF THE FINANCIAL CRIMES TASK FORCE.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to execute the Memorandum of Understanding, which is attached hereto and incorporated herein by reference, with Internal Revenue Service, Criminal Investigation, for continuation of the Financial Crimes Task Force.

Section 2 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: September 27, 2012

/s/ Jim Gray
MAYOR

ATTEST:

/s/ Susan Lamb
CLERK OF URBAN COUNTY COUNCIL

**EDKY-FCTF
FINANCIAL CRIMES TASK FORCE
MEMORANDUM OF UNDERSTANDING**

PURPOSE

This Memorandum of Understanding (MOU) is executed in order to memorialize the agreement and set forth the terms and conditions between the Internal Revenue Service, Criminal Investigation (IRS-CI) and Lexington Fayette Urban County Government (hereinafter known as "the Department"), which have agreed to combine investigative efforts with the following agencies/departments in the Nashville Field Office (hereinafter know as "the Field Office"),

Internal Revenue Service, Criminal Investigation
None.

AUTHORITY

The Secretary has authority to investigate money laundering operations under 18 U.S.C. Sections 981, 1956(e) and 1957(e). The Secretary has delegated that authority to the Commissioner of IRS where the underlying conduct is subject to investigation under the Internal Revenue Code, or the Bank Secrecy Act, as amended, 31 U.S.C Section 5311- 5332. Treasury Directive (T.D.) 15-42: "Delegation of Authority to Commissioner to Investigate Violations of 18 USC 1956 and 1957". The Secretary has also delegated to the Commissioner of IRS the authority to investigate possible criminal violations of 31 Code of Federal Regulations (CFR) Part 103. Treasury Directive (T.D.) 15-41 (Dec. 1, 1992).

MISSION OF THE TASK FORCE

The mission of the Task Force will be to develop and assist with criminal investigations and asset forfeitures of illegal activities within the Field Office. The emphasis of the Task Force is to pursue investigations on individuals and organizations that will result in criminal prosecutions and large asset forfeitures in investigations arising out of the analysis of Suspicious Activity Reports (SARs) filed by financial institutions pursuant to Title 31 of the United States Code. The Task Force will work in coordination with the United States Attorney's Office(s) within the Field Office to determine the types of activities that merit investigation and are allied to the investigation and prosecution strategy.

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PERSONNEL

- 1) During the period of the assignment, the representatives remain under the supervision of their respective departments. However, the day-to-day supervision of employees shall rest with the Task Force Supervisory Special Agent (SSA).
- 2) IRS-CI will assign one SSA and one or more Special Agents as needed by the Task Force. IRS-CI will be responsible for the management, supervision and coordination of all investigative and operational activities. The United States Attorney will also designate a point of contact for consultation regarding the selection of targets for investigation, and for obtaining legal assistance in such investigations, including but not limited to grand jury subpoenas, tax disclosure orders, ex parte orders (other than tax), search and seizure warrants and any motions or pleadings required by the Civil Asset Forfeiture Reform Act (CAFRA).
- 3) Task Force personnel shall adhere to all Department of Treasury and IRS-CI policies and procedures. Where Treasury and/or IRS-CI policies are in conflict with the policies and procedures of the member's department, the Department may request in writing to the Task Force SSA that its employee follow the policies and procedures of the Department. If the Task Force SSA does not assent to the request, the Special Agent in Charge (SAC) and Chief Law Enforcement Officer of the respective department will resolve the matter. Failure to adhere to established policies and procedures may be grounds for immediate removal of the officers from the Task Force.
- 4) Personnel assigned to the Task Force shall be designated as full or part time in accordance with an agreement with their respective departments. It is understood that personnel assigned to the Task Force may continue to have duties (training, administrative duties, etc.) that are linked to their respective departments.
- 5) It is agreed that the Task Force SSA will contact the immediate supervisor (or other department designee) of any personnel assigned whose performance or conduct is questioned. The matter will be addressed in coordination with the department supervisor/designee.
- 6) During the period of assignment, each department representative will report to his/her department for personnel administrative matters. Each department shall be responsible for pay, overtime, annual leave, performance evaluations, insurance coverage and other benefits of its employees. Upon the establishment of a State and Local Overtime (SLOT) Agreement, departments will be reimbursed for overtime and related travel, as well as, lease expenses for

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vehicles for full time task force officers from the Treasury Forfeiture Fund, upon submission of Department of Treasury Form 9972, Request for Reimbursement of Joint Operation Expenses. This form, with necessary documentation, will be submitted monthly to the IRS-CI Task Force Coordinator.

- 7) Task force operations shall be conducted as joint operations with all participating agencies/departments acting as partners in the endeavor.
- 8) The Task Force SSA shall be a member of IRS-CI. The SSA shall be responsible for the day-to-day administration of the Task Force and with the input of the participating agencies/departments, shall establish the direction and any internal policy for the Task Force.

ADMINISTRATIVE ISSUES

- 9) Computer equipment and Travel:
 - a. All computer and related equipment assigned to the Task Force personnel will be used for official purposes only, and remains the property of the Task Force.
 - b. All Task Force Officers will adhere to his/her local agency policy while traveling armed. Task Force Officers when traveling by air will not utilize the IRS issued Unique Federal Agency Number (UFAN).
- 10) The IRS-CI Task Force Coordinator will be responsible for the oversight and administration of all equitable sharing distributions.
- 11) The Task Force will be located 7300 Turfway Rd., Turfway Ridge Office Park 1, Suite 410, Florence, KY 41042. IRS-CI will provide all necessary secretarial, clerical, automation and technical support (regarding IRS-CI issued equipment) for the Task Force.
- 12) In no event will the member departments charge IRS-CI for administration or implementation of this memorandum of understanding.
- 13) All members of the Task Force agree not to knowingly act unilaterally on any matter affecting the task force without first coordinating with the IRS-CI SSA.

STATE AND LOCAL LAW ENFORCEMENT DETAIL TO IRS-CI

- 14) Personnel from state and local law enforcement departments assigned full or part time to the Task Force shall be detailed, per 5 USC §3374(a)(2), as IRS-CI Task Force Officers.

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- 15) No action will be taken by any task force officer, utilizing their authority, under 26 USC § 7608(b) (1) and (2), without approval of the IRS-CI SSA.

INVESTIGATIVE MATTERS

- 16) IRS-CI will provide the necessary funds for the investigative expenses, and for the purchase of evidence and information that relates to investigations and intelligence gathering (unless the cost is considered a grand jury expense).
- 17) The Task Force investigative procedures will conform to the requirements for Federal prosecutions. All prosecutions shall be initially referred to the United States Attorney's Office(s) within the Field Office. The United States Attorney's Office may then recommend referral for state charges. In the event that prosecution does not lie with that office, or there is a conflict as to the proper venue or jurisdiction, any dispute shall be resolved by agreement of all parties having an interest in the investigation.
- 18) Access to and use of task force records will be in accordance with Federal Law and Department of Treasury and IRS-CI regulations and policy, including but not limited to the Freedom of Information and Privacy Acts.
- 19) The IRS is responsible for tax administration and the investigation of criminal violations of the Internal Revenue Code, (Title 26, United States Code). Internal Revenue code, Section 6103, restricts the disclosure of tax or tax return information except as provided by Section 6103. Reports recommending the prosecution of persons for criminal tax violations are subject to review by IRS Criminal Tax Counsel. Prosecution reports must also be referred to the Department of Justice (Tax Divisions) for their review and approval prior to prosecution.

INFORMANTS

- 20) All confidential and cooperating witnesses exclusively developed through the Task Force will be opened as IRS-CI informants, sources, assets or cooperating witnesses, and handled in accordance with IRS-CI guidelines, policy and procedures.
- 21) IRS-CI, as permitted by Federal law, agrees to pay reasonable and necessary informant expenses incurred by the Task Force. IRS-CI must approve all informant related expenses before they are incurred.

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FORFEITURE

- 22) Assets seized in connection with the Task Force will be forfeited under Federal and/or State laws. The Agreement between the IRS-CI and the Department, which have agreed to combine investigative efforts with the above named agencies/departments within the Field Office, for Equitable Sharing from Asset Seizure and Forfeiture, will be determined by agreement of all parties having an interest in the forfeiture.
- 23) All sharing will be within the discretionary authority of the Department of Treasury, as provided by 31 U.S.C. § 9703 (a)(1)(G) and (h), 18 U.S.C. 981(e)(2), and the Secretary of the Treasury's Guidelines for Equitable Sharing.
- 24) Any release of information to the media or through a press conference concerning task force investigations will be agreed to and coordinated jointly by the participating task force agencies/departments. No release may be made by any agency/department without the prior approval of the other task force agencies/departments. Generally, the United States Attorney's Office will be the lead concerning press releases pertaining to any arrest, convictions or seizure developed by the Task Force.
- 25) All task force related travel will require the approval of the agency employing the individual. All individuals will be responsible for securing his/her own agency/department approval for all travel.
- 26) For international travel, the IRS will obtain country clearances for all task force members. For domestic travel, each agency/department member will be responsible for appropriate notifications within their own agency/department.
- 27) Upon approval of a SLOT Agreement, reimbursement for investigation related and training travel will be requested from the Treasury Asset Forfeiture Fund. Each participating agency/department will submit required documentation to IRS-CI coordinator monthly for travel reimbursement.

LIABILITY

- 28) Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Legal representation by the U.S. is determined by the Department of Justice (DOJ) on a case-by-case basis. The IRS cannot guarantee the U.S. will provide legal representation to any Federal or State law enforcement officer or employee.

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- 29) For the limited purpose of defending claims, arising out of TASK FORCE activity, state officers who have been specifically detailed, and who are acting within the course and scope of their official duties and assignments, pursuant to this MOU, may be considered an "employee" of the U.S. government, as defined in 28 U.S.C., Section 2671.
- 30) Liability for any negligent or willful acts of TASK FORCE members, undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency/department involved.
- 31) Liability for violations of Federal constitutional law rests with the individual Federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C., Section 1983 for state officers or cross-detailed federal officers.
- 32) Task force officers may request representation by the U.S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R., Sections 50.15, 50.16.
- 33) If a task force officer is found to be liable for a constitutional tort, he/she may request indemnification from Department of Justice to satisfy an adverse judgment rendered against the employee in his/her individual capacity. 28 C.F.R., Section 50.15(c)(4).

DURATION

- 34) The term of this MOU shall be for a period of two years from the date signed. Upon termination of the Task Force, or withdrawal by a department, all equipment and IRS-CI credentials will be returned to IRS-CI.
- 35) The provisions of the LIABILITY section will continue until all potential liabilities have lapsed.

OTHER PROVISIONS

- 36) To the extent, there is any conflict between Federal law and the law of The State of Kentucky, Federal law controls. While state law may be used to aid in the interpretation of provisions of the MOU, which are not specifically covered by Federal law, it cannot be used to the extent it is inconsistent with any Federal law.

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37) The terms of this Agreement are not intended to alter, amend, or rescind any current agreement or provision of Federal law now in effect. Any provision of this MOU, which conflicts with Federal law, will be null and void.

38) This MOU does not confer any rights or benefits on any third party.

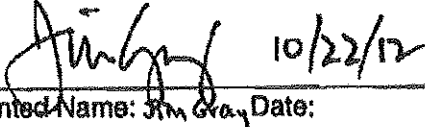
39) This Agreement may be amended at any time by mutual written consent of all Parties.

40) Should any provision of this MOU be construed or deemed invalid or unenforceable, by reason of the operation of any law or be reason of the interpretation placed thereon by any court, this MOU shall be construed as not containing such provision, but only as to such jurisdictions where such law or interpretation is operative. The invalidity of such provision shall not affect the validity of any remaining provision hereof and all other provisions hereof which are otherwise lawful and valid shall remain in full force or effect.

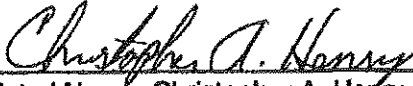
41) The undersigned agree that their agency/department will participate in the Financial Crimes Task Force, and agrees that their agency/department will abide by the policies set forth herein this agreement.

MODIFICATIONS

42) This memorandum of understanding may not be modified, except by addendum with written consent of all involved agencies/departments. Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing in an addendum and signed by an authorized representative of each participating agency/department.

 10/22/12

Printed Name: Jim Gray Date:
Title: Mayor
Agency/Department: Lexington Fayette Urban County Government



Printed Name: Christopher A. Henry Date: 11-19-2012
Title: Special Agent in Charge
Field Office: Nashville
Agency/Department: Internal Revenue Service, Criminal Investigation

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