TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Collection Employees Adhered to Fair Tax Collection Practices From January 2009 Through September 2009

March 17, 2010

Reference Number: 2010-10-037

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.

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HIGHLIGHTS

COLLECTION EMPLOYEES ADHERED TO FAIR TAX COLLECTION PRACTICES FROM JANUARY 2009 THROUGH SEPTEMBER 2009

Highlights

Final Report issued on March xx, 2010

Highlights of Report Number: 2010-10-037 to the Internal Revenue Service Chief Counsel and the Human Capital Officer.

IMPACT ON TAXPAYERS

The abuse or harassment of taxpayers by Internal Revenue Service (IRS) employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance. It can also result in civil damages against the Federal Government when Fair Tax Collection Practices (FTCP) are violated. From January through September 2009, there were no cases involving FTCP violations for which an employee received administrative disciplinary action and there were no taxpayers who received civil damages for an FTCP violation. As a result, taxpayers have reasonable assurance that communications with the IRS in connection with the collection of unpaid taxes generally did not violate the FTCP statute.

WHY TIGTA DID THE AUDIT

The overall objective of this review was to obtain information on IRS administrative or civil actions resulting from FTCP violations by IRS employees. Section 1102(d)(1)(G) of the IRS Restructuring and Reform Act of 1998 requires TIGTA to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations. This audit was conducted as part of the TIGTA Fiscal Year 2010 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

WHAT TIGTA FOUND

The FTCP provisions of Internal Revenue Code Section 6304 prohibit employees from using abusive or harassing behavior toward taxpayers when attempting to collect taxes. Employees who are found to have violated the FTCP could be subject to disciplinary action. From January through September 2009, IRS collection employees did not violate the FTCP statute. The IRS coded only three cases as FTCP complaints; however, two cases were not substantiated as FTCP violations and the other was improperly coded as an FTCP case. TIGTA recommended the miscoding be fixed during the audit and the IRS corrected the miscoding. In addition, there were no civil actions resulting in monetary settlements being paid to taxpayers because of an FTCP violation.

WHAT TIGTA RECOMMENDED

TIGTA made no recommendations in this report. However, key IRS management officials reviewed the report prior to issuance and agreed with the facts and conclusions presented.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

March 17, 2010

MEMORANDUM FOR CHIEF COUNSEL
INTERNAL REVENUE SERVICE HUMAN CAPITAL OFFICER

FROM: Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Collection Employees Adhered to Fair Tax Collection Practices From January 2009 Through September 2009 (Audit # 201010007)

This report presents the results of our review of Fair Tax Collection Practices[1] (FTCP) violations from January through September 2009. The overall objective of this review was to obtain information on Internal Revenue Service (IRS) administrative or civil actions resulting from FTCP violations by IRS employees. Section 1102(d)(1)(G) of the IRS Restructuring and Reform Act of 1998[2] requires the Treasury Inspector General for Tax Administration to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations. This audit is included in our Fiscal Year 2010 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

We made no recommendations in this report. However, key IRS management officials reviewed the report prior to issuance and agreed with the facts and conclusions presented.

Copies of this report are also being sent to the IRS managers affected by the report results. Please contact me at (202) 622-6510 if you have questions or Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations), at (202) 622-8500.

[1] 26 U.S.C. Section 6304 (2007).
[2] Pub. L. No. 105-206, 112 Stat. 702-703.

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Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
FTCP	Fair Tax Collection Practices
IRS	Internal Revenue Service

Background

Section (§) 1102(d)(1)(G) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998[1] requires that the Treasury Inspector General for Tax Administration include in one of its Semiannual Reports to Congress information regarding any administrative or civil actions related to violations of the Fair Tax Collection Practices (FTCP) listed in 26 U.S.C. § 6304.[2] The Treasury Inspector General for Tax Administration's Semiannual Report to Congress must provide a summary of such actions and include any judgments or awards granted.

As originally enacted, the Fair Debt Collection Practices Act[3] included provisions that prohibit various collection abuses and harassment in the private sector. The restrictions did not apply to Federal Government practices. However, Congress believed that it was appropriate to require the IRS to comply with applicable portions of the Fair Debt Collection Practices Act and to be at least as considerate to taxpayers as private creditors are required to be with their customers. The IRS Restructuring and Reform Act of 1998 § 3466 requires that the IRS follow FTCP provisions that are similar to the Fair Debt Collection Practices Act provisions.[4]

Violations of the FTCP and related disciplinary actions are tracked on the IRS Human Capital Officer Workforce Relations' Automated Labor and Employee Relations Tracking System (ALERTS). For this review, we analyzed cases closed from January 1 through September 30, 2009, on the ALERTS to identify violations of the FTCP.[5] To be an FTCP violation that the Treasury Inspector General for Tax Administration is required to report, the action must have been taken by an IRS employee who was involved in a collection activity and who received a disciplinary action that is considered an administrative action.

The law does not provide a definition of "administrative action." We used the IRS' definition of a disciplinary action when determining the number of violations to report under IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G). As defined by the IRS, disciplinary actions range from a letter of admonishment to removal.

In addition, taxpayer civil actions are tracked on the Office of Chief Counsel's Counsel Automated System Environment. We also determined whether there were any FTCP violation cases that resulted in judgments or awards granted on the Counsel Automated System Environment from January 1 through September 30, 2009.

[1] Pub. L. No. 105-206, 112 Stat 702-703.
[2] 26 U.S.C. § 6304 (2007).
[3] 15 U.S.C. §§ 1601 note, 1692-1692o (2006).
[4] See Appendix V for a detailed description of FTCP provisions.
[5] We could not validate that the cases recorded on the ALERTS constitute all FTCP violations. There was no way to determine if any potential violations were reported but not recorded on the ALERTS.

This review was performed at the offices of the IRS Human Capital Officer and the Chief Counsel in the IRS National Headquarters in Washington, D.C., during the period October 2009 through January 2010. 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.

Results of Review

No Fair Tax Collection Practices Violations Were Identified

We did not identify any FTCP violations during the audit period. As such, taxpayers have reasonable assurance that communications with the IRS in connection with the collection of unpaid taxes generally did not violate the FTCP statute.

Although we did not identify any FTCP violations, three cases were coded as FTCP complaints and closed on the ALERTS from January 1 through September 30, 2009. Specifically, two cases involved potential FTCP violations that were unsubstantiated and one case was miscoded. The miscoded case was not an FTCP violation because it involved improper disclosure of taxpayer information and unprofessional conduct and not the use of obscene/profane language as coded. During the audit, we recommended that the miscoding be corrected, and the Workforce Relations function staff corrected the miscoding by amending the case to reflect the appropriate issue codes instead of the FTCP violation issue code.[6]

In our previous reports,[7] we have noted the miscoding of a significant number of cases. As a result, we previously recommended that improvements be made to ensure cases are coded correctly. In addressing our prior recommendation, IRS management implemented a hard-code validation[8] of the ALERTS in January 2009. However, the hard-code validation would not have prevented the one miscoded case identified above.

To determine whether other types of cases were miscoded, we also reviewed 615 cases on the ALERTS in 6 other case categories involving employee misconduct allegations, including those coded as either "Unprofessional Conduct" or "Not Otherwise Coded," to determine whether any of the cases should have been coded as FTCP violations. All data in the ALERTS must be accurate so that IRS management can detect any problems or trends that might exist and properly address them. In addition, the ALERTS is the data source for reports provided to a number of other offices and at times is the basis for information provided to Congress on legislation affecting the IRS. We concluded that the IRS had improved its coding process because we did

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[6] See Appendix IV for additional details.
[7] *Collection Employees Adhered to Fair Tax Collection Practices in Calendar Year 2008* (Reference Number 2009-10-101, dated July 23, 2009) and *Five Fair Tax Collection Practices Violations Resulted in Administrative Actions in Calendar Year 2007* (Reference Number 2008-10-162, dated September 5, 2008).
[8] An enhancement to an ALERTS software program that only allows FTCP violation issue codes on cases for which the affected party was a taxpayer/taxpayer representative and the case involved an employee performing specific collection-related activities.

not identify any additional cases that should have been coded as an FTCP violation from the cases we reviewed in the six other categories.

No Fair Tax Collection Practices Violations Resulted in Civil Damages (Monetary Awards) to Taxpayers

Section 7433 of the Internal Revenue Code provides that a taxpayer may bring a civil action for damages against the Federal Government if an officer or employee of the IRS recklessly, intentionally, or by reason of negligence disregards any provision of the Internal Revenue Code or related regulation in connection with the collection of Federal tax.

There were no cases closed on the Counsel Automated System Environment from January 1 through September 30, 2009, for which the IRS paid civil damages to taxpayers resulting from an FTCP violation.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to obtain information on IRS administrative or civil actions resulting from FTCP violations by IRS employees. To accomplish the objective, we:

I. Identified the number of FTCP violations resulting in administrative actions.

A. Obtained a computer extract from the ALERTS of any cases opened after July 22, 1998, with an issue code of 141 to 147,[1] and closed during the period January 1 through September 30, 2009. Due to time constraints, we did not conduct validation tests of this system.

B. Determined whether any cases in the extract involved FTCP violations that resulted in administrative actions.

C. Obtained a computer extract from the ALERTS of any cases opened after July 22, 1998, and closed during the period January 1 through September 30, 2009, with the following issue codes:

- 013 (Position/Authority Misuse – limited to only those closed with a disposition code of 009 or higher).
- 020 (Fighting, Assaults, and Threats – limited to only those closed with a disposition code of 009 or higher).
- 058 (Unprofessional Conduct – limited to only those closed with a disposition code of 009 or higher).
- 114 (Conviction Assault/Battery – all disposition codes).
- 119 (Threat of Audit/Personal – all disposition codes).
- 999 (Not Otherwise Coded – limited to only those closed with a disposition code of 009 or higher).

D. Analyzed the ALERTS extract and determined whether any of the cases in these categories were miscoded and should have been coded as FTCP violations.

[1] See Appendix VI for additional information.

II. Determined whether there were any FTCP violation cases (Subcategory 6304, established to track FTCP violations) resulting in IRS civil actions (judgments or awards granted) on the Office of Chief Counsel's Counsel Automated System Environment database that had been opened after July 22, 1998, and closed during the period January 1 through September 30, 2009. Due to time constraints, we did not conduct validation tests of this system. The data for January 1 through September 30, 2009, were consistent with those of past years, and there is less risk that cases were misclassified because qualified attorneys were deciding whether each case met the legal definition of an FTCP violation. For these reasons, we considered the data's reliability as undetermined but suitable for use in this report.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. For this audit, we determined that internal controls related to the reliability of information were relevant to our audit objective. We evaluated these controls by reviewing cases and discussing any potentially miscoded cases with management.

Appendix II

Major Contributors to This Report

Nancy A. Nakamura, Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Troy D. Paterson, Director
Thomas F. Seidell, Audit Manager
William Simmons, Lead Auditor
Stephen A. Elix, Auditor

Appendix III

Report Distribution List

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Audit Liaisons:
    Chief Counsel CC
    IRS Human Capital Officer OS:HCO

Appendix IV

Outcome Measure

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Reliability of Information – Actual; one ALERTS[1] record (see page 3).

Methodology Used to Measure the Reported Benefit:

We reviewed the three FTCP complaints closed on ALERTS from January 1 through September 30, 2009, and determined that one of the cases was incorrectly coded as an FTCP violation. The miscoded case was not an FTCP violation because it involved improper disclosure of taxpayer information and unprofessional conduct, and not the use of obscene/profane language as coded. During the audit, we recommended that the miscoding be corrected, and the Workforce Relations function staff corrected the miscoding by amending the case to reflect the appropriate issue codes instead of the FTCP violation issue code.

[1] The Office of Workforce Relations' ALERTS generally tracks employee behavior that may warrant IRS management administrative actions.

Appendix V

Fair Tax Collection Practices Provisions

To ensure equitable treatment of debt collectors in the public and private sectors, the IRS Restructuring and Reform Act of 1998[1] requires the IRS to comply with certain provisions of the Fair Debt Collection Practices Act.[2] Specifically, the IRS may not communicate with taxpayers in connection with the collection of any unpaid tax:

- At unusual or inconvenient times.
- If the IRS knows that the taxpayer has obtained representation from a person authorized to practice before the IRS and the IRS knows or can easily obtain the representative's name and address.
- At the taxpayer's place of employment, if the IRS knows or has reason to know that such communication is prohibited.

In addition, the IRS may not harass, oppress, or abuse any person in connection with any tax collection activity or engage in any activity that would naturally lead to harassment, oppression, or abuse. Such conduct specifically includes, but is not limited to:

- Use or threat of violence or harm.
- Use of obscene or profane language.
- Causing a telephone to ring continuously with harassing intent.
- Placement of telephone calls without meaningful disclosure of the caller's identity.

[1] Pub. L. No. 105-206, 112 Stat. 768-769.
[2] 15 U.S.C. Sections 1601 note, 1692-1692p (2006).

Appendix VI

Fair Tax Collection Practices Violation Issue Codes

Issue Code	Description
141	CONTACT TAXPAYER UNUSUAL TIME/PLACE – Contacting a taxpayer before 8:00 a.m. or after 9:00 p.m., or at an unusual location or time, or location known or which should be known to be inconvenient to the taxpayer.
142	CONTACT TAXPAYER WITHOUT REPRESENTATIVE – Contacting a taxpayer directly without the consent of the taxpayer's Power of Attorney.
143	CONTACT AT TAXPAYER EMPLOYMENT WHEN PROHIBITED – Contacting a taxpayer at his or her place of employment when it is known or should be known that the taxpayer's employer prohibits the taxpayer from receiving such communication.
144	USE/THREAT OF PHYSICAL HARM – Conduct which is intended to harass or abuse a taxpayer, or conduct which uses or threatens to use violence or harm.
145	USE OBSCENE/PROFANE LANGUAGE TO ABUSE – The use of obscene or profane language toward a taxpayer.
146	CONTINUOUS PHONE CALLS WITH INTENT TO HARASS – Causing a taxpayer's telephone to ring continuously with harassing intent.
147	PHONE CALLS WITHOUT MAKING FULL IDENTIFICATION DISCLOSURE – Contacting a taxpayer by telephone without providing a meaningful disclosure of the IRS employee's identity.

Source: IRS ALERTS User Guide (January 2008).