Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

April 17, 2008

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TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

April 17, 2008

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 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 200840001)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with established procedures to implement the legal guidelines set forth in IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204.[1] 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[2] using any record of tax enforcement results (ROTER) or base employee successes on meeting arbitrary production goals and quotas. In the sample we reviewed, we did identify a few instances in which employee evaluations contained ROTERs. However, based on the overall results of our sample, we believe that the IRS' efforts to enforce the employee evaluation requirements under Section 1204 are generally effective and are helping to protect the rights of taxpayers.

[1] 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.).
[2] 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.

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 all functions subject to Section 1204 were located. We selected 1 first-line manager from each function[3] and 3 employees for each of these managers (if available) for a total of 68 managers and 202 employees.[4] In addition, we selected 15 second-, third-, and upper-level managers (including executives) having supervisory responsibilities over the first-line managers selected for review. We evaluated Fiscal Year 2007 performance evaluation documents (including midyear and annual performance reviews and award documentation) for each selected employee to determine whether ROTERs were used when evaluating the employees' performance.

Full compliance with RRA 98 Section 1204 was not achieved during Fiscal Year 2007.

We identified potential violations of RRA 98 Section 1204(a) in 7 (1 percent) of the 660 performance evaluation documents reviewed. In addition, four managers did not document that they had evaluated employees on the retention standard that requires the fair and equitable treatment of taxpayers, and 29 (45 percent) of the 65 employees and managers we asked did not understand the intent of the retention standard. Further, five managers of employees could not substantiate compliance with IRS procedures by providing evidence that they had completed the requested RRA 98 Section 1204 Manager's Self-Certification Forms.

Recommendation

The Deputy Commissioner for Operations Support should work with the National Treasury Employees Union and the IRS business units and functions to 1) revise Block 9 of the Bargaining Unit Performance Appraisal and Recognition Election (Form 6850-BU) and the Non-Bargaining Unit Performance Appraisal (Form 6850-NBU) to label the retention standard as the "Fair and Equitable Treatment Standard" and 2) define the standard in the instructions attached to the Forms.

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[3] After obtaining the Fiscal Year 2007 data, we determined that two sites did not have a manager in one of the seven business units. Therefore, no managers or employees were selected for those business units.
[4] These were employees in jobs for which RRA 98 Section 1204 would be applicable.

Response

IRS management agreed with our recommendation. The Human Capital Officer will work with the National Treasury Employees Union to revise Block 9 of Forms 6850-BU and 6850-NBU to label the retention standard as the "Fair and Equitable Treatment Standard" and to define the standard Section 1204(b) in the instructions attached to each of the Forms. Management's complete response to the draft report is included as Appendix V.

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 in this and the prior audits is that self-assessments containing ROTERs do violate RRA 98 Section 1204(a). 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.

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.

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Abbreviations

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

Background

On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law.[1] 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 (ROTER) 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 ROTERs 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. It 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.

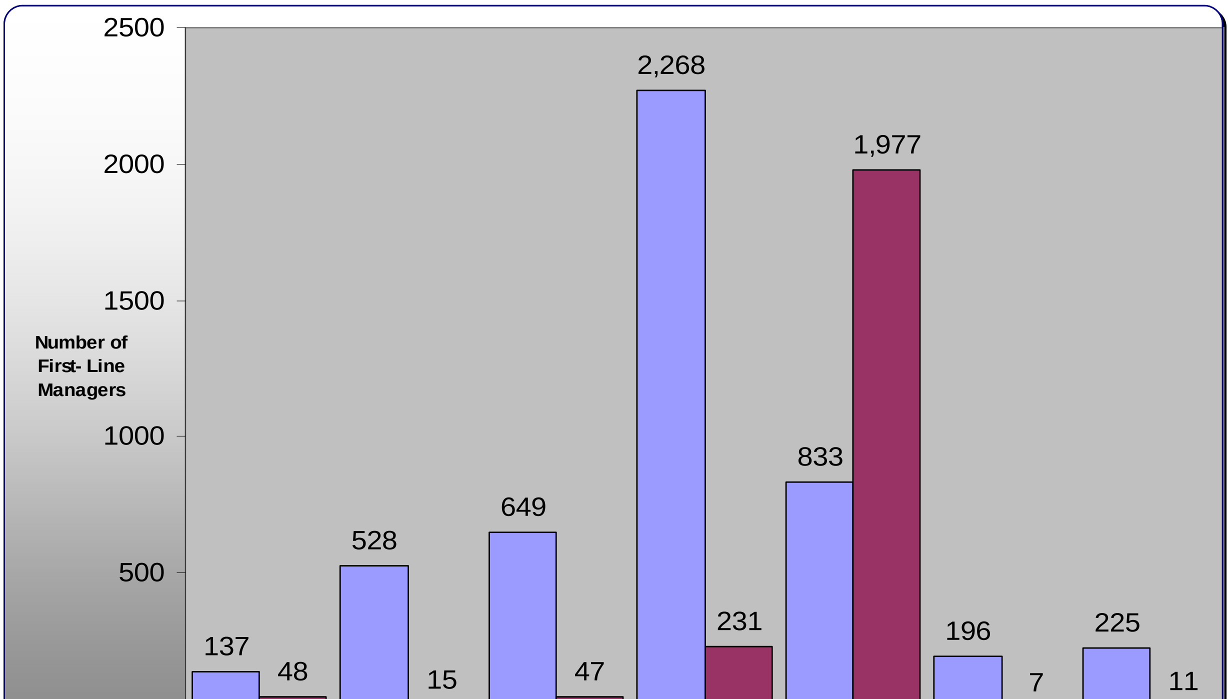
RRA 98 Section 1204(c) requires each appropriate supervisor to perform a self-certification quarterly. In the self-certification, the appropriate supervisor attests to whether ROTERs or production quotas or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest ranking executive in a distinct organizational unit who supervises directly or indirectly one or more Section 1204 enforcement employees.[2] 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 is then to prepare a consolidated office certification covering the entire organizational unit.

[1] 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.).
[2] 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.

The IRS business units and functions, 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 Section 1204 Coordinators in each division and function 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 units as of June 30, 2007. 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 First-Line Managers by Business Unit (as of June 30, 2007)



	Appeals Function	Criminal Investigation Division	Large and Mid-Sized Business Division	Small Business/Self-Employed Division	Wage and Investment Division	National Taxpayer Advocate	Tax Exempt and Government Entities Division
Section 1204	137	528	649	2,268	833	196	225
Non-Section 1204	48	15	47	231	1,977	7	11

Source: IRS Section 1204 Program Managers, June 30, 2007.

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 nine annual reviews to meet this requirement. The audit reports are listed in Appendix IV.

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 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 during the period August 2007 through January 2008. Onsite reviews were performed at the IRS field offices in Boston, Massachusetts; Detroit, Michigan; Greensboro, North Carolina; Los Angeles, California; New Orleans, Louisiana; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Plantation, Florida; Sacramento, California; and Washington, D.C. 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

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

The IRS did not achieve full compliance with RRA 98 Section 1204 in Fiscal Year 2007.

- Potential ROTER violations of RRA 98 Section 1204 were identified in 7 (1 percent) of 660 employee or manager performance-related documents reviewed.
- Five managers could not provide one of the two Manager's Quarterly Self-Certifications (Form 1204) requested.
- Four managers, affecting six employees, did not indicate that employees were evaluated on the retention standard, which requires the fair and equitable treatment of taxpayers.

To evaluate the IRS' compliance with Sections 1204(a) and 1204(b), which prohibit the use of enforcement statistics to evaluate employee performance and require that employees be evaluated on the fair and equitable treatment of taxpayers, we selected a judgmental sample of 68 first-line managers and 202 employees in 10 cities.[3] We selected sites that had at least one Section 1204 first-line manager in each of the seven IRS business units and selected one first-line manager from each of the business units and three employees from each manager.[4] We also reviewed performance documentation for 35 first-line managers and 15 second-, third-, and upper-level managers and executives. We evaluated 660 Fiscal Year 2007 performance-related documents, including midyear 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 660 performance-related documents for 252 employees showed 7 instances (1 percent) in which ROTERs were used to evaluate employees. These ROTERs were found in employee self-assessments and annual and midyear performance reviews. The managers sampled worked in the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation Division; the Large and Mid-size Business Division; the Small

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[3] See Appendix I for details of the IRS offices and cities selected for review.
[4] After obtaining the Fiscal Year 2007 data, we determined that two sites did not have a manager in one of the seven business units. Therefore, no managers or employees were selected for those business units.

Business/Self-Employed Division; the Office of the National Taxpayer Advocate; the Tax Exempt and Government Entities Division; and the Wage and Investment Division.

We also researched the TIGTA Performance and Results Information System[5] for any related Section 1204 complaints during the period September 1, 2006, through August 31, 2007. There was only one potential Section 1204 complaint in the Performance and Results Information System during that 12-month period.

Based on the results of our review, 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 manager self-certification process, it has developed a mandatory briefing to be completed by all Section 1204 employees by March 21, 2008.

Most managers maintained copies of completed self-certification forms

Sixty-three (57 + 6, or 93 percent) of 68 first-line managers sampled had complied with the provisions of RRA 98 Section 1204(c) by completing the required self-certifications on the use of tax enforcement results.

- 60 (98 percent) of 61 managers produced copies of their second quarter self-certification forms, and 57 (93 percent) of these 61 managers also produced copies of their fourth quarter self-certification forms.
- 7 (100 percent) of 7 managers produced copies of their second quarter self-certification forms, and 6 (86 percent) of these 7 managers also produced copies of their third quarter self-certification forms.

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. To do this, 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.

[5] 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.

- 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).

Figure 2 presents an excerpt from Form 1204-M, which is one of the versions of Form 1204.

Figure 2: Manager's Quarterly Self-Certification – No Violations (Form 1204-M)

Manager's Quarterly Self-Certification – No Violations
RRA 98 Section 1204

Name of Manager	Title
Organization	Quarter ending *(select correct quarter from drop down)*

☐ 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

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:

- **Section 1204(a)** In General -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.
- **Section 1204(b)** (Retention Standard) Taxpayer Service - The IRS shall use fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.

To comply with Section 1204(a), I have not:

- Used records of tax enforcement results (ROTERs) in any written performance evaluations prepared or reviewed, including appraisals, awards, or promotion justifications
- Used records of tax enforcement results (ROTERs) to impose or suggest production quotas or goals with respect to field activities (e.g. through program guidance or business and program reviews)
- 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

To comply with Section 1204(b), all employees in my organization have:

- Signed for receipt of the Retention Standard annually
- Been evaluated on the Retention Standard annually

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.

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

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

Because the IRS is generally in compliance with the requirements of Section 1204, we are making no recommendations at this time.

Most managers indicated that employees were rated on the fair and equitable treatment of taxpayers

Of 118 managers sampled, 114 (97 percent) documented that they had evaluated employees on the retention standard. However, four managers, affecting six employees, did not indicate on the evaluation form that the employees were evaluated on the retention standard that requires the fair and equitable treatment of taxpayers. By law, IRS employees are to be evaluated on the retention standard.

On June 16, 1999, the IRS established such a standard to ensure that employee performance is focused on providing quality service to taxpayers instead of on achieving enforcement results. The standard applies to all executives, managers, and other employees. 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.

Managers and employees are confused about the intent of the retention standard

Of the 65 managers and employees who were asked if they understood the retention standard, 29 (45 percent) did not understand the intent of the retention standard. Forms 6850 do not define the retention standard. The instructions indicate that a narrative is required only if the assigned rating is "Not Met." Figure 3 presents an excerpt from the two Forms 6850 pertaining to the retention standard.

Figure 3: Forms 6850 Retention Standard Rating

Bargaining Unit Performance Appraisal and Recognition Election
(Review instructions before completing this form)

1. Name of employee (Last, first, middle initial)	2. Social Security Number	3. Reason for Appraisal ☐ Annual Rating ☐ Interim Rating ☐ 90 Day Appraisal ☐ 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 ☐ Not Applicable	☐ Met	☐ Not Met

Block 9. Retention Standard Rating: Narrative is mandatory if assigned rating is "Not Met".

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

Sixteen employees and 13 managers interviewed showed a lack of knowledge of the intent of the retention standard. Some managers stated that the retention standard was measuring whether the employee would be retained in his or her job as a result of meeting the critical job elements on the evaluation form. Other managers could not describe how they evaluate employees in their unit on this standard. It appears that for some managers the standard on the evaluation form has become a box that is simply "checked" without any real substance being discussed with the employee.

The standard is defined in employee performance plans, and the IRS advised us that the retention standard information is found in many avenues through IRS web sites and on the Critical Elements and Standards that managers should review annually with employees. However, the evaluation forms for most employees label the standard simply as the "retention standard," which is not defined on the evaluation forms or in the instructions. Some managers and employees advised us that no recent training on the retention standard has been received and that this standard is not discussed during meetings or performance evaluation discussions. Clarifying the standard on the employee evaluation forms would help managers and employees better understand the intent of the standard and ensure that it is being considered.

Recommendation

Recommendation 1: The Deputy Commissioner for Operations Support should work with the National Treasury Employees Union and the IRS business units and functions to 1) revise Block 9 of the Forms 6850 to label the retention standard as the "Fair and Equitable Treatment Standard" and 2) define the standard in the instructions attached to the Forms.

> ***Management's Response:*** IRS management agreed with this recommendation. The Human Capital Officer will work with the National Treasury Employees Union to revise Block 9 of Forms 6850-BU and 6850-NBU to label the retention standard as the "Fair and Equitable Treatment Standard" and to define the standard Section 1204(b) in the instructions attached to each of the Forms.
>
> ***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 in this and the prior audits is that self-assessments containing ROTERs do violate RRA 98 Section 1204(a). 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.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with established procedures to implement the legal guidelines set forth in IRS RRA 98 Section 1204.[1] 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'[2] 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 National 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 by city. We judgmentally selected the following 10 cities for this year's audit: Boston, Massachusetts; Detroit, Michigan; Greensboro, North Carolina; Los Angeles, California; New Orleans, Louisiana; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Plantation, Florida; Sacramento, California; and Washington, D.C. We selected sites that had at least 1 Section 1204 first-line manager in each of the 7 IRS business units and considered geographic coverage and prior audit coverage when selecting the 10 audit sites.

   B. Selected a judgmental sample of one first-line manager per business unit and three Section 1204 employees for each manager. This provided a total of 68 managers and 202 employees for review. Because Fiscal Year 2007 data were not yet available, we used Fiscal Year 2006 data to select the initial audit sites for the sample. After receiving the Fiscal Year 2007 data and selecting the sample of managers, we determined that two sites did not have a manager in one of the seven business units. No employees were selected for those business units. Also, one of the managers selected had only one Section 1204 employee at the site selected. We reviewed performance documentation for 35 first-line managers while onsite. We judgmentally

[1] 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.).
[2] 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.

selected those managers based on whether their supervisors were located at the same site. In some instances, offsite supervisors were contacted for a copy of the documentation. We also reviewed documentation for 15 second-, third-, and upper-level managers and executives, bringing the total number of employees reviewed to 252 (202 employees + 35 first-line managers + 15 other managers). We selected the sample of second-, third-, and upper-level managers by researching the management chain for the selected Section 1204 first-line managers, compiling a list of those supervisors, and selecting the sample using a random number generator.

C. Obtained and reviewed Fiscal Year 2007 performance evaluation documentation (including midyear and annual performance reviews and award documentation) for each employee selected to determine whether the use of any 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 employees and managers concerning the use of ROTERs and their understanding of the retention standard. We selected the employees based on who was in the office the day of our visit and 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 employees per site.

E. Reviewed the TIGTA Performance and Results Information System[3] for complaints regarding the violation of Section 1204.

II. Determined whether selected first-line managers complied with RRA 98 Section 1204(c) by certifying by letter whether ROTERs were used in a manner prohibited by RRA 98 Section 1204(a).

A. Obtained Fiscal Year 2007 second and fourth quarter self-certifications for the selected first-line managers and reviewed the self-certifications for compliance with IRS procedures and the identification of any use of ROTERs or production quotas or goals. Due to the timing of our first site visit, the fourth quarter certifications were not yet due. Therefore, we obtained the second and third quarter self-certifications from managers at this site.

[3] The Performance and Results Information System is the TIGTA management information system that tracks all leads developed by the TIGTA, all complaints received from external sources, and all investigations initiated as a result of internal and external allegations.

Appendix II

Major Contributors to This Report

Michael E. McKenney, Assistant Inspector General for Audit (Wage and Investment Income Programs)
Augusta R. Cook, Director
Paula W. Johnson, Audit Manager
Sharon Shepherd, Lead Auditor
Lynn Faulkner, Senior Auditor
Jack Forbus, Senior Auditor
Tracy Harper, Senior Auditor
Jerome Antoine, Auditor
Jean Bell, Auditor
Patricia Jackson, Auditor

Appendix III

Report Distribution List

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Office of the Commissioner – Attn: Acting Chief of Staff C
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Commissioner, Tax Exempt and Government Entities Division SE:T
Commissioner, Wage and Investment Division SE:W
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National Taxpayer Advocate TA
Chief Financial Officer OS:CFO
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Director, Strategy and Finance, Wage and Investment Division SE:W:S
Chief, Performance Improvement, Wage and Investment Division SE:W:S:PI
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- Chief, Appeals AP:TP:SS
- National Taxpayer Advocate TA
- Chief Financial Officer OS:CFO
- Director, Communications, Liaison and Disclosure SE:S:CLD
- Senior Operations Advisor, Wage and Investment Division SE:W:S

Appendix IV

Prior Audit Reports

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

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 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 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 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 2003).

Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement (Reference Number 2002-40-163, dated September 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 2001).

Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics (Reference Number 2000-10-118, dated September 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 1999).

Appendix V

Management's Response to the Draft Report

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

CHIEF FINANCIAL OFFICER

RECEIVED
APR 1 2008

April 1, 2008

MEMORANDUM FOR MICHAEL R. PHILLIPS
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Alison L. Doone
Chief Financial Officer

SUBJECT: Draft Audit Report – Fiscal Year 2008 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit No. 200840001)

Thank you for the opportunity to review and respond to the subject draft audit report. Although we did not agree with four of the seven cited potential ROTER violations of Section 1204(a) and the Section 1204(c) quarterly self-certifications, we agree with the recommendation noted in the report relating to Section 1204(b). The attached action plan describes the corrective actions necessary to implement the recommendation.

We appreciate your independent validation that the IRS efforts to ensure 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. However, we did not agree with four of the seven potential ROTER violations cited in the report, which focus on statements appearing in employee self-assessments and their relation to Section 1204(a). Section 1204(a) prohibits any IRS employee from using ROTERs to evaluate any other employee. There are no provisions in Section 1204(a) governing the use of ROTERs in employee self-assessments. It is, therefore, our opinion that none of the statements identified by TIGTA as potential ROTERs in IRS employee self-assessments constitute violations of Section 1204(a).

With regard to the potential violations of Section 1204(c) cited in the report, which relate to the inability of some IRS managers to produce a copy of their FY 2007 Section 1204 quarterly self-certification forms, we appreciate your findings that most managers have maintained copies of completed self-certification forms, and that the IRS is generally in compliance with the requirements of Section 1204. However, it is our opinion that during the on-site audit, and subsequent to the release of the audit findings, each of the managers in question has adequately demonstrated compliance with the provisions of Section 1204(c).

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

Attachment

Attachment

RECOMMENDATION 1:

The Deputy Commissioner for Operations Support should work with the National Treasury Employees Union and IRS business units and functions to revise Block 9 of the Forms 6850 to label the retention standard as the "Fair and Equitable Treatment Standard," and define the standard in the instructions attached to the forms.

CORRECTIVE ACTION:

The IRS Human Capital Officer (HCO) will work with the National Treasury Employees Union (NTEU) to revise Block 9 of Forms 6850-BU and 6850-NBU to label the retention standard as the "Fair and Equitable Treatment Standard" and to define the standard §1204(b) in the instructions attached to each of the forms.

PROPOSED IMPLEMENTATION DATE: October 1, 2009

RESPONSIBLE OFFICIAL: Chief, Human Capital Officer (HCO)

CORRECTIVE ACTION MONITORING PLAN:

- April 2008 – Determine precise language changes to the Forms 6850-BU and 6850-NBU
- July 2008 – Coordinate with the Workforce Relations Division (WRD) to place notice of revision to Form 6850-BU on July 2008 quarterly notice
- September 2008 – Complete negotiations with NTEU, if union opts to bargain over the changes
- October 2008 – Submit ePerformance change request to Treasury through AWSS ePerformance program office after negotiations with NTEU have been completed
- March 2009 – Coordinate with W&I Multimedia Publishing Services to effect changes to forms in IRS forms repository
- September 2009 – Revised version of forms available in ePerformance and IRS forms repository
- September 2009 – Publicize Servicewide change to forms for FY 2010 appraisal cycle
- October 1, 2009 – Implement new Forms 6850-BU and 6850-NBU*

*Note: This date reflects the first opportunity to change the title of block 9 of Form 6850-BU and Form 6850-NBU as well as the instructions in ePerformance. Almost all employees' performance appraisals are processed under ePerformance so it is essential that the necessary changes be made to the system as well as to the version of the forms that appear in the Multimedia forms repository.

All ePerformance changes must be approved by Treasury and agreed with by other bureaus using the system. Normally, this process requires a 6-month lead time. However, because of ePerformance System upgrades in progress, the lead time is now 12 to 18 months for system changes. The changes should be made concurrently in ePerformance and the forms repository to avoid confusion.