



*Fiscal Year 2008 Statutory Review of
Restrictions on Directly Contacting
Taxpayers*

March 27, 2008

Reference Number: 2008-40-090

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

March 27, 2008

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

FROM: *Michael R. Phillips*
Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2008 Statutory Review of Restrictions
on Directly Contacting Taxpayers (Audit # 200840024)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with legal guidelines addressing the direct contact of taxpayers and their representatives, as set forth in Internal Revenue Code (I.R.C.) Sections (§§) 7521(b)(2) and (c). The Treasury Inspector General for Tax Administration is statutorily required to conduct this audit.

Impact on the Taxpayer

The Omnibus Taxpayer Bill of Rights¹ created a number of safeguards to protect taxpayers being interviewed by an IRS employee as part of an examination or investigation. IRS employees are required to stop an interview if the taxpayer requests to consult with a representative and may not bypass a representative without supervisory approval. Neither the IRS nor we could readily identify cases in which the taxpayer requested a representative or the IRS improperly bypassed the representative. Of the limited number of complaints received related to this issue, there were none in which the facts of the case indicated the IRS employee did not comply with the taxpayer's request to consult with a representative or improperly bypassed the representative.

¹ Pub. L. No. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of 5 U.S.C. and 26 U.S.C.).



Fiscal Year 2008 Statutory Review of Restrictions on Directly Contacting Taxpayers

Synopsis

IRS employees are required by the direct contact provisions of I.R.C. §§ 7521(b)(2) and (c) to:

- Stop a taxpayer interview whenever a taxpayer requests to consult with a representative.
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative is responsible for unreasonably delaying the completion of an examination or investigation.

The IRS Internal Revenue Manual provides employees with guidance to help ensure compliance with the direct contact provisions. In addition, the IRS has informed taxpayers of their rights through various publications. However, we could not determine whether the IRS complied with I.R.C. §§ 7521(b)(2) and (c) requirements when directly contacting taxpayers and their representatives. IRS management information systems do not separately record or monitor direct contact requirements, and there is no legal requirement for the IRS to do so. Further, we do not recommend the creation of a separate IRS system to track those cases involved with direct contact issues. Accordingly, we made no recommendations in this report.

Response

Because we made no specific recommendations in this report, comments from the IRS were not required.

Please contact me at (202) 622-6510 if you have questions or Michael E. McKenney, Assistant Inspector General for Audit (Wage and Investment Income Programs), at (202) 622-5916.



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

Table of Contents

Background Page 1

Results of Review Page 3

 The Internal Revenue Manual Provides Employees With Guidance
 to Help Ensure Compliance With the Direct Contact Provisions Page 3

 The Internal Revenue Service Has Informed Taxpayers of Their
 Rights Through Various Publications Page 3

 Compliance With Statutory Requirements for Restrictions on
 Directly Contacting Taxpayers Cannot Be Determined Page 4

Appendices

 Appendix I – Detailed Objective, Scope, and Methodology Page 6

 Appendix II – Major Contributors to This Report Page 8

 Appendix III – Report Distribution List Page 9



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

Abbreviations

I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
RRA 98	Restructuring and Reform Act of 1998



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

Background

The Omnibus Taxpayer Bill of Rights¹ created a number of safeguards to protect taxpayers being interviewed by an Internal Revenue Service (IRS) employee as part of an examination or investigation. Specifically, IRS employees are required by the direct contact provisions of Internal Revenue Code (I.R.C.) Sections (§§) 7521(b)(2) and (c) to:

- Stop a taxpayer interview whenever a taxpayer requests to consult with a representative.
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative is responsible for unreasonably delaying the completion of an examination or investigation.

A taxpayer can file a civil suit against the IRS if an IRS employee intentionally disregards these provisions by denying a taxpayer the right to appropriate representation.

On July 22, 1998, the President signed into law the IRS Restructuring and Reform Act of 1998 (RRA 98),² which required the IRS to revise *Your Rights as a Taxpayer* (Publication 1) to inform taxpayers of their rights (1) to be represented at interviews and (2) to suspend an interview pursuant to I.R.C. § 7521(b)(2). In addition, Congress added I.R.C. § 7803(d)(1)(A)(ii) to the RRA 98, which requires the Treasury Inspector General for Tax Administration to annually evaluate the IRS' compliance with the direct contact provisions. *Senate Committee on Finance Report 105-174* (dated April 22, 1998), related to RRA 98 § 3502 provision, stated that Congress believes taxpayers should be more fully informed of their rights to representation in dealing with the IRS, and that those rights should be respected.

***The Treasury Inspector General
for Tax Administration is
required to annually evaluate the
IRS' compliance with the direct
contact provisions of
I.R.C. §§ 7521(b)(2) and (c).***

This review was performed in the offices of the acting IRS Commissioner and the National Taxpayer Advocate in Washington, D.C., and in the Small Business/Self-Employed Division Headquarters in New Carrollton, Maryland, during the period October 2007 through

¹ Pub. L. No. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of 5 U.S.C. and 26 U.S.C.).

² 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.).



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

February 2008. 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.



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

Results of Review

The Internal Revenue Manual Provides Employees With Guidance to Help Ensure Compliance With the Direct Contact Provisions

Following enactment of the Omnibus Taxpayer Bill of Rights in 1988, the IRS began to establish written procedures regarding taxpayer interviews for employees to follow and planned to enhance those procedures as needed. The initial procedures required employees to meet the legal guidelines imposed by the direct contact provisions and to document the related actions in the taxpayer's case file. Enactment of RRA 98 further enhanced the procedures and guidelines related to the direct contact issues.

In response to prior Treasury Inspector General for Tax Administration reports, the IRS updated the procedures and guidelines for directly contacting taxpayers and their representatives in its Internal Revenue Manual. In addition, the IRS assigned group managers responsibility for monitoring employee compliance with the direct contact provisions. The group managers are required to address this issue during group meetings, case reviews, on-the-job visits, and taxpayer/representative inquiries to ensure employees fully comply with the law.

The Internal Revenue Service Has Informed Taxpayers of Their Rights Through Various Publications

The IRS uses Publication 1 as the main document to keep taxpayers informed of their rights and to explain the examination, collection, appeals, and refund processes. Taxpayers are provided a copy of Publication 1 prior to scheduled interviews with the IRS. Prior to December 1998, taxpayer rights during IRS interviews were not specifically mentioned in Publication 1. The RRA 98 required the IRS to revise Publication 1 to include information concerning taxpayers' rights to be represented at interviews with the IRS and to suspend an interview pursuant to I.R.C. § 7521(b)(2). The IRS has also included information on these rights in other publications, such as:

- *Your Federal Income Tax* (Publication 17).
- *Tax Guide for Small Business* (Publication 334).
- *Examination of Returns, Appeal Rights, and Claims for Refund* (Publication 556).
- *The Examination Process* (Publication 3498).



Fiscal Year 2008 Statutory Review of Restrictions on Directly Contacting Taxpayers

As a result, taxpayers may be better informed of their rights during interviews through the expanded information avenues made available by the IRS.

Compliance With Statutory Requirements for Restrictions on Directly Contacting Taxpayers Cannot Be Determined

We could not determine whether the IRS complied with I.R.C. §§ 7521(b)(2) and (c) requirements when directly contacting taxpayers and their representatives. Neither the IRS nor we could readily identify cases in which the taxpayer requested a representative or the IRS improperly bypassed the representative.

Current IRS management information systems do not separately record or monitor cases in which taxpayers had requested to consult with a representative or in which IRS employees bypassed taxpayer representatives and contacted the taxpayers directly. There is no legal requirement for the IRS to record or monitor cases involving these two procedures.

One way to identify possible violations of these taxpayer rights is to determine if taxpayers have complained that an IRS employee intentionally denied them their right to representation or bypassed representatives without proper approval. The Taxpayer Advocate Management Information System⁴ and the IRS Commissioner's Information Tracking System⁵ do not track these types of complaints. However, taxpayer complaints that allege IRS employees bypassed their representatives and contacted them directly are tracked on the Performance and Results Information System⁶ by the Treasury Inspector General for Tax Administration Office of Investigations. The Office of Investigations closed four direct contact complaint cases between October 2006 and September 2007. In all four cases, the Office of Investigations determined the facts did not support the opening of a criminal investigation for any violation of the law.

⁴ The Taxpayer Advocate Management Information System is an electronic database and case inventory control system used by Taxpayer Advocate Service function employees.

⁵ The Information Tracking System is a system used by the IRS to control and track information and correspondence.

⁶ The Performance and Results Information System is a management information system that provides the Treasury Inspector General for Tax Administration with the ability to manage complaints received and investigations initiated.



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

This is the tenth year in which we have reported our inability to give an opinion on the IRS' compliance with the I.R.C. restrictions on direct contact. Although the IRS does not systemically monitor its employees' compliance with the direct contact provisions, we believe the procedures and guidelines it has established and enhanced over the years adequately address the requirements of the law. We do not recommend the creation of a separate tracking system and are making no recommendations in this report.



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with legal guidelines addressing the direct contact of taxpayers and their representatives as set forth in I.R.C. §§ 7521(b)(2) and (c). To accomplish this objective, we:

- I. Obtained confirmation from the Small Business/Self-Employed Division that the IRS neither has, nor plans to implement, a system or process to identify or track cases in which taxpayers have requested to consult with a representative or in which an IRS employee bypassed a representative.
- II. Interviewed various IRS and Treasury Inspector General for Tax Administration personnel responsible for the Taxpayer Advocate Management Information System,¹ the Information Tracking System,² and the Performance and Results Information System³ to determine if there is a system to track taxpayer complaints relating to violations of the direct contact provisions of the law.
 - A. Identified four direct contact cases on the Performance and Results Information System closed by the Treasury Inspector General for Tax Administration Office of Investigations during the period October 1, 2006, through September 30, 2007.
 - B. Obtained and reviewed the closed Office of Investigations case files to determine their validity and what actions were taken by the IRS as a result of the complaints and investigations.
- III. Obtained information on the actions taken by the IRS in response to I.R.C. §§ 7521(b)(2) and (c) to determine the impact on IRS programs.
 - A. Reviewed all prior Treasury Inspector General for Tax Administration audit reports for the statutory direct contact reviews and summarized the audit results, recommendations, and corrective actions taken by the IRS.

¹ The Taxpayer Advocate Management Information System is an electronic database and case inventory control system used by Taxpayer Advocate Service function employees.

² The Information Tracking System is a system used by the IRS to control and track information and correspondence.

³ The Performance and Results Information System is a management information system that provides the Treasury Inspector General for Tax Administration with the ability to manage complaints received and investigations initiated.



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

- B. Reviewed historic and current Internal Revenue Manual sections to identify any updates made in response to I.R.C. §§ 7521(b)(2) and (c).
- C. Reviewed IRS.gov (the public IRS Internet site) and related IRS publications to identify how the IRS informs taxpayers of its prohibition against directly contacting taxpayers in certain situations.



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

Appendix II

Major Contributors to This Report

Michael E. McKenney, Assistant Inspector General for Audit (Wage and Investment Income Programs)
Marybeth H. Schumann, Director
Bryce Kisler, Audit Manager
Kristi Larson, Lead Auditor
Tanya Adams, Senior Auditor



*Fiscal Year 2008 Statutory Review of Restrictions on
Directly Contacting Taxpayers*

Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Acting Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Director, Collection, Small Business/Self-Employed Division SE:S:C
Director, Communications, Government Liaison, and Disclosure, Small Business/Self-Employed
Division SE:S:CLD
Director, Examination, Small Business/Self-Employed Division SE:S:E
Chief Counsel CC
National Taxpayer Advocate TA
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