Treasury Inspector General for Tax Administration
Office of Audit

REVIEW OF THE INTERNAL REVENUE SERVICE'S PROCESS TO ADDRESS VIOLATIONS OF TAX LAW BY ITS OWN EMPLOYEES

Issued on April 14, 2015

Highlights

Highlights of Report Number: 2015-10-002 to the Internal Revenue Service Commissioner.

IMPACT ON TAXPAYERS

According to Section 1203 of the IRS Restructuring and Reform Act of 1998 (RRA 98) the IRS shall terminate employment of any IRS employee if there is a final determination that the employee committed certain acts of misconduct, including willful violations of tax law, unless such penalty is mitigated by the IRS Commissioner. As the agency primarily responsible for administering Federal tax law, the IRS must ensure that its employees comply with the tax law in order to maintain the public's confidence.

WHY TIGTA DID THE AUDIT

The overall objective of this review was to determine whether the IRS had an effective process in place to address willful violations of tax law by employees.

WHAT TIGTA FOUND

Twice a year, the IRS's Employee Tax Compliance Branch uses a screening process to identify potential employee tax noncompliance. TIGTA found that potential employee tax noncompliance cases the IRS identified were forwarded for further examination by managers and Labor Relations Office personnel. More than 1,000 cases of potential employee tax noncompliance are referred each year.

TIGTA reviewed records for cases closed in Fiscal Years 2004 through 2013 (prior to the term of the current Commissioner). For this period, IRS records show that 1,580 employees were found to be willfully tax noncompliant. While the RRA 98 states the IRS shall terminate employees who willfully violate tax law, it also gives the IRS Commissioner the sole authority to mitigate cases to a lesser penalty. Over this 10-year period, 620 employees (39 percent) with willful tax noncompliance were terminated, resigned, or retired. For the other 960 employees (61 percent) with willful tax noncompliance, the proposed terminations were mitigated to lesser penalties such as suspensions, reprimands, or counseling.

TIGTA's review of a judgmental sample of 34 cases of willful tax violations found that employees with similar violations received different discipline. In cases that were mitigated, files included mitigating factors as well as evidence that violations of tax law were willful; however, the basis for the Commissioner's decision to mitigate was not clearly identified in the case files. Some employees had significant and sometimes repeated tax noncompliance issues, and a history of other conduct issues. Moreover, management had concluded that the employees were not credible. Nonetheless, the proposed terminations were mitigated by the IRS Commissioner. These cases included willful overstatement of expenses, claiming the First-Time Homebuyer Tax Credit without buying a home, and repeated failure to file required Federal tax returns timely.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS Commissioner amend existing policy on how Section 1203 cases are handled to include a requirement to document the analysis of evidence and the basis for the decision on whether or not to mitigate penalties to something less than termination.

In its response, the IRS agreed with TIGTA's recommendation, noting that it plans to review existing procedures to document the analysis of evidence and basis for decision, and consult with its General Legal Services on potential improvements to the transparency of the mitigation process while not interfering with the IRS Commissioner's authority. In addition, the IRS has subsequently advised TIGTA that it has begun to document the analysis of evidence and the basis for the decision on whether or not to mitigate penalties for 1203 cases to something less than termination.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full IRS response, go to:

http://www.treas.gov/tigta/auditreports/2015reports/201510002fr.pdf.