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AMANDA L.H. BRINTON

February 7, 2005

The Honorable Arlen Specter  
THE UNITED STATES SENATE  
600 Arch Street  
Suite 9400  
Philadelphia, PA 19106

RE: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

Dear Senator Specter:

I am writing this letter to you in an effort to bring attention to the actions of ATF as it relates to unlawfully seizing lawfully owned and registered deactivated war trophies (DEWAT) brought back home by servicemen following World War II.

I have had the honor to represent a former law enforcement officer who bought a DEWAT from a very nice elderly woman whose husband owned a DEWAT weapon. The weapon in question was a Thompson Machine Gun. Despite clear proof that the DEWAT was registered, ATF denied the transfer and determined that the weapon was not registered and that it was contraband. Congressman Curt Weldon wrote a letter to ATF asking about the registration and was told that the weapon was not properly registered. Thereafter, Congressman Weldon did nothing.

I got involved in this matter to attempt to get ATF to reconsider its position, and after many months, ATF changed its position and acknowledged that the DEWAT had been registered. Prior to reversing its decision, ATF sent several agents to the widow's home to confiscate the weapon. It was only after we threatened a lawsuit to compel ATF to consent to the transfer, that ATF changed its position and acknowledged that the DEWAT was lawfully registered.

This change of policy by ATF is great for my client, but very troubling for many other Americans. In fact, ATF, in prosecutions for the unlawful possession of machine guns, has to rely on its claim that the registry (National Firearms Registration and Transfer Record) is accurate, yet, we know of many instances, including our own, where this is not the case. In fact, its own audits appear to admit that its registry is not 100% accurate, as claimed.

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The case involving my client, although very egregious, worked out for the widow, but there must be numerous other instances where lawfully owned property were illegally seized by ATF. We have attempted to get an explanation from ATF through various channels. In fact, Eric Larson, the foremost expert on this issue, has also attempted to shed light on ATF's abuses relating to the NFRTR, yet he is getting stonewalled as well.

I have enclosed materials from Eric Larson, which show that the NFRTR is not accurate, and suggesting that there be an amnesty period so that the NFRTR can be made accurate. Additionally, we are requesting that you ask ATF the following questions:

- Is there any written evidence or other proof that the NFRTR is complete and accurate?
- What did ATF do with the \$1,000,000.00 that Congress appropriated to render the NFRTR accurate and complete?
- What documents are acceptable to ATF to prove lawful ownership of an NFA firearm or device?

ATF, since the case that I handled resolved, has also been asked about the types of documents that would be acceptable to prove lawful ownership, and it has been asked to post on its website guidance in this regard. In the letter attached to this correspondence, ATF has stated that it is not in the public interest to update its website to include a list of documents that are acceptable to prove ownership of an NFA firearm or device.

The bottom line in this is that ATF has been seizing lawfully owned firearms from many unsuspecting individuals and estates. ATF has also claimed, especially in the case that I handled, that a firearm was not properly registered and subject to seizure only to reverse itself when forced with the prospect of a lawsuit. Clearly, until the NFRTR is complete and accurate, which an amnesty period can accomplish, many lawfully owned weapons will be subject to seizure by ATF.

Thank you for your consideration of this matter and please feel free to contact me if you require any additional information.

Very truly yours,

  
C. SCOTT SHIELDS

CSS/sh  
Enclosures  
cc: Eric Larson



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

AUG 24 2004

Washington, DC 20226

www.atf.gov

CC-82,457 FE: TH

Eric M. Larson  
P.O. Box 5497  
Takoma Park, Maryland 20913

Dear Mr. Larson:

I am in receipt of your June 19<sup>th</sup> letter regarding procedures for transferring National Firearms Act (NFA) firearms after the owner of the firearm has died. Specifically, you are concerned that documents that may "entitle" an heir to inherit NFA firearms are not discussed on the ATF website. Because the body of your letter refers specifically to the transfer of pre-1986 machineguns, our response will address those weapons.

The Gun Control Act of 1968 generally prohibits the transfer or possession of machineguns by private citizens, unless the machinegun was lawfully transferred or possessed before May 19, 1986. 18 U.S.C. § 922(o). In order for any machinegun to be lawfully possessed, it must be registered in compliance with the NFA. 26 U.S.C. § 5861(d).

You have referenced the article posted on the Internet that addresses the broader category of all NFA firearms. Generally, most NFA firearms that are properly registered at the time of the owner's death can be transferred within a reasonable amount of time to a lawful heir, beneficiary of the estate, or a person outside of the estate, so long as the transfer is approved by ATF and appropriate taxes are paid. Therefore, there are no documents that "entitle" an heir to inherit an NFA firearm. The procedure for transferring NFA firearms, including pre-1986 machineguns, is set forth in the article you referenced, "Transfers of National Firearms Act Firearms in Decedents' Estates" and in the Federal Firearms Regulations Reference Guide (ATF P 5300.4) Item 15. If you are seeking additional clarification regarding these articles, please provide us with your specific questions and we will address them as promptly as possible.

As to your suggestion that ATF post additional information regarding documents that may establish ownership of pre-1986 machineguns, we do not believe there is any benefit to the public in adding this information to the website. Presently, the information posted regarding transfers of NFA weapons in decedents' estates does not address this issue as it is of no relevance to most transfers. We will continue to work with applicants when the issue of ownership at the time of transfer is in question. However, the law provides that a pre-1986 machinegun can only be transferred if it has been lawfully possessed and registered by the transferor. Therefore, documentation establishing ownership is limited to NFA registration and, in limited circumstances, other records maintained by the Attorney General pursuant to the

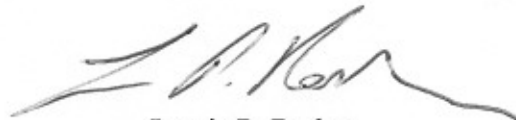
Eric M. Larson

National Firearms Act in force on the day immediately prior to the effective date of the NFA. 26 U.S.C. § 5841(d). The documents mentioned in your letter, such as U.S. military documents issued during World War II authorizing soldiers to retain captured enemy equipment, are not the type of documents included in the NFA registry as evidence of lawful possession and registration. Accordingly, we believe it would merely confuse the issue to specifically mention such documents in ATF publications.

Finally, your letter expresses concern that certain citizens are "deprived of valuable inherited personal property," and this deprivation is somehow associated with their inability to transfer a machinegun. Lawfully owned and registered pre-1986 machineguns can be transferred to approved individuals through the NFA application process. Without more information, we are uncertain as to the obstacles you believe prevent such a transaction.

ATF will continue its efforts to educate and provide accurate guidance to the public regarding the enforcement of Federal firearms laws. Also, please be assured that ATF does not have a policy or practice of seizing and forfeiting machineguns that are lawfully possessed. As previously stated, if you have specific concern regarding an NFA application to transfer a firearm or ATF's enforcement of the provisions of the Gun Control Act or National Firearms Act, please provide me with detailed information and we will respond as quickly as possible.

Sincerely yours,



Lewis P. Raden  
Assistant Director  
(Enforcement Programs and Services)