



*Fiscal Year 2009 Statutory Audit of  
Compliance With Legal Guidelines  
Restricting the Use of Records of  
Tax Enforcement Results*

**June 30, 2009**

**Reference Number: 2009-30-091**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

June 30, 2009

**MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT**

*Michael R. Phillips*

**FROM:**

Michael R. Phillips

Deputy Inspector General for Audit

**SUBJECT:**

Final Audit Report – Fiscal Year 2009 Statutory Audit of Compliance  
With Legal Guidelines Restricting the Use of Records of Tax  
Enforcement Results (Audit # 200930023)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in the IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204.<sup>1</sup> The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1)(2000) to annually evaluate the IRS' compliance with the provisions of RRA 98 Section 1204.

*Impact on the Taxpayer*

The RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees<sup>2</sup> using any record of tax enforcement results (ROTER) or base employee successes on meeting production goals and quotas. Based on the results of our sample, we believe the IRS' efforts to enforce the employee evaluation requirements under Section 1204 are generally effective and are helping to protect the rights of taxpayers. However, in our last two audits, the IRS has not achieved full compliance with Section 1204, and this heightens our concern that the IRS is moving in a direction away from achieving full compliance with Section 1204 and ensuring the rights of all taxpayers are protected in the future.

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> An enforcement (Section 1204) employee is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.



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*Synopsis*

RRA 98 Section 1204(a) prohibits the IRS from using any ROTER to evaluate employees or to impose or suggest production quotas or goals. Section 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. Section 1204(c) requires each appropriate supervisor to certify quarterly whether tax enforcement results were used in a prohibited manner.

To evaluate compliance with RRA 98 Section 1204, we selected a judgmental sample of 10 cities in which at least 4 IRS organizations subject to Section 1204 requirements were located. We selected 7 first-line managers from the different business organizations and 3 employees from each of the managers for a total of 69 managers and 207 employees.<sup>3</sup> In addition, we selected 10 second-level managers having supervisory responsibilities over the first-line managers selected for review. We evaluated Fiscal Year 2008 performance evaluation documents (including mid-year and annual performance reviews and award documentation) for each selected employee to determine whether ROTERs were used when evaluating the employees' performance.

The IRS did not achieve full compliance with Section 1204(a) requirements. We identified violations of RRA 98 Section 1204(a) in 7 (1 percent) of the 601 performance evaluation documents reviewed. In all seven violations, we found documentation that managers included ROTERs in the employees' evaluation, evaluated employees on the fair and equitable treatment of taxpayers, and prepared quarterly self-certifications showing that ROTERs were not used to evaluate employees.

***Full compliance with  
RRA 98 Section 1204  
was not achieved during  
Fiscal Year 2008.***

*Recommendation*

The Deputy Commissioner for Operations Support should ensure that Section 1204 violations are reviewed with the managers and they are provided remedial training, using the appropriate internal guidelines, to address their understanding of ROTERs. In addition, the Deputy Commissioner should strengthen the IRS' efforts to achieve full compliance with RRA 98 Section 1204 procedures by ensuring that all managers are aware of and use internal guidelines when preparing and reviewing performance evaluations.

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<sup>3</sup> We sampled 70 front-line managers; however, 1 manager did not have responsibility for enforcement employees. The IRS did not require the manager to prepare the self-certification; therefore, one manager and three employees were eliminated from our sample.



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*Response*

IRS management disagreed with six of the seven potential violations identified and did not agree with the recommendation. Regarding the one violation they agreed to, IRS management responded that the violation was addressed with the manager. Also, management responded that IRS employees are trained in the latest Section 1204 requirements throughout the year, and they use these training opportunities to raise manager awareness and understanding of the requirement. Management's complete response to the draft report is included as Appendix VI.

*Office of Audit Comment*

IRS management disagreed that the ROTERS we identified in employee self-assessments violate RRA 98 Section 1204(a). However, our position is that a self-assessment containing ROTERS violates RRA 98 Section 1204(a) when the self-assessment is adopted by a manager in the evaluation. Furthermore, when ROTERS appear in managerial self-assessments, they raise an inference that Section 1204(a) has been violated. Self-assessments are a fundamental part of the evaluation process for managers and executives, who complete self-assessments and provide them to their managers for consideration when preparing their annual appraisals. In our experience, the self-assessments are usually associated with the annual appraisals. Quite often, self-assessments are attached to and, in effect, become part of the annual appraisals.

Copies of this report are also being sent to the IRS managers affected by the report recommendation. Please contact me at (202) 622-6510 if you have questions or Margaret E. Begg, Assistant Inspector General for Audit (Compliance and Enforcement Operations), at (202) 622-8510.



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*Abbreviations*

FY	Fiscal Year
IRS	Internal Revenue Service
ROTER	Record of Tax Enforcement Results
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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## *Background*

On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law.<sup>1</sup> RRA 98 Section 1204 restricts the use of enforcement statistics. Specifically, RRA 98 Section 1204(a) prohibits the IRS from using any record of tax enforcement results (ROTTER) to evaluate employees or to impose or suggest production quotas or goals.

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement results reached in one or more cases. A ROTER does not include evaluating an individual case to determine if an employee exercised appropriate judgment in pursuing enforcement of the tax laws. Examples of ROTERs include the amount of dollars collected or assessed, the number of fraud referrals made, and the number of seizures conducted.

***RRA 98 Section 1204  
prohibits the IRS from using  
ROTTERs or production goals  
or quotas to evaluate  
employees.***

RRA 98 Section 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS refers to this standard as the retention standard. The standard requires employees to administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer ethically with honesty, integrity, and respect. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results.

RRA 98 Section 1204(c) requires each appropriate supervisor to perform a self-certification quarterly. In the self-certification, the appropriate supervisor attests to whether ROTERs or production quotas or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest ranking executive in a distinct organizational unit who supervises directly or indirectly one or more Section 1204 enforcement employees.<sup>2</sup> IRS procedures require each level of management, beginning with first-line managers of Section 1204(a) employees, to self-certify that they have not used ROTERs in a manner prohibited by RRA 98 Section 1204(a). The appropriate supervisor then prepares a consolidated office certification covering the entire organizational unit.

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> An enforcement (Section 1204) employee is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.

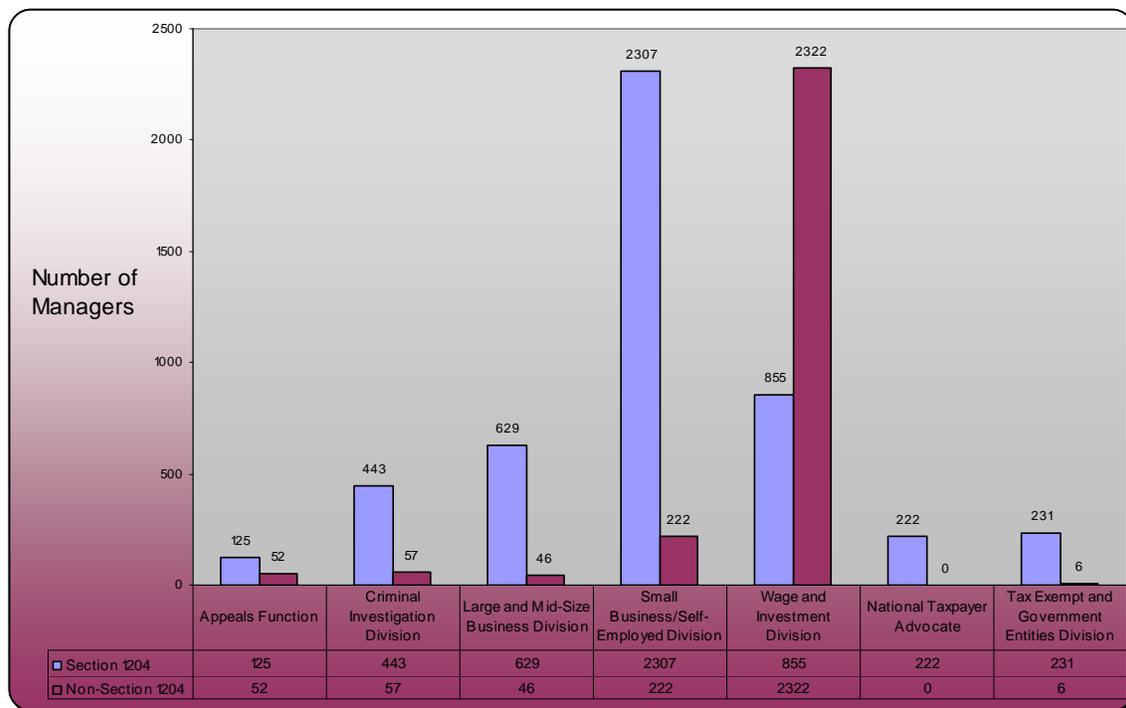


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The IRS business organizations, including the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation Division; the Large and Mid-Size Business Division; the Small Business/Self-Employed Division; the Office of the National Taxpayer Advocate; the Tax Exempt and Government Entities Division; and the Wage and Investment Division, are responsible for Section 1204 program implementation within their respective areas. Section 1204 Program Managers and Coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the certification process.

Figure 1 depicts the ratio of Section 1204 and Non-Section 1204 managers in the subject business organizations as of September 30, 2008. The Section 1204 managers either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities.

**Figure 1: Number of Section 1204 and Non-Section 1204 Managers  
by Business Organization (as of September 30, 2008)**



Source: IRS Section 1204 Program Manager.

Internal Revenue Code Section 7803(d)(1) (2000) requires the Treasury Inspector General for Tax Administration (TIGTA) to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 Section 1204. We have previously performed 10 annual reviews to meet this requirement. The audit reports are listed in Appendix IV.



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This review was performed at the IRS National Headquarters in Washington, D.C., in the Office of the Chief Financial Officer; the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation Division; the Office of the National Taxpayer Advocate; the Large and Mid-Size Business Division; the Small Business/Self-Employed Division; the Tax Exempt and Government Entities Division; and the Wage and Investment Division during the period October 2008 through March 2009. Onsite reviews were performed at the IRS field offices in Brooklyn, New York; Cincinnati and Cleveland, Ohio; Indianapolis, Indiana; Laguna Niguel and San Diego, California; Las Vegas, Nevada; Newark, New Jersey; Saint Louis, Missouri; and San Antonio, Texas. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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## *Results of Review*

### ***First-Line Managers Appropriately Completed Their Quarterly Self-Certifications***

All 69<sup>3</sup> of the first-line managers we sampled were in compliance with the provisions of RRA 98 Section 1204(c) and completed the required self-certifications on the use of tax enforcement results for the second and fourth quarters of Fiscal Year (FY) 2008. Each manager certified that ROTERs or production goals or quotas were not used when evaluating employees. Appendix V reflects the Manager's Quarterly Self-Certification – No Violations (Form 1204-M) that managers use quarterly to self-certify that there are no violations of RRA 98 Section 1204(a) and (b).

RRA 98 Section 1204(c) requires appropriate supervisors to certify quarterly, in writing, to the IRS Commissioner whether ROTERs and production quotas or goals were used in a prohibited manner. Therefore, managers who evaluate Section 1204 employees are required to certify in writing that they did not:

- Use ROTERs to evaluate employees or to impose or suggest production quotas or goals for employees in any performance evaluations, including appraisals, awards, or promotion justifications, written or reviewed by the manager.
- Verbally communicate to employees that ROTERs affected their evaluations.
- Verbally or in writing use ROTERs to impose or suggest production quotas or goals for employees or for work unit activities (e.g., through program guidance or business and program reviews).

Per the Internal Revenue Manual, the business organization and function Section 1204 Program Managers and their respective Section 1204 Coordinators should monitor the quarterly certification process throughout their organizations/functions. The Section 1204 Program Managers and Section 1204 Coordinators are responsible for providing guidance to managers regarding Section 1204 issues.

Through the quarterly certification process, managers are reminded of their responsibilities under RRA 98 Section 1204 not to evaluate their employees on the basis of ROTERs or production

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<sup>3</sup> We judgmentally sampled 70 front-line managers; however, 1 manager did not have responsibility for enforcement employees. The IRS did not require the manager to prepare the self-certification; therefore, one manager and three employees were eliminated from our sample.



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quotas or goals. The quarterly certification process helps to ensure that managers are aware of the IRS' commitment to administer the tax laws fairly and to protect the rights of taxpayers.

### ***The Internal Revenue Service Is Not in Full Compliance With the Use of Records of Tax Enforcement Results Procedures***

In FY 2008, the IRS did not achieve full compliance with RRA 98 Section 1204(a) due to violations in 7 (1 percent) of 601 employee or manager performance-related documents reviewed. The IRS' performance in FY 2007 was also not in full compliance and we reported 7<sup>4</sup> (1 percent) of 660 ROTER violations in performance evaluation documents reviewed. In the past 2 fiscal years, our audit results have identified that the IRS is moving in a direction away from achieving full compliance with Section 1204 procedures. We previously reported that sampled managers provided documentation verifying that their employees were evaluated on the fair and equitable treatment of taxpayers. However, we are still concerned that IRS employees do not fully understand the IRS terms used to identify if taxpayers are receiving fair and equitable treatment.

To evaluate the IRS' compliance with Sections 1204(a) and 1204(b), we selected a judgmental sample of 69 first-line managers and 207 employees in 10 cities.<sup>5</sup> The sites selected had at least four business organizations with Section 1204 first-line managers. We selected seven managers and three of the manager's employees at each site and reviewed their performance evaluation documents. We also reviewed performance documentation for 10 second-line managers. We evaluated 601 FY 2008 performance-related documents, including mid-year and annual performance reviews, workload reviews, and award documentation for each employee, to determine whether ROTERs were used when evaluating the employees' performance.

#### **ROTERs were used in a few evaluative documents**

Our review of a judgmental sample of 601 performance-related documents for 286 managers and employees showed 7 (1 percent) instances in which ROTERs were used to evaluate employees. The ROTERs were found in employee self-assessments and annual performance reviews in the Office of the Chief, Criminal Investigation Division; the Large and Mid-Size Business Division; and the Tax Exempt and Government Entities Division. We discussed the violations with the managers and they were not aware that they had included ROTERs in their performance evaluation documents. The managers provided their intentions and additional context for using the statistics in the performance evaluations and judgment for how the IRS pursued the enforcement of tax laws. However, none of the additional context and intentions was included in the performance evaluation documents. In most cases, however, the additional information

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<sup>4</sup> The violations of RRA 98 Section 1204 (a) identified in the FY 2008 evaluation documents were found in different cities from the violations in FY 2007.

<sup>5</sup> See Appendix I for details of the IRS offices and cities selected for review.



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would not have eliminated the violation. Also, when we asked the managers if they used Section 1204 internal guidelines when writing performance evaluation documents, they stated that they did not always use them.

We also researched the TIGTA Performance and Results Information System<sup>6</sup> for any related Section 1204 complaints during the period October 1, 2007, through September 30, 2008, and found two investigations and nine complaints. However, no Section 1204 violations were identified based on the investigations or complaints.

Based on the results of our review, the IRS' efforts to ensure that managers are not using ROTERs or production goals or quotas to evaluate employees are generally effective and are helping to protect the rights of taxpayers. Because the IRS continues to identify and report ROTER violations through its managerial self-certification process, it developed a mandatory briefing to be completed by all Section 1204 employees by March 21, 2008. Our review found that the IRS mandatory Section 1204 training was conducted from February 11, 2008, to April 4, 2008, and that 96 percent of the Section 1204 employees completed the training.

**Some employees did not understand the meaning of the retention standard and did not receive training**

The first-line managers we sampled documented that they had evaluated employees on the retention standard. By law, RRA 98 Section 1204(b), IRS employees are to be evaluated on the retention standard. The standard applies to all executives, managers, and other employees.

On June 16, 1999, the IRS established a retention standard method to ensure that employee performance is focused on providing quality service to taxpayers instead of on achieving enforcement results. In most instances, Block 9 of the Bargaining Unit Performance Appraisal and Recognition Election (Form 6850-BU) or the Non-Bargaining Unit Performance Appraisal (Form 6850-NBU) was checked, indicating that the employees were evaluated on this standard. Figure 2 presents an excerpt from the two Forms 6850 pertaining to the retention standard.

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<sup>6</sup> The Performance and Results Information System provides the TIGTA the managerial ability to account for and track all leads developed by the TIGTA, all complaints received from external sources, and all investigations initiated as a result of internal and external allegations.



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**Figure 2: Forms 6850 Retention Standard Rating**

<b>Bargaining Unit Performance Appraisal and Recognition Election</b>		
(Review instructions before completing this form)		
1. Name of employee (Last, first, middle initial)	2. Social Security Number	3. Reason for Appraisal <input type="checkbox"/> Annual Rating <input type="checkbox"/> Interim Rating <input type="checkbox"/> 90 Day Appraisal <input type="checkbox"/> Other Reason for other:
4. Office symbols/Organization	5. Pay plan, series and grade	
6. Position title	7. Period covered From:                      To:	8. Mandatory progress review was conducted on
9. Retention Standard Rating <input type="checkbox"/> Not Applicable <input type="checkbox"/> Met <input type="checkbox"/> Not Met		

Source: Form 6850-BU and Form 6850-NBU.

We interviewed 34 of the judgmentally selected employees to determine if they understood the terminology “retention standard” and 23 of the 34 employees to determine if they received training on the retention standard. Six of the 34 (18 percent) did not understand the term “retention standard” and 2 (9 percent) of the 23 had not received training on the retention standard. We are not making a recommendation to address the concerns at this time because IRS management agreed in their response to a prior TIGTA audit<sup>7</sup> to make changes to the appropriate Forms 6850 and define the standard. The implementation date for the changes is October 1, 2009. In our opinion, this repeat finding indicates that the IRS is moving away from full compliance with Section 1204 procedures.

### **Recommendation**

**Recommendation 1:** The Deputy Commissioner for Operations Support should ensure that Section 1204 violations are reviewed with the managers and they are provided remedial training using the appropriate internal guidelines to address their understanding of ROTERs. In addition, the Deputy Commissioner should strengthen the IRS’ efforts to achieve full compliance with RRA 98 Section 1204 procedures by ensuring that managers are aware of and use internal guidelines when preparing and reviewing performance evaluations.

**Management’s Response:** IRS management disagreed with six of the seven potential violations identified and did not agree with the recommendation. Regarding the one violation they agreed to, IRS management responded that the violation was addressed with the manager. Also, IRS management responded that IRS employees are trained in the latest Section 1204 requirements throughout the year, and they use these training opportunities to raise manager awareness and understanding of the requirement.

<sup>7</sup> Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Reference Number 2008-40-108, dated April 17, 2008).



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**Office of Audit Comment:** IRS management disagreed that the ROTERs we identified in employee self-assessments violate RRA 98 Section 1204(a). However, our position is that a self-assessment containing ROTERs violates RRA 98 Section 1204(a) when the self-assessment is adopted by a manager in the evaluation. Furthermore, when ROTERs appear in managerial self-assessments, they raise an inference that Section 1204(a) has been violated. Self-assessments are a fundamental part of the evaluation process for managers and executives, who complete self-assessments and provide them to their managers for consideration when preparing their annual appraisals. In our experience, the self-assessments are usually associated with the annual appraisals. Quite often, self-assessments are attached to and, in effect, become part of the annual appraisals.



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## **Appendix I**

### *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in RRA 98 Section 1204.<sup>1</sup> To accomplish this objective, we:

- I. Determined whether a sample of IRS first-line managers complied with the provisions of RRA 98 Sections 1204(a) and 1204(b) when evaluating their Section 1204 employees'<sup>2</sup> performance.
  - A. Identified the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation Division; the Large and Mid-Size Business Division; the Small Business/Self-Employed Division; the Office of the Taxpayer Advocate; the Tax Exempt and Government Entities Division; and the Wage and Investment Division office locations in various cities and the number of Section 1204 first-line managers located in each business organization.

We judgmentally selected 10 cities for this year's audit:

- Brooklyn, New York.
- Cincinnati and Cleveland, Ohio.
- Indianapolis, Indiana.
- Laguna Niguel and San Diego, California.
- Las Vegas, Nevada.
- Newark, New Jersey.
- Saint Louis, Missouri.
- San Antonio, Texas.

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

<sup>2</sup> An enforcement (Section 1204) employee is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for Section 1204 program activities.



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- We selected sites that had at least 4 business organizations with Section 1204 first-line managers and considered geographic coverage and prior audit coverage when selecting the 10 audit sites.
- B. Selected a judgmental sample of seven first-line managers per city and three Section 1204 employees for each manager in our sample. This provided a total of 69 managers and 207<sup>3</sup> employees for review. We used FY 2008 data to select the audit sites for the sample. The audit team focused on the cities that had at least 15 Section 1204 managers in at least 4 business organizations. The audit sites were judgmentally selected based on the number of first-line Section 1204 managers located at a site and the business organizations represented, prior audit coverage in FYs 2004 through 2008,<sup>4</sup> geographical location of potential cities for travel considerations, and sites where the IRS internal review team identified problems.
  - C. Obtained and reviewed FY 2008 performance evaluation documentation (including mid-year and annual performance reviews and award documentation) for each employee selected to determine whether the use of ROTERs or production goals or quotas was documented and whether employees were evaluated appropriately on the fair and equitable treatment of taxpayers.
  - D. Interviewed a judgmental sample of 34 employees concerning the use of ROTERs and their understanding of the retention standard. We selected the employees based on available employees in the office the day of our visit who agreed to speak with us. Because the IRS had advised us that the number of Section 1204 employees changes frequently based on the duties performed, we were not able to pre-determine the total number of employees per business unit. We selected three to six employees per site.
  - E. Reviewed TIGTA's Performance and Results Information System<sup>5</sup> for complaints regarding the violation of Section 1204.
  - F. Obtained TIGTA Counsel's opinion on seven cases identified and referred as having potential legal violations of RRA 98 Section 1204.
- II. Determined whether the selected first-line managers complied with RRA 98 Section 1204(c) by certifying by letter whether or not ROTERs were used in a manner prohibited by RRA 98 Section 1204(a).

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<sup>3</sup> We sampled 70 front-line managers; however, 1 manager did not have responsibility for enforcement employees. The IRS did not require the manager to prepare the self-certification; therefore, one manager and three employees were eliminated from our sample.

<sup>4</sup> Reviewed locations visited during prior audits to ensure locations selected were not duplicated.

<sup>5</sup> The Performance and Results Information System provides the TIGTA the managerial ability to account for and track all leads developed by the TIGTA, all complaints received from external sources, and all investigations initiated as a result of internal and external allegations.



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- A. Obtained FY 2008 second and fourth quarter self-certifications for the selected first-line managers. We reviewed the self-certifications for compliance with IRS procedures and the identification of any use of ROTERs or production quotas or goals.



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**Appendix II**

*Major Contributors to This Report*

Margaret Begg, Assistant Inspector General for Audit (Compliance and Enforcement Operations)  
Marybeth Schumann, Director  
Deborah Drain, Audit Manager  
James O'Hara, Audit Manager  
Gwendolyn Green, Lead Auditor  
Carol Gerkens, Senior Auditor  
Cindy Harris, Senior Auditor  
Rebecca Kaplan, Auditor  
Andrea McDuffie, Auditor  
Sylvia Sloan-Copeland, Auditor  
Ali Vaezazizi, Auditor  
Erlinda Foye, Management Assistant



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**Appendix III**

*Report Distribution List*

Commissioner C  
Office of the Commissioner – Attn: Chief of Staff C  
Commissioner, Large and Mid-Size Business Division SE:LM  
Commissioner, Small Business/Self-Employed Division SE:S  
Commissioner, Tax Exempt and Government Entities Division SE:T  
Commissioner, Wage and Investment Division SE:W  
Chief, Appeals AP  
Chief, Criminal Investigation Division SE:CI  
Chief Financial Officer OS:CFO  
National Taxpayer Advocate TA  
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division  
SE:S:CLD  
Director, Strategy and Finance, Wage and Investment Division SE:W:S  
Chief, Performance Improvement, Wage and Investment Division SE:W:S:PI  
Chief Counsel CC  
Director, Office of Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis RAS:O  
Office of Internal Control OS:CFO:CPIC:IC  
Audit Liaisons:  
    Commissioner, Large and Mid-Size Business Division SE:LM  
    Commissioner, Small Business/Self-Employed Division SE:S  
    Commissioner, Tax Exempt and Government Entities Division SE:T  
    Commissioner, Wage and Investment Division SE:W  
    Chief, Appeals AP:TP:SS  
    Chief, Criminal Investigation Division SE:CI  
    Chief Financial Officer OS:CFO  
    National Taxpayer Advocate TA



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## **Appendix IV**

### *Prior Audit Reports*

The TIGTA has previously performed 10 audits in this subject area. The audit reports were:

*Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2008-40-108, dated April 17, 2008).

*Fiscal Year 2007 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2007-40-055, dated March 20, 2007).

*Fiscal Year 2006 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2006-40-095, dated June 6, 2006).

*Fiscal Year 2005 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2005-40-157, dated September 21, 2005).

*Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2004-40-066, dated March 19, 2004).

*Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Reference Number 2003-40-090, dated March 27, 2003).

*Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement* (Reference Number 2002-40-163, dated September 11, 2002).

*Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Reference Number 2001-10-178, dated September 27, 2001).

*Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics* (Reference Number 2000-10-118, dated September 18, 2000).

*The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance with Restrictions on the Use of Enforcement Statistics* (Reference Number 1999-10-073, dated September 29, 1999).



*Fiscal Year 2009 Statutory Audit of  
Compliance With Legal Guidelines Restricting  
the Use of Records of Tax Enforcement Results*

**Appendix V**

*Manager's Quarterly Self-Certification –  
No Violations (Form 1204-M)*

<b>Manager's Quarterly Self-Certification – No Violations</b>	
RRA 98 Section 1204	
Name of Manager	Title
Organization	Quarter ending (select correct quarter from drop down)
<input type="checkbox"/> I certify to the best of my knowledge that during this quarter I was in compliance with the IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204(a) and 1204(b).	
Certification Process	
<p>The quarterly certification process is a formal process required by statute to ensure managerial accountability and compliance with Section 1204. The process specifically addresses the following:</p> <ul style="list-style-type: none"> <li>• <b>Section 1204(a) in General</b> -The IRS shall not use records of tax enforcement results (1) to evaluate employees; or (2) to impose or suggest production quotas or goals with respect to such employees.</li> <li>• <b>Section 1204(b) (Retention Standard) Taxpayer Service</b> - The IRS shall use fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.</li> </ul> <p><b>To comply with Section 1204(a), I have not:</b></p> <ul style="list-style-type: none"> <li>• Used records of tax enforcement results (ROTERTs) in any written performance evaluations prepared or reviewed, including appraisals, awards, or promotion justifications</li> <li>• Used records of tax enforcement results (ROTERTs) to impose or suggest production quotas or goals with respect to field activities (e.g. through program guidance or business and program reviews)</li> <li>• Communicated to employees, verbally or in writing, that records of tax enforcement results affected their evaluations, or were used to set individual/group production goals or quotas</li> </ul> <p><b>To comply with Section 1204(b), all employees in my organization have:</b></p> <ul style="list-style-type: none"> <li>• Signed for receipt of the Retention Standard annually</li> <li>• Been evaluated on the Retention Standard annually</li> </ul> <p>I have provided a copy of this self-certification to my next level manager and retained a file copy to be available for audit or review.</p>	
Manager's signature	Date signed
Next-level Manager's signature (Section 1204 Appropriate Managers do not need to forward for next level signatures)	Date signed

Source: Internal forms on the IRS web site.



*Fiscal Year 2009 Statutory Audit of  
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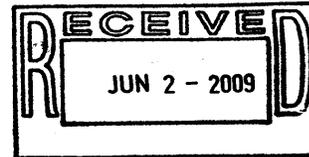
**Appendix VI**

*Management's Response to the Draft Report*



CHIEF FINANCIAL OFFICER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224



June 2, 2009

MEMORANDUM FOR MICHAEL R. PHILLIPS  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

*Alison L. Doone*  
Alison L. Doone  
Chief Financial Officer

SUBJECT:

Draft Audit Report – Fiscal Year 2009 Statutory Audit of  
Compliance with Legal Guidelines Restricting the Use of  
Records of Tax Enforcement Results (Audit # 200930023)

Thank you for the opportunity to review and respond to the subject draft audit report. We do not agree with six of the seven potential violations identified. We also do not agree with the recommendation in the report.

We appreciate your independent validation that the IRS efforts to ensure managers are not using ROTERs to evaluate employees or to impose or suggest production quotas or goals with respect to such employees are generally effective and are helping to protect the rights of taxpayers. The six violations we do not agree with consist of four statements appearing in employee self-assessments and two appearing in employee evaluations. Section 1204(a) prohibits any IRS employee from using ROTERs to evaluate any other employee but there are no provisions in Section 1204(a) governing the use of ROTERs in employee self-assessments.

With respect to the two employee evaluations, the language cited does not violate Section 1204(a). In the first case, there was not a ROTER violation because tax enforcement results of individual cases do not constitute a violation when used to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws. In the second case, there was not a ROTER violation because the evaluation did not include the "outcome" produced by the exercise of judgment.

With regard to the recommendation, IRS employees are trained in the latest Section 1204 requirements throughout the year, and we use these training opportunities to raise manager awareness and understanding of the requirements.

If you have any questions, please contact Peter Rose, Acting Associate CFO for Corporate Planning and Internal Control, at (202) 622-4508.



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*Fiscal Year 2009 Statutory Audit of  
Compliance With Legal Guidelines Restricting  
the Use of Records of Tax Enforcement Results*

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Attachment

**RECOMMENDATION 1**

The Deputy Commissioner for Operations Support should ensure that Section 1204 violations are reviewed with the managers and they are provided remedial training using the appropriate internal guidelines to address their understanding of ROTERs. In addition, the Deputy Commissioner should strengthen the IRS' efforts to achieve full compliance with RRA 98 Section 1204 procedures by ensuring that managers are aware of and use internal guidelines when preparing and reviewing performance evaluations.

**CORRECTIVE ACTION**

We disagree with this recommendation. The ROTER violation was addressed with the manager. IRS employees are trained in the latest Section 1204 requirements throughout the year, and we use these training opportunities to raise manager awareness and understanding of the requirements.

**IMPLEMENTATION DATE**

Completed March 15, 2009

**RESPONSIBLE OFFICIAL**

Chief, Criminal Investigation

**CORRECTIVE ACTION MONITORING PLAN**

N/A